

# Serving An Aging Clientele: Medicaid and Other Planning

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# Changing Landscape

- Baby Boomers began turning 65 in 2011 at the rate of 10,000 per day (Now turning 77).
- Persons over 65 today= 46 million.
- By 2050, the U.S. Census Bureau predicts there will be 86.7 Million citizens age 65 and older living in the U.S. – 21% of the total population.
- 1 in 5 Adults is a Caregiver of an older American.
- The average net worth of older Americans is \$232,000.



# Changing Landscape

- The Society of Actuaries current mortality tables show increased longevity for 65 year-olds:
  - 65-year-old Males = 21.6 yrs. to age 86.6 (up from 19.6 yrs; 10.4% increase)
  - 65-year-old Females = 23.8 yrs. To age 88.8 (up from 21.4 yrs; 11.3% increase)
- Are you prepared to face the challenges of living into your 80's, 90's, and 100's?



# Most Can't Afford Care

One Month of Care.....	$\$8,000 \times 12 =$	\$ 96,000
Stay-at-Home Spouse Needs..	$\$4000 \times 12 =$	<u>\$ 48,000</u>
Total		\$144,000

## Budgeting for Long-Term Care

Social Security	\$ 24,000
Income from \$1MM investments (@4%)	<u>\$ 40,000</u>
	\$ 64,000

Most would need \$3m to \$4m to “self-insure”



# The Elder Law Profession

- Elder law places special emphasis on issues surrounding *long life* instead of death.
- Health, isolation and financial problems ranked as the top worries when respondents were asked to describe the worst things about being over age 65 (AARP Survey).
- Concerns are rooted in our underlying cultural values of ***independence, autonomy, involvement,*** and ***connection*** with family and community.
- These values permeate nearly every aspect of an elder law practice.



# Proactive Planning vs Crisis Planning

- Estate Planning – Trusts, Insurance, and Advance Directives
  - Prospective LTC Planning
- Crisis Planning – Immediate need for care; options to pay for care, including: insurance, Medicaid, and tax planning
  - Medicaid Applications
  - No margin for error



# Highly Motivated Clients

- Healthcare Crises put families in a state of panic
- Hospital discharge planning, nursing home admissions, home healthcare options, and assisted living alternatives are complex, costly, and often catastrophic
- Clients are unprepared for the cost of long-term care – Medicare, like crime, does not pay
- Legal and financial documents are often not in place or inadequate



# Medicare vs Medicaid

## ▶ Medicare

- Entirely funded and administered by the federal government
- Medicare is not “means tested”
- Medicare doesn’t pay for *LONG TERM CARE*

## ▶ Medicaid

- The **ONLY** government program that pays for **LONG TERM CARE**.



# Medicaid Eligibility

- Medicaid is a means-tested program, not an entitlement like Medicare.
- Applicants must meet stringent asset (\$2,000 in most states) and income limitations (varies by state).
- Transfers of assets are subject to a five-year lookback period in all states for nursing home care.
- Rules governing home care programs vary by state.



# Transfer Penalties

- Transfers within the 5-year lookback create a period of ineligibility.
- The penalty period is calculated by dividing the total \$ amount of transfers by the average cost of nursing home care in the region.

Example: 
$$\frac{\text{Total transfers } \$200,000}{\text{Regional Rate } \$ 10,000} = 20 \text{ Months}$$



# Transfer of Asset Exceptions

- In general, transfers to spouses, disabled and blind children are exempt.
- Also exempt are transfers of a primary residence to one of the following:
  - Sibling with equity (ownership) interest
  - Caretaker child residing in residence for 2 yrs., enabling parent to remain at home



# Commencement of the Penalty Period

For any transfers made after February 8, 2006, the penalty period does not begin to run until the following **three** conditions are met:

1. The applicant is in a nursing home, and
2. The applicant is “otherwise eligible” for Medicaid (assets under \$2,000), and
3. A Medicaid application is actually filed.



# Crisis Planning = Medicaid NOW

- Medicaid Spend-Down
- Transfers of assets (rule of halves) using promissory notes or immediate annuities to pay for care during the penalty period
- Medicaid applications – filing and perfecting
- Fair hearings and appeals, if denied.



