

Medi-Cal Eligibility: Asset Conversion Strategy

In previous editions of this weekly email newsletter, we have explored the need for long-term care planning as part of a comprehensive estate plan, the ethics of Medi-Cal planning,

Case: Joe recently suffered a stroke and was taken to the hospital. After a few weeks there, he was sent to a skilled nursing facility for rehabilitation and physical therapy. A few weeks later, the nursing home called Joe's daughter and asked her to pick him up: Joe was being discharged. She was distraught because she was unprepared for the call. After all, she thought he had 100 days of Medicare coverage. Moreover, she knew her father couldn't take care of himself, and she knew she couldn't take care of him due to her work schedule and other family commitments. She asked about Medi-Cal eligibility and was told that her father had too much money to qualify.

At the time, Joe's assets consisted of his home, which was subject to an outstanding mortgage of \$50,000 and which needed at least \$30,000 worth of repairs, and \$100,000 in a savings account. He also received \$1,200 a month in social security income.

Joe's daughter was told her father could stay in the nursing home if she agreed to pay their private pay rate of \$150 a day. She did the math quickly in her head and figured she couldn't afford to pay them \$4,500 a month. At that rate, her father would run out of money within 30 months assuming all of his income was paid to the nursing home. Of course, there was the house, but she knew that her dad would not want to sell it or refinance it, and it would cost a lot to prepare it for rental.

Question: How can Joe qualify for Medi-Cal without turning over his entire life savings to the nursing home?

Solution: From previous articles, you may recall that the home is an exempt or non-countable asset and does not figure in the Medi-Cal eligibility equation as long as the Medi-Cal applicant intends to return to the home, regardless of actual ability to do so. The only thing that's required to protect the house is to check the right box on the Medi-Cal application.

In this case, cash in savings is the problem. An individual Medi-Cal applicant is only allowed to have \$2,000 in cash. More than that and the individual either fails to qualify or loses continuing eligibility. Joe can protect his life savings while still qualifying for Medi-Cal benefits by converting non-exempt or "countable" resources (in this case, cash of \$98,000) into exempt or "non-countable" resources by simply buying exempt assets.

For example, if the non-exempt assets exceed the Medi-Cal eligibility limit of \$2,000 but the Medi-Cal applicant has a mortgage or outstanding credit card bills, the applicant may use excess cash to payoff the mortgage or credit card bills. The same principle applies to home repairs, remodeling the home, paying attorney's fees, buying a car, buying jewelry and household items, buying burial plots, and establishing burial funds.

In addition, the applicant can establish a designated burial fund of up to \$1,500. A designated burial fund is a separate savings account in which the funds are *revocably* designated today to pay for future burial expenses. A formal trust is not required to create a designated burial fund. One can designate a burial fund and later terminate it if he or she desires, although termination might jeopardize ongoing Medi-Cal eligibility.

The applicant can also set up an irrevocable burial trust. Irrevocable burial trusts are funds that are *irrevocably* set aside today to pay for future burial expenses. Accordingly, once the applicant places his funds in the trust account, he or she cannot later terminate the account. Oftentimes, the trustee of the burial trust is a funeral director. Unlike designated burial funds, there is no limit on the amount the person can place in the trust account. None of the money placed in an

irrevocable burial trust will be counted in determining the applicant's Medi-Cal eligibility. If there is money remaining after all burial expenses have been paid, it is permissible to payout all remaining trust funds to designated beneficiaries according to the terms of the trust agreement.

In this example, Joe's home needs \$30,000 worth of repairs. Joe could spend \$30,000 of his cash savings on needed home repairs. His home is also encumbered by a mortgage of \$50,000. Joe could payoff his mortgage with \$50,000 of his remaining cash, securing his ability to retain the home without worrying about monthly mortgage payments. That would leave Joe with cash in savings of only \$20,000. Remember that Joe can keep \$2,000 in a checking or savings account, leaving \$18,000. Of this amount, Joe can designate \$1,500 as his designated burial fund, leaving \$16,500. The remaining cash could be used to fund an irrevocable burial trust of any amount, pay attorney's fees (to advise him about Medi-Cal eligibility, asset protection, and estate planning), prepay property taxes and homeowner's insurance, buy a new car (using his old one, if any, as trade-in value), buy a burial plot, and fund a burial trust.

In the end, a very satisfactory solution to a seemingly complicated problem: Joe has managed to pay for his nursing home care without selling, mortgaging, or renting his house, and without going broke in the process. And Joe's daughter knows that her father will receive the best care possible for him under the circumstances. Hopefully, Joe will recover and will be able to return to his home. If so, at least the home will still be there! If not, at least he has preserved its value to pay for those special needs that are otherwise unmet through Medicare, Medi-Cal, or any other similar government entitlement program, such as recreation and entertainment, special equipment, prescription medicines, maybe even an upgrade in his room accommodations from a semi-private room to a private room, and, at his death, he has passed along an inheritance to his children which he always wanted to do.

Editor's Note: This article is one in a series of articles dedicated to the need for long-term care planning in a comprehensive estate plan and how to pay for nursing home care without going broke. This information is for general informational purposes only and does not constitute legal advice. Please do not rely on the limited information given here. Medicaid is a highly complex area of the law; it varies from state to state and even within a particular state. *Unfortunate and costly mistakes can be made if you do not know what you are doing.* Before taking any steps to protect assets, you are strongly urged to consult with an elder law attorney who is competent in this area of the law so that you will understand all of the ramifications of your actions, including but not limited to property, estate, gift, and income tax; financial and estate planning considerations; and even possible *criminal sanctions*.

If you need help in planning for long-term care as part of a comprehensive estate plan or finding the right nursing home or paying for it without going broke, please give us a call. We can help!

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