

SAFE

PLANNING

Seniors' Asset & Family Estate Planning

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SEPTEMBER 2014



Will Granny Go To Jail?

By Ric Cochran

Q: Is it illegal to transfer assets to qualify for Medicaid?

I was told the other day an attorney had sent out a letter telling people it was illegal to transfer assets to qualify for Medicaid. I remember these types of letters going out in the mid-nineties, often passed along by long-term care insurance sales reps as a reason to purchase policies. That these are still in circulation is about as baffling to me as anyone still believing the royal family in Nigeria might share a huge fortune with them if they send some money to show their good intentions.

As the Clinton administration worked feverishly to breathe life into the ill-fated and never implemented HillaryCare, finding money to pay for it became an issue just as it has for ObamaCare. One scheme was to insert a provision into Health Insurance Portability and Accountability Act of 1996, aka HIPAA, imposing criminal penalties on any person who "knowingly and willfully disposed of assets" for the purpose of becoming eligible for Medicaid, if disposing of the assets resulted in a penalty period during which the applicant would be deemed ineligible. This absurdity was frequently referred to as the "Granny Goes to Jail" law and didn't go over well with the public leading to its repeal shortly after its enactment, by Section 4734 of the Balanced Budget Act of 1997, which freed Granny from the threat of jail. Some insurance reps, though, either ignorant of the change or willfully ignoring it, continued to threaten Granny with going to the slammer in order to peddle long-term care policies.

While the new law, BBA 1997, got Granny off the hook, it imposed new criminal penalties, this time for advisors, "persons who for a fee assist others in disposing of assets" to qualify for Medicaid, which became known as the "Granny's Lawyer Goes to Jail" law. Penalties for Granny's advisors could be a fine not to exceed \$10,000 or imprisonment for not more than a year, or both. More letters circulated to inform both the public and advisors, some of which still turn up periodically in spite of the law's later declared un-enforceability. Shortly after the "Granny's Lawyer Goes to Jail" law was enacted, U.S. Attorney General, Janet Reno, issued a letter finding what any high school civics student should have known, that the "Granny's Lawyer Goes to Jail" law violated the First Amendment and was therefore unenforceable. A federal court agreed in the case of New York State Bar v. Reno, which drove a stake through its heart to the presumed chagrin of only the Clinton administration and backers of HillaryCare. Otherwise, life went on for those helping seniors try to save what they'd worked hard for all their lives.

Q: So can we give things away and then qualify for Medicaid?

The short answer is, as they say on TV, "Don't try this at home." Penalties can exist for most gifts made by an applicant or their spouse, if married, within five years prior to attempting to qualify for Medicaid. The key is in knowing ways to avoid or reduce the penalties. No, Medicaid doesn't disregard a patient's spouse owning or giving away separate property

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Newsletter Editor, Elaine Marze

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LA S.A.F.E. workshop: September 9. Reserve your seat!

One day a farmer died. His elderly widow became very depressed. Their son tried everything he could think of to cheer her up, but nothing worked. He spoke to the doctor and was told a shot of whiskey would perk her up some and should be given to her nightly. This would make it easier for her to sleep at night which would make her better humored each day.

But the son knew his mother didn't believe in liquor. So the doctor told him to put it in her food or drink. So the boy went home and put the whiskey in his mother's milk. That night she slept like a baby and woke up feeling wonderful. So each evening he fixed her a shot of whiskey and milk, and she woke the following morning feeling more and more cheerful.

One day the son suggested that they sell the farm and move closer to the city. His mother said, "Son, you can do anything you want to with the farm, but **DON'T SELL THAT COW!**"

Continued from Page 1...

from an inheritance or prior marriage. All assets and gifts must be disclosed for applicant and spouse, if married. There are gifting strategies we frequently use for pre-planning measures, and some even at the last minute when a patient is already in a facility. But we're professionals who study Medicaid provisions, and have many years of experience using them, helping to avoid unintended consequences that frequently occur when people try to do it themselves.

Q: What about the five-year look-back period?

Medicaid can look back up to five years and frequently does. Hoping they won't catch you hiding things you don't want to disclose is not a realistic strategy! The key is to rely on professionals with an in-depth knowledge of workable gifting strategies and Medicaid policy rather than subterfuge.

Families frequently come to us with problems encountered from gifting on their own that wasn't handled properly or that created unintended consequences, sometimes recent and sometimes over five years ago. Years later, when a family member is already in a nursing home can be a bad time to find out you blew it trying to save a few bucks.

Q: So what should I do to protect my assets?

