

Estate Planning - Protecting Your Assets from the State

Article by: Ronald Hudkins

It isn't just the US Government waiting out there to grab a chunk of your hard earned estate when you become incapacitated or die. Strangely enough, state coffers are frequently enlarged through the mechanism of Medicaid. When someone requires long-term care in a nursing home, unless he or she has a private long-term care insurance policy, their whole estate may belong to the state when they pass on.

Nursing home care is not free, even in county or state operated facilities. Someone, somewhere, has to foot the bill. If you, or your family, does not have resources to pay for the care, Medicaid steps in. While Medicaid is a federal program, funds are allocated to the states for administrative purposes and are subject to state rules and regulations.

People who apply for Medicare aren't always aware of exactly how the program works, but even more sadly, most people who are forced to apply for Medicare really have no other choice, so it doesn't matter how it works. By the same token, Medicaid rules have been revised so that if one half of a married couple requires nursing home care, the other spouse doesn't have to sell the house and live on the street.

Under the most recent Medicaid rulings, when one spouse has to be in a nursing home for 30 days or more, the couple's assets are assessed and some assets are excluded by virtue of "spousal impoverishment" rules. The couple's residence is excluded from the asset evaluation, along with household furnishings and personal effects. In some states, the remaining spouse's IRAs are exempted, as well. The non-ailing spouse is then entitled to half of any remaining assets, subject to minimum and maximum limits, while the other half must be spent on the nursing home care.

In addition, income like Social Security, some pensions, and some interest dividends are subject to "maintenance allowance," rules designed to allow the healthy spouse enough money to live on. If, for example, the Social Security Income or other pension income is in the remaining spouse's name, he or she is entitled to keep it for living expenses. In some cases, the spouse at home can receive more than half of the marital assets, particularly if his/her income falls below minimum levels.

If there is no spouse, in many states the individual requiring nursing home care is required to sign over his or her home to the state to reimburse Medicare. When the nursing home stay is not permanent, the Medicaid recipient is allowed to live in the house until death, but cannot pass it on to children or other heirs, because it actually belongs to the state, not to the individual.

Estate planning, particularly if it involves some sort of long-term care insurance, can alleviate or eliminate some of the worries associated with the potential for requiring nursing home care. Talk to your attorney or other estate planner about what can be done to protect your remaining assets if you have to go to a nursing home. About Ronald E. Hudkins

Ronald Hudkins is a retired U.S. Army Military Police member that was assigned as a staff researcher. He has coordinated with military and criminal investigators, set on court marshals and worked closely with the Staff Judge Advocate Generals Office (JAG). He has a keen sense of legal matters - their interpretation, initiatives and guidelines.

For imperative financial planning needs he suggests his book "Asset Protection and Estate Planning for All Ages." Additionally, he offers a Free Newsletter, Articles and Financial and Tax Newsfeed at his web site: <http://www.AssetProtectNow.com>