# Planning: Pre-Application

## Spend Down of Assets

- Purchases (car, clothes, television, etc.)
- Attorney Fees
- Spend on Exempt Property such as home improvements
- Prepaid burials for self, spouse, children
- Purchasing home if option is available
- Pay down debt



# Crisis Planning: Pre-Application

- Caregiver Agreements – Families can get compensated (authority for lump sum payment)
- Consider fair hearings to increase the Resource and/or Income allowances for Spouse
- Execute exempt transfers:
  - Transfers to spouse
  - Transfers to blind or disabled child recipients



# Crisis Planning: Filing the Application

- Lookback Period = 5 years
  - All financial records for the prior five years must be submitted with the application
- Assessment of the Penalty Period
  - All uncompensated, non-exempt transfers are aggregated
  - The sum of the transfers is divided by the average regional rate for nursing home care



# Is the “Rules of Halves” alive?

- ❑ Jane has recently entered into a nursing home
  - No preparation done
- ❑ Jane’s assets total \$202,000, income of \$4,500 per month
- ❑ Pre-Pay Funeral, Attorneys fees = \$20,000
- ❑ Net countable assets \$182,000
- ❑ Nursing Home will cost \$14,500 per month
- ❑ Average Regional Rate = \$10,000



# P-Note Rule of Halves Example

- Jane will **gift** \$90,000 to a trust or family member (Triggers 9-month penalty)
- She will **loan** \$90,000 to her son, Robert
- Loan payments = \$10,000 / month for 9 months
- \$2,000 will be left in Jane's name following the gift and note transfers
- \$4,500 monthly income pays the balance of cost

**Total Assets Saved** = \$102,000 after 9 months



# Assessing Your Clients' Risks

- Losing Capacity
- Retirement Costs
- Health Care Costs
- Long-Term Care Costs- #1 cause of middle class impoverishment
- Outliving your money



# Key Questions to Ask Clients

If you need Long-Term Care...

Where would you want to live?

Who would take care of you?

How would you pay for it:

**Self-Insuring**

**Private LTC &  
Life Insurance**

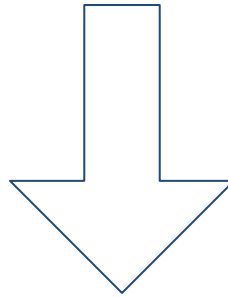
**Medicaid**



# Empowerment Strategy

**“IMPOVERISHMENT”**

strategy



**“EMPOWERMENT”**

strategy



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# Empowerment Strategy

It's about how we make life better and more fulfilling as we age, without fear of being pushed into a nursing home or dying broke as a ward of the state.

This will require a fusion of elder law + financial strategies + tax planning.



# Planning for Medicaid

- 7% of eligible purchasers own insurance to cover long-term care.
- Of the other 93%, the vast majority cannot afford to pay for their own long-term care.
- The only option left to pay for LTC is Medicaid.
- Planning in advance to qualify for Medicaid and preserve assets involves trust, tax, and financial planning.



# Typical Asset Protection Plan

## Single Package:

- Medicaid Asset Protection Trust
- Revocable Living Trust
- Pour Over Will
- Asset Protection Letter (optional)
- Enhanced Power of Attorney
- Healthcare Advance Directives

*Estate Planning Plus!*



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# Medicaid Asset Protection Trust

CLIENTS



- Trustee – manages trust assets
- Beneficiaries – income & principal
  - Client – income for life and rights to use real and personal property
  - Heirs = Remaindermen - inherit when trust ends
  - Grantor trust for income tax purposes



# Medicaid Asset Protection Trust

**Home**  
**Bank Accounts**  
**Stocks & Bonds**  
**Annuities**  
**Life Insurance**  
**Business**  
**Real Estate**

- Income can be paid or accumulated
- Principal can NOT be given back to the Grantor directly
- Principal can be paid during lifetime to children or others (who can use it for any purpose)



# Medicaid Asset Protection Trust

## KEEP OUT

Cash

Bank Acct.

IRA, 401(k) –  
varies by state

## Security Features

- Power to change Trustee
- Power to change beneficiaries
- Can revoke under most state laws with consent of beneficiaries



# MAPT RESULTS

Long-Term Care costs will be covered by Medicaid

- Home and assets protected
- Wishes upon death will be followed
- No probate or court involvement
- Full step-up in basis for trust assets



# What Are We Trying to Accomplish?

- Removing the assets from the reach of healthcare creditors for possible Medicaid applicants and spouse
- Providing more protection for family assets than an outright gift
- Tax Advantages: income taxed to the grantor, capital gains exclusion on the sale of the residence during lifetime and basis step-up at death



# MAPT / Insurance Combined “Planning”

- Using LTCi/ MAPT Combination Plans to “bridge” the 5 year lookback
- Partnership Policies = Medicaid Protection in Part (Dollar-for Dollar)
  - MAPT gives same result, for 100% of the assets
- Enjoy the flexibility and benefits of LTC Insurance
  - Home Care & Assisted Living coverage
  - Asset *and* income protection
  - Choice of providers
- With the benefits of a Medicaid Asset Protection Trust

**2 + 2 = 5**





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**THANK YOU!**

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