

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 Special 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, DC 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 TEN MOST COMMON MEDICAID MYTHS

MYTH 1:

Greedy children want Medicaid planning to protect their inheritance.

Reality: If I get the feeling that a child has unduly influenced his or her parent to come visit me in order to preserve an inheritance, I will send them packing. Most Elder Law attorneys have a passion for protecting the dignity and quality of life of the Elder, which is what Elder Law is all about.

Reality: The expenses of long-term care caused by a chronic illness are often catastrophic because in the United States, citizens do not have a right to basic long-term care. Through Medicare, seniors have had virtually universal health insurance coverage for most chronic illnesses since 1965. For individuals under age 65, private health insurance has likewise always covered treatment, medication, and surgery for most chronic illnesses, such as heart disease, lung disease, kidney disease, and hundreds of other chronic medical conditions.

Reality: Our American health insurance system essentially discriminates against people suffering

from certain types of chronic illnesses, i.e., chronic illnesses 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, muscular dystrophy, and cystic fibrosis. So those Americans suffering the misfortune of one of these diseases must also suffer the misfortune of having the "wrong" disease according to our American health insurance system. 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 clients 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 arbitrary social policy?

Reality: Medicaid asset protection planning is not about “cheating” or “gaming” the system; it is about understanding and using existing laws that enable us to help our clients preserve their dignity and self-worth and avoid being financially destroyed by our unfair health care system.

MYTH 2:

A nursing home resident must “spend down” virtually all assets on nursing home care before qualifying for Medicaid.

Reality: Elder Law Attorneys who specialize in Medicaid Asset Protection legally help nursing home residents protect significant assets every day. For a married client, we can generally protect 100 percent of their assets, regardless of how the assets are titled, without forcing them to get divorced. For an unmarried client, we can generally protect 40 percent to 70 percent of the assets.

MYTH 3:

It is illegal to transfer assets in the five years prior to applying for Medicaid.

Reality: Nothing is illegal about transferring your own assets, though there may be Medicaid consequences in doing so. Many legal and ethical asset protection strategies do involve transferring assets.

MYTH 4:

Once someone is in a nursing home, it’s too late to do any asset protection.

Reality: It’s never too late to protect assets, even if you or a loved one is already in a nursing home facility.

MYTH 5:

Someone on Medicaid gets lower quality care than someone paying privately.

Reality: Disparate treatment between Medicaid recipients and private pay residents is illegal. In fact, Medicaid recipients who have worked with a qualified Elder Law Attorney often get much better care than their private-pay counterparts because the

money that has been protected is often used by a loving family member to help the elder obtain better quality care and to maintain dignity and quality of life.

MYTH 6:

Medicare will pay for long-term care in a nursing home.

Reality: Medicare only pays for short-term rehabilitation, and only for a limited time and under limited circumstances. Medicare does not pay a single penny for long-term care.

MYTH 7:

All Power of Attorney documents are basically the same.

Reality: Full gifting powers must be in a Power of Attorney in order to facilitate Medicaid Asset Protection planning. If you’re an Estate Planning attorney or General Practitioner who routinely limits gifting in your POAs, you need to reconsider this practice, which ultimately does a tremendous disservice to your clients.

MYTH 8:

A revocable living trust will protect assets from Medicaid.

Reality: A regular living trust does not protect assets from Medicaid. For a detailed explanation of a living trust that does protect assets from Medicaid, while allowing the Settlor the ability to act as trustee and change beneficiaries, see <http://www.livingtrustplus.com>.

MYTH 9:

An irrevocable trust can never be changed or revoked.

Reality: An “irrevocable” trust is a trust that cannot be revoked by the settlor unilaterally. Modification and/or termination can occur by consent between all interested parties.

MYTH 10:

A client with over \$1 million won't ever need Medicaid.

Reality: Nursing homes nationally now average more than \$100,000 per year. A million dollars doesn't go as far as it used to. I've had clients that have spent over \$1 million on nursing home care before coming to see me. Long-term Care Medicaid is not a program for poor people with low income; it's an entitlement program for people who are able to legally qualify under the provisions of applicable laws, regulations, and policy. 🗡️