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NORFOLK& PLYMOUTH ESTATE AND BUSINESS PLANNING COUNCIL

"PYA"-Protecting Your Assets from MassHealth and the Cost of Care

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Long-term-care expenses (like nursing home costs), can be exorbitant. According to the state the average cost of a nursing home is $310 per day, the real cost is more like $425. If you want to be able to pass on some of your property to your children or other chosen beneficiaries after you die, you need to plan in advance. The rules that deal with having the state pay for your nursing home care (called Long-Term-Care MassHealth), vary greatly depending on your marital status and the assets that you own.

Contrary to a lot of misinformation out there, the state does not "take" your assets if you need the state to pay for your care, you are either eligible or you aren't. But even if you are deemed eligible and retain an asset, the state can still put a lien against it to be recovered after you die.

Here are only some of the basic rules for MassHealth eligibility:

-If you are single, you must have less than $2,000 in "countable" assets;

-If you are married, your spouse at home can keep only $119,220 in assets, and your primary residence, you can keep $2,000 (total $121,220). All assets of either spouse, or both spouses, is counted towards eligibility;

-If you are single your residence must have an equity value under $828,000;

-If you want to give your assets away to protect them from MassHealth, you must do it five (5) years in advance of applying for MassHealth (Community MassHealth, which provides home care paid for by the state if you would otherwise be in a nursing home, does not enforce the transfer rule);

-You must be medically eligible for MassHealth, meaning you have dementia, or cannot perform at least three (3) of the "activities of daily living", such as bathing, continence, dressing, eating, toileting and transferring to and from bed.

Almost all of your assets are "countable", meaning that they must be given away in advance or reduced to the appropriate amount (spent-down), in order for you to be eligible for MassHealth.

The following are some legal tools available to try to protect your assets against long-term-care costs:

Deed: You could deed your home out to your children (or anyone) else to protect it, so long as you do it at least five (5) years before going into a nursing home. Of course, they could then kick you out since they own the house, and if they got divorced or had an accident or financial reversal and had to file bankruptcy, they (and you) could lose the house. Also, when and if they went to sell the house they would have to pay capital gains tax on the difference between what you paid for the house and what they sell if for (note that if someone were to inherit the house from you after your death they would get a so-called "stepped-up" tax basis in the property as of the value as of your date of death, and if they then sold it for that value would have no capital gains tax).

Life Estate: If property is deeded out using a life estate deed at least five (5) years before you (or one of you if the owners are a couple), applies for state aid the property will have protection from state claims for long-term-care expenses after death. A "life estate" is created by the owner or owners of the real estate who deed the property to one or more persons with a deed, but retain the right to live there the remainder of his, her or their lives. The deed can be to a person or to the trustee of a trust. The transfer is completed by recording the deed at the Registry of Deeds where the property is located. Once completed both the person(s) holding the life estate and the person(s) to whom the property was transferred have a legal interest in the property, so you give up control, but in return you protect the home from state claims if state aid is needed. Upon your death there would also be a "stepped-up" tax basis in the property using a life estate. MassHealth will put a lien against the property to recover your interest if the property is sold during your life, but that lien will be removed without recovery at your death.

Joint Property: If a joint interest in property is deeded out using a deed at least five (5) years before you (or one of you if the owners are a couple), the property will be protected after the death of either owner since it goes go the other by operation of law. The transfer is completed by recording the deed at the Registry of Deeds where the property is located. MassHealth will put a lien against the property to recover your interest if the property is sold during your life, but that lien will be removed without recovery at your death.

***IMPORTANT UPDATE: Governor Baker added a provision to the FY2017 Massachusetts budget that will make any interest in a home that you own when you die subject to having the state get paid back for any MassHealth benefits paid during your lifetime. This is called "expanded estate recovery". This would remove life estates as options for protecting property. It is also anticipated to cause title problems and delay probates. CONTACT your local state Representative and Senator to voice your objection!

Irrevocable Income Only Trust: If property (including liquid assets) is deeded to or transferred to this particular kind of trust (commonly called an IIOT), at least five (5) years before you (or one of you if the owners are a couple), applies for state aid the property will have protection from state claims for long-term care expenses after death. The state does not count the assets in this type of trust for eligibility for state care so long as the trust is set up correctly, and the property was transferred into the trust more than five years before the application for benefits is filed. These trusts are very complicated and need to be approached, created, and funded very carefully.

Similar to the life estate you give up control over your property, but in return you protect it from state claims if state aid is needed. Also like a life estate the trust can be drafted to get a "stepped-up" tax basis in the property.

***IMPORTANT UPDATE 2:** MassHealth has been aggressively attacking IIOTs and there are no guarantees these will work to protect your assets at this time. Several court cases are pending to get clarification, both in state and federal court. More recently MassHealth has taken the position that if a home is in such a trust, and the Donor lives in the home, regardless of the terms of the trust, or the length of time since the transfer, the home is "available" to the Donor and not protected.

Some Other Masshealth Exemptions/Deferments:

Spousal Single Premium Immediate Annuities: If one member of a married couple requires nursing home care, and the couple together have liquid assets exceeding the maximum of $121,220, the community spouse can buy a qualified annuity that will return the excess assets over time.

Disabled Child: If you have a child (not a grandchild), who is permanently and totally disabled or blind, your home can be transferred to that child at the time you need nursing home care without penalty. If a disabled child of low income lives in your home, and you do not transfer the home to them, estate recovery may still be deferred and ultimately waived.

Sibling: If you have a brother or sister who has a legal interest in the home and was living there as least one (1) year before you go into a nursing home your home can be transferred to that sibling at the time you need nursing home care without penalty.

Caretaker Child: If a child of yours lives with you for at least two (2) years prior to your entering a nursing home, and provides care to you that keeps you from having to otherwise go into a nursing home, and you can prove it, your home can be transferred to your child without penalty and you can get state aid to pay for the nursing home.

Properties Necessary for Self-Support: If you have income-producing property, like a rental home, and it has been rented for a while and rent is in excess of the expenses, MassHealth will allow you to keep it. The rent has to go toward your care, and MassHealth will lien the property and recover benefits paid after death, but the differential between private pay and what MassHealth can recover, and appreciation, may make the property worth keeping.

Long-Term Care Insurance: A Long-Term Care Insurance policy that when purchased meets certain standards (as of 2016 covers minimum of two (2) years, pays at least $125 per day in benefits, and starts paying benefits no later than 365 days after the services become needed), will provide protection against a MassHealth lien for long-term-care costs and services against your primary residence (home). This is a specific exemption to the state "estate-recovery" regulations and is a law in Massachusetts only. There are very specific steps that need to be followed to have the exemption work, including having the policy in place when you are admitted to a nursing home (even with minimum remaining benefits), and indicating that you do not intend to return home on the MassHealth application.