

“Why an Elder Law Attorney is the Best Choice for Medicaid Planning”

Be the lookout for unscrupulous organizations during your search for help

BY: KURTIS M. SUNSET

WESTERN KENTUCKY ELDER LAW, PLC

Many seniors and their families have initial fears of hiring an attorney for medicaid planning due to the potential cost or the negative stigma of litigation. With these fears in mind, some seniors might try to plan alone, or rely on the advice of the nursing home, which often leads to an unfortunate situation of dwindling down assets until there is nothing left to preserve. Some seniors may try to utilize an industry of non-lawyers called “elder counselors” or “certified senior advisors” to assist with the medicaid application process. While the appeal to use such organizations might be a slightly cheaper cost, the truth is these non-lawyer organizations often cost more in the long run due to the cost of unnecessary products, creation of tax liabilities, and issues of improper planning that cause costly litigation.

Some states have banned such medicaid planning practices by non-lawyer organizations due to the

resulting harm poor advice can have on seniors and their families. Florida, Ohio, New Jersey, and Tennessee have already issued regulations stating that many areas of medicaid planning by non-lawyers is the unlicensed practice of law. Florida has gone even further ruling that it can also be the unlicensed practice of law for a lawyer to draft living trusts and other legal documents for such non-lawyer organization’s clients. The Kentucky Bar Association is currently reviewing similar complaints.

Hiring an Elder Law Attorney is the best option when considering cost effectiveness and the ability to legally preserve assets. Generally, at a cost of less than two months of private pay at a nursing home, an Elder Law Attorney will help prepare the legal documents to preserve most, if not all, of a person’s hard earned assets. Elder Law Attorney’s are able to directly draft the necessary legal documents such as qualified income trusts, personal service contracts, wills, and power of attorney documents. Many of these documents are time sensitive and should not be outsourced due to the unique needs of each client.

Additional perks of hiring an attorney over a non-

lawyer include client confidentiality, no conflict of interest, and malpractice insurance. During the process of medicaid planning, seniors must reveal a list of their monetary assets, real estate, and identifying information. The courts have long protected lawyer-client confidentiality, but that same amount of

confidentiality is not present when dealing with information revealed to a non-lawyer. Furthermore, an attorney only has a duty of loyalty to the client. Non-lawyers may also have to consider the best interest of the nursing home. Many times the interest of the nursing home in keeping a resident on private pay is not in line with the client’s best

interest. Finally, in a worse case scenario, a lawyer unlike non-lawyers carry malpractice insurance that will help remedy a mistake.

Many Elder Law Attorneys give a free consultation. Seniors should take advantage of this consultation to fully understand the necessity of hiring an attorney over trying to take on medicaid planning alone or with the help of a non-lawyer. After becoming fully informed, seniors will be happy with their choice to use an actual attorney for this process. The marketing gimmicks of non-lawyers in the medicaid planning process is simply not worth the risk.

Mr. Sunset, a graduate of Emory University School of Law, is an Associate Attorney at Western Kentucky Elder Law, PLC. He formerly served on the Board of Trustees



Are You Privately Paying For Nursing Home Care? If So, You Need a Medicaid Plan!

Consider a Medicare plan if you are privately paying for nursing home care

BY: DARON L. BRAWNER

WESTERN KENTUCKY ELDER LAW, PLC

Too many nursing home residents ultimately end up spending all of their assets privately paying for nursing home care. Medicaid planning is an area of law in which elder law attorneys advise clients about how to legally use Medicaid laws to their own advantage to qualify clients for Medicaid benefits. A good Medicaid plan allows clients to preserve their assets for their spouse or children while qualifying themselves for Medicaid to pay for nursing home care.

Many people falsely believe that once a person is in a nursing home that it is too late to do Medicaid planning. However, every person in a nursing home who is privately paying for nursing home care needs a Medicaid plan before all of their assets are exhausted.

Many people falsely believe that, once a person is in a nursing home, its too late to do Medicaid planning.

For married persons, there are many important protections that can be used to make sure that the spouse who is not in the nursing home (“community spouse”) does not become impoverished. There are many exemptions the state allows for a community spouse. It is important to have an elder law attorney guide you through this process because the nursing

homes and Department for Medicaid Services do not always tell families about the exemptions or how to obtain the exemptions. For most married persons, an elder law attorney can use the Medicaid laws to preserve most of all of the assets for the community spouse.

For single individuals, Medicaid

laws do not allow as many exemptions. However, an elder law attorney can use a divestment plan that I call the “half-a-loaf” plan. Under the “half-a-loaf” plan, an elder law attorney uses gifting laws to the client’s advantage and is able to legally protect typically half of an institutionalized person’s assets for the client’s children.

There is no need to spend all of your assets privately paying for nursing home care. If you or someone you know is privately paying for nursing home care, then they need to contact an elder law attorney for a Medicaid plan. Without a Medicaid plan, all assets could be ultimately exhausted paying for nursing home care.

Mr. Brawner is the founder of Western Kentucky Elder Law, PLC, an accredited attorney with the Department of Veterans Affairs, and a member of the National Academy of Elder Law Attorneys.

