Medicaid Myths: Fact or Fiction
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In practicing elder law, many of my clients are concerned that the nursing home or the government is going to take their home when they die. Others want to transfer everything to an irrevocable trust or an annuity so that they can qualify for Medicaid but still save their hard-earned assets for their children. It seems that there is more bad information than good being shared around the water cooler and the internet. So in this article, I want to set the record straight about some of the more common misconceptions about Medicaid.

Myth #1 – The nursing home will take my house when I die.

You've probably heard someone say that, if they go into a nursing home, either the government or the nursing home will take their house when they die. While this statement is not entirely incorrect, this is not always true, either. If a person goes into a nursing home before death, they may lose their home if either (1) they have to sell it during their life to pay the nursing home bill or (2) the nursing home or Medicaid files a claim against their estate at death.

When a person dies, his creditors will file a claim against his estate to be repaid what the deceased owed them. If a person was in a nursing home and paid privately, that person may have owed money on his nursing home bill at the time of his death. Therefore, the nursing home may file a claim against the deceased's estate for repayment. Alternatively, if the deceased received Medicaid while alive, then Medicaid will also file a claim against the estate seeking to recover the amounts that it paid on the deceased's behalf during his life. This is known as Medicaid estate recovery.

There is a certain order in which creditors are repaid from a person's estate. This order is set by law and is referred to as "priority." Both the nursing home and Medicaid are just like any other creditor, and they are repaid in relation to the priority of their claim. If there are not enough liquid assets (i.e., cash) in the deceased's estate to pay all creditor claims, then non-liquid assets must be sold to pay them. The deceased's home is usually one of the largest assets in the estate and often must be sold in order to pay these claims. Since a typical nursing home bill is between $5,000 and $7,000 per year, it is not surprising that the home may need to be sold to pay a nursing home or Medicaid claim.

Myth #2 – I can put all my money in a trust and protect it from Medicaid.

If you simply Google "Medicaid planning," you will probably get thousands of results that talk about special Medicaid trusts which will protect your millions of dollars, allowing you to pass it on to your kids while also qualifying for government long term care benefits. Again, this is a partially true statement.

Use of trusts is one strategy which can help to protect assets for future generations. Assets placed in the trust are not counted as resources for Medicaid purposes, so the trust

is advertised as a way to save assets, rather than having to spend them down, in order to fall within the very strict Medicaid resource limits. There are several qualifications to this, though. First, the trust must be irrevocable. That means that once you put the money into the trust, you cannot change your mind and get it back out. You have essentially given the money away. You also cannot be responsible for managing the trust money; someone else, maybe a friend, child, or financial advisor, must serve in that role. Finally, you can only receive income from the trust. If you receive principal, then all the money in the trust is considered an asset to you for Medicaid purposes.

Transferring the money into the trust is also considered a transfer of assets under Medicaid rules, which could disqualify you from Medicaid for a certain period of time if the trust is funded within five years of applying for Medicaid benefits. This five year period is called the Medicaid lookback period. When a person applies for Medicaid, the Department of Social Services will look back at the previous five years to determine if the applicant has made any gifts. A transfer of money or property to an irrevocable trust is considered a gift. If a gift was made, the applicant is subject to a penalty period of benefit ineligibility, the length of which depends on the amount gifted. For each $5,500 given away, the applicant is ineligible for Medicaid for one month. The penalty period does not begin until the person is in the nursing home and has spent down enough of his assets that he would otherwise be eligible for Medicaid. Again, this transfer sanction only applies to gifts made within the five years prior to applying for Medicaid. Therefore, if the trust is set up and funded more than five years ahead of time, all the assets in the trust should be protected.

Myth #3 – I can put all my money in an annuity and protect it from Medicaid.

Another popular Google search result is the Medicaid-compliant annuity. As with the irrevocable trust, the money used to purchase the annuity is not considered a countable resource for the Medicaid applicant. However, the annuity must be irrevocable, meaning once it is purchased, it cannot be cashed in or terminated to get the money back. The annuity payments must also begin right away, and the annuity must be structured so that it will pay out completely over the statistical life expectancy of the annuitant. In other words, you cannot structure the annuity to make very small monthly payments in an effort to ensure there is a large death benefit for the beneficiary.

As with the irrevocable trust, the purchase of the annuity can be considered a transfer of assets. However, the current Medicaid rules allow the annuity purchase not to be deemed an impermissible transfer if Medicaid is named a beneficiary of the annuity. In essence, if there is any money left in the annuity at your death, it must be used to pay back Medicaid in order to escape the transfer of assets penalty.

Fact – Medicaid rules are complex and change frequently. There are many myths about Medicaid and long term care planning which are passed both by word of mouth and on the internet. You can cost yourself or your family dearly if you act hastily without getting accurate advice tailored to your specific situation. However, with the right information and smart planning in place, you can both take care of yourself and your

family for years, and possibly even generations, to come.*Casey Pope is an attorney at*

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