

THE MOST OVERLOOKED ISSUE IN ESTATE PLANNING

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Before we can discuss the most overlooked issue in estate planning, we must first define what is meant by “estate planning?” Black’s Law Dictionary is a dictionary of legal terms used by attorneys. Black’s Law Dictionary defines estate planning as, “That branch of law which, in arranging a person’s property and estate, takes into account the laws of wills, taxes, insurance, property, and trusts so as to gain maximum benefit of all laws while carrying out the person’s own wishes for the disposition of his property upon his death.” Although this is a pretty good definition, the concept of estate planning is much broader than this definition. In addition to involving wills, taxes, insurance, property and trusts, many times estate planning involves protecting and maintaining assets while individuals are living.

When considering estate planning, people usually have lots of questions. For instance, What is probate and how does it work? What is real versus personal property? Do I need a will or should I use a trust? If I use a trust, do I use a revocable or irrevocable trust? If I use an irrevocable trust, can I ever change it? What are land trusts, farm trusts and mineral trusts? What about joint tenancy or transfer-on-death designations? Is my estate going to owe estate taxes? If so, is there a way to avoid them? Do I need life insurance and a life insurance trust? Do I need a limited liability company or corporation? How about a power of attorney, do I need one of those? Should I have an advance directive for health care? Do I even need to do any planning?

Almost all attorneys beginning addressing these questions and concerns by discussing whether to use a will or a trust, which is a discussion for a future article. The attorney will proceed to address the remaining questions and how they impact individual’s estate planning. These questions and the attorney’s discussions of these topics involve administering an individual’s

assets when the person dies. But, what about while the person is living?

The largest threat to individuals, their families and their assets is long-term care. However, neither the individual nor the attorney ever address the issue of long-term care when discussing estate planning. When long-term care is mentioned, some people automatically believe we are talking about care in a nursing facility. This is not always the case. Long-term care is much broader than care in a nursing facility. Long-term care can involve care at home, in an assisted living facility or in a nursing facility.

The Centers for Medicare and Medicaid Services (“CMS”) is the federal agency tasked with managing Medicare and Medicaid in the United States. CMS, along with several research organizations, report one out of every two individuals will need some type of long-term care in their lifetimes. Furthermore, they report the total cost of long-term care in the Midwest can easily cost between \$10,000 to \$15,000 per month. Currently, in Northern Oklahoma, nursing facility care in an semi-private room costs from \$8,000 to \$9,000 per month. This cost is slightly more for a private room or if any special accommodations are needed. Long-term care at home is even more expensive ranging from \$10,000 to \$13,000 per month depending upon the requisite care. None of these amounts consider any additional medications or out-of-pocket medical or care expenses which can easily exceed \$1,000 per month.

CMS and the research organizations also report the average length of care for a non-dementia or non-Alzheimer’s patient is slightly over three years. However the average length of care for a dementia or Alzheimer’s patient is just more than 11 years. Remember, these are averages. Since there are individuals who need care less than the averages, mathematically there have to be persons requiring care more than these averages. Based upon these findings, long-term can easily cost an individual and his or her family \$300,000 to \$400,000 in the absence of dementia

or Alzheimer's disease, and well over \$1 million with dementia or Alzheimer's disease. With a 50% probability of individuals incurring such costs, long-term care is a real and significant threat to individuals, their families and their assets. Yet, most individuals and their attorneys completely overlook this issue.

Basically, there are five ways to pay for long-term care. First, individuals can self-fund their care meaning they can pay for care out of their assets. There is nothing wrong with people spending their assets to pay for their care. This is the easiest option to implement since they do not spend any time or money on addressing the issue. However, it can be the most costly for individuals and their families. Choosing not to do anything is choosing to self-pay for care.

The second option is using long-term care insurance. CMS reports less than 5% of the population has any type of long-term care insurance. Of that 5%, most are underinsured. It can be very difficult to medically qualify for long-term care insurance. For those persons who can medically qualify for long-term care insurance, it many times will be cost prohibitive to purchase.

Medicaid is the third option in paying long-term care expenses. All working individuals have paid for their Medicaid benefits. Contrary to popular belief, individuals can qualify for Medicaid benefits having significant net worths. People having net worths of as little as \$50,000 to as much as \$5 million regularly receive Medicaid benefits. However, the net worth of most individuals receiving Medicaid is between \$100,000 to \$2 million. This also is a discussion for a future article.

Medicare is not an option for paying long-term care expenses. It has a very restrictive and limited skilled nursing benefit which is not designed to pay long-term care costs. It only pays a limited number of days of skilled nursing necessary for rehabilitation. If no progress with rehabilitation is being made, or once the limited number of days are exhausted, Medicare does not

pay for any skilled nursing care.

Fourth, there is a limited benefit from the Department of Veteran Affairs (VA) to help pay for long-term care for veterans and their spouses. The fifth and final option in paying for long-term care is a combination of the preceding four options.

In most cases, the typical estate planning attorneys will not discuss Medicaid planning with clients because they are not trained in it. Probate, wills, trusts and related topics are taught to attorneys when they are attending law school. If an attorney is going to practice in the area of wills and probate, he or she learns the basics in law school, reads the state probate statutes and treatises on probate, and learns how to practice in this area. The treatises explain the statutes and even provide the attorney with forms to use in his or her practice. Long-term care and Medicaid are different.

There are no such treatises or other aids. Medicaid involves a mangled web of federal statutes, federal regulations, federal case law, state statutes, state regulations and state case law. If the attorney is going to practice in the area of Medicaid, he or she must self-teach themselves. It results in very few attorneys knowing anything about Medicaid. When doing estate planning, it is important for individuals to incorporate long-term care planning into their estate plans, and to use an attorney who is fluent in Medicaid and long-term care planning when doing so. This will protect the individuals, their families and their assets from the most significant financial threat facing society today.

For more information about Medicaid, Medicare, VA benefits, Social Security disability, estate planning and asset planning, visit the website of Senior Resource & Benefits, LLC (“SRB”) at www.SRBLLC.com or call toll-free 1-800-407-9302. All legal services for SRB are provided

by the law firm of Riffel, Riffel & Benham, PLLC having a website of www.westoklaw.com and telephone number of 580-234-8447.



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