

The Elderlaw Forum: Disclaiming inheritance to thwart Medicaid?

by Professor Michael Myers

There are times when a person may wish to avoid the opportunity to receive property or money; to reject an inheritance; to simply say, “No, thank you.”

One of those times may be when you are a Medicaid beneficiary and living in a nursing home. “Can she disclaim? Should she disclaim? And what happens if she does disclaim?” asked an accountant who contacted the senior legal helpline.

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He called on behalf of his mother-in-law, age 86. She resides in rural nursing home where she has been for the past five years and expects to live out her life. To date, Medicaid has paid approximately \$134,000 for her care. Three months ago an aunt died, bequeathing her an interest in certain stocks and bonds expected to produce a long term cash stream of \$6,000 to \$12,000 per year.

The money will not increase the quality of her life. It will simply offset the government’s expense under the Medicaid program. She would like to step aside and permit the inheritance to go directly to two nieces.

Inheritance law allows persons to renounce their legal right to benefit from an inheritance under a will, through intestacy, or through a trust. The “disclaimer of interest” must be in writing and submitted to the court overseeing the estate within a specified time, usually within nine months of the death of the grantor.

She may disclaim; however, most states will treat the disclaimer as a “transfer of assets” and impose a “penalty period” during which Medicaid payments would be suspended. A Maryland court ruled that the failure to disclose a disclaimed asset may well result in the unjust enrichment of those who surreptitiously

dine upon the fruits of inheritance while cloaked in the veil of non-disclosure.â€•

On the other hand, the Iowa Supreme Court ruled in 1999 that Iowaâ€™s disclaimer provisions â€œdo not include restrictions involving claims for Medicaid payment,â€• ruling that a person may disclaim for the express purpose of thwarting Medicaid.

Our 86-year-old lives in a state that has a regulation stating that a Medicaid recipient must avail herself of assets such as insurance, annuities, bonds and other sources of cash. It does not specifically address the disclaimer of interest in an inheritance. Under common law, persons who disclaimed were treated as though they had died before the trust or will came into effect. In this case our Medicaid beneficiary is alive. The law is mixed. A disclaimer will likely face a legal challenge.

(Pro bono legal information and advice is available to persons 55 and older through the USD Senior Legal Helpline; 1-800-747-1895; mmyers@usd.edu. Opinions are solely those of the author and not the University of South Dakota)

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