Caring for Elderly Parents and Preserving Their Assets

By Jason McMullin, LJCooper and Bill Heder, Elder Law Attorney, MacArthur Heder Metler

Is "caring for elderly parents AND preserving their assets" really possible? Sure it is, if you are willing to gain an understanding of the options and then plan ahead for what is coming. You may have thought long-term care planning should only be done for those that imminently face that need due to health complications and age. However, the need to care for an elderly parent or grandparent can come at anytime to anyone and be taxing emotionally and financially—especially when you haven't planned for it.

A study by the U.S. Department of Health and Human Services says that people who reach age 65 have a 40 percent chance of entering a nursing home. About 10 percent of the people who enter a nursing home will stay there five years or more. – Source: http://www.medicare.gov/longtermcare/static/home.asp

Even my childhood superhero needed long-term care for 9 years! Superman (Christopher Reeves) suffered an accident during a horse riding event and suddenly became paralyzed from the neck down. He obviously had the resources to obtain the best care available, and many medical breakthroughs were discovered which improved recovery from spinal cord injuries. But that is generally not the case for most people who have long-term care needs or who enter a nursing care home. No one is immune from the probability of needing long-term care in one form or other.

This kind of planning can be confusing and emotionally draining. Who really wants to face this possibility anyway? However, not planning can be devastating from the emotional and financial load placed on family members. The first step to consider is finding a good Elder Law Attorney. An elder law attorney is one who specializes in the legal issues and liabilities faced by the elderly. His or her job is to preserve the independence and dignity of your loved one through legal planning and advising you of the pitfalls and the options available.

A good Elder Law Attorney will usually involve other trusted advisors to advise you on things that are not strictly "legal" in nature. For instance, the attorney may sense that you need answers involving you or your loved one's financial situation, or help to understand if or when you should apply for Medicaid. Thus, an accountant and financial advisor might be consulted with the attorney to protect you from making costly mistakes that would disqualify you from Medicaid benefits, (such as incorrectly gifting), or arranging your finances properly so that the spouse not entering a care facility has the resources to carry on.

I recently came across a case where an aging client was sold an annuity and was told that it would protect them from Medicaid spend down. While annuities can be effective tools for Medicaid planning, there are two important aspects that must be in the contract of the annuity before it will qualify. The annuity must be irrevocable (meaning once payments start they can not be turned off) and it must be non-assignable. Many annuities allow the benefit to be assigned to someone else and that is where the problem lies. So if you are being sold an annuity as part of a Medicaid plan, your Elder Law Attorney or Financial Advisor should be able to tell you if it is irrevocable and non-assignable. Make the advisor show you the non-assignable provision of the contract.

> "In the state of Utah, the person applying for Medicaid can only have $2,000 of 'countable' assets to qualify!"

If you would like to qualify for Medicaid there is an important asset test that you need to understand. It is simple to figure out for single people, so this article will give a brief overview for married couples. First, Medicaid is a joint federal and state program mainly administered by the state, and should be considered as a supplement to your own resources. Once again, obtaining the services of a local Elder Law Attorney is critical here.

When applying for Medicaid, the first thing you'll want to ask for is a "snapshot". The snapshot is quick picture of your assets to help Medicaid determine if you qualify for coverage. The snapshot will divide your assets into two main categories, countable assets and non-countable assets. Countable assets are things like cash, CDs, life insurance cash value (over $1500), annuities, IRAs, 401ks and other "liquid-type" assets. These countable assets are what Medicaid would require to be spent down to a certain level. Non-countable assets are your car, home furnishings, personal residence, real estate properties; basically things that are difficult to sell or liquidate.

In the state of Utah the person applying for Medicaid can only have $2,000 of "countable" assets to qualify! If the snapshot reveals you have more than $2,000 in assets, Medicaid would require those assets to be spent down before you could qualify for benefits. Don't worry, there is more to this story. Let's say that you and your spouse have $220,000 in assets such as CDs, cash, mutual funds, and cash value from a life insurance policy. In addition to that you also own your home free and clear and it is worth $250,000. In the state of Utah the personal residence does not normally count as a countable asset for Medicaid purposes, so we can move that out for now. Utah is what is known as a 50/50 state meaning that the countable assets ($220,000) are counted jointly. So the spouse not applying for Medicaid would be allowed to keep 50% up to a maximum of $109,560 in assets to sustain him or her. This would leave $108,440 ($220,000 - $109,560 - $2000 = $108,440) for the nursing home spouse to spend down before her or she could qualify for Medicaid benefits.

So, now that the snapshot reveals you need to spend down $108,440 before you can actually qualify for benefits, what do you spend them on? Naturally, you may think nursing home cost, of course. However, Medicaid law allows the spend down amount to be used for a short list of things other than nursing care costs. Your Elder Law Attorney would be a key resource to help you spend down these assets in the most meaningful and beneficial way for you and your heirs.

There is one more thing to mention before moving on to other methods of planning for long-term care needs, and that is that Medicaid will try to recover its costs after the institutionalized spouse has passed away. This is known as estate recovery and if not planned for properly, your personal residence could be levied by the state.

Medicaid is meant to help needy people without substantial assets, but when considering the costs of care these days, even people with significant assets would be wise to engage in aged care planning. The average cost for a nursing care facility is a little over $4,000 per month. Multiply that out over a five year period and you'll find that your net worth can easily be reduced by $240,000! So, in addition to consulting with an Elder Law Attorney about your situation, you may want to consider talking to a financial advisor about a long-term care policy.

This is an insurance policy that will pay benefits to the nursing home. You can get policies that pay $140 or more per day and have elimination periods from 30-120 days (how long you must be in a care facility before benefits pay out). There are inflation adjustments available to increase benefits over time. There are quite a few options to consider when searching out a long-term care policy. Your financial advisor can help decide what is best for you.

Some folks have a hard time qualifying for a long-term care policy due to health issues or other reasons. In those cases, there are annuities that have much less stringent underwriting guidelines which would

> "You should never feel like you don't have options. Planning ahead increases the options available…"

allow a lump sum investment and offer a bump in benefits available for long-term care. For instance, if you have $100,000 that you invest in one of these types of annuities, $200,000 could be available for long-term care services.

Whatever your situation, you should never feel like you don't have options. Planning ahead increases the options available to you to protect your assets and provide the necessary resources for the best quality of life available. Facing these decisions earlier will also ease the frustration of trying to figure it all out when the time comes where you or someone you love must be admitted to a place where she can receive necessary care.

If you have questions, or would like to have a consultation to review your long-term plans, please call your LJCooper advisor. We have a wealth of resources at our disposal, including relationships with trusted Elder Law Attorneys and long-term care specialists, and would be happy to answer questions to get you started. •

WWW.LJCOOPER.COM (801) 221.2939 499 S. OREM BLVD. OREM, UT. 84058

Securities offered through Triad Advisors, Member FINRA/SIPC. Investment Advisory Services offered through LJCooper Capital Management, LLC, a Registered Investment Advisor.