PLANNING PERSPECTIVE

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J. Douglas Fitzgerald
Fitzgerald Law Office

The new Medicaid law dominated 2014. At this point, the law seems to be settled and we now know that we can work to protect assets and plan for the future. The Medicaid drama overshadowed the changes made to Wisconsin's trust law. There are far fewer headline grabbing changes involved with the new trust law. However, it too will provide opportunities for families who want to plan ahead..

Top Four Questions For 2014

Every client we talk to is unique and presents their own special collection of issues for estate planning. However, many clients are thinking about the same things and asking the same questions about the planning for their families. Here are some of the most frequently asked questions (in no particular order):

"Do I need to 'fund' my Revocable Trust?" (Sometimes also stated as "Shouldn't I change ownership on my house and investments to my Revocable Trust?"). A single person should absolutely fund their trust and change ownership of all assets to their revocable trust. For a single person the revocable trust will not avoid probate unless the house, investments, bank accounts, and all other assets are owned by the trust or tied to the revocable trust in some concrete way.

The answer is different for married couples. Fitzgerald Law Office gives married couples a Marital Property Agreement when they sign a Revocable Trust. The Marital Property Agreement automatically funds the Revocable Trust when one spouse dies. Upon the death of the first spouse the house, investment accounts, and bank accounts transfer directly to the Revocable Trust without probate. ,It also works if both spouses die simultaneously. This means that funding the trust and changing ownership today is essentially optional for married couples until one spouse dies (at which time the surviving spouse becomes "single" and the "absolutely fund the Revocable Trust" rule mentioned above will apply).

Note that many financial advisors are more comfortable with married couples funding their revocable trusts just like single people. You can find attorneys who also support married couples funding their revocable trust. However, with a Marital Property Agreement in hand, married couples have the option to change ownership of their Wisconsin assets.

"What is the amount of the annual gift tax exemption?" The technically correct answer is that the amount of the annual gift tax exemption is indexed and can change from year-to-year, but in practice they do not change every year. You need to find the most recent information from the IRS to be sure what the amount is in any given year. The shortest answer is that the 2013 exempt amount was $14,000 and that is a safe number to use.

The real problem with the annual gift tax exclusion is that many clients phrase the question like this: "How much can I give each year?" The true answer to this question is "Give as much as you want to give and as much as you feel is appropriate." The IRS and the government should not limit or control what you choose to do with your money.

The current estate tax exemption is $5 million per person (effectively $10 million for a married couple). The estate tax and the gift tax are linked together, so if you do not have an estate worth more than $5 million, the government will not tax any gifts that you make over the $14,000 exempt amount. By focusing on the annual gift tax exemption, you can create an artificial boundary that affects your giving and what you decide to do with your money.

"How long is the Medicaid 'look back' period for nursing home and long-term care benefits?" Is it five years or seven years?" The Wisconsin Medicaid Eligibility Handbook states "Effective January 1, 2014, the look back period is 60 months for all divestments." The answer is five years and it has been five years for some time. The fact that the seven-year period continues to get mentioned is a valuable reminder of how difficult it can be to get solid information about Medicaid and government long-term care benefits.

The Medicaid rules are complicated, they change frequently, and not every State is required to use the same rules. It is very difficult to simplify them without losing something important in translation. That means that this area of the law is not well suited for Internet research. Following the "word on the street" can also be frustrating because the rules can be very fact specific. What works in one family may not work for another family because the two families have different assets and stories.

The rules are only a guide to planning. In order to know what would happen to your family if you needed nursing home or assisted living care, you need to have your assets and your situation looked at carefully. Only then can you understand what would happen to your family and what options are open to preserve and protect assets.

"Will I pay tax on my inheritance?" Estate or inheritance taxes apply when an estate is worth more than $5 million. If you are the beneficiary of an estate, you need to check the

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value of the estate, but in many cases estate or inheritance tax will not apply. Even when estate or inheritance taxes apply, the estate or Revocable Trust pays the tax before the beneficiary receives their inheritance. The tax does not come out of the beneficiary's pocket.

Estate beneficiaries can be required to pay income taxes (which are different from estate or inheritance taxes). However, those income taxes are limited to (a) income actually earned by the estate after death, and (b) income trapped in IRA, 401(k), retirement plans, annuity contracts, government bonds, and other assets that pay out after death. The beneficiary needs to look at the particular assets in the estate to determine whether there is any deferred income tax waiting to come out.

In many cases the beneficiaries find that the estate does not have any of these tax-deferred assets. In other cases, the taxable assets make up only a small portion of the estate. Thus, while it is a possible issue to keep an eye on, beneficiaries should not automatically assume that their inheritance will be taxed.

Office Programs and Events

Doug Fitzgerald made a number of presentations regarding the changes to the Medicaid law and planning under the new rules. This included a private presentation to investment advisors and two different seminars at the YMCA for clients.

Doug continues to appear regularly on West Bend Community Cable, discussing estate planning and other legal matters. Recent shows discussed the new Medicaid laws, the "slippery slope" from simple questions to complicated legal issues, and steps to take after a death. Check the local television listings on the West Bend City website and in the West Bend Daily News for Doug's show.

Fitzgerald Law Office

2005 Stonebridge Circle
West Bend, WI 53095
262-334-8015 • 262-334-1593 fax
email: fitzgeraldlaw@fitzgeraldlawoff.com

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Understanding Wisconsin's New Medicaid Law

Between 2013 and 2014 the Wisconsin Legislature made major changes to the law regarding Medicaid benefits for nursing homes and assisted living care. Simply put, this new law does two things:

1. Gives the State the power to seek reimbursement from any assets held by a Medicaid recipient or their spouse after a death. The State will get reimbursed before the children receive any inheritance.

2. Restricts what a Medicaid recipient or their spouse can do with their assets after government benefits begin. Once Medicaid benefits start, the State has tools to prevent families from avoiding the State's right to get reimbursed at death. The State will track down your children and recover the assets.

These are significant changes that will affect many families. If a family does no advance planning, it will be much more difficult to receive government benefits and ensure an inheritance for the children. However, many important things regarding Medicaid benefits and planning for long-term care did not change with the new law:

1. The rules for recovery after death and restrictions during life only apply if you receive Medicaid benefits after August 1, 2014. If you do not go into a nursing home or apply for Medicaid benefits, the State will not get involved with your family or your estate.

2. A married couple can still qualify one spouse for Medicaid benefits without losing all of their assets. The spouse living at home will not be driven into the poor house if their husband or wife needs nursing home or long-term care.

3. Any planning you did before August 1, 2014 is safe. Revocable Trusts, life estate gifts, and life insurance policies that were created before this deadline still work. Only new planning will be subject to the new rules.

4. Families can still plan to protect assets. Using irrevocable trusts and other tools more than five years before you need Medicaid will still protect assets from long-term care bills and preserve an inheritance for your children.