

THE PRACTICAL LAWYER

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THE PRACTICAL ESTATE PLANNER



In practice since 1987, Certified Elder Law Attorney **EVAN FARR** is widely recognized as one of the leading Elder Law, Estate Planning, and Specials Needs attorneys in Virginia, Maryland, and the District of Columbia, and one of foremost experts in the country in the field of Medicaid asset protection and related trusts. He has been quoted or cited as an expert by numerous sources, including: the Washington Post, Newsweek Magazine, Northern Virginia Magazine, Trusts & Estates Magazine, The American Institute of Certified Public Accountants, and The American Bar Association.

Evan has also been featured as a guest speaker on numerous radio shows, including WTOP and Washington Post Radio. Evan has been named by SuperLawyers.com as one of the top five percent of Elder Law and Estate Planning attorneys in Virginia every year since 2007, and in the Washington, D.C. Metro Area every year since 2008. In 2011, Evan was named by Washingtonian Magazine as one of the top attorneys in the DC Metropolitan area, by Northern Virginia Magazine as one of the top attorneys in the Northern Virginia area, and by Newsweek Magazine as one of the top attorneys in the country. Evan is a nationally renowned author and frequent educator of attorneys across the U.S. As an expert to the experts, Evan has educated tens of thousands of attorneys across the country through speaking and writing for numerous national legal organizations such as the National Academy of Elder Law Attorneys, ALI CLE, the National Constitution Center, myLaw CLE, the National Business Institute, the Virginia Academy of Elder Law Attorneys, the Virginia Bar Association, Virginia Continuing Legal Education, and the District of Columbia Bar Association.

THE MORALITY OF MEDICAID PLANNING

“Hide” is a four-letter word

Elder Law attorneys do not hide assets. Hide is literally a four-letter word, and has no place in an Elder Law practice. Elder Law attorneys legally “protect” or “shelter” assets using the applicable laws that are available. Medicaid Asset Protection is absolutely ethical and moral; in fact, it is the “right” thing to do if a family is concerned about the long-term care of a loved one. From a moral and ethical standpoint,

Medicaid planning is no different from income tax planning and estate planning.

Medicaid planning is just like income tax planning

Income tax planning involves trying to find all of the proper and legal deductions, credits, and other tax savings that you are entitled to—taking maximum advantage of existing laws. Income tax planning also involves investing in tax-free bonds, retirement plans, or other tax-favored investment vehicles, all in an

effort to minimize what you pay in income taxes and maximize the amount of money that remains in your control to be used to benefit you and your family.

Medicaid planning is just like estate tax planning

Estate planning involves trying to plan your estate to minimize the amount of estate taxes and probate taxes that your estate will have to pay to the government, again taking maximum advantage of the existing laws. Similar to income-tax planning, estate planning is a way to minimize what your estate pays in taxes and maximize the amount of money that remains in your estate to be used to benefit your family.

Similarly, Medicaid planning involves trying to find the best methods to transfer, shelter, and protect your assets in ways that take maximum advantage of existing laws, all in an effort to minimize what you pay and maximize the amount of money that remains in your control to be used to benefit you and your family.

Like income-tax planning and estate planning, Medicaid planning requires a great deal of extremely complex knowledge due in part to constantly changing laws, so clients need to work with experienced Elder Law attorneys who know the rules and can give proper advice.

Medicaid is just like long-term care insurance (sort of)

For seniors over the age of 65, Medicaid has become equivalent to federally subsidized long-term care insurance, just as Medicare is equivalent to federally subsidized health insurance. Congress accepts the realities of Medicaid Planning through rules that protect spouses of nursing home residents, allow Medicaid asset protection via the purchase of qualified long-term care Insurance policies, allow the exemption of certain types of assets, and permit individuals to qualify even after transferring assets to a spouse or to a disabled family members or to a caregiver child. To plan ahead and accelerate qualification for Medicaid is no different than planning to maximize your income tax deductions to receive the largest income tax refund allowable. It's no different

than taking advantage of tax-free municipal bonds. It's no different than planning your estate to avoid paying estate taxes.

Medicaid planning is required to overcome a discriminatory health insurance system

One of the inherent tragedies of our American health insurance system is that it discriminates against people suffering from certain types of chronic illnesses, i.e., those that routinely result in the need for long-term care, such as Alzheimer's disease and other types of dementias; Parkinson's disease and other types of degenerative disorders of the central nervous system; Huntington's disease, Amyotrophic Lateral Sclerosis (ALS), and other progressive neurodegenerative disorders; and many genetic disorders such as Multiple Sclerosis and Muscular Dystrophy. Those Americans suffering the tragedy of one of these diseases must also suffer the tragedy of having the "wrong" disease according to our American health insurance system.

Why should someone with brain cancer—tumors in the brain that aren't supposed to be there—have all of his treatment (chemotherapy, radiation, and surgery) covered by health insurance, yet someone with Alzheimer's—plaques and tangles in the brain that aren't supposed to be there—must pay for his care out of pocket until he goes broke? In both cases, we are dealing with the care that someone needs because of the disease that person has. How is the differing result fair? It's not.

Is it an ethical social policy that seemingly arbitrarily distinguishes among these different types of illnesses? Is it an ethical social policy that provides full coverage for most illnesses—whether chronic or acute—but forces Americans with certain chronic conditions (many of them elders) to become impoverished in order to gain access to the long-term care necessitated by their particular type of chronic illness? Is it a surprise that Americans suffering the "wrong type" of chronic illness will want to look for legal ways to preserve the efforts of their lifetime in order to protect themselves from this unfair and seemingly arbitrary social policy? 🍷