

The "Daily Plan-It"™

LAW OFFICES OF GARY R. WAITZMAN, L.L.C.

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Personal Services Agreements Can Help Protect Assets from Nursing Home Costs

As advisors, we're always looking for ways to help clients and their families protect and grow their resources. This particular strategy, while not permitted in every state, can help both your client and the caregiver.

If your client does not have long-term care insurance, they can spend their entire life savings when entering a nursing home. One way clients can protect their assets is to try to qualify for Medicaid. However, Medicaid has strict rules that vary state-by-state as to how much an individual can own.

"Why Can't I Just Give It Away?"

Many people make gifts to beneficiaries to reduce the size of their estates and lessen their "death tax" burdens. The gift tax law allows an individual to give away \$13,000 per year to another person, and allows individuals to give away as much as \$5 million in their lifetime tax free.

However, Medicaid views gifts as "uncompensated transfers" and as a way of hiding assets.

If Mom gives each of her children and grandchildren \$13,000 in an attempt to bring her estate down below Medicaid's permitted asset limit of, for example, \$2,000, then she just disqualified herself from receiving benefits.

A Contract to Protect Everyone

When family members take care of an elderly relative, it is perfectly appropriate to compensate them. Many quit jobs or reduce their hours to accommodate their new care giving responsibilities.

Some families pay caregivers an hourly wage, but as an estate-planning tactic, your client might opt for a lump-sum payment to cover services over an extended period via a Personal Services Agreement.

In undertaking this strategy, families must consider the tax consequences for the caregiver, who must report the payments as income.

Rather than issue regular paychecks, some families pay caregivers an upfront lump sum, typically

calculated by multiplying the caregiver's hourly wage by the number of hours he or she is expected to work over a parent's life expectancy.

With such a move, a family can make a one-time lump transfer of assets to a child that Medicaid might otherwise deem available to pay a nursing home.

Consult an Attorney First

Caregiver payments can help deplete the elderly person's savings on paper so he can qualify for Medicaid. Without the employment contract, Medicaid could consider all of the payments to the caregiver as a gift made to hide assets.

To qualify for Medicaid, it is important to have such a contract in place before the services are rendered and to have it drafted by a qualified estate or elder law attorney.

I hope this article has helped you and your clients. As always, if you have a specific case or concern, please contact our office.

Provided to
Friends, Clients and Colleagues of

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