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IT TAKES TWO: LONG-TERM CARE INSURANCE AND LEGAL PLANNING

By Dana E. Bookbinder, Esquire

Among the many misperceptions regarding Medicaid and long-term care planning is the myth that asset protection planning and long-term care insurance don't work well together. Unfortunately, many individuals, including many professionals, believe these two planning options are mutually exclusive and that one negates the need for the other. In fact, a carefully planned and cost-effective strategy to guard against the high costs of long-term care often includes both asset protection planning and long-term care insurance.

Shopping for long-term care insurance and commencing an asset protection plan have much in common. Studies show that almost half of the individuals in this country require long-term care at some point in their lives. Generally, once an individual acquires a long-term illness, he/she can no longer acquire long-term care insurance. This by no means suggests that he/she is unable to save substantial assets by engaging in legal planning, however. In fact, even after an individual enters a nursing home, he/she can still save substantial assets for his/her family through asset protection planning. Of course, to maximize savings through legal planning, the planning should be done early. Therefore, it is necessary with regard to both obtaining insurance and obtaining and implementing a plan to start early. Just as insurance premiums will be much lower the early one purchases the insurance, the savings through planning will be substantially greater.

With both the insurance and legal planning, it is important to carefully select a provider. Increasingly, professionals are amassing more knowledge on Medicaid. However, the Medicaid asset transfer rules are sufficiently complicated so that partial knowledge of the subject is likely to place the client in a worse situation than if no planning had been done at all. Because many seniors discuss long-term care planning amongst themselves and with their trusted advisors, many myths abound. Likewise, when choosing a long-term care insurance company, the selection must be done carefully. It is critical to choose a stable company, which will be in existence for many more decades to come. Many insurance brokers agree that even a slight increase in premiums is worth the stability and security, which a large company offers. Purchasers are best advised to select a broker who represents several companies so that he or she can review and compare different prices and features.

In trying to maximize savings, insurance purchasers must not forget that the benefit amount they choose must cover the cost of care. The average monthly cost of a nursing home today in New Jersey exceeds \$9,000. Most of our clients are paying approximately \$8,000 per month for a semi-private room. In trying to cut costs, purchasers must make sure they have ample coverage. Because the cost of nursing homes rise significantly and rapidly, inflation protection should be considered. Many policies offer this feature and allow the policy owner to pay the same premium over time while coverage increases.

While cutting the benefit amount to a level inadequate to cover the cost of care is not recommended, individuals can save money on their long-term care insurance purchases by limiting the length of the benefit. Rather than choosing a policy that would pay out over a lifetime of the individual, individuals can still be adequately prepared to meet the costs of long-term care by selecting a policy that pays for nursing home care for only five years. That would still give the insurance policy owner ample time to complete an asset protection plan and, thereby, still meet the primary goals of asset protection, which are: reserving enough assets to meet care needs beyond the minimum for which Medicaid pays, protecting the spouse and helping her maintain the family home and her lifestyle, eventually leaving an inheritance to children, and avoiding state liens.

Five years is a reasonable amount of time for the benefits, because the Medicaid lookback period for a transfer of assets is set by federal law at 60 months for transfers. Therefore, if an individual or a couple engages in asset protection planning and does not choose to utilize a trust, it is possible to protect an entire estate within five years. While the benefits period is running, the asset protection plan can be implemented and completed so that once the benefits period expires, the Medicaid applicant can continue receiving the same level of care for which the insurance was paying and make a smooth transition to Medicaid benefits.

In situations where one spouse of a couple is sick, the couple can plan for each of their care by purchasing long-term care insurance for the healthy spouse and engaging in asset protection planning for the ill spouse. This is commonly done, but couples are well advised to remember that Medicaid does look at the assets of the healthy spouse as well as the ill spouse when an application is filed. Therefore, while adequate insurance coverage will guarantee that the healthy spouse can retain assets and property in his or her name and still pay for long-term care if it is needed, a comprehensive asset protection plan is still necessary.

As attorneys focusing much of our practice on Elder Law, our office routinely recommends that clients investigate their long-term care insurance options. However, when that option is foreclosed, we are prepared to assist individuals in protecting their life savings through legal planning. Where both long-term care insurance and an asset protection plan are established early, these often regarded as separate strategies work together harmoniously to comprise a comprehensive, protective plan that maximizes savings for families.



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Speakers

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Begley & Bookbinder

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The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

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