Debunking Myths About Medi-Cal

How Planning Documents Can Protect Your Family and Assets

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By Alma Soongi Beck, J.D., LL.M. Taxation
Principal Attorney, The Beck Law Group, P.C.

On a recent plane flight, I had the fortune of having a flight attendant who used humor to get us to pay attention to the required safety announcements. “If you are travelling with someone who needs assistance,” he said, “put on your own oxygen mask first before helping others.” Then he added, “And if you are travelling with more than one person who needs assistance, pick the one with the best college potential first.” (Laughter from the cabin.) “Better yet, pick the one with the highest chance of taking care of you in your old age.”

Let’s face it. The idea that we might someday need residential skilled nursing care is not an easy topic. It forces us to face our mortality, the idea of lost capacity and chronic illness, and the impact of aging on our health and well-being. As if that weren’t bad enough, it raises concerns about completely losing our assets and draining the resources of our spouses, partners, and loved ones in the process.

The good news is that you have options. The bad news is that getting good information about how it all works is surprisingly difficult. For instance, most people know that Medicaid (or in California, Medi-Cal) is available to pay for nursing home care for people when they run out of assets to pay for their care. But from there, the details often start breaking down and conflicting. Surprisingly, the staff at nursing homes, hospitals, and the Department of Health Care Services sometimes contribute to the confusion, even with the best of intentions, by giving incomplete information at exactly the time it might be the most difficult to comprehend it. The confusion can cause people to act in ways counter to their goals and interests in very serious and sometimes irreversible ways.

The purpose of this article, then, is to clear up some of the common myths and confusions around Medi-Cal and the role of Medi-Cal Planning, to help people avoid the most obvious pitfalls, and to understand how and when to seek legal counsel in the process.

MYTH 1: Having too many assets will disqualify me from Medi-Cal for purposes of skilled nursing care.

Yes, and no. Yes, some assets will disqualify you from Medi-Cal eligibility. Other assets, such as a primary residence, the first vehicle, and very limited types of annuities, are considered “exempt” for purposes of Medi-Cal eligibility, even though they are subject to a Medi-Cal recovery claim at your death, or in some cases the death of both spouses or domestic partners.

For assets considered “countable” for purposes of determining Medi-Cal eligibility, people applying for Medi-Cal are typically allowed to keep $2,000 under current law, and if married or state-registered as domestic partners, the spouse or domestic partner can keep an additional $117,240. In some cases, more is permitted with a court order.

The more important fact is this: With proper planning, most people can protect all (or almost all) of their assets for purposes of Medi-Cal eligibility and in many cases, from Medi-Cal recovery claims, even when the countable assets exceed these amounts currently. The key is planning in advance, prior to applying for Medi-Cal, and meeting with an attorney who specializes in Medi-Cal Asset Protection planning. Even the smallest, most naïve of mistakes in implementing a Medi-Cal plan can completely ruin your eligibility for Medi-Cal for many months and sometimes years.

IMPORTANT: Medi-Cal eligibility rules are expected to become significantly more strict in the foreseeable future. Many years ago, California adopted the Deficit Reduction Act of 2005 (the “DRA”), but the stricter rules will not take effect until full regulations are written and implemented, which is likely to occur in 2-5 years.

For this reason, some clients are planning now for possible exposure of their assets to future Medi-Cal claims.

MYTH 2: Medi-Cal will take my house.

Yes, and no. Under current California law, your principal residence is considered “exempt” for purposes of Medi-Cal eligibility, regardless of the fair market value or your equity in it.

Interestingly, “principal residence” is defined by Medi-Cal as your principal residence to which you have a subjective “intent to return.” The subjectivity of the standard is crucial. Your residence qualifies under this definition even if, objectively, you are not likely or capable of returning.

So basically, if you qualify and use Medi-Cal for nursing home care, and own the residence at your death, Medi-Cal has a claim to recover from your estate against the principal residence to the extent that you used Medi-Cal services. If you are married or have a state-registered domestic partner, the Medi-Cal recovery occurs after the death of both spouses (or both state-registered domestic partners).

Most importantly, with proper advance planning, you can also protect the primary residence from future Medi-Cal recovery claims. Many attorneys prefer setting up irrevocable trusts for this purpose, but again you need to be very careful. The wrong kind of trust, and the wrong kind of transfer can trigger irreversible consequences relating to property taxes, gift taxes, and of course, the Medi-Cal recovery claim itself.

MYTH 3: I have to give away all my assets in order to protect them.

Be very careful! Giving away some types and scale of assets can disqualify you from Medi-Cal for many months, and sometimes years. On the other hand, some types of gifting can completely protect most or all of your assets.

The best way to assess your situation is to consult with an attorney with a background in Medi-Cal Asset Protection planning. The Beck Law Group offers complimentary consultations on Medi-Cal and asset protection, as well as estate planning. If you are interested in a complimentary consultation, please contact Jack Seabolt, jack@becklawgroup.com, (415) 584-9930.