

The Benefits of Being a Caregiver Under Medicaid.

By Laura Wynn

Qualifying financially for Medicaid can be a daunting task, particularly if you have assets that you would like to pass on to your children and other non-spouse loved ones. In addition, Medicaid has steep penalties for gifting away assets that include months of ineligibility for the program.

There are, however, some great programs and exceptions that Medicaid has created to reward caregivers of those who might otherwise potentially qualify for Medicaid either now or in the next few years. These programs include caregiver agreements, which are contracts where loved ones perform in-home help, and an exemption from the gifting penalty of the individual's house if the caregiver helps keep the individual in the home instead of a long-term care facility.

Caregiver Agreements.

One great option for those who care for people trying to qualify for Medicaid in the next few years is to enter into a caregiver agreement. This agreement is a contract between the two parties which details the kind of care the caregiver will provide; for example, bathing, cooking meals, dressing, cleaning, companionship, and otherwise caring for the individual.

In return, the caregiver can be paid at a rate that is appropriate for the caregiver's skill level. For example, if the caregiver is a registered nurse and is providing medical care, she may be paid more than a caregiver who has no medical training and who only cleans and provides companionship services. A great place to look for appropriate rates is

on the internet. You can also contact other professional services to get a price quote for how much a caregiver at a certain skill level would cost.

The great benefit of entering into these contracts is that caregivers can be paid for services they are often already doing. Particularly in families where a child caregiver may be unemployed, these caregiver agreements give the caregiver compensation for helping out someone they care for and also help out the individual trying to qualify for Medicaid spend down some of his or her assets without gifting them away.

The one serious drawback to caregiver agreements is that the caregiver has to pay taxes on the money he or she earns under the agreement. The individual receiving help additionally becomes an employer and would have to pay certain other taxes, including Social Security, Federal and State unemployment taxes, and any other taxes which employers are responsible for paying on a quarterly and annual basis. Additionally, individuals cannot pay for any past services performed. This means that any services caregivers have provided prior to the caregiver agreement are uncompensated.

Adult Child Caregiver House Exemption.

Medicaid created another great option for the adult children of individuals thinking about applying for Medicaid but who want to be able to keep their parent's house in the family. An individual may transfer the house to his or her adult child caregiver without any months of Medicaid ineligibility if the caregiver meets several requirements.

First, the caregiver must reside with and provide care for the individual for two years prior to the individual's institutionalization in a long-term nursing home. The caregiver must be able to show that had the caregiver not lived with and cared for the individual, he or she would have had to go into a long-term nursing home earlier. This means that the individual must be disabled to such an extent that he or she would otherwise be able to go into a long-term nursing home without the in-home care of the caregiver.

Second, the caregiver must also provide documentation from a physician detailing why the individual needed in-home care. This third-party statement verifying the individual's condition and need for care during the time that the caregiver lived with the individual before the individual gave the caregiver the home is critical to keeping the home from being a gift for Medicaid purposes. Finally, to corroborate that the caregiver was in fact the caregiver and didn't just hire out care-giving duties, the caregiver must provide a detailed statement of services he or she provided to the individual, as well as the time commitment of the in-home care.

The great benefit of the caregiver exception to the Medicaid to the gift penalty is that adult children of individuals can save their parents' house from being sold to pay for their parents' care in return for taking care of their parents. The drawback of this exemption is that it is only available to adult children of individuals applying for Medicaid, and therefore other caregivers, such as neighbors, nieces and nephews, or other friends cannot take advantage of this exemption.

Conclusion.

Both caregiver agreements and the Medicaid adult child house exemption are wonderful benefits and incentives for caregivers to take care of their loved ones who might otherwise need to go into a long-term nursing home. If you are interested in pursuing either one of these, it is important to get legal advice, either through the William & Mary Elder Law Clinic or another attorney.

Planning Ahead: Powers of Attorney, Advance Medical Directives, and Guardianships and Conservatorships.

By Abby Norris

It is not uncommon these days for elderly parents to need the help of their adult children as they age. From heavy lifting, to yard work, to deciphering technology, the list of things that become more difficult as the years fly by only gets longer. The assistance needed by parents as they grow old can be as limited as a mere safety net for worst-case-scenarios, or as extensive as complete responsibility for every day decisions. As an adult child, or loved one, needing expansive permissions and authorizations, it can be extremely difficult to navigate how to go about acquiring them, especially when the one needing the help does not want to ask for, or admit they need, the help. There are a number of options available to parents, children, and loved ones looking to prepare for and react to the failing mental and physical help of the aged.

Powers of Attorney and Advance Medical Directives.

One way to prepare in advance for a parent or loved one's possible future mental and physical decline is to execute a durable power of attorney. A power of attorney is a document that authorizes a designated person to act on behalf of another. The person giving the power of attorney is the "principal," and the person who is authorized to act on behalf of the principal is the "agent." The power of attorney does not take away the rights of the principal; it simply grants the agent the power to act on behalf of the principal while keeping the principal's rights intact. It is essential that at the time of execution of a power of attorney, the principal is able to understand the nature and consequences of the power of attorney in order for the power of attorney to be legally valid. A durable power of attorney will remain in effect if the principal later becomes mentally incapacitated. Virginia law requires language indicating that the principal intends for the power of attorney to remain in effect upon disability; otherwise, the power of attorney would automatically terminate.

A power of attorney is normally effective as soon as it is signed, unless it is "springing." "Springing" powers of attorney contain language stating that they will not go into effect until a specified time in the future (for example, upon incapacitation).

Alongside a power of attorney, an agent can be designated under an advance medical directive, which gives a loved one the authority to make tough health care decisions if the loved one cannot make the decisions for themselves. Again, this document does not remove the principal's right to make decisions. These documents set up a back-up plan in the event the principal loses

the ability to make decisions and act on their own behalf.

When Powers of Attorney and Advance Medical Directives Are No Longer an Option.

However, it is not always possible or realistic that people prepare ahead of time for the kinds of unfortunate situations that require these documents. When executing a power of attorney isn't an option, because the elderly person cannot or will not legally agree to it, a loved one can petition the court to obtain guardianship and conservatorship. Guardians and conservators are appointed by a Circuit Court judge to protect an incapacitated person, someone who legally cannot make decisions without assistance. Incapacitation is a legal status that can only be determined by a Circuit Court judge; it should not be confused with poor judgment or foolishness.

A guardian's authority can be very broad or can be limited to making specific decisions. A guardian can be granted the authority to make any number of decisions, from personal and health care decisions to whether the person may have visitors or will attend a social gathering. A court may limit the breadth and scope of a guardians' authority based on the facts presented to the court in the petition that speak to the ability of the incapacitated adult to care for his own personal, health and safety needs.

A conservator is appointed to manage a person's financial and property affairs. Similarly to the authority of a guardian, the authority of a conservator may be limited depending on the situation of the incapacitated person.

Unlike the power of attorney, the appointment of a guardian or a conservator

removes the person's freedoms and rights to make decisions for himself, including things such as driving and voting, and therefore is a last resort. This option is meant to be used only when there are no less restrictive alternatives that will protect the interest of the incapacitated person.

Conclusion.

Whenever possible, it is always prudent to plan ahead for these kinds of situations. A power of attorney and advance medical directive are great planning tools, but loved ones may need to obtain guardianship and conservatorship in certain crisis situations.