

Medicaid Changes and Revisiting Your Estate Plan

by Attorney Michael Hooker

In 2006 Masshealth expanded the look back period on asset transfers from 3 years to five years. Might it increase in the future? My guess is yes, given the sad condition of federal and state health care finances. Will the government grandfather transfers made now if they expand the look back to more than 5 years? Likely. That's what it did in 2006. But in 2006 the government gave very little notice that future transfers would have 5 year look back.

Masshealth's legal department has increasingly challenged Irrevocable Trusts as an asset protecting strategy in regards to nursing home coverage. It is a troubling issue that elder law attorneys are familiar with, but not one that is likely to make headlines. Why is this important? Because you may want to change course in your asset protection strategy. I encourage those who have created and funded Irrevocable Trusts to consult an experienced elder law attorney as to their current effectiveness. (As you may know from prior columns, Revocable Trusts are completely ineffective as an asset protection strategy).

There is a reason estate planning attorneys recommend that elders revisit their estate plan every five years or so. Laws, family dynamics (death, divorce, estrangement), finances, financial institutional protocols and elders' living situations may change over time.

One example of change is institutional protocol. Many health insurance companies now require that a Power of Attorney legal document specifically authorize the company to provide health information to the agent. Some financial institutions require a "current" Power of Attorney. They may not recognize and abide by one signed 12 years ago. If you have a Power of Attorney does it include language regarding on-line passwords for financial accounts? Can you believe that Comcast cable will not deal with a family member on behalf of an elder unless there is a Power of Attorney?

I now include language in my Health Care Proxy that specifically authorizes the proxy to sign a Medical Order for Life Sustaining Treatment directive, admit an elder to a skilled nursing facility and to treat with anti-psychotic medications.

These additions are all a reaction to recent pressures from the industry and health care providers. Effective 2012 the Commonwealth legislature made it much easier (a rarity in the law!) to process a Will through probate court provided that heirs are in agreement. This may undercut the need for probate-avoiding Revocable Trusts and might cause you to revisit the continued use of one or the merits of creating one in the first place.

A revisit to your estate plan might also reveal a missing piece, such as the lack of long term care insurance. After the 9/11 tragedy I reviewed my estate documents and finances and realized that all of the marital assets were not in fact titled jointly for probate avoidance. My law firm account did not have my wife's name on it. Off to the bank I went!