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Talk To Relatives About Caregiving Before They Need It

Linda Worden RN, MPH, CMC for CzepigaDalyDillman

We are pleased to announce the second article in a series highlighting Geriatric Care Services of CzepigaDalyDillman, LLC.

Before my grandfather died of cancer, I helped my grandmother care for him in their home. For more than a decade, I managed health care and other financial issues for my disabled brother until his death. I also assisted with some of my grandmother's financial affairs in the years leading up to her passing. I'm currently the trustee for an older aunt.

With this experience, you would think it would be easy to talk to yet another adult about his care. But it's often not easy to get someone who has been living independently to open up, especially about finances.

Gathering the information my husband and I need to care for my father-in-law has been difficult. He is fiercely frugal and private. Everything we mention that he needs -- a wheelchair or assistance with his daily living -- is met with resistance because of the cost. He keeps coming back to two things: He's worried about outliving his money, and he wants to leave an inheritance to his grandchildren.

I certainly understand the first concern. The second point is a wonderful gesture, but we need him to use his money now for his care.

To help with having the all-important conversation about my father-in-law's care and finances, I turned to a professional to get some tips on effectively having the talk.

"We start saving for our kids to go to college years in advance but don't talk to our parents until it's too late to make good decisions," says Rosemarie Rae, executive vice president of strategy for Volunteers of America. She is running the nonprofit organization's "Aging With Options" initiative.

Rae and other professionals urge that you start talking well in advance of when you think you need to start caregiving, when your loved ones are still in good health.

Wait too long and it's hard for your mom and dad to acknowledge their diminishing cognitive abilities or their failing health. Say nothing and it becomes more of a struggle by the time you notice your dad's deteriorating memory or that your mom's house is a mess because she can't clean it like she used to.

So where do you start?

"A great way is by letting your aging parents or relatives knows that they can count on you, but in return they have to help you prepare," Rae says.

I like that conversational strategy. If they expect you to help -- and you should -- they need to make things easier by opening up. Here's a list Rae came up with. It is by no means all-inclusive but will help you get started:

Ask about insurance policies including long-term care, disability and life.

Discuss all the possible living options should that need arise. The options may include home modifications (to yours or theirs), home care, assisted living, senior day-care centers and nursing homes.

For added support, consider hiring a geriatric care manager, a professional who specializes in helping families who are caring for older relatives. "When siblings are spread across the country, this person can help you come up with a game plan before something happens," says Karen Boothroyd, executive director of the National Association of Professional Geriatric Care Managers. The cost can range from $80 to $200 per hour. But the fee could be more or less depending on where you live. You can find more information on this topic at http://www.caremanager.org.

"Caregivers are rarely prepared for the emotional wear and tear on their marriages and sibling relationships," Rae said. "While caregiving can be rewarding, it can also stir up years of resentments and unresolved family issues. Engaging a neutral third party to negotiate can be very helpful."

Discuss what monthly income, savings, investments and other assets the older relative has. Save this topic for the last part of your talk.

Relatives -- adult children included -- can take advantage of seniors, so understand that your parents may be reluctant to hand over financial information. Nonetheless, keep pushing, because in all that you will have to do, it's vital to effective caregiving to have some idea of what financial resources are available. So talk.

Paul's Note: I agree with what the writer says. Don't ignore the aging of a loved one or pretend things will just get better. I urge any of you reading this who have concerns about the safety and welfare of a relative, whether the concern is about health or finances, to call CzepigaDalyDillman and talk to us about your concerns. CzepigaDalyDillman is proud to be one of the few law firms in Connecticut with a Certified Care Manager on staff. We added Linda Worden to our staff to address those client needs concerning safety, independence, dignity and lifestyle.

Share of Family Limited Partnership Disqualifies Medicaid Recipient

The Supreme Court of Montana rules that a share of a family limited partnership has a fair market value that should count as a resource for purposes of Medicaid eligibility. The court also determines that the hearing officer's decision is not a final decision under the Montana Administrative Procedure Act. Micone v. Department of Public Health and Human Services (Mont., No. DA 10-0541, July 29, 2011).

Joshua Micone applied for Medicaid in 2003, but never disclosed his wife's interest in Jump Investments, a family limited partnership established by her grandparents. Three years after the family's benefits were approved, the state Department of Health and Human Services terminated the family's benefits, claiming that Mrs. Micone's interest in the partnership was a countable resource that placed the family above the $3,000 resource limit. The Department demanded repayment of nearly $23,000 in benefits, and Mr. Micone contested the request in a hearing held in March 2008. The hearing officer issued a negative decision in February 2009, which Mr. Micone unsuccessfully appealed to a Board of Hearings and a trial court.

On appeal, Mr. Micone argued that the state violated the state's administrative procedure act because it did not issue a decision within 90 days of when his case was submitted to the hearing officer. He also claimed that his wife's partnership interest had no marketable value and should not have counted as an available resource.

