Protecting Assets from Catastrophic Care Costs

by Attorney Michael Hooker

NORTHAMPTON - While it is always a good practice to have a will, a will does not protect your assets from catastrophic health care costs. Medicare, federal health in- surance1 pays for some nursing home stays, but not long- term care. It pays for very little community-based home care: Demographics, advancements in medical technology and changing societal norms play a factor in the need for long term care.

Many elders' children no longer reside in the Pioneer Valley. Increasingly, children are not able to take care of the elder because of work demands. .This leaves elders often on their own, perhaps with minimal agency support from Highland Valley Elder Services; Franklin County Home Care or Western Mass Elder Care.

Some elders do have the resources to move to assisted living facilities, often paying with the proceeds from the sale of their house. Look around the Valley and you will see new assisted living facilities in Amherst, Northampton, Haydenville and Greenfield. However not everyone can afford assisted-living facilities, which generally have few government subsidized rooms.

While there are still some rest homes in the Valley, they are vanishing. Lathrop Home on South Street and Rockridge near the Hatfield line are two in the Northampton area. That leaves nursing homes as the haven of last resort for those without the funds or skills to live independently or in a rest home.

Who pays for this? Under Massachusetts law, in order for the state to pay for long-term nursing home stays, the elder must first spend all of his or her assets until only $2,000 remains. If there is a spouse in the community, the spouse can keep the house and other assets such as cash, brokerage accounts or annuities to a maximum of $121,200. .

How do you protect your assets from catastrophic· costs so that your savings can be inherited by your children? Unfortunately, two avenues are outside your control: death and your children taking care of you so that you never need admission to a facility.

The third option is long-term care insurance. It can be expensive, but may be worthwhile, the earlier you buy in; the cheaper it is in the long run. The fourth avenue, and one which many of my clients take, is to transfer assets out of their name to begin the so-called Medicaid five year look-back. Transferring assets to a revocable trust will not work. Unfortunately there are several elders I have helped who believe that their existing·revocable or "living" trust does insulate the assets from nursing home costs.

If you want to transfer assets to a trust it must be irrevocable. However, even these types of trusts have recently been challenged successfully by MassHealth, the funding agency for long-term nursing home care.

One reason you would use an irrevocable trust rather than gift directly to one or more of your children is so that your grandchild doesn't have his or her college financial aid adversely impacted by the fact that his or her parent is "holding" grandma's money.

If you ate not concerned about that, you could transfer assets directly to one or more stable, trusted children who then hold it for the elder if the elder ever needs it. If the elder is admitted long term to a nursing home six years from the date of transfer, they are past the five-year "look back" and are MassHealth eligible. If they make it to four and half years then just pay for six months and pass the five year ineligibility period.

There are many things that can go wrong, however, when transferring assets out of your name. Your child may get divorced, become estranged, or be sued or require their own long term care.

Pick your poison. Hold on to your assets and hope that a bad fate doesn't befall you, transfer your assets to an irrevocable trust that may later be challenged, or transfer assets directly to a child or two.

It is impossible to protect your assets under the transfer strategy without relinquishing control over your assets.

The wisest way to control your destiny, independence and security is to seriously consider buying long-term care insurance.

I finally convinced my wife to buy it when we turned 55. It is expensive but it saves me the hand-wringing, late night thoughts of "should I or shouldn't I transfer my assets?"

A final word of caution: consult with an experienced elder law attorney before taking any dramatic financial and legal potentially life altering steps regarding asset protection.

Attorney Michael Hooker's Northampton practice focuses on the legal needs of older people. His website is elderlawsevice. com