IRA M. LEFF
AND ASSOCIATES

ATTORNEYS AT LAW

1722 PINETREE CIRCLE, N.E.
ATLANTA, GEORGIA 30329

WWW.IRALEFF.COM

IRALEFF@IRALEFF.COM

IRA M. LEFF

TELEPHONE: (404) 633-1801
FACSIMILE: (404) 633-1830

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ELDER LAW MINUTE

Last week, I wrote about a single gentleman named Charlie who wanted to protect some of his assets for his children. Charlie, age 84, had just been admitted to a nursing home which costs $6,022.50 per month. His income is just $1,800 per month. Through a somewhat complicated formula which compares Charlie's income to his expenses, and the cost of his nursing home to the average cost of nursing homes in Georgia ($4,916.55), we determined that he can protect $59,880 for his children. How does he go about doing this?

Step 1: Charlie transfers all but $12,000 of his assets to his children currently. This is necessary because in order to start the transfer penalty clock, Charlie's assets must be under the resource limit.

Step 2: Charlie applies for Medicaid even though we know that he will not receive nursing home assistance for 12.18 months. This is also necessary to start the transfer clock ticking.

Step 3: Charlie sets up a Qualified Income Trust. This is necessary because his children will be giving Charlie back $4,387.50 per month. These gifts count as Medicaid income to Charlie which puts his income over the Medicaid CAP of $2,022 per month. In order to remain income eligible, Charlie needs to run at least $4,165.50 through the QIT each month.

Step 4: After 12 months, the children have transferred back $52,650. They ask DFCS to recalculate the transfer penalty. The penalty on $60,350 is 12.27 months so Charlie is eligible to a Medicaid vendor payment beginning in month 13.

Step 5: Charlie closes the QIT since his income is now under the CAP.

Congress imposed these counter-intuitive steps in 2006 in order to discourage gifting. But, obviously, if you know the law it is still possible to protect assets by making gifts.