WILL PARENTS' LONG-TERM CARE COSTS SINK THE BUSINESS?

Ownership in family businesses can present unique challenges when the older generation (and often founding generation) retain an ownership interest in the business and begin to need long-term health care services (e.g., assisted living or nursing home). Making sure their business ownership does not jeopardize the business due to the expenses associated with long-term care becomes a priority.

Here's a common situation I encounter when helping families. John and Jane once ran a business (or farm) with their children. Although they have stepped aside from the day-to-day operations, they are reluctant to give up control of the business they worked so hard to create. They continue to hold onto their controlling ownership interest in the business. Recent health issues now require them to start looking for long-term care services for John that are not covered by Medicare. While working, John and Jane put a majority of their resources into building the business, so now they have a valuable ownership interest, but they do not have a lot of additional resources. They are worried about affording the care they need. As they begin exploring options, an overriding concern is what will happen to the family business if they need medical assistance. In other words, they want to know, "Will the state take their business from their family?"

This very typical scenario presents both financial and emotional concerns related to how to pay for long-term care. John and Jane worry about the impact their care will have on the business. They also know that the care John will need is expensive, and regardless of whether he receives care at home, in an assisted living facility, or a nursing home, it may be necessary to apply for medical assistance to help pay for his care.

Benefits with no protection for the business. The good news is that business ownership is typically an exempt asset for medical assistance purposes. This means that the value of the business does not count as an asset that would keep John from receiving medical assistance benefits. The bad news, though, is John's ownership interest is an asset that is part of his estate. After John's death, the state will look to recoup the costs paid for John's care by filing a claim against his estate (note: the rules vary based on whether John or Jane are the first spouse to die, but those variations are beyond the scope of this article).

The real danger to the family business comes when dealing with the claim against John's estate. John's estate must satisfy the state's claim. The business interest gives value to John's estate, but liquidity is an issue. If John's estate has no other resources to use to pay the claim, pressure is put on the family to find a way to preserve the business and generate the cash needed to pay the claim.

A better way that protects the business. To avoid issues with claims against John's estate, John and Jane could have done planning to protect their business interests. Some may suggest that John and Jane should have given the business to the children years before needing care. Although transferring ownership in a family business is often done by a gift, John and Jane also would have given up control of the business when they gave away their ownership interests in the company. For them, the loss of control was unacceptable.

In addition, when dealing with medical assistance, gifts may cause benefits to be withheld. Gifts must be reported on an application for medical assistance if they are made within five years prior to applying (i.e., the 5-year look back). Because of this, any gifting should take place well before care is anticipated.

To help John and Jane protect the business and maintain control of the company, they could have transferred their ownership interest into an irrevocable trust that they are the trustees of. Yes, this is a gift that must be reported for five years. However, making the gift to the trust allows John and Jane to maintain control of their interest in the company. In addition, when John later passes, the trust is not subject to a claim by the state for benefits paid on John's behalf.

By planning early, parents can maintain control of their interest in the business and ensure that the business interest will not be subject to an unwanted claim by the state after death.

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