

# *A Legal Update*

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## **The HUMAN SIDE of ESTATE PLANNING**

Effective Estate Plans must consider a family's specific needs, the preservation of their assets and any tax consequences associated with the plan. Now, with a large segment of the population well into their fifties and with long-term nursing care costing as much as \$8,000.00 a month, long-term care must also be considered in any comprehensive plan. *Medicaid* is the primary government medical assistance program available to pay for long-term care for those individuals that demonstrate a medical and financial need. Before anyone applying for *Medicaid* can qualify benefits, the applicant must meet a financial eligibility requirement that imposes a \$2,000.00 asset limit. As estate planners, the attorneys at Russell, McTernan & McTernan can recommend a number of strategies to help preserve the family assets and still qualify the applicant for *Medicaid* but what about the human side of long-term care.

What if you had just discovered that a loved one has Alzheimer's disease and needs to be placed in a nursing home. Choosing the right nursing home is a difficult task. How do you pay for the care? What factors are important and whose needs do you consider? First and foremost, you must consider the applicant's needs. Can the applicant retain his or her personal physician? Are there appropriate rehabilitation and therapy programs available at the facility? Does the facility meet the Alzheimer's Association criteria? Beyond that you may want to consider the facilities accommodations, their staffing, meals, resident activities and visiting hours. Bottom line, you should gather as much information as possible and then personally visit each of the facilities that appear to meet the applicant's needs. You may also want to contact the Executive Office of Elder Affairs and speak to the Ombudsman who covers the facility you are considering or contact the Massachusetts Department of Public Health to get the "Survey Performance Tool for Nursing Homes".

Once an applicant is admitted to a nursing home, there are a number of laws that protect the applicant's rights to good care, dignity, and privacy and he or she is entitled to maintain as much independence as possible. One such law requires that nursing homes conduct a comprehensive assessment of the applicant's needs to ensure he or she receives the care that is appropriate. This assessment is done through interviews, examinations, and meetings with different staff members. Within 14 days of the applicant's arrival, the staff members must pool together what they

know about the applicant and develop a full assessment. Within 21 days they must develop a plan for care that will be used to give instructions to nurses aides, to order meals, to schedule activities and cover all general needs. Obviously, the applicant's input into this process should be significant. The applicant should tell the staff the things he or she likes to do, discuss daily routines, and explain to the staff the things that he or she can do alone and those they need help with. In essence, the applicant should be an active participant in the care plan and then make sure that it is followed. The applicant should be treated with dignity and respect, and his or her personal needs should be incorporated into the care plan as much as possible. If there is a problem then talk to the nurse or social worker or, if a problem persists, report it to the facilities Ombudsman. The Ombudsman is a community member certified by the State Ombudsman's Program who regularly visits the nursing home and follows up on problems or complaints.