SET THE STAGE FOR MEDICAID ELIGIBILITY

AMERICAN ACADEMY | OF ESTATE PLANNING ATTORNEYS

INTRODUCTION

Incapacity planning is a broad area of law that covers how you are cared for if you become physically or mentally unable to care for yourself. The type of care could range from simple tasks like buying groceries, paying bills, and handling financial matters to more important decisions such as selling real estate or gifting assets to your children.

Within the realm of incapacity planning, there are also arrangements that deal specifically with decisions regarding steps taken to obtain Medicaid benefits. A Trust with "Medicaid triggers" comes into play by allowing your Agent to move forward with decisions that you would have handled yourself, if you were still legally competent to do so. The types of decisions required in this area of planning can vary. For instance, you may outline instructions for a nursing home stay or the repositioning of assets to allow you to qualify for Medicaid while preserving assets for the next generation if you are single, and while protecting your spouse's financial independence.

When you determine that you want to move forward with this type of planning, it is necessary to work with a qualified estate planning attorney. This attorney will find the optimal solutions for you in the event of your legal incapacity (defined as the inability to manage your own affairs). Because 70% of people over the age of 65[1] will need some kind of long-term care at some point in their lives, it becomes painfully clear this type of planning is not only extremely important, but requires immediate attention to ensure you and your family protect your assets.

[1] https://acl.gov/ltc/basic-needs/how-much-care-will-you-need#:~:text=Someone%20turning%20age%2065%20today,for%20longer%20than%205%20years

AS WE AGE

Even with the knowledge that our life span is increasing, many of us will encounter chronic or debilitating illness in our final years. While these medical challenges can change our lives dramatically in the physical sense, they can also wreak havoc in our financial lives if we haven't taken the appropriate measures to safeguard our wealth.

Nursing homes today can cost over $100,000[2] per year or more, and a long-term stay can easily impoverish all but the wealthiest families. With proper planning, however, you can shelter assets and keep your family's wealth intact. Keep in mind, that since there is no "one size fits all" solution, a careful analysis of your situation by a competent legal advisor is your best route for incapacity planning.

WHEN SHOULD YOU PLAN?

The question of when to begin incapacity planning is fairly easy to answer. Since we cannot be sure how soon, how late, or even if tragedy will strike, implementing the necessary changes as soon as possible brings peace of mind knowing that you are covered should you become legally incapacitated.

REASONS TO CREATE A FORMAL LEGAL PLAN

The reasons for incapacity planning are not vastly different than the ones behind creating a Will or a Living Trust. Let's review some of the general reasons why having a formal plan such as a Living Trust is so important. With a Living Trust, you can:

- Avoid the delay, time, cost and publicity of probate.
- Provide for a surviving spouse, other beneficiaries, or loved ones.
- Safeguard your children's inheritance from ex-spouses and creditors.
- Ensure that "special needs" beneficiaries or loved ones who receive government benefits do not lose these benefits such as Medicaid, SSI and In-Home Supportive Services.

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[2] "Cost of Care Report." Genworth, https://www.carescout.com/cost-of-care

HOW IS INCAPACITY PLANNING DIFFERENT?

In the arena of incapacity planning, there are additional legal measures you can take to ensure your wishes are honored should you become legally incapacitated. This family of options includes the following:

- **A Healthcare Power of Attorney (HPOA)**—this type of POA outlines the specific medical decisions that you would like to see made in the event of your incapacity.
- **A Durable POA for Property**—this type of POA outlines what will happen with assets held outside your Living Trust upon incapacity.
- **Gifting Language**—special language that may be drafted and included with your Trust document and POA to outline your specific wishes.
- **Medicaid Triggers**—these "triggers" or events can put into motion the shift of assets out of the name of the person who is incapacitated.

With the appropriate incapacity language in place, you can effectively designate who will manage your affairs if you become incapacitated. Using legal tools such as a Revocable Living Trust, Durable Power of Attorney, and gifting or sheltering plans, you can set the stage to allow your spouse or your children to properly manage your assets should you need nursing home care and be unable to do these things for yourself.

The special language in a Trust with "Medicaid triggers" can give your Trustee the authority to handle certain types of planning, even though you—the person applying for Medicaid—are not capable of signing the necessary documents.

WHAT INCAPACITY PLANNING DOES NOT COVER

Now that you have a handle on the reasons to plan, and what planning can cover, it's important to know what your Trust with Medicaid triggers will not do for you. Your Trust will not establish your eligibility for Medicaid, or serve as long-term healthcare insurance. Establishing Medicaid eligibility and purchasing healthcare insurance are separate actions that require the execution of special forms unrelated to your Trust documents.

Additionally, Medicaid triggers will not guarantee your Medicaid qualification because eligibility and qualification are based on a number of financial variables and the type of illness you have. Whereas Medicaid triggers do not change the size of your estate, they can outline how assets could be restructured to help you qualify for Medicaid.

A fundamental advantage of having Medicaid triggers outlined in your Living Trust is the peace of mind that comes from knowing the proper steps to apply for Medicaid benefits will be carried out on your behalf, just as if you were competent. Should a person become incompetent before including Medicaid triggers in his or her Trust, it would likely mean these important steps would not occur, and this could signify a loss of potential Medicaid benefits. It's another reason to handle this matter now, while you are still managing your own affairs.

ESTABLISH A COMPLETE ESTATE PLAN WITH MEDICAID TRIGGERS

Regardless of how solid your health is today, there is no way to know what tomorrow brings. We invite you to take the time to discuss this important topic with us. Call our office today to schedule a meeting. In this meeting, we can address several issues including living probate and disability, Medicaid planning options, death probate and taxes.

With the proper plan in place, you can rest easy knowing that whatever the future holds, you have formally outlined your wishes and made the proper arrangements for you and your family.