PLANNING PERSPECTIVE

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Now What? One Year After Major Changes To The Medicaid Law

One year ago, the state finalized a major overhaul to the rules for Medicaid benefits that help pay for nursing home and assisted living care. In July 2013, the Wisconsin legislature included Medicaid changes as part of the State budget bill. When those changes came to light, we saw hearings, revisions, policy interpretations, and corrective legislation. By August 2014, the smoke had cleared and we knew what new rules would apply. Now, in late 2015, we've had about a year to adjust to the new rules.

Here are a few lessons that we have learned about Medicaid benefits and planning for long-term care costs:

- Married Couples are Fine. The new rules did not change things that much for married couples. If one spouse needs nursing home care and the primary goal is to protect the healthy spouse living at home, then the new rules still offer many options for protecting and preserving assets. A husband or wife can qualify for Medicaid benefits without losing the house or bankrupting their spouse.
- Protecting Assets for Children is More Difficult. The new rules cut off the most common planning techniques to preserve an inheritance for children if one or both of their parents need long-term care in a nursing home or assisted living facility. If the family's primary goal is to protect assets for the children, there are new and challenging roadblocks to work around. That does not mean that it is impossible to protect the children's inheritance under the new rules. Families still have many options available, but parents need to start planning earlier in life and be prepared to deal with some more complicated planning techniques.
- The Rise of Assisted Living Has More Impact Than the New Laws and Rules. Changes in the long-term care industry are overshadowing the changes in the law. Fewer people are being admitted to nursing homes. The vast majority of seniors with long-term care needs are being shifted to assisted living facilities and specialty care facilities. Many of these facilities do not accept Medicaid or only accept it in limited circumstances. This makes long-term care decisions more complicated for families already under tremendous stress. As a result, many families do not plan for Medicaid benefits at all or push the planning off until later. If these families do not apply for benefits, they never need to deal with the new rules.

> "Changes in the long-term care industry are overshadowing the changes in the law."

J. Douglas Fitzgerald

Fitzgerald Law Office

To learn more about Medicaid benefits protecting assets, moving a family member to an assisted living facility, and other related topics, review the following articles at FitzgeraldLawoff.com:

- Five Reasons Why Medicaid Law is Frustrating
- Five Things to Consider Before Moving to Assisted Living
- Five Myths and Half-Truths About Medicaid Planning

Estate Planning Gone Wrong

People do not set up an estate plan intending to confuse, frustrate, or aggravate their family. However, because families tend to call a lawyer only when there is a problem, lawyers see many examples of estate planning that has gone wrong. There are some lessons you can learn to help avoid unintentionally putting your family through tough times after death.

1.) Check Your Beneficiary Designations. The most common source of unwelcome surprises after death is beneficiary designations that transfer a retirement plan, life insurance policy, annuity, Certificate of Deposit, or bank account to the wrong person. To avoid this problem in your family:

- Obtain a written statement showing the current beneficiary on every asset and account where a beneficiary is named.
- Compare the current beneficiary to the recommendation from your estate planning attorney.
- Make any necessary corrections.

If your financial advisor, accountant, banker or other advisor disagrees with the recommendation from your estate planning attorney, you should have those professionals speak with each other directly.

2.) Read Your Will or Revocable Trust. Many problems that come up after death start when one of the beneficiaries says "My mother/father never meant the estate to be divided this way." To ensure that your documents do, in fact, say exactly what you mean, you should read your Will or Revocable Trust every five years or so. Reading the documents again will allow you to look at it through the beneficiaries' eyes. You can see spots where the document might cause conflict. If you see a sensitive point, you can have the document updated to clarify it. If you do not see any issues, then everyone can be more confident knowing that you looked the documents over again and approved them.

3.) Create A Financial Statement. Most children do not know what their parents' own and where their parents' investments and other money are held. It takes many executors time and effort to piece things together. During that time, the other beneficiaries often become restless and, in the most difficult cases, suspicious and unhappy. If the executor starts with a thorough list that you prepared, they can hit the ground running. The more information and detail on the list, the better. For example, if you add something regarding the beneficiary designations on assets it will help avoid confusion on that point (see item 1 above). If you already have a financial statement or list of assets, then you can review it from time to time to make sure that it is up-to-date (see item 2 above).

4.) Double Dipping on Estate Planning Documents. Most people want

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to avoid probate, and there are a number of ways to do it. However, using more than one technique at the same time can open the door to confusion, crossed wires, and unwelcome surprises. One example where two tools to avoid probate are not better than one is a beneficiary designation that does not match your Will or Revocable Trust. Most estate plans include a recommendation from the attorney showing how the beneficiary designations and account ownership should be set up to coordinate with the other documents. It is a good idea to review those recommendations before changing a beneficiary designation or adding a payable on death or transfer on death designation to a bank or investment account.

5.) Be Realistic About Family Conflict. A large percentage of problems with estates involve personality conflicts or long-standing differences between the surviving children. After mom or dad dies, sibling rivalries and disagreements are magnified by grief, shock, and uncertainty. If there is any possibility for disagreement between the children, it is a good idea to meet it head-on in the estate planning documents. This can be as simple as reading your estate planning documents over a few extra times to ensure that your instructions are clear and decisive (see item 2 above). In other cases, it may make sense to add new language that will tell the family exactly what you think they should do to reduce strife. In cases where there are loans to one or more of the children, you can create a clear, written statement that lies out how much is owed and how you want these amounts repaid.

Newsletter E-Mail Option

This newsletter is now available in an e-mail format. Receiving the email version may better fit your lifestyle. It can also make it easier to access added material on FitzgeraldLawoff.com.

If you prefer to have the newsletter delivered via e-mail, send your e-mail address to fitzgeraldlaw@fitzgeraldlawoff.com and we will send you an e-mail version of this newsletter and all future editions.

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Tax Basis Is King Under Our New Estate Tax Law

Since Congress increased estate tax exemptions to more than $5 million for single people and $10 million for married couples, avoiding estate taxes has faded into the background. The biggest question facing most families is “How do I maximize the benefits of tax basis?”

Tax basis is the value the IRS uses to calculate your capital gains tax when you sell assets such as stocks and real estate. The IRS generally uses the original purchase price to calculate your capital gains tax, although people who own rental properties or business assets usually have to use a lower number. The good news with tax basis is that it is reset or “stepped up” when the owner dies. After death, investments or real estate can be sold tax-free and the owner can start to depreciate business assets over again.

Proper estate planning can give families additional opportunities to step up their tax basis. This is particularly helpful for families owning rental real estate or other assets that are heavily depreciated. Families holding highly appreciated stock or investments may also benefit from special planning. These families should consider updating their Wills and Revocable Trusts to shift the planning away from avoiding estate taxes and into increasing tax basis.

Office Programs and Events

Doug Fitzgerald made a number of presentations regarding guardianships, powers of attorney, and advanced directives. This included a private presentation sponsored by the Threshold, a talk sponsored by NAMI-Washington County, and a presentation at the Washington County Senior Conference. Doug also gave a number of talks regarding basic estate planning, including presentations sponsored by the Kettle Moraine YMCA, Todd White/Edward Jones, and St. John’s Lutheran Church.

Doug continues to appear regularly on West Bend Community Cable, discussing estate planning and other legal matters.