



Pathfinders in Elder Law



***Families Can Plan for Elder
Care and Protect Assets
Under Safety of New Law,
but Must Act Before
October 1, 2009***

The When each day's news seems to announce economic shifts that would have been unthinkable just a couple of years ago, it is a welcome relief when government leaders offer an oasis of security. From now until October 1, 2009, middle-class families have been given such an oasis where they can make legal plans for elder care and protect assets before harsh new federally-mandated restrictions are adopted here.

Take the case of Bill and Irene: (real identities protected) who came to us for an elder law consultation recently. They had sold their home and moved to a retirement community several years earlier, but both were now facing health challenges that concerned them and their three adult children.


Bill's Social Security and pension checks had comfortably met their costs in their independent living apartment and they had been able to add most of Irene's small check to their savings, which now totaled

\$150,000. Their doctor had recommended that they move to the Assisted Living Facility (ALF), and they realized that they would have to dip into their savings for a small amount to meet the higher costs each month. \$3,800 was the cost for ALF with "level 1" services, where they lived.

Their children recognized that the doctor was right to recommend the move, and the extra costs would not threaten their life savings in the near future. However, they also knew that Irene's memory problems and confusion were a "progressive dementia" and as time went on, she was likely to require admission to the health center's memory unit. When that happened, the costs to support both of them could skyrocket to nearly \$10,000 per month, or even higher if Bill's arthritis required level 2 or level 3 care in the ALF.

One of their sons was surprised to learn that Medicare and their Medicare supplement insurance would be of no help whatsoever in that circumstance. Bill and Irene knew that Medicare did not cover long-term care and Bill had even purchased a long term care insurance policy ten years ago. Irene had also applied for coverage, but the insurance company had turned her down because she had a chronic intestinal disease.

I explained how Bill's nursing home insurance would offset his costs if he required the Level 3



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Families Can Plan ...

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costs and how we could help Irene qualify for Medicaid payments without a transferring of assets or large spend-down while Bill stayed in the Assisted Living apartment. They were relieved to understand how knowledge of the Medicaid "Spousal Impoverishment" rules and some simple preparations now would permit Medicaid payment for Irene's care if that happened.

However, if they both required nursing home admission or if Bill died before Irene, they would be subject to much greater challenges to protect assets. Their spend-down requirements would be much greater during their lifetimes. Medicaid can also claim from their estates if they do not plan now. An irrevocable, income-only trust was one way to increase their protection.

After hearing the options, Bill and Irene chose to transfer about one-half of their savings to the trust. One of their sons will be trustee. I explained that under Medicaid transfer penalty calculations, they would not be eligible for Medicaid help for the next 16 months, but they were confident that she would not need nursing home care within that period of time and Bill had the insurance in case he did. The protection of one-half of their life savings was right for

them. The legal plan gave the family a sense of security. The meeting at the law office was the first time that the whole family had met to talk about their elder care concerns or really understood Bill and Irene's financial circumstances. Now they had a plan. They were also relieved that Irene's lack of insurance would not doom her to impoverishment. In fact, the one-time cost to create the irrevocable income-only trust cost was less than Bill paid for his nursing home policy each year.

The passage of Senate Bill 301 was critical to my advice. I would have had to recommend a very different, more complex and expensive plan if Indiana legislators had not clarified that Indiana will not punish its citizens for violating rules that have not yet been written.

Clients can now rest assured that upcoming transfer rule changes will not add penalties to plans according to current Indiana Medicaid law. But they must act soon, before the protected period in SB 301 ends October 1st. ▲

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