The Supreme Court of Montana affirms. The court rules that the state's method of valuing the partnership interest was, if anything, conservative and that Mr. Micone did not present evidence that the valuation method was clearly erroneous. The court also holds that the hearing officer's decision was not a final one for purposes of the administrative procedure act, saying that "[w]hen the Board receives a timely request for review, it is considered the 'agency' . . . who renders the 'final decision'." Two justices dissent, arguing that the hearing officer's decision was untimely.

Paul's Note: This case is interesting for 2 reasons. First, the social services agency, when valuing the partnership interest, permitted a large discount (40%) to reflect that the FLP interest was non-controlling. Although we often encounter discounts in estate tax and IRS matters, it is unusual to see a social service agency grasp the illiquid nature of an FLP interest. Secondly, in the dissent, two judge's ruled that the hearing officer violated the 90 day turnaround time to render a decision. Late decisions, in violation of Connecticut case law and federal statute, continue to plague practitioners here in Connecticut and, absent a lawsuit, one can expect little change.

No Estate Tax Deduction for Caregiving Debt Without Written Care Agreement

The U.S. Tax Court rules that a son is not entitled to deduct from estate taxes the debt he claimed his mother's estate owed him for providing care to her because he did not have a written care agreement. Estate of Olivo v. Commissioner (U.S. Tax Ct., No. 15428-07, July 11, 2011).

New Jersey resident Anthony Olivo provided nearly full-time care to his mother from 1994 to 2003, largely abandoning his solo practice as an attorney during that time. After his mother died, Mr. Olivo became administrator of her estate.

Mr. Olivo filed a tax return for the estate and claimed a deduction of $1.24 million as a debt the estate owed to him for the care he provided to his mother. He claimed he had an oral agreement with his mother that after she died she would compensate him for his services. The IRS mailed a notice of deficiency to Mr. Olivo, and he filed a petition with the Tax Court.

The U.S. Tax Court rules that the estate is not entitled to the deduction. Applying New Jersey law, the court holds that it must presume that Mr. Olivo's services were gratuitous unless the estate can prove by a preponderance of the evidence that Mr. Olivo was entitled to be paid for his services. The court finds that without a written agreement, there is no evidence Mr. Olivo did not provide the services gratuitously.

Paul's Note: The Court, in my view, arrived at the correct decision if for no other reason than under the theory "pigs get fat, hogs get slaughtered." Clearly the son was overreaching in trying to get a deduction for the estate. This case is a reminder, too, that under Connecticut's Medicaid rules, the State is much more apt to permit payments to a caregiver child if there is a written, as opposed to an oral, agreement between the child and the parent. The State will also look at the caregiver child's income tax return to see if the child reported the payments as taxable income. If the child does not report the income, then the State is likely to classify the payments as gifts, with the attendant Medicaid penalties that arise from gifts.

Note Compensating Son for Future Personal Services Is Impermissible Transfer

A North Carolina appeals court holds that a Medicaid recipient who executed two promissory notes secured with two deeds of trust in favor of her son, purportedly in exchange for past and future personal services, made asset transfers, and at least one of them was uncompensated. Joyner v. N.C. Dep. Of Health & Human Services (N.C. Ct. App., No. COA10-670, Aug. 2, 2011).

Medicaid recipient Leola Joyner executed two promissory notes secured with two correlating deeds of trust executed in favor of her son, Dennis Joyner. The first note purported to reimburse Mr. Joyner for past expenditures made on his mother's behalf. The second note compensated Mr. Joyner for future personal services under the terms of a personal service agreement. The two notes fully encumbered Ms. Joyner's house. The state terminated her Medicaid benefits, finding that the two notes constituted uncompensated transfers of Ms. Joyner's assets.

Ms. Joyner appealed, and the hearing officer affirmed. Ms. Joyner died, and her estate appealed, arguing that the execution of a deed of trust does not constitute a "disposition" of assets and that even if it does, the transfers were made for fair market value. The trial court reversed, holding that Ms. Joyner did not dispose of or transfer any assets when she executed the notes. The state appealed.

The North Carolina Court of Appeals reverses and remands. The court holds that Ms. Joyner's transfer of the title to her residence through the execution of deeds of trust constituted a disposal and a transfer of an asset under federal law. With regard to whether the first note was executed for fair market value, the court remands to the trial court for findings of fact as to whether Mr. Joyner and Ms. Joyner had an agreement for compensation at the time the expenditures were made. The court also rules that the second note was not transferred for fair market value because it was for future services.

Paul's Note: By now, we have seen enough of these court decisions. Bottom line: If you want to pay a child for taking care of you, it is best have a written agreement with reasonable compensation and have the agreement in place before the services are rendered. Connecticut annually publishes caregiver rates for a variety of health care providers, including RN's, homemaker companions and home health aides.