



When Should You Refer to an Elder Law Attorney for Medicaid Planning?

Elder Law attorneys help older people and their families with all of the legal consequences of aging. These considerations tend to fall into three categories: surrogate decision making for finances and health care; estate planning; and long-term care cost planning. We address these concerns through powers of attorney for finances, advance directives for health care, wills and trusts, and a variety of strategies to help people get and pay for good care. When an older person lacks the ability to pay for care over their life expectancy using private savings or long-term care insurance, an elder law attorney will advise him or her on qualifying for long-term care assistance through the Medicaid program.

Since a long-term care social worker is not likely to have detailed information about the elder's financial resources, it is appropriate to refer him or her to an elder law attorney for possible Medicaid planning in cases where there is a need for long-term care. The elder law attorney will meet with the elder and his or her supportive family members. We will look at the income and resources available to the elder and try to determine where the elder is on the continuum of illness. We will also consider the needs of other family members, such as a healthy spouse or a disabled child, who may be dependent on the same income and resources for support. We can then advise the elder and his or her family whether the private resources are sufficient to pay for the care of the elder and to support the healthy spouse and any disabled children. If there is any chance the private resources will be insufficient for these purposes, the elder law attorney will suggest Medicaid planning.

Medicaid planning involves the restructuring of an elder's finances in order to qualify for Medicaid

long-term care assistance without losing everything. Medicaid is a means-tested program, and the elder's assets often have to be spent down to very low levels before he or she will qualify. In the case of an unmarried person, his or her assets have to be spent down to \$2,000. If the ill person is married, the healthy spouse can keep a portion of the assets; however, this portion is usually insufficient to pay for the spouse's care for his or her life expectancy. Through the process of Medicaid planning, an elder law attorney can get a much better result for the ill person, a healthy spouse, and any disabled children.

The bottom line for this type of planning is good care and personal dignity for the elder. In our system of health care, money is often necessary to ensure a good quality of life for the elder. Protected funds can be used to support a healthy spouse in the community, pay for a geriatric care manager for the ill spouse, and provide for special needs items for a disabled child. An elder law attorney is an important part of the long-term care team and can make a tremendous difference in the dignity and quality of life for elders facing serious health issues.

DISCLAIMER – *The information contained in this article should be used for general purposes and should not be construed as legal advice. Consult with your own attorney if you have specific legal questions.*

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- Asset Protection Plans
- Guardianship/Conservatorships
- End-of-Life Decision Making
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