BLOISE & SNAVELY LAW OFFICE NEWSLETTER

283 South Hamilton St.
Painted Post, NY 14870

SUMMER EDITION I, 2007

Medicaid Planning –
The Personal Care Contract

Every July 4th we are reminded of our independence. Sadly, many senior citizens lose their independence each year due to failing health that compels them to enter assisted living or skilled nursing facilities. These seniors would probably prefer to stay in their own homes, but that is only possible if they have the resources to pay for in-home care or if they have a relative who is able to provide such care. Even if a relative lives nearby and is willing to help, he or she may not be able to afford to leave a paying job for a nonpaying one. That is when a Personal Care Contract can help.

The harshness of the Deficit Reduction Act (DRA), signed into law in 2006, has forced elder Americans to consider strategies like the Personal Care Contract to keep family assets in the family. The fear of losing all the assets one has spent a lifetime accumulating is now greater than ever before. Nursing homes cost $7,000 to $9,000 each month in Western New York and Northern Pennsylvania. Medicaid pays the bill when a resident has exhausted almost all his assets or, in the case of a married person, spent the assets down to a certain level. The DRA disqualifies a person from receiving Medicaid if that person made gifts within five years of making a Medicaid application.

The Personal Care Contract allows a parent to transfer money to someone, e.g. a child, without the transfer being treated as a gift. If the transfer is not a gift, the child may keep the money even if the parent enters the nursing home within five years. The tradeoff to the child is that the money will be subject to income tax.

A Personal Care Contract is a written agreement between two or more parties whereby one of those parties promises to provide personal care and managerial care in exchange for fair market compensation from the person receiving those services. It is similar to an employment contract in that future services are to be rendered in exchange for an agreed sum.

It is not recommended that caretaker children receive payment from parents for providing services without a formal agreement. Without a contract, Public Welfare in Pennsylvania and Social Services in New York will presume that the caretaker has performed the services out of love and affection. Any payments given to the children will therefore be treated as gifts. Once a payment is classified as a gift, it will render the donor ineligible to receive Medicaid benefits if the donor applies for Medicaid benefits within five years of the payment/gift.

To qualify for Medicaid, the term of a Personal Care Contract should be for the statistical life expectancy of the elder. Due to the technical nature of the agreement, it is imperative that families use legal counsel to prepare a Personal Care Contract. Tens, and often, hundreds of thousands of dollars are at stake.

Do You Have The HIPAA Release Form?

The Health Insurance Portability and Accountability Act (HIPAA) is causing havoc among caregivers and patients. Without the appropriate health care forms your family may not be able to transfer your medical records to another doctor or hospital. Even worse, your family may not be able to obtain information about your medical condition. If you have a college student in the family, it is vital that the student sign health care documents. Without them, Mom and Dad may be left in the dark if their college student is sick or injured.

Save Taxes with Life Insurance

Pennsylvania residents already know that life insurance avoids the Pennsylvania inheritance tax. Life insurance will not avoid the Federal or New York estate tax, however, unless the owner does some additional planning. I expect this issue to garner more and more attention as the Federal estate tax threshold returns to $1,000,000 in 2011 or before.

According to a recent report in *Bottom Line*, if you want to make a large bequest to a child or grandchild, the smart way to do it may be to use life insurance instead of a bequest of property. For example, say you want to leave $1,000,000 to or for the benefit of your children. To do so in the traditional way you need to have that much in assets, and after federal and state taxes, you may need twice that much.

The better way is to fund the bequest to the children with a $1,000,000 life insurance policy held in a life insurance trust. Here's why. First, a properly structured trust will be estate tax free, reducing the assets you need by as much as half and cutting the IRS out of the deal. Second, investment income earned within the life insurance policy will be tax free. Third, the dollar cost of the insurance is very low since the value of the policy is leveraged through tax savings.

For example, a married couple, both age 60, buys a $1,000,000 second-to-die life insurance policy (that pays on the death of the survivor) for an annual premium of about $13,000 a year for 15 years. They place the policy in a life insurance trust benefiting the children. Policy premiums are gift-tax free due to the couple's annual gift tax exclusions ($12,000 per person per year). The children will receive $1,000,000 tax free at a maximum cash cost to the couple of only $195,000. Better yet, the after-tax cost may be as much as 50% less, as the $195,000 is removed from the parent's taxable estate.

Does Your Long Term Care Insurance Measure Up?

The best way to pay a potential nursing home bill is with Long Term Care Insurance (LTCI). Unfortunately most people don't have it or cannot get it. Those who do have it, however, are often lulled into a sense of false security because their policies do not cover what they think. All policies taken out prior to 2006 should be reviewed.

Examine the benefits of your policy. Does it adjust for inflation? If it doesn't, the benefit may be fixed at 1995 levels and be grossly inadequate. You need to know the actual dollar benefit that the policy will pay. Is the benefit period three years or less? Policies today should cover a term or at least five years. Coverage for one's lifetime is better. Will the policy pay for in-home care? Will the policy cover such items as adult daycare? Older policies may not provide these benefits.

If you can't get LTCI or your policy is inadequate, you may want to look at the Medicaid Trust as a way to get a bit more protection.

DIRECTIONS

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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