Vouga Elder Law, LLC

Veterans & Seniors Asset Protection

Dedicated to Seniors & Veterans

Volume 1, Issue 2

September 2009

In this issue of Vouga Elder Law Newsletter, you will find the focus is on Medicaid Planning, and different situations that each one of us can face. If you or a loved one is in a similar situation please contact us to set up a free one hour conference. You can qualify for a **FREE** 2 hour conference if you attend a workshop.

FREE EDUCATIONAL WORKSHOPS

Every month we offer FREE educational workshops on different subjects including, How to Protect Your Assets from the Draining Cost of Nursing Home Care, Veterans Benefits and more. If you or someone you know would like to attend a workshop please call Lori at 636-591-0089 to reserve your seat.

Attendees at our workshop who fill out a survey and ask for an appointment receive two certificates for giving us an opportunity to educate you on these issues. The first certificate is a **FREE** 2 hour consultation to review your assets and your particular situation. Our second certificate is a 10% discount on our services or an upgrade on your current estate plan documents for whose who hire us at the **FREE** no-obligation 2 hour conference.

Please take us up on our offer and visit us in September and October at the Hampton Inn & Suites!

Medicaid Fact Sheet 2009

Q. Can my son take money out of our joint account without effecting my eligibility?

A. No. Any transfer of assets from a joint account, regardless of who makes the transfer, will be considered a transfer, and may cause a penalty.

Q. Can I still give $13,000.00 a year away?

A. No, not without it being considered a transfer. Many people mistakenly believe that because you can give away $13,000.00 per person per year tax free, that this is the same case with Medicaid. Unfortunately it is not, and the gift may effect your eligibility.

Q. Do I get to keep my income if I am on Medicaid?

A. No. With a few exceptions, you are required to pay to the nursing home your total monthly income, minus $30.00 for personal needs.

Q. If I have too many assets to qualify, but need Medicaid now, is it too late to protect my assets?

A. **NO.** While you may have lost the opportunity to use some of the easier strategies, it is NEVER too late to protect some if not all of the remaining assets.

Inside this issue:

FREE WORKSHOP

HOW TO PROTECT YOUR ASSETS FROM THE DRAINING COST OF NURSING HOME CARE

September 24, 2009

10:00 am to Noon

and again at

6:30 to 8:30 pm

Hampton Inn & Suites

Chesterfield, Missouri

October 13, 2009

10:00 am to Noon

and again at

6:30 to 8:30 pm

Hampton Inn & Suites

Chesterfield, Missouri

Seating is Limited!

RSVP Required!

636-591-0089

How Medicaid Planning Can Help Almost Every Married Couple

Jim's Alzheimer's Has Gotten Much Worse. Jim is 80; his wife Ann is 77. Over the past several years, Jim's Alzheimer's disease has gradually diminished his capacity. Although 8 inches shorter and 75 lbs lighter than her husband, Ann has done her best to care for him at home. She has given it her very best effort, but their children can notice in Ann's eyes that she is growing increasingly tired and weary. For the past month, she has had the sniffles.

Within the past month, Jim's Alzheimer's has become much worse. He has become frequently agitated, sleeps at odd hours - if at all, and has difficulty following even simple instructions that Ann gives him. Other than his Alzheimer's, Jim is as healthy as a proverbial horse. Both of his parents lived into their 90's.

Ann is finally prepared to say that Jim would probably be better off being cared for in a nursing home. For their mother's sake as well as their father's, the children readily agree that it's the right thing, and it needs to be done right away.

Jim and Ann own the following assets that they "saved up" for retirement:

- Their home, worth $100,000;
- Jim's IRA, worth $40,000;
- A joint checking account with a $5,000 balance;
- A joint money market account with a $23,500 balance;
- Two jointly-owned CDs, worth $60,280 each;
- Jim's life insurance policy, with a $6,000 death benefit and a $5,000 cash value;
- Ann's life insurance policy, with a $7,500 death benefit and a $6,500 cash value.

Their only income is from Social Security. Jim gets $1,000 a month and Ann gets $700. The $1,700 is about how much they spend in an average month. They have no debts. The nursing home the children have chosen for Jim costs $140 per day, which figures out to around $4,200 per month.

Fortunately, it has a few Medicaid beds immediately available. Jim's prescriptions, even with a Medicare Part D plan, cost them around $43,500 per year out-of-pocket. Jim and Ann have typical "sweetheart" wills. When the first of them dies, everything will go to the survivor, and when the second of them dies, everything will go to their children.

Let's take a look at how legal Asset Protection planning, or a lack of planning, can impact Jim and Ann's outcome.

<u>Jim and Ann's Results Without Planning</u>. Jim and Ann live in Missouri. Jim will only get to keep one bank account with $999.99 or less. Ann will get to keep half of their financial assets, or $109,560 worth. The other $109,560, including Jim's IRA and his life insurance policy, will have to be spent down to pay for Jim's nursing home care and prescriptions. It will take a little less than two years to go through the rest of the money. Only then will Jim be eligible for Medicaid.

