

Medicaid Planning or Medicaid Avoidance?

University of Texas School of Law:
***26th Annual Estate Planning, Guardianship
& Elder Law Conference***

(August 8-9, 2024)

H. Clyde Farrell

Farrell & Johnson PLLC

1004 Mo-Pac Circle Suite 1000

Austin, TX 78746

512-323-2977

www.txelderlaw.com



FARRELL & JOHNSON PLLC

1

Medicaid Planning or Medicaid Avoidance?

Ethics: Competence, Diligence, Loyalty

- Guardian held liable for selling ward's home to pay for care that Medicaid would have paid for
- Attorney's license suspended 6 months for failing to put Special Needs Trust in a will, so beneficiary lost Medicaid
- But some clients are better off paying their own way
- And what "better off" means depends on the *client's* values
- Our responsibility: present all the options clearly, so the *client* can the best decisions for them

Page 1



FARRELL & JOHNSON PLLC

2

Client Capacity and Gifting

- An agent generally cannot make gifts without express authority in the power of attorney.
- *Natho v. State*: 25-year sentence for agent making transfers to himself under power of attorney

Page 2



Why We Don't Discuss Medicaid Avoidance Enough

- Learning to do Medicaid planning takes several years
- Learning to do cash flow projections takes time also
- Medicaid *avoidance* is hard to sell—most people want someone else to pay for their medical care
- When you do sell it, you don't get paid well (financially)

Page 3



Why Avoid Medicaid: “Medical Necessity” Requirement

- The Requirement: At least LVN-level care in an institutional environment
- The Risk: Don’t strip them of their savings just when they need the money most!

Page 3



FARRELL & JOHNSON PLLC

5

Why Avoid Medicaid: Getting Better Care

- Since 1997, Medicaid programs have not been required to pay the reasonable cost of nursing facility care—so most do not.
- Most years Texas pays about 81% of the cost of nursing home care
- That is about 2/3 of the *private-pay rate*.
- Result: Private-pay residents pay a tax on getting old and sick—if they are in facilities with Medicaid beds
- ...a tax that you don’t have to pay if you pay privately in an Assisted Living Facility or in a nursing facility with few or no Medicaid beds

Pages 3-4



FARRELL & JOHNSON PLLC

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Medicaid Planning or Medicaid Avoidance?

Also available as part of the eCourse

[2024 Estate Planning, Guardianship and Elder Law eConference](#)

First appeared as part of the conference materials for the
26th Annual Estate Planning, Guardianship and Elder Law Conference session
"Medicaid Planning or Medicaid Avoidance?"