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Medicaid and Estate Planning: Strategies, Conflicts, Trust and Power of Attorney Issues, and Tax Consequences

WEDNESDAY, FEBRUARY 1, 2023

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Medicaid and Estate Planning:
Conflicts, Trust Drafting Issues, and Tax Consequences

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Today's Goals & Objectives Your Takeaways

- The difference between Elder Law Planning and Estate Planning.
- Proper Estate Planning from an Elder Law perspective – do and don'ts
- The complicated law of Medicaid and how transfer/gifts of assets are treated.
- How Medicaid treats income of for married couples and non-married persons.
- Basic Medicaid eligibility requirements.
- Medicaid asset preservation strategies for Married Couples.
- Medicaid asset preservation strategies for single persons.
- What mistakes must be avoided in utilizing and drafting certain trusts?
- The cornerstone document for viable asset preservation – the Elder Law Durable Power of Attorney for Financial Decisions.

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LIFE, ESTATE AND LONG TERM CARE PLANNING

- An act of Love
- Preservation of Assets so that you can stay in the least restrictive setting; home, assisted living and last resort the Nursing Home.
- Avoid “Living Probate” -- Health Directives – Incapacity Planning
- Avoid Probate upon death, Joint Ownership, Beneficiary Designations and Trust Planning
- Privatize affairs
- It is not about saving the kids inheritance, it is about quality of life, though with proper planning - may happen.
- Protect against Medicaid Estate Recovery
- Proper documents in place for loved ones to enact planning.

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Estate and Medicaid Planning

Requires to plan for The worst and hope for the best

Issues to discuss with your client when preparing their estate plan:

- Client's health physical and cognitive. Ability to manage ADL's and IADL's.
- Client's source of income and if married what happens to the income when 1st spouse passes away.
- Find out about health insurance and do they have long term care insurance.
- Who will be responsible for their: day-to-day and end-of-life medical decisions; and financial decisions. Who will serve as trustee.
- Discuss , that person's age, relationship to the client, special skills and successors. This is a vital issue and picking the right person(s) can vary depending on the client's goals. A great planning tool - discuss their children's strength and weaknesses

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Estate and Medicaid Planning

Issues to discuss with your client when preparing their estate plan:

- First Marriage
- Multiple Marriages
- Children from different marriages
- Problem Beneficiaries
- Spouse or Child with a disability
- Single
- Same Sex Partner Issues
- Estate Tax Issues

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Thoughts on planning

Plan ahead,
Don't Procrastinate:

It wasn't raining when Noah built the Ark!

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Life planning for today and the next 25 years

No one is promised tomorrow.

Plan for the unthinkable

70% of all caregivers
over the age of 70 go first.

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Estate Planning vs. Elder Law

Elder Law is for Anyone Who Wants to Be Old One Day – It is just not for the Elderly!

- Looks at the estate tax laws.
- Basic DPOA is springing for medical decisions.
- DPOA limits or prohibits gifting.
- No long-term care language to protect homes in Revocable Living Trusts.
- Disinherit child with disability.

- Looks at the Medicaid, Veterans and the estate tax laws.
- DPOA is effective immediately for daily medical decisions.
- DPOA allows gifting for proper long-term care planning.
- House can be removed from Trust if there is a long-term care issue.

What if I can't stay in my home? How can I pay for it without going broke? Greatest! Quality of Care at least cost.

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Medicaid - Benefit Planning

- Comprehensive DPOA with provisions to allow the creation and modification of RLT & IT and Special Needs Trusts 3rd party and 1st party. Address self-dealing issues, authority to prepare and enact the necessary tools for benefit planning.
- Robust Healthcare Surrogate/Proxy
- Trust planning that includes provisions for contingent special needs trust, ABLE accounts, Pooled Special Needs Trust, and authorize Trustee to enter into personal service contract, address self-dealing among other issues.
- Creation of Irrevocable Trust and/or 3rdParty Special Needs Trust. Discussion of tax issues. Loss of Step-up in basis. Acceleration of income taxes.
- Reverse-Pour over Revocable Trust with accompanying Testamentary Special Needs Trust for Spouse. 42 USC 1396p(d)(2)(A)
- Personal Care Contract
- Planned Gifting
- Real Estate Transactions
- Avoid Estate Recovery

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Purpose of Estate Planning

- Incapacity
- Probate avoidance
- Tax mitigation
- Protection for child from creditors or divorce
- Protect child from themselves if can't handle money
- Strings from beyond the grave
- Want to gift differently than intestate statute, healthcare proxy, insure right person has authority over your affairs, especially when non-family
- Provide Security knowing your wishes will be honored and ease burden on family in incapacitated or after death
- Special Needs – solving the client's greatest worry
- Business succession
- Charitable bequest.

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Estate Planning: What can go wrong?

