



ELDER LAW AND ESTATE PLANNING

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Too late to create Medicaid Asset Trust for father, but other asset protection possibilities may exist

Question: My 80-year-old father has been living with me for several years. Unfortunately the time has arrived that he needs more intense care than I can give. I've started looking around at nursing homes and I've come to realize how expensive they are. Way beyond reach for regular, middle-class people. I'm under the impression that his assets and income are probably too high for him to receive Medicaid assistance, but a neighbor who I was talking with about this mentioned something about setting up a Medicaid asset trust for him. How does that work? Is it the same thing as a living trust? My father has a living trust already.

Answer: Let's take your last question first. No, a living trust is not the same thing as a Medicaid asset protection trust. Assets that are titled in a living trust that has been created by your father are not protected assets. Your father has access to the assets. That means they are not exempt assets as far as Medicaid eligibility is concerned.

The Medicaid asset protection trust is an altogether different strategy. Regrettably, it's not appropriate for your father because you indicate his admission to a nursing facility is imminent. A Medicaid asset trust must be set

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up well in advance, usually greater than five years before applying for Medicaid. (Five years is the look-back period.)

There are, however, other strategies that may be available to protect some – or all – of your father's assets and deal with excess income, potentially establishing his Medicaid eligibility. Please schedule a consultation with a certified elder law attorney, and do it without delay. Some strategies are available only if your father is competent to understand and execute documents, or if he has signed a durable power of attorney that gives someone else the authority to implement these strategies. Good luck.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.