Protecting your family’s Inheritance from long-term care costs

Indiana Agricultural law foundation

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Various Ways to Pay for Long-Term Care without using up farm assets

- 3 Primary Ways to Pay for Long-Term Care:
  - Income Flow
  - Long-Term Care Insurance
  - Government Benefits

Paying for Long-Term Care with Income Flow

Concept: You have enough income to pay for costs of care without selling off farm assets

To do:

- Accurately estimate your after-tax income (as if you are over 72 ½ and no longer farming)
  - Include ALL sources of income
  - Social Security, Required Minimum Distributions, farm cash rent, etc.
- Compare that estimate against the current cost of long-term care
  - Nursing home average: $91,620/yr
  - Can be upwards of $120,000/yr

Paying for Long-Term Care with Insurance

Concept: You have enough long-term care insurance benefits in combination with your income to pay for costs of care without selling farm assets

To-do:

- If you currently have long-term care insurance:
  - Review the policy to determine whether to keep in place
    - How much does the policy pay per day?
    - For how many years?
    - Are the benefits increasing with inflation?

Paying for Long-Term Care with Insurance

<u>To-do</u>:

- If you do not currently have long-term care insurance and:
  - You are young and healthy:
    - Apply now
    - But policy will most likely be a hybrid policy
- You are older and/or unhealthy:
  - You can apply now, but will likely be denied or premiums will be excessively high

Paying for Long-Term Care with Government Benefits

Concept: Use Veteran's Benefits or Medicaid benefits to pay for long-term care

To-do:

- If you are a Veteran:
  - Visit your local Veterans' services office to review your benefits.
  - Assess whether those benefits will be enough to cover your cost of care
- If you are not a Veteran (or your Veterans' benefits are not adequate)
  - Meet with an elder law attorney to discuss what steps (if any) should be taken NOW to set yourself up to qualify for Medicaid benefits WITHOUT losing farm assets

Paying for Long-Term Care with Medicaid Benefits

To-Do:

- If you believe neither you nor your spouse (if any) will need long-term care in the next 5 years:
  - Determine what assets you most want to preserve:
    - Typically farm real estate
    - Sometimes residential real estate and/or large non-qualified accounts
  - Get those assets our of your individual name(s) using one of the following:
    - Outright gifts
    - Gifts of real estate with retained life estates
    - Gifts to an irrevocable trust
    - Transfers to an LLC then gifts of LLC Interest

Paying for Long-Term Care with Medicaid Benefits

Outright Gifts:

Pros:

- Simplicity – need only a deed, check, stock certificate, etc.
- Can be used for many types of assets

Cons:

- Gift takes income with it
- Donor has not right to live residence – loss of homestead deduction
- Donor loses control of assets – e.g. who rents real estate and on what terms
- Donee gets donor's basis – no basis step-up
- Asset is subject to donee's creditors – divorce, bankruptcy, etc.

Paying for Long-Term Care with Medicaid Benefits

Gifts of Real Estate with a Retained Life Estate:

Pros:

- Simplicity – need only a deed
- Donor retains income from real estate and right to live in home during donor's life
- Donor retains control during donor's life – e.g. who rents real estate on what terms
- Donee gets basis step-up at donor's death

Cons:

- Any sale or mortgage of real estate requires signatures of both donor and done
- If real estate is sold during donor's life, sale proceeds split between donor and done
- Donee's divorce for financial difficulties can cause problems
- Difficult for donor to control after death

Paying for Long-Term Care with Medicaid Benefits

<u>Gifts to an Irrevocable Trust:</u>

<u>Pros:</u>

- Donor may have right to live in home/homestead exemption during donor's life
- Donor may retain income and, if so, assets get basis step-up at donor's death
- Trust can be used to control assets during donor's life and at death
- Trust can be used to protect many types of assets – e.g. real estate, investments, etc.
- Not subject to divorce of creditors of ultimate beneficiaries during donor's life

<u>Cons:</u>

- Most terms of the trust cannot be changed
- Donor cannot be the trustee

Paying for Long-Term Care with Medicaid Benefits

Transfers to an LLC then gifts of LLC Interest:

Pros:

- Donor may preserve control by being the Manager
- Donor may receive a salary – but not distributions
- Can be used to reduce death taxes

Cons:

- Assets do not receive basis step-up at donor's death
- LLC interests are attachable by donee's creditors and ex-spouses

Paying for Long-Term Care with Medicaid Benefits

To-Do:

- If your need for long-term care is imminent:
  - Don’t Panic
  - Make an appointment with an elder law attorney to take advantage of:
    - Spousal impoverishment rules
    - Spend-down rules
    - Half-a-loaf gifting
    - Certain types of annuities

Paying for Long-Term Care with Medicaid Benefits

To-Do:

- If you do not believe you have 5 years until you may need long-term care, but long-term care is not imminent:
  - Get a Durable General Power of Attorney in Place with Unlimited Gifting Authority
  - Make sure your estate plan accurately reflects your current wishes

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