



The Arkansas Voice

MAY 2007

From the Law Office of
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REVOCABLE LIVING TRUSTS AND MEDICAID ELIGIBILITY: WHAT YOU DON'T KNOW CAN HURT YOU.

A revocable living trust is a common estate planning tool. The primary purpose of this type of trust is to avoid having a deceased individual's estate go through the probate court process. It is also beneficial if the individual becomes incapacitated and needs help managing their assets. A major attraction is that you retain control over the assets in the trust. The probate process may result in a fee based on the net worth of the deceased estate and may result in privacy concerns. Distribution through a trust is private and can cost less than the cost of probate.

One thing a revocable living trust will not do is help if you need to turn to Medicaid for assistance with home care or nursing home care. Many who establish this type of trust mistakenly believe it will help preserve assets under Medicaid.

First, you have to understand, Medicaid is a complex combination of federal law and state policies. It frequently conflicts with common everyday practices—particularly making gifts to others.

As I stated above, many individuals establish revocable living trusts to avoid the probate court process. Assets owned by the trust can be passed to heirs avoiding the extra expense. One of the main assets placed in this type of trust is the home. For many, the home is the most valuable asset they own.

Medicaid does not consider your home an available asset in determining eligibility. (An individual is limited to \$2,000.00 in available assets.) This means you can have \$2,000.00 or less plus a home and still meet Medicaid eligibility requirements.

If you have a revocable living trust and your home is in the trust, the trust is considered the owner under Medicaid. Medicaid will look at your home in the trust and say, "since you don't own it, but still control it, we will count it as an available asset." Your home loses the Medicaid exclusion and is counted towards your \$2,000.00 limit. This can result in you being denied Medicaid benefits.

Does this mean you should not establish a revocable living trust? Not necessarily, you need to get appropriate advice from an attorney that understands your situation. Everyone is different and what may be good

ABOUT US

We are an Elder Law and Special Needs Trust Law Firm. Located in Little Rock, Arkansas, we focus on helping individuals obtain Medicaid benefits without losing their home, Long Term Care Planning for victims of Alzheimer's Disease and other related disorders, Special Needs Trust solutions for families with children with special needs, and Preserving Eligibility for Public Benefits for personal injury victims.

DISTRIBUTION OF THIS NEWSLETTER

Raymon B. Harvey, P.A. encourages you to share this information with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Raymon B. Harvey, P.A.

If you are interested in a free subscription to The Arkansas Voice, then please contact us at:

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for your neighbor may not be appropriate for you. If you do find yourself in this situation where you have a revocable living trust and need assistance from Medicaid, the problem can easily be corrected. It requires your home be removed from the trust. Unfortunately, this leaves your home exposed to recovery by the state if you receive Medicaid, but that is for another article.

Peer Review Rated.

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Peer Review Ratings attest to a lawyer's legal ability and professional ethics, and reflect the confidential opinions of members of the Bar and Judiciary. The General Ethical Standards Rating denotes adherence to professional standards of conduct and ethics, reliability, diligence and other criteria relevant to the discharge of professional responsibilities. The General Recommendation Rating is: V - Very High.

Legal Ability Ratings take into consideration the standard of professional ability in the area where the lawyer practices, the lawyer's expertise, and other professional qualifications. If a lawyer's practice is limited or specialized, Peer Review Ratings are based on performance in those specific fields of law.

Legal Ability Ratings are:

C - Good to High

B - High to Very High

A - Very High to Preeminent

When both categories of Peer Review Ratings are confirmed, a lawyer receives an CV, BV or AV Rating.

Mr. Harvey has received an AV rating by Martindale-Hubbell. An AV rating is a significant accomplishment - a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence.



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The Arkansas Department of Health & Human Services, through the Division of Aging and Adult Services, is managing a new website—The Direct Service Worker Online Registry. The website aims to help you find personal care attendants in your area or register for employment as a personal care attendant. Participation is voluntary and not a condition to receive or provide Medicaid Services and terms of employment are made strictly between the two parties involved. For participation and referrals you must (1) have a valid email address, (2) be 18 or older and (3) agree to the terms and conditions of the registry. For more information and to find the registry go to the Division of Aging Adult Service website at www.arkansas.gov/dhhs/aging then click on the Direct Service Worker Registry icon.

My Medicare Drug Plan Doesn't Cover All My Drugs!

