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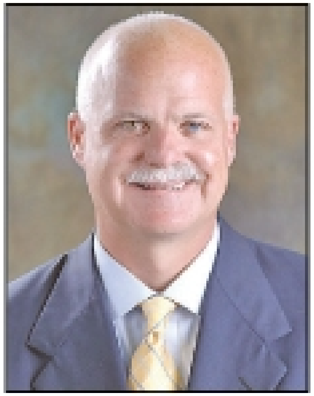
Elder Law and Asset Protection Strategies



by Terrance Emmens

Effective February 8, 2006, the United States Congress enacted the Deficit Reduction Act of 2005 and modified the asset protection strategies available to its citizens entering nursing homes. It took New York State quite some time to implement the new law and still more time to train its employees on how to properly apply the new rules to Medicaid applications. During the summer of 2007, Lacy Katzen LLP's Elder Law attorneys witnessed consistent and reliable application of its strategies and wishes to debunk common myths related to what those entering nursing homes can and cannot do to protect their assets.

Myth #1: IRA's, 401(k)'s, SIP's and other qualified funds have to be sold or liquidated before my spouse or parent can qualify for Medicaid. This is false. We routinely and without exception protect these important assets for all of our clients.

Myth #2: If my spouse enters a nursing home I must spend all or substantially all of my assets on his or her care before my spouse will be eligible for Medicaid. This is false. There are numerous, lawful, ethical and proven ways that the healthy spouse can retain all or substantially all of the couple's assets without in any way, adversely affecting the spouse's quality of care or quality of life.

Myth #3: If my single mother or father is entering a nursing home (or if my mother or father is already admitted to a nursing home), my parent is obligated to spend all but $4,350 on their care before Medicaid will pay for his or her care. This is false. A parent can lawfully protect between 40 percent and 60 percent of their estate.

Myth #4: The contract I signed (or the contract my spouse or mother or father signed) states that I must spend all of my assets on my care before I can apply for Medicaid or the nursing home will force me to leave. This is false. The nursing home admission contract simply states that the applicant (and his or her agents) will do nothing that adversely affects qualifying for Medicaid upon the exhaustion of his or her assets. In the Elder Law Planning Group at Lacy Katzen, LLP, we assist our clients in protecting their assets in the face of ruinously expensive long term care costs and guide them through the application process. Nursing homes must provide equivalent care to Medicaid eligible and private pay clients. It is for this reason that Congress made rules that allow for lawful asset protection strategies finding that it would be unfair to penalize those who worked, paid their taxes and managed to save by re quiring them to spend all of their assets on nursing home costs.

Elder Law attorneys at Lacy Katzen LLP are committed to maximizing the autonomy and independence of our seniors as they age in the community. We have developed a solution to the often asked question, "What can we do to protect our assets should one of us end up in a nursing home"? We are strong supporters of the use of long term care insurance as an effective asset protection strategy, but we know that many of our senior clients do not own this insurance product. If you have questions and want to know more about these lawful, asset protection strategies, feel free to contact the attorneys at Lacy Katzen LLP, 130 East Main Street, Rochester, NY 14604, 585-454-5650 (ph) or visit our website at www.lacykatzen.com.

Terrance W. Emmens, Esq. has been practicing law at Lacy Katzen, LLP for the past 15 years and concentrates his practice in the Elder Law area. He is a 1991 graduate of Vermont Law School and former confidential law clerk to the Honorable Frances G. Conrad, United States Bankruptcy Court, Southern District of New York. He is a frequent lecturer and guest speaker at New York State Bar Association and Monroe County Bar Association continuing legal education seminars on the subject of Medicaid. temmens@lacykatzen.com. Direct 585-324 5713 (ph).