- Funding – asset slips through the cracks, does not get funded and needs to go through probate
- Insufficient authority of agent to act – common issue financial DPOA restricts or prohibits gifting
- Trust is irrevocable upon the death of the 1st spouse to die
- Failure to plan for the unthinkable/worst
- Conflict between family about money, jealousy, control and often second marriages
- Does not address contingencies such as special needs, drugs, criminal entanglements, ne'er-do-well of a child

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Benefit Planning: What can go wrong?

- Violate 5-year look back period
- Misunderstanding 5-year lookback – Waiting too long
- Improper timing of application for Medicaid benefits
- Paying for Care without a proper care contract
- Screw up benefit eligibility
- Disrupts estate plan
- Mistakes in gifting assets
- Confuse gifting for IRS & Gifting for Medicaid
- Mandatory disbursement or certain assets can cause difficulty with Medicaid eligibility

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Common Drafting Issues

- Revocable Living Trust are a countable resource for both Medicaid and VA purposes.
- If you are preparing an Irrevocable Trust, be sure the Grantor does not retain the ability to revoke or amend the trust. This essentially causes the trust to revert back to a revocable living trust.
- One common clause which is often found in trusts is the ability to terminate the trust once the assets are reduced to a low enough amount. If this provision is in your trust, make sure the Grantor is not a beneficiary and cannot receive any portion of the terminated trust assets.
- If placing the primary home into IT, the Grantor can remain in the residence and in Michigan still receive homestead exemption as long as the Grantor maintains equitable ownership. To avoid the argument that the Grantor is benefiting from the trust, it is common to have a rental/lease agreement executed.
- Be cautious when drafting provisions regarding mandatory and discretionary disbursements of income and principal.

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Common Drafting Issues

- Carefully draft any power of appointments. While powers of appointment can be a useful estate planning tool, when it comes to benefit planning, if the power of appointment isn't limited it can cause the trust assets to become a countable resource due the control retained by the Grantor. Typically, a testamentary power of appoint is used since the Grantor cannot benefit from the funds while alive.
- If the Grantor retains the ability to control various aspects of the Trust, the trust will be counted as an available resource. Some further examples would be if the Grantor can remove and replace the Trustee, If the Grantor is getting income from the trust, the trustee cannot have the discretion to adjust the source of those distribution between income and principal.
- HEMS language is not sufficient to prevent the trust funds from being counted as a resource to the beneficiary of the HEMS trust.

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Irrevocable Trusts (IT)

- Self-settled Irrevocable Trust can be an effective planning tool for Medicaid planning as well as VA non-service-connected pension with aide and attendance benefits.
- Frequently, these trusts will be drafted with provisions to qualify as a Grantor Trust. The choice to seek Grantor Trust status, Non-grantor Trust or an intentional defective grantor trust can have significant tax ramifications. It is always advisable to have the client work with a knowledgeable tax professional regarding the consequences.
- Typically, it is inadvisable for the Grantor to serve as the Trustee of their Trust. This applies to both Medicaid and VA. Some states will allow the Grantor to serve as Trustee for Medicaid purpose, but federal law is silent on the issue. However, it is still strongly recommended to avoid the Grantor serving as Trustee. For VA this will cause the Trust to count as a resource of the Veteran.

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Irrevocable Trusts (IT)

One key issue when drafting an IT, is whether or not the Grantor can retain rights to income from the trust. This is an important issue for multiple reasons:

- It can dictate which assets are used to fund the trust
- If the client is eligible to file for VA benefits, the trust cannot disburse income to the Grantor. See 28 CFR 3.276(b) and general counsel opinions 73-91 and 72-90. The VA can take the position that the income from the trust violates their rule that the veteran must give up all rights of ownership and control of the trust assets, and therefore it is a resource available to the Veteran/Grantor. The other issue which can occur is VA benefits are determined by the veteran's income and unreimbursed medical expenses. This income can reduce the Veterans VA award.
- If VA is not a concern, the trust can disburse income to the Grantor. However, if the Grantor is getting Nursing Home Medicaid, the income will be used to determine patient reasonability. To avoid this, you may consider a provision which allows the trustee to stop income disbursement and/or the ability to replace the income producing asset with non-income producing assets. Depending on your state, Medicaid may consider the termination of income as a Divestment. So be cautious when addressing this issue.