In checking your Medicare drug plan prescription list (called a formulary) you learn that not all your prescriptions are covered. This may not be bad, as the covered drugs may be as good as the drugs you are presently taking. Ask your doctor if another drug covered by your plan is safe and effective. If your doctor determines there is no alternative, you can ask for a "formulary exception."



Medicare allows you to appeal to obtain drugs not on your plan's formulary. You, your doctor, or your pharmacists, can file a formulary exception requesting the insurer to cover a drug which is medically necessary. With the help of your doctor or pharmacist, you must explain why covered drugs on the plan's list are not as effective, or why the covered drug would cause you harmful side effects. If an exception is granted, it is good for one year.

If you are denied an exception, you can appeal by submitting a request for re-determination. If you are again denied, the next level of appeal is to an Independent Review Entity (IRE). An IRE review is an agency which works for Medicare to review drug exceptions appeals.

The IRE will make a determination as to whether your drug is "medically necessary" for you. The IRE ordinarily makes its decision within seven days.

There are two additional levels of appeal if the dollar amount you pay for your drug (or drugs) exceeds \$110 per year. The first is to appeal to an Administrative Law Judge. The second and final appeal is to the Medicare Appeals Council. This is the last step before proceeding to federal court.

Source: Solutions for Seniors Issue: 80, from the Law Office of James M. O'Reilly, LLC

Announcements

Mr. Harvey will be presenting at the following events in the coming months. For more information on any of these events, please contact our office.

June 6-9, 2007 (Speaking, June 8, 2007) 10:45 a.m. Arkansas Bar Conference, Hot Springs, Arkansas

YET ANOTHER REASON TO LOOK FORWARD TO GETTING OLDER...

A couple snacks each day might help elderly adults ensure they get enough calories and needed nutrients, a study suggests. For young and middle-aged adults, snacking can be the enemy of the waistline. As people age, however, their calorie intake tends to drop, either from appetite loss, medical conditions or difficulty buying food. This puts some older adults at risk of inadequate nutrition and unintended weight loss. Research suggests that even among relatively healthy people in their 60s and beyond, those with low calorie, protein and carbohydrate intakes die sooner. In the new study, published in the Journal of the American Dietetic Association, researchers found that snacks were an important source of older adults' daily calories and nutrients. And in general, snackers took in more calories, protein, carbohydrates and fat than non-snackers did. The authors based their findings on data from a national health and nutrition survey that included 2,000 adults age 65 and older. Overall, 84 percent said that they snacked in addition to eating meals.

Source: Reuters Health (7 May 2007), reprinted from The NEALA Bulletin May 8, 2007.



May 19, 2007—Armed Forces Day!

May 28, 2007—Memorial Day!

A special "thank you" to all our veterans and servicemen.

Please Note: our office will be closed on May 28, 2007
in observance of Memorial Day!



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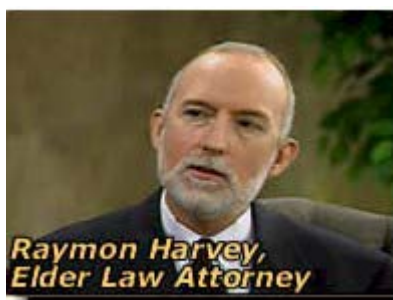
If you are interested in having
Raymon Harvey speak at an event,
please call Sherrie at 501-221-3416.

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Raymon B. Harvey, P.A.

Arkansas Elder Law & Special Needs Trusts

Raymon B. Harvey, P.A. is an Elder Law and Special Needs Trust Law Firm. We represent older persons, disabled persons, their families, and their advocates. The practice of Elder Law and Special Needs Trusts includes estate planning, estate and trust administration, powers of attorney, advance medical directives, guardianships, conservatorships, and public entitlements (Medicaid and SSI), disability planning, and long-term care planning. For more information about Raymon B. Harvey, P.A., please visit our web site at www.ArkansasElderLaw.com.



**Raymon Harvey,
Elder Law Attorney**

As the Arkansas member of the Special Needs Alliance, Raymon B. Harvey, P.A. assists injured plaintiffs and personal injury attorneys create special needs trusts. We also assist parents seeking supplement to their disabled child's benefits and maintain a quality of life. The Special Needs Alliance is a nationwide network of disability attorneys. For more information about the Special Needs Alliance, visit its website at www.specialneedsalliance.com.

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