MEDICAID (TITLE 19) PLANNING

The Need for Planning
One of the greatest fears of older Americans is that they may end up in a nursing home. This not only means a great loss of personal autonomy, but also a tremendous financial price. Depending on level of care, nursing homes cost between $75,000 and $150,000 a year.

Most people end up paying for nursing home care out of their savings until they run out. Then they can qualify for Medicaid to pick up the cost. The advantages of paying privately is doing so eliminates or postpones dealing with your state's welfare bureaucracy--an often demeaning and time-consuming process. The disadvantage is that it's expensive.

Careful planning, whether in advance or in response to an unanticipated need for care, can help protect your estate, whether for your spouse or for your children. This can be done by purchasing long-term care insurance ($6,000 per year/per person) or by making sure you receive the benefits to which you are entitled under the Medicare and Medicaid programs. Veterans may also seek benefits from the Veterans Administration.

Medicare
Medicare Part A covers up to 100 days of "skilled nursing" care per spell of illness. However, the definition of "skilled nursing" and the other conditions for obtaining this coverage are quite stringent, meaning that few nursing home residents receive the full 100 days of coverage. On average only 14 days are covered. As a result, Medicare pays for only about 9 percent of nursing home care in the United States.

Medicaid (Title 19) (T-19)
For all practical purposes, in the United States the only "insurance" plan for long-term institutional care is Medicaid. Lacking access to alternatives such as paying privately or being covered by a long-term care insurance policy, most people pay out of their own pockets for long-term care until they become eligible for Medicaid. Although their names are confusingly alike, Medicaid and Medicare are quite different programs. For one thing, all retirees who receive Social Security benefits also receive Medicare as their health insurance. Medicare is an "entitlement" program. Medicaid, on the other hand, is a form of welfare -- or at least that's how it began. So to be eligible for Medicaid, you must become "impoverished" under the program's guidelines.
Also, unlike Medicare, which is totally federal, Medicaid is a joint federal-state program. Each state operates its own Medicaid system, but this system must conform to federal guidelines in order for the state to receive federal money, which pays for about half the state's Medicaid costs. (The state picks up the rest of the tab.)

This complicates matters, since the Medicaid eligibility rules are somewhat different from state to state, and they keep changing. (The states also sometimes have their own names for the program, such as "MediCal" in California and "MassHealth" in Massachusetts.) Both the federal government and most state governments seem to be continually tinkering with the eligibility requirements and restrictions. This has most recently occurred with the passage of the Deficit Reduction Act of 2005 (the DRA) which significantly changed rules governing the treatment of asset transfers and homes of nursing home residents. The implementation of these changes will proceed state-by-state over the next few years. But to be certain of your rights, consult an expert. He or she can guide you through the complicated rules of the different programs and help you plan ahead.

Those who are not in immediate need of long-term care may have the luxury of distributing or protecting their assets in advance. This way, when they do need long-term care, they will quickly qualify for Medicaid benefits. Giving general rules for so-called "Medicaid planning" is difficult because every client's case is different. Some have more savings or income than others. Some are married, others are single. Some have family support, others do not. Some own their own homes, some rent. Still, a number of basic strategies and tools are typically used in Medicaid planning. These are described below.

**Transfers**

Congress has established a period of ineligibility for Medicaid for those who transfer assets. The DRA significantly changed rules governing the treatment of asset transfers. For transfers made, Wisconsin Medicaid officials will look at all transfers made within the 60 months.

While the look back period determines what transfers will be penalized, the length of the penalty depends on the amount transferred. The penalty period is determined by dividing the amount transferred by the average daily cost of nursing home care in Wisconsin.

Transfers should be made carefully, with an understanding of all the consequences. People who make transfers must be careful not to apply for Medicaid before the five-year look back period elapses without first
consulting with Board Certified Elder Law Attorney Timothy P. Crawford. This is because the penalty could ultimately extend even longer than five years, depending on the size of the transfer.

Any transfer strategy must take into account the nursing home resident's income and all of her expenses, including the cost of the nursing home. Also, be very, very careful before making gifts.

The Attorney's Role
Do you need an attorney for even "simple" Medicaid planning? This depends on your situation, but in most cases, the prudent answer would be "yes." The social worker at your mother's nursing home assigned to assist in preparing a Medicaid application for your mother knows a lot about the program, but will not know the strategies that apply in your case.

The best bet is to consult with Attorney Timothy P. Crawford, a Board Certified Elder Law Attorney. He can advise you on the entire situation. At the very least, the price of the consultation should purchase some peace of mind. And what you learn can mean significant financial savings or better care for you or your loved one. This may involve the use of transfers of assets, purchase of annuities or increased income and resource allowances for the healthy spouse.

“A majority of text has come from an article prepared by Attorney Harry Margolis, friend of Attorney Timothy P. Crawford, is used here with permission.”