Navigate Medicaid Planning with Irrevocable Trusts

For many the word "trust," when used in the context of estate planning, brings up images of stereotypical wealthy individuals. However, although trusts may be used by the wealthy to preserve their wealth, there is one type of trust that offers significant benefit to those who are seeking ways to preserve more modest assets and finance future long term care with Medicaid benefits.

With careful planning, you may be able to preserve some of your estate for your loved ones and still meet future Medicaid qualifications. However the technique requires the transfer of assets. It is often safer to transfer assets to a trust, rather than to individuals outright. A trust is a legal entity in which one person–the trustee–holds legal title to property for the benefit of a beneficiary. The trustee must follow the rules that are contained in the trust document.

The type of trust that is typically used by those interested in preserving assets and becoming eligible for future Medicaid benefits is an irrevocable trust. It is designed to hold assets and handle income of the transferor. Typically, the individual transfers his or her assets to the irrevocable trust, sometimes retaining an interest in lifetime income in trust assets. The purpose of the transfer to the trust is for the individual to qualify for Medicaid long term care benefits after the expiration of five years from the date of the transfer of assets to the trust. The trust cannot instruct the beneficiary to use the corpus of the trust for the benefit of the transferor, and in fact doing so would be Medicaid fraud. Because the trust is irrevocable, the transferor cannot revoke the trust and reacquire the trust assets; therefore, the assets are not available for Medicaid eligibility purposes.

Upon the death of the transferor, the remaining trust assets may be passed to the remainder beneficiaries. The use of this technique also works to avoid probate as well as Medicaid estate recovery.

When an individual or a couple makes the decision to transfer some of their assets to their beneficiaries in order to qualify for Medicaid long term care benefits, the transfer will subject the assets to the creditors of their beneficiaries. Also, if the assets are commingled with the beneficiary's spouse, the assets could be lost in the event of a future divorce action. Additionally, if the beneficiary dies prior to the death of the transferor, the assets may be inadvertently inherited by the beneficiary's spouse or children. In all of the scenarios, the assets of the transferor could be totally or partially lost.

In comparison, when assets are transferred to an irrevocable trust, the assets are protected from the claims of the beneficiaries' creditors, divorce actions, and premature death of the beneficiary. There are other advantages. Such advantages include the selection of trustees to ensure proper asset management, preservation of family harmony, as well as probate and guardianship avoidance. Additionally, the trust can provide beneficiaries who have special needs the protection from the loss of governmental benefits with the use of supplemental care provisions.

In most scenarios, the client should retain sufficient assets in his or her name for foreseeable shortfalls over the five year penalty period. However, almost all Medicaid planning strategies have pros and cons. Purposefully subjecting oneself to the five year look back period, always comes with risks. A

credentialed and experienced elder law attorney can explain the pros and cons of all available Medicaid planning strategies and help you decide what is best.

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