Should You Give Your Money Away to Protect It from Nursing Home Costs?

by Attorney Michael Hooker

If I had a dime for every client who wanted to protect their savings from “the nursing home” or “the state,” I would be a wealthy man. Many elders have heard war stories of how a neighbor or relative had all of his or her savings consumed by a long term nursing home stay. The elder wants to stay one step ahead of the system. Some of our fellow citizens hide cash in their house or in a can in the yard or basement. Their thought is “what the government doesn’t know won’t hurt them”. Of course, the government is comprised of its citizens such as you and I, and we are harmed when people don’t abide by rules when others do.

For those of us whose moral and civic compass is a tad more respectable, the options are more difficult. Let me first dispel a myth that flutters around our valley. The “government” does not take your money. What it does is mandate that you spend it on you or your family member’s care. Medicare (federal health insurance) does not pay for long term nursing home care.

Medicaid (also known as Masshealth) does pay for such care. However, it is needs based. You are only eligible if you meet strict financial criteria. If you have too much money you won’t be eligible. Likewise, if you have transferred/gifted assets within five years of nursing home placement, then that agency will deny eligibility. It will not chase your assets as the IRS would do for failure to pay taxes. If you have done something that triggers ineligibility, such as recent transfers/gifts then you will have the business office of the nursing home to deal with, not Medicaid.

So how do you get your assets away from you but not so far away that you lose control? You can’t. If you want the ledger sheet to show that you don’t have assets, then you need to transfer ownership. Many of my clients are fine with transferring their assets directly to one or more of their children. (Putting their name on a bank account does not achieve that goal). Most don’t want to pay for the legal work nor deal with the complexity of an Irrevocable Trust. Others are not ok with transferring their assets to their children or an Irrevocable Trust. So they hold onto them. When a stroke hits, it is too late to “get rid” of the money. I liken the situation to musical chairs: If you have substantial savings when the music stops…..then you are vulnerable, and have lost the game.

So do you or don’t you? The answer is: what keeps you awake at night? If it is the thought of spending large amounts of money on nursing home care then transfer your assets (or get long term care insurance). If you lie awake at night because you are concerned that your daughter in law might divorce your son and take your savings, then don’t transfer them. You can’t have it both ways.

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