Protect Assets When Seeking Long Term Care

One of the greatest myths about qualifying for Medicaid benefits is that you have to go broke in order to qualify. I have heard numerous professionals who advise the elderly that they must "spend down" all of their assets in order to qualify for Medicaid to assist in paying for their long term care costs. Usually, these professionals work for companies or firms that have a vested interest in having the patient private-pay for long term care for as long as possible or are selling some sort of long term care insurance.

Here are some simple (and legal) ways that assets are protected from the "spend down" or the three year "look back" period (which is moving very shortly to five years):

1. Transfers between spouses are permitted; however, most people don't know that transfers to disabled children or trusts established for the benefit of a disabled child are also permitted (regardless of age).
2. Funds can be transferred to children for the care and management of the patient's care through the use of a "personal services" contract. Time sheets must be kept and the money transferred is considered as ordinary income to the child. Additionally, new administrative rules are proposed that regulate these contracts.
3. In addition to homestead real property not counting as an asset, rental real property is not counted. However, ownership must be structured properly to avoid the Medicaid lien in probate.
4. Debts can be paid including a mortgage.
5. There is a "spousal refusal of support" option that can protect all the assets of the spouse of a patient. Care must be taken that this option is structured properly because it may effect future spousal diversion and later transfers between spouses are not permitted.
6. Irrevocable pre-paid funeral contracts are not counted as an asset.

This is not an exhaustive list; it is here mainly to illustrate the fact that there are things that can be done to protect a patient or the spouse's assets in the event Medicaid is needed to pay for long term care. Long term care insurance is still the best way to go, especially with the passage of the Florida long term care partnership program. However, 50% of seniors make less than $25,000 a year and cannot afford long term care insurance. Many seniors are also rejected for pre-existing conditions (28-38%).

The moral of the story is to seek competent legal advice when dealing with any government program.