Asset Preservation:

The Family Home

by **Steven A. Early**

In ongoing conversations with our Life Care Plan clients, families ask about the family home and if it is prudent to preserve it when the owner may need to qualify for Medicaid. The home is an exempt asset for Medicaid purposes. This means that it is not counted as an asset for the purpose of determining eligibility for Medicaid.

Medicaid Estate Recovery: A "Deferred Countable" Asset

There is a downside to owning a home. Under Medicaid law, the government must seek repayment of Medicaid funds paid out for nursing home care after the death of the institutionalized person. This is called estate recovery. The government gets repaid from assets owned by the institutionalized person at his or her death. In most cases, the only such asset will be the home. The government cannot force the sale of the home, however, until the death of the Medicaid recipient and only at a time when the recipient has no surviving spouse, disabled child, or a child of any age who resided in the home.

The result is that the countability of the home is generally deferred to a later date unless one the above conditions are met. A person who has sold her home may have transformed an exempt asset (the house) to a countable asset (the cash sale proceeds), but the benefit of retaining the home and accelerating Medicaid eligibility only to lose all or a portion of the house to estate recovery years later can be illusory.

The Home as a Burdensome Asset

There are other downsides to retaining the home. Real estate that is no longer occupied either by the owner or a family member as a homestead or by a tenant who pays rent is a burden. Utilities and taxes and insurance have to be paid, upkeep and maintenance done, and the home kept safe from vandals and other calamities. This makes the home a burden, unless there really is a realistic chance that the owner will be able to return home someday from the nursing home.

Most of our families, therefore, do not want to retain the home unless the burden of ownership can be alleviated or shifted to someone else. The most obvious way to do this is to sell the home.

Selling the Home

When, if ever, does it make sense to convert an exempt asset (the home) into a countable asset (the cash sale proceeds)? If the home is sold while the owner is receiving Medicaid nursing home benefits, the sales proceeds would be countable. This amount would have to be reduced to $2000 in order for the owner to resume getting Medicaid.

If the person has been receiving Medicaid nursing home benefits for a lengthy period of time, it may make sense to sell the house and transfer away the money, even if the result is a period of ineligibility. More may be saved by paying privately during the period of Medicaid ineligibility than what will be lost from estate recovery.

Example: Mrs. Jones has been residing in the nursing home and receiving Medicaid benefits for seven years. She is in very poor health and is not likely to live for more than another year. The only asset she owns is her home, which is worth $90,000. Mrs. Jones sells her house for $90,000 and begins paying the nursing home privately until her death nine months later. She pays out $30,000 from the $90,000 over that nine months, leaving $60,000 to her children at her death.

The government will probably have paid out over $200,000 in Medicaid for her during the past seven years. Had she not sold the house, upon her death the government would have recouped out of the house all of the Medicaid benefits it paid out on her behalf. There would be nothing left for her children to inherit.

For persons who have just entered the nursing home, whether it is wiser for the nursing home resident to rent out the house or sell unfortunately depends on a rather morbid calculation of his or her life expectancy.

Selling could be successful where a long nursing home stay is anticipated: The longer the nursing home stay, the more Medicaid pays out for nursing home care, the more Medicaid will be reimbursed out of the house on estate recovery.

If a short nursing home stay were anticipated, selling the home may result in a longer ineligibility period. In such a case it may be wiser to retain the home and utilize other strategies for protecting the home.

Protecting the Home from Medicaid Estate Recovery

As discussed above, while the home is considered an exempt asset for Medicaid eligibility purposes, after the death of the Medicaid recipient, the property is subject to estate recovery. Listed below is a summary of the strategies for protecting the probate estate of the nursing home resident from Medicaid estate recovery:

1. Do nothing and wait out the one-year statute of limitations that the government has to file a claim for Medicaid estate recovery from the date of death of the nursing home resident.
2. Have a single child live in the residence for at least one year prior to the death of the Medicaid recipient.
3. Transfer the property immediately before the nursing home resident dies.
4. Transfer or restructure title to the property and pay privately until the penalty period (if any) runs out.
5. Sell the property (possibly to another family member) and pay privately if necessary until our Plan for preserving the countable assets results in Medicaid eligibility.

Changes in the Law

Federal and state law, rules and regulations change regularly, particularly the laws and interpretation of laws pertaining to Medicaid. For further discussion on this or any other area of Elder Law, please feel free to contact my office.

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