

Just because you have a Will or Trust doesn't mean you have a Long Term Care Plan

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Frequently when talking with families about their estate plan after an older family member has had a short visit to a rehabilitation facility following a medical event, they mention "we have already done a Trust". It seems as though people think that just because they have addressed one aspect of an estate plan with a legal document, that somehow they will be insulated from the significant costs of long term care. Yes, you may have a Will or a Trust, but it may be the wrong kind of Trust. Furthermore, a Will is a reactive document that goes into effect only after someone dies. Frequently, estate plans focus on death and taxes, not on long term care planning while a person is alive. Ignoring this real threat of living a long time and quite expensively can be disastrous.

Many Trusts are done many different ways and very few of them focus on asset protection planning and Government Benefits eligibility. Since Medicare covers very little nursing home care costs, the majority of people access Medicaid to pay for care. Typically, you will see an estate planning attorney use a Revocable Living Trust for planning purposes. This type of trust can be very useful to address many estate planning issues, except one - long term care costs. In fact, a Revocable Living Trust will usually own your primary residence for purposes of probate avoidance. However, this can be detrimental if you go into a nursing home and want to expedite your Medicaid eligibility to cover your care costs. This occurs because the home is an "exempt" asset under the Medicaid rules - unless it's owned by a Living Trust. So, you may have a trust, but it may be the wrong type of trust for long term care planning and asset protection issues. You don't want to find out that you have the wrong type of trust when you're 3 months in arrears at the nursing home (about \$30,000) with a pending Medicaid application that will be denied due to the home being considered an excess resource.

If you are fortunate enough to go home after a medical event like a stroke or fall, you must consider your age and medical condition as it is likely that your care costs are not going to decrease from this point forward. This is the time to meet with an Elder Law Attorney. You have been given an opportunity to examine what your exposure would have been if you had stayed in the nursing home. This is a "second look" that should not be squandered. Now you can plan to reduce your financial exposure to long term care costs and protect your assets and your family.