There is no guaranty that a Medicaid bed will still be available in two years at the nursing home that Jim is in. If not, Ann will have to move Jim to another nursing home or continue to pay for his care with Ann's assets until a Medicaid bed is available.

Jim and Ann's residence will then be at risk. It will not have to be sold as long as Ann still lives there, but after Jim and Ann have passed, it will be subject to Medicaid "estate recovery." What that means is that the house will then have to be sold and the money first goes to repay the Medicaid benefits paid by the State of Missouri for Jim's care during his lifetime. If Jim lives another two years after qualifying for Medicaid, chances are that all or most of the proceeds of the sale will go to the State of Missouri.

If Ann dies before Jim (as overburdened caregiver spouses sometimes do), that will result in an immediate and great problem. Jim will inherit everything from Ann, and all of the financial assets he inherits above $999.99, will have to be spent down to pay for his care. Jim will lose his Medicaid eligibility and have to apply again after the "spend down" to $999.99. He probably will lose his Medicaid bed, and he will have to pay the nursing home's full daily rate by using his inheritance from Ann. The house will likely have to be sold in which case the money from the sale would also have to be spent-down. If the house isn't sold, it will be subject to "estate recovery" when Jim dies.

Jim and Ann's Results WITH Legal Asset Protection Planning. All of the financial assets that Ann would not otherwise be permitted to keep, including Jim's IRA, will be converted into a stream of income for Ann, and Ann will get to keep all of that income. None of their assets will have to be spent down before qualifying for Medicaid to immediately pay for Jim's nursing home care or prescription costs. He will qualify immediately for Medicaid, at a time when the family knows that a Medicaid bed is available in their nursing home of choice. Jim will only be required to contribute his Social Security income, less a $30 monthly allowance, toward the cost of his care. Ann will get to keep **ALL** of her income.

Jim and Ann will prepay for their funerals. They will assign their life insurance policies toward payment, thus assuring that they realize the full death benefit value of those policies rather than the lower cash surrender values.

Ownership of Jim and Ann's residence can be transformed to non-countable assets. That transformation of assets will not have any effect at all on Jim's Medicaid eligibility. When the latter of Jim and Ann dies, their house will—at least based on the way the Medicaid rules are now, and historically always have been applied—be protected from Medicaid estate recovery.

Jim and Ann will be protected against the risk of Ann dying before Jim by having Ann execute a new Will.

The new Will provides for Jim, during his remaining lifetime, through a "special needs trust."

The money will be available to pay for goods and services that will benefit Jim and that are not provided by the nursing home or covered by Medicaid. The availability for the money in that limited way will preserve Jim's eligibility for Medicaid. After Jim dies, their children will be able to inherit the rest of the money.

It is very important to note that the dramatically better result Jim and Ann can achieve through proper legal Asset Protection planning, and these results can be achieved even under the "new" Medicaid rules. If the facts were different, the results may differ somewhat. Every case is different, which is why every couple facing this kind of situation should have a skilled elder law attorney review their individual circumstances and recommend a personalized plan that will achieve the best possible results for them. One thing is clear: for almost any married couple who owns a home or has more financial assets that the "spend-down" rules would otherwise let them keep the outcome that can be achieved with proper legal Asset Protection planning will be far better than without it.

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The choice of a lawyer is an important decision and should not be based solely on advertisements.

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Medicaid Myths, Part 2
Missouri Adopted the Name Missouri Health Net in July 2007 For Its Medicaid Program

Medicaid was considered a complicated program when President Lyndon B. Johnson first signed it into law at the Truman Library in Independence, Missouri, and it has grown even more complex during the thirty-four years since. Although it is a national program, it is administered by each state. The rules and regulations are constantly changing and can vary widely from state to state. So, it's no wonder there are many myths and inaccuracies surrounding the program. Medicaid Myth Number 2:

"My father is already in the nursing home so there's nothing we can do now."

It's true that a family can wait longer than they should to contact an Elder Law attorney, but it's rarely too late to establish a good plan. A good rule of thumb is that the earlier a plan is put in place, the more assets can be protected.

So, when is the right time to call an Elder Law attorney? You should pick up the phone right now if you or a loved one does not have a Medicaid Asset Protection Power of Attorney in place for financial and health care decisions. It's important that these documents are put in place **BEFORE** a gradual or sudden decline in mental competency occurs. It's also very important to make sure the financial Power of Attorney contains the right language so Medicaid Asset Protection is possible.

You should also call right now if you think that nursing home care will be needed by a loved one. This may be due to a diagnosis of a terminal or debilitating illness, such as Alzheimer's, Parkinson's or ALS. It may also be that your loved one is being discharged from the hospital and told he or she will be unable to care for themselves at home. All of these situations should be reviewed by an Elder Law attorney as soon as possible to determine what type of planning can be done.

Look for more Medicaid Myths in our next newsletter!