How Planning Can Protect Property From Nursing Home Costs

Michael T. Lahti

Background and Statistics

We have prospective clients fill out a questionnaire expressing their concerns and priorities when doing an estate plan. Perhaps of the greatest concern to most people is "How can I protect my property from nursing home costs?" Clients are constantly being bombarded with information, some good and some erroneous, about the risks of nursing home care. We thought it might be helpful to our clients to discuss the most frequently asked questions.

The chance that a senior will enter a skilled nursing facility is reportedly 1 in 3[1]. Rarely does anyone want to go into a skilled nursing facility (aka "nursing home"), yet this happens to many people. In many instances the gateway to a nursing home is from the hospital. At that time people may be weak, in pain, and disengaged; and there is simply no other option. Sometimes in this condition people even embrace the structured, safe environment offered by a nursing home. So, when this happens, what are the costs?

Nursing homes are costly. A 2010 Prudential study[2] indicates the following:

Annual Nursing Home Care Cost

Room Type	RI	MA	FL
Private	$97,455	$127,385	$85,775
Semi-Private	$91,980	$116,435	$77,380

Annual Assisted Living Care Cost

RI	MA	FL
$36,334	$48,250	$26,428

In-Home Care Hourly Rate

Skill Level[3]	RI	MA	FL
HHA/CNA	$26	$23	$18
LPN	$70	$65	$34

Any stay is expensive, but long stays can be devastating. The Massachusetts Executive Office of Health and Human Services published a report showing that in 2008, 46% of nursing home stays were of one year or less, while 33% were between 1-4 years, and 21% were more than 4 years[4]. Of course it's natural to be fearful that we will fall in these latter groups.

Qualifying for State-Provided Care

Perhaps the greatest source of misinformation concerns what happens when the state is asked to pay for nursing home care. To oversimplify, assets are categorized into what is "countable" versus what is "non-countable." What is countable varies by state. For instance, Massachusetts lets residents keep houses with a higher value ($786,000) than Rhode Island and Florida (both $525,000). On the other hand, in Massachusetts retirement assets are countable and must be spent down, whereas in Rhode Island and Florida such assets are non-countable. Other assets are non-countable to some extent such as an automobile, minimal amounts of life insurance, personal property, and prepaid burial plans, among others.

Once assets are categorized as "countable" versus "non-countable", persons are then told how much they can keep. For single persons, it is a pittance ($2,000 each in Massachusetts and Florida, versus $4,000 in Rhode Island). For married couples, when one spouse is sick the well spouse is allowed to keep a "community spouse resource allowance," or CSRA. Massachusetts and Florida allow the well spouse to keep the first $113,640 of countable assets; whereas Rhode Island allows the well spouse to keep one-half (1/2) of the countable assets up to $113,640.

Crisis Planning; Examples

When clients have not planned in advance, and come in with a crisis, planning usually focuses on determining to what extent assets can be protected for the spouse and children.

PROVIDENCE OFFICE
1 RICHMOND SQUARE
SUITE 303N
PROVIDENCE, RI 02906
PH 401.331.0808
FX 401.223.5115

SOUTHCOAST OFFICE
651 ORCHARD STREET
SUITE 304
NEW BEDFORD, MA 02744
PH 508.992.8677
FX 508.992.8678

CAPE COD OFFICE
72 MAIN STREET
SUITE 5
W. HARWICH, MA 02671
PH 508.430.8677
FX 508.992.8678

CALL TOLL-FREE 1-888-EST-ATTY (1-888-378-2889)

For instance, if a couple has too much in countable assets, then assets must spent down, or converted to non-countable assets. A classic example of this would be a Massachusetts couple with a house worth $300,000 (but subject to a $50,000 mortgage), and cash in the bank worth $175,640. The house is non-countable; the cash is countable. At first blush it might seem that this couple has too much in the way of assets to qualify. The proper answer for this couple is that they are eligible, immediately, for nursing home care. How? This couple could prepay for funerals ($10,000) and pay off the mortgage ($50,000). This leaves them with $115,640; or precisely $2,000 for the sick spouse and $113,640 for the well spouse.

(A sad fact is that oftentimes this very basic advice is overlooked, and couples are told simply to "spend" countable excess money, usually on the nursing home, and to apply when their cash is reduced.)

But what if we change the facts? What if this couple had cash in the bank of $275,640, what would we do with this excess $100,000? Again, this couple is not without options. At this point, this excess cash could be converted into an income stream for the well spouse.

This would be done by moving assets into the well spouse's name, and having him or her purchase an annuity (a special type of annuity based actuarially on the well spouse's life expectancy). The purchase of the annuity would change the character of the cash asset from a countable cash asset into an exempt income stream for the well spouse. This planning is incredibly powerful and important for the well spouse, who can then receive the assets back (in the form of an annuity stream). Furthermore, when this asset is returned to the well spouse and is reinvested, the fact that it pushes assets above the initial threshold of $113,640 is irrelevant.

The above examples show how powerful even "crisis" planning can be. Some key points to make here are that clients must have, at that time, estate planning documents in place that allow last-minute transfers (to the well spouse), and planning to take place. If one does not have appropriate documents in place, then the probate court becomes a necessary party to the planning process, with its accompanying delays and cost.

Continuing with our previous example, what happens if the well spouse subsequently needs nursing home care? At that point, options become very limited. Unless the couple has certain exempt persons to transfer assets to (for instance, a disabled child or caretaker child), then assets must be spent on nursing care, and disappear fast. For many clients, this risk is unacceptable, and they will want to take steps to protect assets ahead of time.

Advance Planning

Planning in advance usually involves insurance or some form of gifting. Long term care insurance, when affordable, is wonderful. When assets start flying out the window, it is very comforting to have insurance assets marching in the door. The problem with long term care insurance is that it's expensive and medically underwritten. Many times clients do not want to spend the money for it until they are sick and realize they need it; and then it's too late.

For clients who do not purchase insurance, maybe because they medically do not qualify, or maybe because they do not want to spend the money, gifting becomes the next option. However, rarely if ever do we recommend outright gifts. The preferred method to make gifts in this context is with an irrevocable trust. When making gifts into an irrevocable trust, to oversimplify, and unless an exception applies, this generally must be done 5 years before one enters a nursing home.

Irrevocable trusts give clients the ability to move assets (usually real estate) into trust and keep many controls over the assets. (Law school professors often equate property ownership to a "bundle of sticks." In other words, there are many ways to enjoy property. Some "sticks" might be the ability to "use" the property, the ability to enjoy "income" from the property, the ability to "sell" the property, the ability to "direct" where the property goes upon death, etc.) The fact is that irrevocable trusts allow clients to enjoy many of these "sticks" while keeping the property protected at the same time.

For instance, our couple above could move their house into an irrevocable trust, and use it for life. When the client is deceased, the house in the irrevocable trust would pass directly to their children free of probate and free of a Medicaid lien. (Most of our clients interested in this type of planning put real estate inside their trusts. A smaller percentage of clients put other assets, such as cash and investable assets, inside these trusts for protection.)

Although these irrevocable trusts can accomplish many great things, they are not perfect. Borrowing against assets inside irrevocable trusts is problematic, and the trusts by their very nature involve a loss of some controls.

Starting the Planning Process

If you have concerns about long-term care, we encourage you to arrange for a consultation at our office. We have been assisting clients for years with this very specialized area of estate planning, and would be happy to share our experience with you and your family. ♦♦♦