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Case Study: Medicaid Planning

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Mary is a 75 year old widow living in Orlando, Florida. She is a US citizen and she has no dependents.

Mary gives her granddaughter \$25,000 on January 1, 2010.

Mary enters a nursing home on June 1, 2012 and the private pay cost is \$8,000 a month.

Mary's only income is social security of \$1,000 per month. Her assets are \$82,000 cash and her Florida homestead worth \$550,000.

Mary's assets exceed the asset limits for qualification for Medicaid for 2 reasons: (1) she has more than \$2,000 of "countable assets"; and (2) the equity in her home (which is not generally a countable asset) exceeds \$525,000.

Before Mary will qualify for Medicaid, she will have to (1) spend down her countable assets to \$2,000, (2) apply all of her social security income (except for a small personal allowance, \$35, which we will ignore) towards the nursing home cost, and (3) reduce the equity in her home to \$525,000 by borrowing against it to pay for the nursing home. It will take Mary 15 months to spend down to \$2,000 (countable assets of \$107,000 less \$2,000 of allowable assets, divided by \$7,000 monthly burn rate after social security applied).

However, even after 15 months when Mary is otherwise qualified for Medicaid, she cannot qualify because the gift she made to her granddaughter within 60 months of qualification will trigger a five month penalty period (\$25,000 gift / \$5,000 Medicaid Florida approved rate per month = 5 months disqualification). This penalty period does not begin to run until the date that Mary is otherwise qualified for Medicaid (i.e., the date she is in the nursing home and is

financially qualified). Mary will have no assets with which to pay for nursing home care during the penalty period unless she takes further loans out on her home. Once on Medicaid, a lien would be placed on Mary's home restricting her ability to sell or re-finance the home without paying the state.

When Mary dies, Mary's estate will face a claim from Medicaid's estate recovery program for money paid by Medicaid.

Planning ahead can help avoid many of the problems Mary faced. Some options Mary should have considered before applying for Medicaid:

- 1.** Gifting at least five years prior to applying for Medicaid. Only gifts made within the "look back" period are considered but when there are gifts during the 5 yr period, the penalty period does not begin to run until the date the applicant becomes otherwise qualified for Medicaid – 2 recent law changes (a) increase look back period from 36 to 60 months, and (b) penalty period no longer runs from the gift date.
- 2.** Enhanced Life Estate – Deed the homestead but reserve a life estate coupled with the right to sell and dispose of the proceeds without the consent of the remainder beneficiaries. NOT a gift and not subject to Medicaid recovery.
- 3.** Cure the Gift by returning the money. Discuss "half the loaf" gift planning with promissory note which is considered income and NOT an asset.
- 4.** Purchase a car (or 2, with second car being at least 7 years old), and other household goods and personal property, regardless of value.
- 5.** Purchase an irrevocable prepaid funeral contract through a funeral home.
- 6.** Purchase **term** life insurance or invest in an IRA (note that IRA distributions are subject to the income rules but the IRA is not considered an asset and Medicaid does NOT need to be the beneficiary).
- 7.** Personal Services Contract – terms must be reasonable (can be lump sum or exchange of property for services, should be solid agreement and FMV for services determined by # of hours per week multiplied by hourly rate for life expectancy); post mortem squabbles.
- 8.** Purchase income producing property (e.g., annuity or promissory note) and transfer excess gross income to a QIT; NOTE that annuity required to have death benefit paid to Medicaid unless married in which case Medicaid must be contingent.
- 9.** Transfer the homestead to a caregiver child who resides with Mary for at least 2 years prior to Mary moving to the nursing home.
- 10.** Marry a penniless spouse and transfer Mary's assets to him and then Mary should waive homestead and elective share rights so that he can leave the assets in a third party

special needs trust for Mary if she survives (NOTE: a Qualifying Special Needs Trust is an elective share trust under the Probate Code).

11. Transfer homestead and other assets to an irrevocable trust reserving the homestead beneficial uses under Section 196.031(1); must be done outside the 5 year look back period, can include other beneficiaries and should be supplemental needs provisions.

About the Author:



Mr. Naberhaus is a Shareholder in the Viera office and his practice consists mostly of estate planning, transfer tax planning, estate and trust administration, Medicaid planning, and asset protection planning. He is certified by the Florida Bar as an expert in the area of Wills, Trusts and Estates, and has extensive experience working with high net worth individuals. He also practices in the areas of business succession planning, charitable planning, guardianship and probate and trust litigation. He may be reached at RNaberhaus@deanmead.com.