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Misconceptions abound in long-term health care, Medicaid

By Joan Stableford

Lawyers who specialize in elder care say that misconceptions run rampant surrounding legal issues of long-term health care, Medicaid and even long-term health-care insurance.

"One of the biggest misconceptions out there is that if you don't give away your assets three years prior to becoming ill and needing nursing home care, that you will lose all of your assets or not qualify," said Frances Pantaleo, an attorney with Walsh & Amicucci in Purchase, who has been involved in eldercare law for almost 20 years.

There are exceptions to Medicaid eligibility rules that require that you be almost destitute before becoming eligible. Medicaid is the federal program which pays for long-term nursing care. For example, you could have a spouse who is well and living in the home, you could be living in your home with another relative who has been taking care of you, or you could have a disabled child who has been living with you, and still be eligible, Pantaleo said.

The rules and intricacies of qualifying for Medicaid are quite complex and there are ways to protect one's assets from being drained, if you protect yourself prior to becoming catastrophically ill, Pantaleo said.

UNDERSTANDING PROGRAMS

Another big misconception on long-term health care is the confusion over the difference between a health-care proxy and a living will, ever since all of the publicity surrounding the Terri Schiavo case, said Bernard Krooks, an attorney with Littman Krooks, one of the largest eldercare practices in New York and Westchester County. Krooks is also president of the National Academy for Elder Law Attorneys.

"If you are sick and are unable to speak and cannot make medical decisions on your behalf, a health-care proxy establishes who you legally appoint to make those decisions for you. A living will just describes what your wishes are for your possible care," Krooks said.

Krooks said that both a health-care proxy and a financial power of attorney are crucial and needed if someone becomes very ill.

"And we know that even though it may not happen, you should have both done before you need them, as the case with Terri Schiavo brought that message home, since one day she was a healthy 25-year-old and the next day she wasn't," Krooks said.

"The other biggest misconception is that there are many millionaires out there taking advantage of the system and now on Medicaid. Nothing could be further from the truth," Pantaleo said.

Caught smack in the middle of this is the middle-class family, who owns a house and has savings, meant to last for their retirement. Once a person in that family becomes disabled through diseases such as Alzheimer's or a stroke, they will face a major eldercare financial crisis.

With nursing home costs typically running \$12,000 to \$13,000 a month or up to \$150,000 a year in Westchester County, Krooks said, many middle-class people can run out of all of their savings and assets very quickly, paying for nursing home care with a combination of Medicare, health insurance and private savings.

The typical middle-class person has seen his home that he bought in the 1960s in Westchester for \$40,000 appreciate tremendously so now it is worth \$400,000 and up and he or she may have a modest retirement plan or pension, Krooks said.

"They do not have tremendous savings for catastrophic care and could lose all of their assets in a short time, with the price of nursing home costs. People usually come here after the crisis has happened. They could prevent this if they planned in advance for long-term health care," Krooks said.

With Medicaid, officials will look back in a person's financial history from three to five years to determine if assets were illegally sheltered to qualify a person for coverage. Moving assets through legal means is permitted, but even if they are legal, it may delay the time when medical benefits can be applied to nursing home care, according to ElderCare Online.

The best defense is to plan ahead, yet many families put off any discussion, until they are at the nursing home door, Krooks said.

"The truth is this issue is not on the radar screen of a healthy 30-, 40-, 50-year-old, who is busy working and raising children. Plus, we all think that Alzheimer's or a stroke, will not happen to us," Krooks said.

LACK OF PLANNING CAN BE COSTLY

"Sometimes, people wait so long, that they don't even have power of attorney, to act on behalf of the ill person — they can't even write a check for them," Pantaleo said.

People delay because there is the psychology of facing one's own mortality. And often, especially with the middle-class, people who have worked all of their lives, they do not want to give up control of their assets and hard-earned money, Pantaleo said.

Many people have not even taken just simple

steps in preparation for the end of their lives. For example, Pantaleo said she often finds that people have had wills for 20 years or more, have not updated their wills, which should be reviewed every three to five years, because finances and circumstances change.

If a potentially catastrophic illness such as heart disease or cancer occurs, they also should consult an attorney right away and at least assign one person power of attorney. Neglecting to do this can become very expensive, since if people lose their mental faculties, their attorney must then apply for guardianship, a very time-consuming and costly procedure, with the typical one running from \$7,500 to \$15,000, Pantaleo said.

Another big issue to contend with is long-term-care health insurance. Healthy people by their 60s or early 70s should investigate the possibility of purchasing long-term health-care insurance, if possible, both eldercare attorneys said. While these policies are quite expensive (\$5,000 up to \$10,000 annually,) they are more affordable when they are purchased when people are younger and in good health.

"Make sure you investigate and research (long-term health insurance) plans carefully and understand everything you can about this insurance before purchasing a policy. They have all types of coverages, with exclusions and inflation factors, which should be understood before you buy," Pantaleo said.

TAX CREDIT FOR LONG-TERM HEALTH INSURANCE

Krooks noted that this year, the New York Legislature just passed a tax credit law in which a taxpayer can receive a tax credit or rebate from 10 percent to 20 percent on purchasing a long-term care health policy.

"That is a big chunk of change. Just think, it could be up to a \$2,000 rebate on a policy that cost \$10,000," Krooks said.

The next step to consider is to consult an

attorney to see if a trust can be set up to hold specific assets, if an individual becomes incapacitated. In a revocable trust, the assets never technically leave the person's ownership, so they are still considered part of the estate when the person dies. In an irrevocable trust, the assets are no longer considered part of your taxable estate and you may be eligible for Medicaid, depending upon the look-back rules, according to ElderCare Online.

"There are lots of legal ways in which you can avoid losing all of your assets, if you consult an attorney who specializes in trusts and estates, before you become ill," said Paul Amicucci, principal of Walsh & Amicucci in Purchase.

Because the Medicaid program is becoming financially strapped, eldercare experts predict that rules for Medicaid will tighten in the next few years.

In New York state, it is legal for one spouse to be on Medicaid and for the other spouse, through a "Spousal Refusal" mechanism, to keep a portion of their money and assets to live on. However, recently, in Westchester County, Krooks said that some of his clients are receiving letters from Medicaid, indicating that they owe the government program money after their ill spouse has died.

"Westchester County has started suing the clients and it is a shame, after all of the time and money they have spent, taking care of their loved ones. We're going to fight this and try, at least, to negotiate this matter out of court," Krooks said.

In New York, state officials also have talked of a "compact" program, where a person might pledge half of their assets to long-term care, without depleting all of their assets to qualify for Medicaid, but this proposal did not pass the Legislature, Pantaleo said.

"Many of my middle-class clients have expressed this wish — that they would be willing to make a type of defined contribution

to their long-term health care at the end of their lives, if they could protect a portion of their assets," Pantaleo said.

No matter what choices people make about their health care for the end of their lives, they should not delay. "If you wait too long, the options are very few. Don't let that happen," Pantaleo said.