

# ELDER LAW TODAY

Adrian & Pankratz, P.A.

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## *When Is The Right Time To Do Medicaid Planning?*

**O**ur office receives many calls from concerned loved ones and family members wondering if or when they should start Medicaid planning.

The answer: It is never too early or too late to discuss the planning options available. Below are just two examples of the many types of calls we get where we advise clients that Medicaid planning is an option *right now*.

\* \* \* \* \*

Mrs. Brown is an 81-year-old widow experiencing short-term memory loss. She is still able to live alone in her own home. Her monthly income is \$750; she has a home worth \$135,000 and other assets of approximately \$60,000. She heard from a friend that she should give away all her assets now to her kids just in case she would ever need to go to a nursing home. Her friend told her that so long as she gives everything away more than five years before moving to nursing home, she'll be able to qualify for Medicaid without having to spenddown any of her assets.

Unfortunately, there are many problems with the advice Mrs. Brown's friend gave her. First, Mrs. Brown may need nursing home care in less than five years. Due to this large transfer being made within the five-year look back period, she will now be ineligible for Medicaid and will have no funds to pay for her own care. Once the money and house are transferred to her children, those assets actually belong to the children - no strings attached. Even if the children are trustworthy, and would be willing to give the money back if Mrs. Brown needed nursing home care, once the assets are in their names, the assets are subject to their creditors. One of the children could be sued or go through a divorce. Since the assets are in the children's names, a lawsuit, tax problems, or a divorce could easily wipe out mom's life savings, as well as leave her without her home.

Also, keep in mind that Mrs. Brown may never need nursing home care. Rather, she may need to make a move to an assisted living facility. Typically, Medicaid does not cover the cost of care in an assisted living facility. Therefore, it's important that Mrs. Brown hang on to her assets while she's still relatively healthy so she can have the freedom and independence to pay for the level of care she needs when she needs it.

In this scenario, we would advise Mrs. Brown to get the proper estate planning documents in place so her children could act on her behalf in the event of incapacity, and to avoid probate in the event of her death. Depending on the family dynamics and Mrs. Brown's prognosis, we may advise a monthly gifting program.

\* \* \* \* \*

Mr. and Mrs. Green had assets of \$220,000 in addition to their home worth about \$120,000 when Mr. Green, who suffers from Parkinson's, moved into a nursing home eight months ago. Mr. Green's monthly income is \$1,300 and Mrs. Green's is \$450. Mrs. Green was told

she needed to spend down their assets to about \$90,000, not including the house, in order to qualify Mr. Green for Medicaid. With nursing home costs averaging \$4,000 a month, and other incidental expenses, they are now down to about \$185,000.

Mrs. Green recently went to a support group meeting for Parkinson's and someone told her that there might be a way to save \$104,400 of their assets. She thought it was too late to protect the assets because her husband had already been in the nursing home for eight months and she had already started the spenddown. Fortunately, she contacted an Elder Law attorney and was told not to spend down any more funds. A Medicaid application was filed immediately and prior quarter coverage was requested. Through the fair hearing process, Mr. Green qualified for Medicaid as of the month the application was filed. Further, through requesting prior quarter coverage, the attorney was able to get Mrs. Green a \$12,000 refund for the previous three months of nursing home care she had already paid.

In the end, Mrs. Green was able to keep significant assets, plus the house, while still getting her husband qualified for Medicaid.

Again, it is never too early or too late to discuss the planning options available. Whether you are 81 years old, healthy, and living in your own home or have been in a nursing home for several months—depending on your situation, there are steps you can be taking now to preserve as much of your assets as the law will allow. The key is to talk to an Elder Law Attorney and find out what the options are.

\*For more information on the five year look back or Fair Hearing process, our attorneys would be happy to answer your questions.

### *Services Available*

Adrian & Pankratz, P.A. offers the following Elder Law services:

Division of Assets	Long Term Care Planning
Guardianship	Powers of Attorney
Estate Planning	Wills
Living Trusts	Special Needs Trusts



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