

April 19, 2017

[REDACTED]
[REDACTED]
Hampton, Virginia 23630

Re: Long-Term Care Planning

Dear [REDACTED]:

I am writing to follow up with regard to your long-term care planning. It is my understanding that you are in relatively good health at the present time and that you are residing in your home, located at [REDACTED], Hampton, Virginia. You have advised us that you intend to remain at home for the present time.

It is my understanding that you are interested in implementing long-term care planning and asset protection planning strategies to prepare for the possibility that you may require Medicaid benefits in the future. Therefore, the following is an overview of the actions that need to be completed to accomplish these goals. It is important that you follow these recommendations very carefully. If you deviate from them in any way, then your potential Medicaid eligibility could be jeopardized. If you have any questions about implementing these steps, please call us immediately.

Based on the information that you have provided to me, your income and assets are as follows:

<u>INCOME</u>	
\$ 577.00	Social Security
\$ 1,623.00	OPM Income
\$ 2,118.00	<u>DFAS Income</u>
\$ 4,318.00	Total

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NON-COUNTABLE ASSETS

\$ 2,000.00	Personal Effects
\$ 2,899.00	Irrevocable Prepaid Funeral (Cremation)
\$ 5,468.31	Memorial Gardens Crypt
UNKNOWN	Federal Employees Group Life Insurance
<u>\$155,130.00</u>	<u>Residence - ██████████, Hampton, VA</u>
\$165,497.31	Total

Your home is an exempt resource for as long as you reside in it. You may own one vehicle of unlimited value, and group or term life insurance policies with no cash value are not countable resources. It is my understanding that you do not own a vehicle.

COUNTABLE ASSETS

NOTE: These values are estimated based on information you have provided.

CHECKING

Bank of America # ████████	\$1,427.02
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LIFE INSURANCE

Nationwide Policy # ████████	\$6,653.25*
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TOTAL COUNTABLE ASSETS

\$8,080.27

**The most recent statement that we have for this policy is dated March 24, 2015.*

In order for a single individual to become eligible for Medicaid benefits, the individual must spend down his or her countable resources to less than \$2,000.

There is a 60-month lookback for transfers. This means that on the application for Medicaid benefits there is a question which asks if there have been any transfers made to an individual or to a trust within the previous 60 months. All such transfers must be disclosed to Medicaid. Failure to do so constitutes Medicaid fraud, which is a criminal offense. It is my understanding that you have not made any uncompensated transfers to date.

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ASSET PROTECTION STRATEGIES

Based on the information that you have provided to me, I estimate that you have approximately \$8,000 in countable resources at this time. I recommend that you implement the following planning strategies in order to protect your resources in anticipation of the possibility that you will require Medicaid benefits in the future.

I recommend that you change the ownership of your Nationwide life insurance policy and transfer a remainder interest in your home to your step-sons, ██████████, ██████████, ██████████ and ██████████. It is my understanding that ██████████ receives SSI payments, which would be disrupted if he were a recipient of such a transfer. This is why I am recommending that your home be transferred to ██████████, ██████████ and ██████████. I will prepare the deed to complete this transfer.

While there are several options that can be utilized to protect your real property, there are several disadvantages of an outright transfer, including:

- No right to live in the house;
- Property is subject to the recipient's creditors;
- No reduction in Medicaid transfer penalty period (except for transfers to certain exempt recipients);
- No step-up in cost basis upon your death (your step-children would receive your cost basis);
- Loss of Senior Citizen, Veteran, and other property tax exemptions, if applicable; and
- Loss of the \$250,000 exclusion of capital gains.

Given these disadvantages, I recommend that you transfer a remainder interest in your real property to your step-children, pursuant to the terms of the enclosed Family Agreement, while reserving the right to live in the home. This is known as reserving a life estate. A transfer of a remainder interest in the real property while reserving a life estate will:

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- Ensure your right to live in the home during your lifetime;
- Offer some protection from the recipient's creditors during your lifetime;
- Shorten the Medicaid penalty period for the transfer based on the value of the life estate;
- Preserve a step-up in cost basis upon your death; and
- Retain your right to qualify for Senior Citizen, Veteran and other property tax exemptions, if applicable.

According to Medicaid guidelines, the value of the remainder interest that you will be transferring to your step-children is based on the tax-assessed value of the property and your age at the time of the transfer. Since you are 81 and the tax-assessed value of your real property is \$155,130, the remainder interest will be valued at \$90,026.59, which is slightly less than 60% of the tax-assessed value of the property.

Therefore, I recommend that you transfer a remainder interest in your real property to your step-children, while reserving a life estate interest for yourself. The major benefit is that after the 60-month lookback period, ownership of the life estate will not adversely affect your potential future Medicaid eligibility and your home will be protected from the cost of nursing home care.

You will retain your checking account in your name, in addition to a life estate interest in your home. You have approximately \$4,300 in gross monthly income, and it is my understanding that you intend to remain at home. Therefore, I anticipate that your monthly income will be sufficient to cover your living expenses for the duration of the 60-month lookback period for the transfers that I have recommended.

If you apply for Medicaid prior to the expiration of the 60-month lookback period for gifts, then you must disclose these gifts and any prior gifts to the Department of Social Services, and a penalty period will be assessed based on the uncompensated value of the gifts. However, if you do not need to apply for Medicaid for 60 months, then you may still be required to disclose these gifts to the Department of Social Services, but the penalty period for these gifts will be disregarded.

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An uncompensated transfer includes an outright gift of assets to anyone other than a certain category of individuals who may receive gifted assets without triggering a Medicaid penalty period (that is, a spouse, disabled child or blind child). Although neither you nor your step-children will pay income taxes on the gift, you will be required to file a gift tax return reflecting the amount of gifted assets to the extent that any one gift to any one individual exceeds \$14,000 in any one calendar year.

ESTATE PLANNING

I have prepared a new Last Will and Testament, General Durable Power of Attorney and Advance Health Care Directive for you, drafts of which are enclosed for your review.

You have elected to name ██████████ as Executor of your Will and Agent under your Power of Attorney and Advance Health Care Directive, with ██████████ as alternate Executor and Agent and ██████████ as second alternate Executor and Agent. Your Will directs that your estate be distributed equally to your four step-children.

I have also enclosed a draft of the Family Agreement, which governs management of the funds to be transferred to your step-children.

Once you have had a chance to review these documents, please contact my office to schedule an appointment to sign these documents.

SUMMARY

In summary, it is my understanding that you are currently still living at home and that you intend to remain there for the present time. I have recommended that you transfer ownership of your Nationwide life insurance policy and a remainder interest in your home to ██████████, ██████████ and ██████████. I will assist you with the life insurance change of ownership and I will prepare the deed to complete the transfer of your property.

There is a lookback period of 5 years for uncompensated transfers, during which you would not be able to receive Medicaid benefits. However, I anticipate that your income would be sufficient to pay for your living expenses during the 60-month lookback period.

It is important that you keep me apprised of any significant changes to your living situation, health or resources during the 60-month lookback period so that we can adjust the plan if

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necessary. If you are hospitalized or transition to an assisted living or nursing home facility, please contact me immediately.

Once you have had a chance to review this plan and the enclosed drafts, please contact my receptionist to schedule an appointment to sign your new estate planning documents and the Family Agreement and to review this plan and discuss the steps that need to take place. **I do not recommend that you make any transfers before our meeting.**

If you have any questions, please feel free to contact me or my paralegal, [REDACTED].

Sincerely,

Timothy K. Palmer
Attorney at Law and
Certified Public Accountant
timothy@palmerelderlaw.com

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Enclosures

pc: [REDACTED]