



WHY THE MEDICAID ASSET PROTECTION TRUST

by

John F. Robbert, Attorney at Law

Admitted in Delaware, Maryland, and Louisiana

“Who wudda thought?” My sister lives in New Orleans in the home where I grew up. Although it is a couple of miles from any body of water or even a bayou, who would have thought that it could fill with sixteen feet of water for a couple of months such as it did as a result of Hurricane Katrina. Despite the misgivings of her husband, she kept flood insurance intact over the years. “You never know,” she said in response to his argument that the insurance was an unnecessary expense. The only way that they were able to rebuild was a result of that unnecessary expense.

I would venture to say that no one has ever experienced a calamitous event without saying, “I could never imagine this happening to me!” In our comfortable lives we can never imagine being in necessitous circumstances. However, I can imagine being in an automobile accident so I insure against that. I can imagine passing away and my income no longer being available to my family so I insure against that. I may have health issues, so I insure against that. What I cannot imagine is growing old. I can’t see myself in a nursing home – despite the fact that statistics show a 70% probability of this happening. Some people have insurance for this; most don’t. In addition to the explanation that such insurance is too expensive, all too often I hear the comment, “We will never let mom go into one of those places.” I am not always convinced that this is a realistic assessment of the situation.

My mother had Alzheimer’s. My father took care of her at home for three years before it started taking a serious toll on his health. Momma would get up in the middle of the night and roam around and this was after she had fallen down a flight of steps doing this. Notwithstanding the fact that he lived in the other side of duplex where my sister lived (yes, the same one that flooded), and notwithstanding my sister’s able assistance, my father slept with one eye open and this was eventually taking its toll on his health. He made the courageous decision to put her in a nursing home; he was there to feed her every meal but now he could also get some rest.

WHAT’S THE RISK: Risk is defined as the probability or threat of quantifiable damage, loss or other negative occurrence that is caused by a vulnerability that may

be avoided through preemptive action. Statistics already tells us that there is a high probability of one being in a nursing home but what is actually at risk? With expenses of seven to ten thousand dollars a month, what is at risk is: being able to leave your heirs with any inheritance; keeping the homestead in the family; preserving the vacation home. One father told me that he could always count on “stuff” happening to his children and when they came to him for help, he wanted to be able to provide; what was most important to him was preserving the family emergency fund. But risk is not just the probability of a negative occurrence; the second part of the definition is important: it is a vulnerability that may be avoided by preemptive action.

PREEMPTIVE ACTION: The risk of being in a nursing home is that the expense of being there will exhaust all family resources. Is there something that can be done ahead of time, before the expense is incurred, to avoid draining the family bank? To understand what can be done ahead of time, one must also have a basic understanding of Medicaid, the program administered by individual state governments and funded by the federal government; it will pay for nursing home expenses but only after family resources are exhausted or nearly exhausted. Needless to say, like any government program, the rules and regulations on what must be spent and what is exempt are extremely complex; it suffices to say that all assets are at some risk.

If the government will pay for my nursing home expense if I have little or nothing, why don't I just give it away and then apply? Giving your property away is a good strategy; the critical issue, however, is the timing of the gifts. The Medicaid administrators will always look at what has been given away over the five years prior to the Medicaid application. Any gift (and that term is broadly interpreted) made during that time will result in a penalty period based on a prescribed calculation. If you have given away all your assets and if you cannot qualify for Medicaid because you are in the penalty period, how then will you pay the nursing home?

There may be some ways to plan around that (like telling the kids to keep the money handy in case they need to give it back – and that's no problem since they always listen to you – and since stuff never happens to them), but the best strategy is to make the gift at least five years before you apply. Rather than giving the assets directly to your children, you give it to them in trust, that is, the Medicaid Asset Protection Trust.

But how do I know when I might go into a nursing home? All we really know is that sooner is better than later. It reminds me of the time I was on the St. Charles Avenue streetcar. A group of tourists asked me if I knew where the Canal Street stop was. I said sure since I get off at the stop after that. So I told them to watch me closely and get off at the stop right before I do.

THINKING FAST AND SLOW: It is curious how the mind works. It tends to fret over things least likely to happen (“What if my kids run away with my money?”) yet it will casually dismiss what is most likely (“I don’t ever see myself in a nursing home!”).

Of all the men age 60, close to seven of them will have prostate cancer within the next ten years but I don’t have to worry because chances are, I will not be one of those seven. Half of all regular smokers will die from the habit but most think that it is the other half. Seventy percent (70%) of all people age 65 will need some type of long term care; even though those inflicted by Alzheimer’s increased 46% from 2000 to 2006, I can still believe that I won’t be the one in a nursing home.

Studies have shown that the mind will jump to conclusions based on emotion despite statistical evidence that such a conclusion is not warranted. All circumstances are different and most folks can find “reasons” why they will fall into the 30% category rather than falling within the 70% group that will need nursing home care. Resist the temptation to jump to that conclusion; consider the risks and leave your family with more than the question “Who wudda thought?”

rev: August 18, 2023