Get professional assistance rather than trying to do it yourself. We employ strategies that are neither illegal, immoral, nor fattening; but they aren't for amateurs to try unaided. Is it possible you might get lucky trying to do it yourself? Sure, it is. But the cost of being wrong can be quite costly. We offer a free initial consultation for those who don't want to gamble an estate hoping they know it all. In that meeting, we can typically determine what needs to be done, how to best preserve assets and provide a cost assessment. If nothing needs to be done, we'll tell you that, too. Either way, it can be a lot cheaper than trying to do it yourself and being wrong or just spending everything to nothing because someone, even a lawyer, gave you bad information.

Move or Stay?

By Elaine Marze

Many of our clients will, in the future, or have already, lost a spouse in death or had one who is in a facility receiving special care. It seems that the older we get, moving is harder to do, but many of us are forced to change residences because of altered circumstances. Moves can be scary; losing familiar things that bring comfort are not easy. I am asked all the time, "Was it hard for you to move to a new house and town and start a new life after your husband died?"

We live in a mobile society where residential adjustments are common when life circumstances change. It can be especially difficult for older, single folks who planned to die of old age living in the same house where they raised their families. When my husband was told that his cancer was terminal, he wanted to sell our house in the Ozarks because he thought there were too many acres for me to take care of, and I'd be alone when the dirt roads became impassible during winter snow and ice. However, our house did not sell before he died, and I lived there for nine months before moving to an apartment in Shreveport, Louisiana.

I've since moved two more times in the nearly three years since he died, and knowing that, people share their concerns about whether they should move or stay put. When you lose a spouse your life is irrevocably changed. Most of us do not like the change, did not ask for the change, and so we want to surround ourselves with memories of a better time—the

past. Sometimes moving out of that home where all those memories are holding you to the past is helpful in moving into the future. I won't lie to you, moving into the apartment where there were no memories of my husband was cold and hard and miserable, but it forced me into the future.

Building a new life out of necessity doesn't guarantee a better life, and you have to be willing to roll with the new reality you find yourself in—making the best of a sorry situation. Some people have adult children who step into a care-giving support role, but as a single person, your social life changes. Couple friends want to go out with other couples so usually a newly single person soon realizes that he or she needs to meet other singles.

Most apartment complexes have monthly get-togethers, and I forced myself to go to them. Nobody likes going to social events alone, but I made myself face the fact that this was who I was now, alone and single. No longer was I part of a loving, committed unit. It's a difficult transition to make, and some people tell me it is a transition they can't make so they end up shutting themselves away, taking depression drugs, and gradually withdrawing from a future life where former plans and dreams have been destroyed by a stroke, cancer, Alzheimer's, etc.

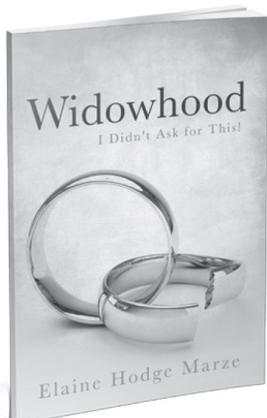
Adult kids may expect an aging parent to move to their city so it is more convenient for them to care for Ma or Pa. It takes some extra fortitude for an "older" person to move alone to a new neighborhood, city or state even if it is to be near relatives, but be aware that family can't replace the ultimate friend and companion that was your spouse.

You've got to get out in public to make new friends. A Sunday school class is the best place I know to meet like-minded people. Kickboxing, line-dancing, Tai Chi, and gym classes are avenues where I met new friends. Book clubs, Friends of the Library, volunteering at the VA Hospital, ministries for unwed mothers and political groups keeps one busy and involved. If you move to a new city, it is up to you to get out and about because as much as we'd like to sit at home and have people come to us, it's probably not going to happen. Feeling sorry for your lonely self isn't going to make you new friends.

Don't be shy about reaching out to people. When my daughter first moved to Nashville, TN, she didn't know anybody. One night she called me crying, and I couldn't jump in the car and drive ten hours, so I did what any mother would do! (Phaedra says, "No, not every mother calls a stranger and tells her to befriend her daughter.") I'd met a young woman that day who gave me her realtor mother-in-law's business card in Nashville in case we decided to buy Phaedra a house, so I called Brenda Tindell that night and got her voicemail. I left a message telling her my daughter was sad and homesick, and as a mother herself I'd appreciate it if she befriended my daughter. I gave this stranger Phaedra's address, and I may have been a tiny bit emotional.

Early the next morning I got a call from a woman saying, "Well, I couldn't sleep last night after getting that pitiful message from you so I came over to Phaedra's, and I just want you to know we are going to be best buds, and you don't have to worry about her!"

