PROTECTING ASSETS IF NURSING HOME CARE IS NEEDED

Written by Jan L. Brown, Esquire

Q. My husband is in a nursing home. I was told by the nursing home that I have to spend all our money on his care except for a small portion that I can keep. If I do that, I will not have enough money to take care of myself. I am very worried and need help. – Theresa

A. It is difficult enough to place someone in a nursing home, and losing most of your assets on top of that can be frightening. If you are concerned that you do not have enough money to care for yourself, I suggest you see an elder law attorney as soon as possible so more of the funds you and your husband have can be sheltered or protected for you. If you have a large estate you may be able to afford to pay your husband’s nursing home costs without it being a detriment to your care or needs. But at a cost of $90,000+ a year, many of us can not afford to pay for nursing home care without becoming impoverished often within a short period of time.

Protecting assets is a complicated legal matter but it can be done. Funds can be sheltered or protected even if someone is already in a nursing home. There are numerous legal strategies that are used to protect more funds for you. Which strategy best suits your needs will be determined by the attorney based on your particular situation (including your insurance, assets, income and how your savings are invested, i.e. IRA, mutual funds, CDs, etc.).

Remember, you, as the spouse at home, have a “protected share” which is an amount of your assets that you can keep without using it for your husband’s nursing home care. Generally, the protected share is one half of the assets, not counting the home and car. The protected share is capped or maximized at $109,560. For example, if you and your husband have $250,000 in investments, then your protected share is $109,560 (not $125,000). If you and your husband have $100,000 in investments, your protected share is $50,000. If you and your spouse have $300,000 in investments, your protected share is $109,560 (not $150,000). In today’s market, $109,560 yields $164 per month so you can see why it may be important to protect more assets, if possible.

What an experienced elder law attorney can do for you is analyze your situation and determine which legal strategy puts you in the best position depending upon your goals and how much more additional funds (beyond the protected share) can be protected for you. Depending upon the strategy, you may be able to shelter 30%, 60%, even 100% of the assets that otherwise would be used for your husband’s nursing home care. Not all strategies are available to everyone though as everyone has different income levels, investment amounts, needs and situations.

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And be aware that many institutions, including nursing homes and even banks, often give advice with the best intentions, but sometimes that advice is incorrect or incomplete. They are not elder law attorneys and do not know the law in detail, so the advice they give is often given based on a “one size fits all” application. Sometimes poor advice can result in irreparable harm if taken so be careful where you get your legal advice.

Based on your letter, you should be able to protect more funds for yourself. By having more of your assets hopefully it will eliminate some of your concerns about taking care of yourself and your needs.