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THE BIG SCARY NURSING HOME

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The Big Scary Nursing Home

by David Silver

I have yet to have a consultation with a client who tells me that they want to go to a nursing home. However, it is estimated that more than half of Americans will need care in a nursing home. No matter how healthy you are, none of us are above having a stroke or getting hit by a bus. Medicare will pay for 20 days of rehabilitation, and most Medicare supplemental plans will pay the majority of the bill for another 80 days, but when that time runs out, or if rehabilitation is no longer helping, Medicare stops paying. The average cost of a skilled nursing facility in North Carolina is officially $6,300 per month, but my experience tells me that the actual cost currently is closer to $7,500 per month. If you or a loved one is over the age of 65 and requires skilled nursing care for a prolonged period of time, how can you pay for it? I advise my clients that the best thing to do is to be independently wealthy. If that can't happen, and if you don't already have a long-term-care insurance policy, then we will need to become eligible for Medicaid.

When most people think of Medicaid, they think of a program that acts like medical insurance of the poor. However, part of Medicaid is dedicated to providing long-term-care for people over the age of 65 at skilled nursing facilities. Medicaid will not pay for nursing care at your home (with some minor exceptions), nor will they pay for care at an assisted living facility (where you don't need a nurse). There are other public benefits that may provide assistance for home care and assisted living, but those will have to be topics for future articles.

If you meet the qualifications, Medicaid will pay the difference between your income and the cost of care at a skilled nursing facility. If you have a spouse that remains at home, your spouse might be able to keep a portion of your income, but the rest of your income will go to the skilled nursing facility. In order to qualify for Medicaid, you must meet a medical test, an income test and an asset test. The medical test simply requires your doctor to fill out a form (called an FL-2 form) stating that you require care at a skilled nursing facility. The income test requires that your income (not including a spouse's income) be less than the skilled nursing facility's Medicaid reimbursement rate (about $5,000 per month).

The final Medicaid qualification test is the asset test. If you are single, you may not have more than $2,000 of "countable" assets. If you are married, Medicaid counts the assets owned by both you and your spouse, even if you have a prenuptial agreement, and the rules are a little more complicated. Your spouse may keep all the countable assets up to $24,180, and half of the countable assets up to $241,800. The rest of the countable assets would have to be "spent down."

What's a "countable" asset and how can you "spend down" these assets? A residence and one vehicle are usually not countable assets, meaning that you do not have to sell them to qualify for Medicaid. Cash, retirement accounts and investments usually are countable assets, meaning that these funds would have to be spent down. It is usually okay to spend down countable assets by pre-paying for a funeral, paying legitimate debts and paying for health care. There are many rules about what constitutes a "countable" asset and what is permissible when "spending down" assets, so it is often worthwhile to consult with an attorney specializing in elder law to discuss what can be done without disqualifying you for Medicaid.

You can't simply give away your assets in order to qualify for Medicaid. If you have given away assets or transferred assets for less than full value within five years of applying for Medicaid, you will be ineligible for Medicaid for one month for every $6,300 that you have transferred. This penalty period does not begin to run until after you are in the skilled nursing facility and have spent down all of your assets to meet the previously-described Medicaid asset qualifications. There are times when gifting assets might be appropriate, there are ways to fix the damage done by past gifts, and there are strategies that can be implemented to preserve assets for a spouse or children, but the details of these circumstances would require individual legal analysis beyond the scope of this article.

If you do qualify for Medicaid, the State of North Carolina will have a claim against your estate at your death for the amount that Medicaid paid for your long term care at the skilled nursing facility, and these claims are often in excess of $100,000. If you don't have anything in your estate when you die, then this claim is of no consequence. However, if you had some non-countable assets when you applied for Medicaid (such as your residence) and these assets are part of your estate when you die, then these assets may have to be sold in order to pay Medicaid's claim in a process called "estate recovery." There are sometimes opportunities to protect assets from estate recovery. If it is important to you to try and ensure that your residence is protected for your kids at your death, then it is usually beneficial to discuss estate recovery with an attorney practicing in elder law.

If you do have a stroke or are hit by that bus and require skilled nursing care, you will likely be unable to participate in any conversation regarding Medicaid and you will probably be unable to take any action regarding countable assets, spend down or estate recovery. For this reason, it is very important to have in place an adequate Power of Attorney in order to allow your loved ones to take action on your behalf. Not all Power of Attorneys are the same, so make sure you have one that will allow your loved-ones to perform any transaction that might be necessary to preserve your wealth should you require skilled nursing care. Not all of us are independently wealthy, and not all of us can afford or can qualify for a long-term-care insurance policy, so a little planning and a little knowledge can prevent the need for skilled nursing care from providing for your spouse and depleting your financial legacy.

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