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MEDICAID FOR MILLIONAIRES? REAL LONG TERM CARE PLANNING ISSUES

By Thomas D. Begley, Jr., Esquire

Recently, the *Wall Street Journal* decried the practice of planning for long term care (what it called "Medicaid estate planning"). The *Journal* assured its readers that the community of elder law practitioners is "dedicated to the children of seniors who want to make sure that other taxpayers, not they, pay for nursing-home care via Medicaid should mom or dad ever need it." Is that what's really going on, or is the *Journal* playing fast and loose with the realities of long term care planning?

Consider two of the recent cases we have seen at Begley & Bookbinder. The facts have been changed just enough to obscure our clients' identities without altering their real situations.

Tony is in his mid-thirties. Despite his youth, he suffered a devastating stroke five years ago, and he now requires total care. He lives at home, and his money has paid for care. His assets, once over a million dollars, are now down to less than $100,000. When that money runs out he will qualify for Medicaid, but there is no way he will be able to stay in his home—he will then be placed in a nursing home.

Tony's brother (who handles all his affairs) is trying to figure out how to shelter some of Tony's remaining money to qualify him for Medicaid right now. With Medicaid's assistance, Tony may be able to stay in his home for an extra year, maybe two or even three. But if he has to wait until his money is all gone, there will be no way to keep him at home—and the money will be gone, at this rate, in about six months.

Diane has a husband, but she requires more help than he can provide. She suffered a brain injury in an automobile accident ten years ago, when she was in her late 40s. She now lives in a nursing facility, and Medicaid is already paying for her care. Their assets, never large, had to be spent down to about $95,000 before she qualified. Her husband is still working and now has managed to accumulate about $200,000 plus his home—which Medicaid rules allow him to keep.

Diane's husband has also found a new life. Diane is unable to communicate, and he has had no companionship for more than a decade. Now he has fallen in love again, and he hopes to marry. First he must divorce Diane, but he intends to continue to provide care.

Diane's husband will be awarded virtually all the assets in a divorce—after all, Medicaid insisted that everything be put in his name and Diane's "share" of assets be spent for her care. Then he has two choices: he can disinherit Diane, leaving her on the Medicaid system totally, or he can try to set up something for her after he dies.

Perhaps the *Journal* had more typical Medicaid clients in mind. Clients like Mr. and Mrs. Dahle, who worry because they have heard that "the State" will take away their home if either of them ever need long term care. It will.

It may be that the *Journal* is thinking about the children who ask whether their parents have enough money to provide for nursing home care at something like $100,000 per year, or for in-home care at $50,000 per year. Possibly they are aware of how strongly middle-class parents feel about leaving something—at least something—to their children, or how desperately couples hope to hold on to enough assets to assure that they are allowed to stay in their homes as long as possible. But we must confess that we are not seeing the same Millionaires that the *Journal* thinks it knows about.

One of the tactics criticized by the *Journal* editorial is what it calls "the notorious 'two Mercedes' rule" that would allow a Medicaid applicant to give away a vehicle, buy a replacement and give it away, and then qualify for benefits. We have talked about the rule for nearly two decades, though we have called it the "multiple Mercedes" rule. The point is that we have explained how it might work dozens of times, we have talked about it in public speeches, we have assured astonished clients that they could use it, and we have never—not once, not ever—seen anyone who wanted to do it. We are glad of that, because we think the rule is a gaping loophole and that it should not exist. But it hardly seems catastrophic if no one is doing it, and the *Journal* cites not a single instance of it actually occurring. It would be illegal in New Jersey, Pennsylvania and most other states.

Which of our clients looks like the “Medicaid for Millionaires” picture? None of them, of course—and that’s just the point. Of the dozens of clients we have counseled about long-term care, only a handful have been "millionaires." Virtually every one of those has decided that they have enough resources to pay for their own long-term care, and not to rearrange their lives around Medicaid/ALTCS eligibility rules. The *Wall Street Journal* has it wrong.

Begley & Bookbinder, P.C. is a law firm that specializes in Elder & Disabilities Law. We are based in Moorestown, NJ, with offices in Stone Harbor & Lawrenceville.

If you have any comments, e-mail us at ccaruso@begleylawyer.com

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