

The Estate Planning Advisor

Planning Today for Long Term Care Tomorrow

By Mindy Menke, J.D.

In 2004, the average life expectancy for a U.S citizen was 77.8 years. Modern medicine has allowed us to live longer, but not necessarily better. Approximately 50% of all individuals will need long term care at some point in their lives. Of those individuals who require long-term care, 22% will need care from between four months to five years.

There are three primary ways to pay for long-term care. The first is to self-insure, or privately pay for care. With an average private pay rate for nursing homes in the Northern Metropolitan region (which includes Orange County) of \$9,074 per month, or approximately \$109,000 a year, this is an unattractive option for most people. The second option is long-term care insurance. This is a good and viable option for those who are eligible based on their health and age and financial situation. The third way to pay for long-term care costs is through the Medicaid program.

The requirements for Medicaid eligibility changed after the passage of the Deficit Reduction Act of 2005 (the "DRA"). Now an individual may retain only \$4,200 in assets and income of \$50 per month in order to qualify for Nursing Home Medicaid. The Community Spouse (the spouse of the Medicaid applicant), may retain up to \$101,640 in assets and income of \$2,541 per month. A primary residence is exempt from this calculation. The applicant is currently subject to a three-year "look back" period. This means that they must provide the Department of Social Services ("DSS") with 36 months of records for all financial transactions, including bank statements, information relating to the sale and purchase of stocks and bonds, statements from brokerage accounts, and information relating to social security, pensions, IRAs and other retirement accounts. Any gifts made during this look back period will create a "penalty period" during which the Institutionalized spouse will have to privately pay for nursing home care.

Beginning in February 2009, one month will be added to the look back period each month through February 2011, when the applicant must provide 60 months worth of records. This is a daunting task for anyone, especially for elderly clients, and may seem impossible for those suffering from memory loss.

To ease this process in the event of a long-term care crises, consider saving in individual folders all statements for bank accounts (including copies of checks), brokerage accounts, retirement accounts and other financial assets. Make a list of all of life insurance policies that you own. Even if you think the value of the policies is nominal, cash values multiple life insurance policies could easily total over \$4,000, thereby making you ineligible for Medicaid. If you have more than one checking account and one savings account at the same bank, you should make a list of all of your accounts. Keep this list up to date, but don't remove closed accounts from this list. If the account was open at any point within the look back period, records will have to be provided to

DSS. Keep your lists in a safe place, but be sure to tell your spouse or a trusted adult child where they are located.

When transferring funds from one account to another, closing and opening new accounts or CDs, or cashing in stocks or bonds, you may want to consider depositing the exact amount withdrawn. This makes it easier to trace the funds and resolves any questions regarding the transactions. An individual should avoid making large cash withdrawals to pay for goods and services, because this may lead DSS to believe that a gift was made, thereby creating a penalty period (or lengthening an existing one). Instead, pay for services with a check or credit card. In the event an individual makes any large deposits or withdrawals, note what they were for on the bank statement; in five years you may not remember.

It is important to begin planning for long-term care before you need it. By contacting an attorney and taking steps today while you are in good health, you will be able to save you and your loved ones considerable time, effort, and piece of mind.

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