BLOISE & SNAVELY LAW OFFICE NEWSLETTER

283 South Hamilton St.
Painted Post NY 14870

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Planning Options Under the New Medicaid Laws – The Medicaid Trust

More parents and singles are using the Medicaid Trust, also known as an "Irrevocable Income Only Trust" or an "Asset Protection Trust" in increasing numbers to address the harshness of the Deficit Reduction Act ("DRA") signed into law February 8, 2006. The DRA eliminated or restricted much of the "crisis" Medicaid planning strategies employed by legal professionals for the last 15 years. Today, if a loved one enters a skilled nursing facility and owns anything, the law requires that most assets be used to pay for the loved one's skilled nursing care. At rates from $6,000 to as much as $10,000 per month for skilled care, it doesn't take long to wipe out your family's estate.

The Medicaid Trust may not be as efficient at protecting our assets as Long Term Care Insurance, but its price tag is much lower. An added benefit is that the Trust does not require us to take a physical and mental exam. The Medicaid Trust allows you or your parent, who is in no danger of immediate need of skilled care, to pick and choose assets that he/she wants to preserve for the children or other beneficiaries. The family member creating the Trust is called the "Grantor." The Grantor places (i.e., "funds") these assets into the Trust and thereby starts a five-year waiting period. As long as the Grantor or the Grantor's spouse does not need Medicaid benefits during the five-year period, the assets cannot be reached by Social Services (NY) or the Department of Public Welfare (PA).

The Medicaid Trust is also called an Irrevocable Income Only Trust because the Grantor is only entitled to the income, i.e. interest and dividends, generated by Trust assets. Principal distributions may be made to benefit only the Grantor's children and grandchildren. The Trust is irrevocable, meaning that the Grantor cannot change its terms once he/she signs the document. Also, unlike the Revocable Living Trust, the Grantor cannot be the Trustee.

For the above reasons, you may not want to put all your assets into the Medicaid Trust, but only those assets you want to go to your family if the worst happens. On the other hand, if you can live comfortably on just the income from your financial assets and the use of your residence, there is no reason not to put all your assets into the Medicaid Trust.

The DRA now forces all of us to be proactive in protecting our assets. We need to adopt strategies while we are healthy because waiting until we are ill will probably be too late.

Under the **old** Medicaid law, if I gifted $16,000 to my children, the gift triggered a two month penalty period (based on the gift divided by the regional average monthly nursing home cost), meaning I could not get Medicaid benefits to pay for skilled nursing care for two months following the date of my gift. If my family applied for Medicaid benefits for me, my county would look at three years of my bank records to see if I gifted money. If the $16,000 gift fell within the three years, my county would then see when the gift occurred, and if I made the gift more than two months ago, that gift would not prevent me from getting Medicaid.

Under the **new** Medicaid Law, if my family applies for Medicaid benefits for me, my county now looks at **five** years of bank/financial records. If the $16,000 gift was made at any time within those five years (e.g., four years, ten months prior) I will be disqualified from receiving Medicaid for two months. If the gift was $160,000, I will be disqualified for 20 months and my county will pressure my family to return the gifted funds.

Lawyers have used the Medicaid Trust to a limited extent for several years, mainly as an Asset Protection Trust. As noted above, the DRA has caused the Medicaid Trust to become more popular as one of the few good planning tools left. Besides helping to protect your assets from the nursing home, the Trust helps your family in several other ways. Chief among the Medicaid Trust's benefits is the fact it completely protects your assets from any creditor. It will shelter your assets when you or a family member is named in a lawsuit or a divorce.

You may be thinking, "Why don't I just give some of my assets to my children?" That is certainly an option, but it comes with numerous risks. First, if your child dies prematurely, your assets may go to someone (e.g., an in-law) contrary to your wishes. Second, if your child has any legal problem (e.g., divorce, lawsuit, bankruptcy, etc.) your assets may be lost. Third, your child or his/her spouse could have a falling out with you and decide to do something with the assets contrary to your wishes. Fourth, an outright gift loses favorable capital gains tax treatment on appreciated assets. Fifth, in New York an outright gift of your residence removes the favorable property tax treatment provided by the Star Program.

A properly drafted and funded Medicaid Trust **avoids** these problems associated with outright gifts to your children. Furthermore, the Medicaid Trust is much cheaper than Long Term Care Insurance, which may cost you $5,000 to $10,000 or more **each year**.

While you, the Grantor, cannot be the Trustee of your Medicaid Trust, your child or children typically fill this role. Like a Revocable Living Trust, your Medicaid Trust will also avoid probate and carry out your other estate planning goals.

What should you do if you currently have a Revocable Living Trust? Take advantage of our offer of a free consultation to discuss your goals. Your Revocable Trust still avoids probate, helps prevent family fighting and allows your successor trustee to manage your assets if you become incapacitated. Despite all its flexibility, however, your Revocable Trust will not shelter assets from creditors, including the nursing home.

Under the **old** law an asset protection strategy known as "half-a-loaf" planning relied on a good Power of Attorney and/or Revocable Living Trust. We were able to save at least one-half of the assets even if you went to a nursing home with all assets in your name. Sadly, those days are gone. You owe it to yourself and your loved ones to do updated Medicaid planning today.

TAX IDENTIFICATION NUMBER FOR TRUSTS

If you have a Revocable Living Trust and you are married, the tax ID number is the husband's Social Security number. If you have a Revocable Living Trust and are single, the tax ID number is your Social Security number.

If you have a Medicaid Trust, your tax ID number cannot be your Social Security number. We obtain the tax ID number for your Medicaid Trust. If you lost it, just call the office.

New Arrival!!

Congratulations to our receptionist, Lori Hoyt, on the birth of her new daughter, Emma Elizabeth.
1/30/07

REMINDER:
Your will and/or Living Trust should be reviewed every three years! Call today for an appointment.

1-800-620-7887

NEW DIRECTIONS

The Corning-Painted Post area has much construction at the Routes 15 and 17 (interstate 86) interchange. We thought it would be helpful to provide instruction on the best way to get to our office.

From North, East and West of Corning/Painted Post area:

Take exit 44 off of Route 86 (old Route 17)

Follow signs for 15 South

Take Exit 3 (417, Gang Mills)

At the traffic light, turn right (417 East)

We are on the right hand side about 0.7 mile, in a plaza of shops.

From South of Corning/Painted Post area:

Take 15 North

Take Exit 3 (417, Gang Mills)

At the traffic light, turn left (417 East)

We are on the right hand side about 0.7 mile, in a plaza of shops.

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