Brenda was true to her word. She and her husband became surrogate parents to Phaedra and close friends to my husband and me. Maybe I was a little aggressive, but it worked. The point is that even though our future is not what we hoped and planned for, we should make the best of it. Sometimes that means NOT being so afraid of change that we hold on to the past instead of reaching out to the future—even if that means selling our big family home and moving to a retirement center or leaving our comfort zone to go to another state to be near supportive people who want us close by. Whatever the circumstances, we can look for opportunities to fill some of the void with new friends and experiences while thanking God for our blessings.



Louisiana News

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*Rainey Asset Management, Inc. is a Registered Investment Advisory Firm registered in Florida, Texas, Arkansas, and Louisiana.

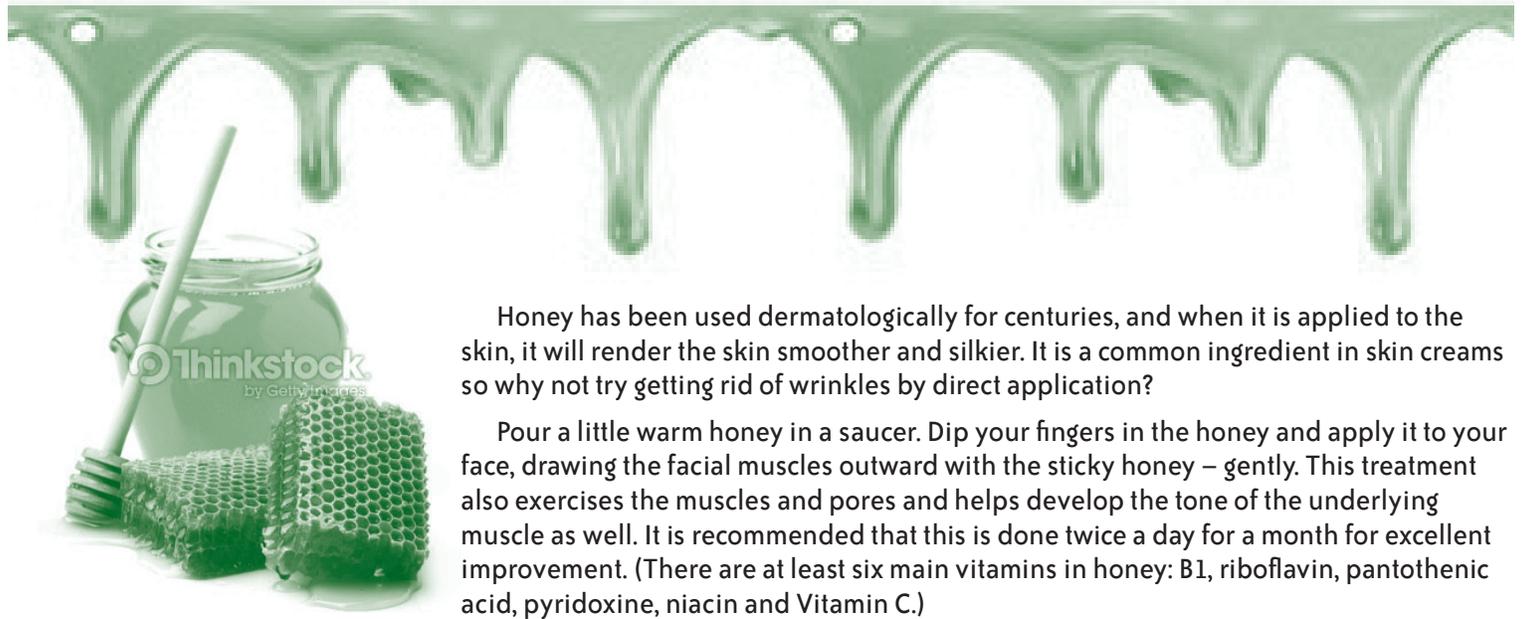


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Want to Look Younger?



Honey has been used dermatologically for centuries, and when it is applied to the skin, it will render the skin smoother and silkier. It is a common ingredient in skin creams so why not try getting rid of wrinkles by direct application?

Pour a little warm honey in a saucer. Dip your fingers in the honey and apply it to your face, drawing the facial muscles outward with the sticky honey – gently. This treatment also exercises the muscles and pores and helps develop the tone of the underlying muscle as well. It is recommended that this is done twice a day for a month for excellent improvement. (There are at least six main vitamins in honey: B1, riboflavin, pantothenic acid, pyridoxine, niacin and Vitamin C.)

One tired young mother said to another, "I don't know about you, but I've thought about running away more as an adult than I ever did as a child."



Steve and Blake will be holding a workshop in Huntsville, AR on Wednesday, October 1.

If your group or organization would like them to come to your town, please call our office.