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New Medicaid laws make protecting your assets more puzzling than ever

By Michael W. Mustico, CPA, JD

Significant changes to Medicaid laws within the past year have essentially stripped older Americans of some of the commonly-used legal strategies that used to be available to protect financial assets in the event of long-term care and nursing home placement.

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This is important because of the serious probability that a person over 65 will require long-term care in their lifetime. The catastrophic cost of long-term care is the greatest threat to you and your spouse's secure retirement and your ability to pass your accumulated wealth to your children.

Medicaid is the only governmental program designed to pay for long-term care expenses for those who qualify. Medicare generally does not pay for nursing home expenses. Medicaid is a form of welfare, meaning it's a "needs-based" program which essentially requires people impoverish themselves before Medicaid will pay for their long-term care expenses. For 2007 in New York, a single individual in a nursing home can retain only $4,200 in total assets and must spend all but $50 of his total monthly income for his nursing care. A married couple with a spouse still living at home – the "Community Spouse" – can generally retain assets between $74,820 to $101,640 and a home. This additional amount is called the "Community Spouse Resource Allowance" (CSRA). The CSRA was built into the law for married couples to prevent the community spouse (the spouse living at home) from becoming completely impoverished. Also the spouse living at home can retain $2,541 of their combined monthly income. All assets and income over these amounts must be "spent down" for the care of the institutionalized person or spouse first before Medicaid will pay for care. With the average daily cost of a nursing home at approximately $275 per day (that's $100,000 per year), it doesn't take long before a person in a nursing home will actually become impoverished.

Prior to the changes in law, the most common strategy used to save assets for a person about to enter a nursing home was to gift or give away assets to children. This would typically allow the clients to save at least one-half of their assets and was commonly referred to as the "half-a-loaf." The new law was specifically designed to eliminate the use of "half-a-loaf" transfers as a Medicaid planning asset protection tactic. This was done by the new law extending the "look back period" for direct (not in trust) asset transfers from three years to five years. However the real "killer" in the new law changed the way the "period of ineligibility" caused by such transfer begins to run. The "penalty-period" for transfers within the five year look-back period will not begin to run until the date the applicant would have otherwise been eligible, thus virtually eliminating previously used tactical planning using the "half-a-loaf" strategy.

These new laws require more proactive planning with your asset protection strategies. Unfortunately, those who procrastinate too long will now find their options severely limited under the new laws. In my practice, I have seen people devote much time accumulating, investing and growing assets, but little to no time developing strategies to protect those assets. Even under the new laws, there are still several useful strategies available to protect many of your assets, including the family home.

I suggest you review your legal strategies with a qualified Elder Law Attorney, and consider the use of long-term care insurance. The available strategies are very case-specific and are too broad for an article of this size. Remember, in this area, it never too early to protect your family's assets... but it can easily be too late.

Michael W. Mustico is a registered investment advisor who has practiced as a CPA and an Elder Law Attorney. He is president of the Mustico Financial Group, Inc., and provides sophisticated financial and retirement planning strategies, as well as investment management.