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Number twenty-two

MEDICAID PLANNING WITH THE IRREVOCABLE FIVE YEAR LOOK BACK TRUST

1. What type of client would be interested in this type of Medicaid planning?

Actually, any client that is concerned about having medical costs financially devastate their family, and the assets the clients have accumulated over the years.

2. How does an Irrevocable Five Year Look Back Trust work?

First, let's look at some of the Medicaid rules that come into play here. Since we are using an irrevocable trust, to protect the clients, which we will discuss later, we need to discuss the "5 year look back" rules under Medicaid. Let's assume that clients realize they are going to need long term care in 6 months. It would be nice if they could simply give all of their property to their children and then apply for Medicaid.

3. I don't know many parents that would simply want to give property to their children, do you?

No, but let's discuss that later, I need to point something out first. To prevent applicants for Medicaid from simply giving everything away and then applying, Congress instituted the, in the case of many trusts, "look back" rule. The look back rule is a procedure whereby an applicant for Medicaid is asked if they have made any gifts, in trust in this circumstance, within the last 5 years. If so, there is a period of ineligibility imposed on the applicant.

4. What is a period of ineligibility?

The government figures that if you could give your property away and then apply for benefits, the taxpayer's would be subsidizing the applicant's family. In 1993, a new rule came in that provides if an applicant has made gifts, in Trust, within 5 years of applying for Medicaid, the value of the gifts will determine a period for which the applicant will be ineligible. This period of ineligibility is based on: (i) the value of the gift, and (ii) the average monthly cost of long term care in the applicant's area. As an example, assume that the average monthly cost for one person is $3,500 per month. If an applicant gave away $300,000, the government will divide the $300,000 by the $3,500 per month average cost, and the resulting figure, 86, is the number of months of ineligibility caused by the gift. That totals 7 years of ineligibility for Medicaid benefits.

5. What is the meaning of "5 Year Look Back Trust" then?

Perfect question. If the applicant had made the gift more than 5 years, even one month, before applying, there is no gift within the 5 year look back period, and the applicant will be covered. That brings us to the format of the Irrevocable 5 Year Look Back Trust.

6. How is it set up?

Frankly it is not that complicated, if done correctly. The following are the steps:

- **The trust is created:** The attorney drafts a properly designed irrevocable trust;
- **Parents contribute their property:** The parents contribute their property to the trust and receive back income interests for their joint lives. At the death of the survivor, the trust property passes to their children or other heirs;
- **Wait 5 Years:** Neither parent applies for Medicaid benefits until 5 years have elapsed. Because there will have been no gifts within 5 years of applying, there is no ineligibility and the property in the trust is protected for the children or other heirs.
- **Who is the trustee of the trust:** Good question, generally, someone the parents trust to make sure that the assets are invested to provide the parents with income for their lives**.**
- **What happens to the income when the parents apply, after 5 years:** The income will be spent on medical care until the death of the survivor, but the corpus of the trust is safe.

7. That sounds like a good planning technique, is it really that simple?

Yes, you will find that most of the sound planning techniques have as few moving parts as possible. The Irrevocable 5 Year Look Back Trust is a planning tool that many parents should consider as a method to maintain their income for life, yet protect their children in the event that long term care becomes necessary