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Irrevocable Trusts (IT)

- Typically, if the client is eligible for VA and they have a home, it is common to use an IT to own the Veteran's home. The home is generally an exempt asset. However, if the veteran is getting VA non-service-connected benefits, and wants to sell the house, the sale proceeds could cause the veteran to lose eligibility if the sale puts the veteran over the net worth limit.
- A common solution this problem is to have the home put into an IT. If using a Grantor IT the sale funds can remain in the Trust but if you are using an intentional defective grantor trust, the proceeds must be disbursed to the lifetime beneficiaries.
- For Medicaid purposes, you must assure that the Grantor cannot receive any payment from the trust principal. If the Grantor can benefit from the trust assets, those assets will be a countable resource for Medicaid. See 42 USC 1396p(d)(3)(B)

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Options For Treatment of Trust Income

- Mandatory Distributions to Grantor
- Discretionary Distributions to Grantor
- Sprinkling Provision
- Income Accumulate
- Discretionary Distributions to Third Parties
- Mandatory Distributions to Third Parties

- NOTE: In MI and many other states, the trust cannot provide that Grantor's right to receive income is terminated upon Grantor's need for long-term care. These are called trigger trusts.

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Taxation of Trust Income

- Income Taxable to Trust
- Income Taxable to Beneficiaries
- Income Taxable to Grantor (IRC Sections 671-677)
- Special Power of Appointment (IRC Section 674(a))
- Reacquire Corpus by Substituting Property
- Typically want the Trust to be a Grantor Trust for income tax purposes because
  - Grantor in lower income tax bracket;
  - Qualify for IRC Section 121 capital gains tax exclusion (Step-up in basis; and
  - Compressed income tax brackets for Trusts (in 2023 highest marginal income tax rate of 37% is reached for Trust income of over $13,451)

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Life and Incapacity Planning

- Avoiding the Living Probate
  - Guardian
  - Conservator
- Establish Durable Power of Attorney for Health Care Decisions
- Establish Durable Power of Attorney for Financial Decisions

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What Happens When We Become Disabled?

- Who makes our medical and financial decisions?
- How do we insure that the individuals that we want to make those decisions are making them?
- What happens if we are on life support?

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Maintaining Control

Conservatorship ($):

Unable to manage property or affairs effectively and property will be wasted or dissipated

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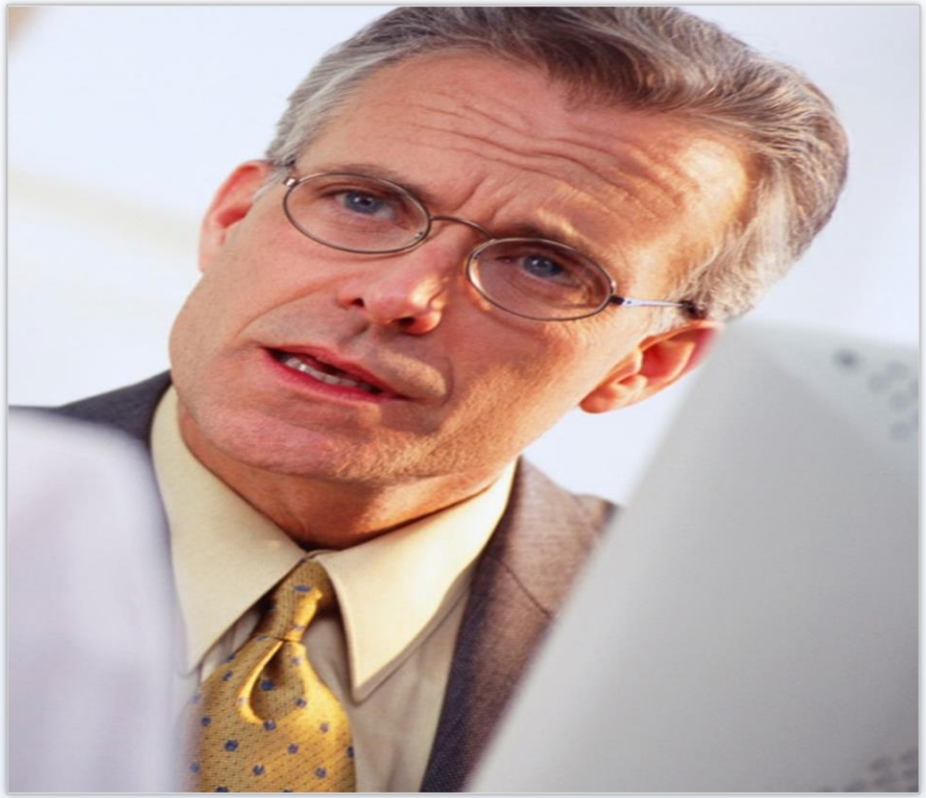
Maintaining Control

Guardianship:

(Personal Decisions)
Lacks sufficient understanding to make or communicate informed decisions



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The Living Probate

If one becomes disabled and are unable to make their own financial and medical decisions, then you have a Choice!

Let the Court supervise your affairs and lose control and no limit to costs.

or

Maintain Control, put your wishes in writing by creating an Elder Law Durable Power of Attorney and a Patient Advocate and keep control at little cost.

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All Durable Power of Attorneys are not the Same!

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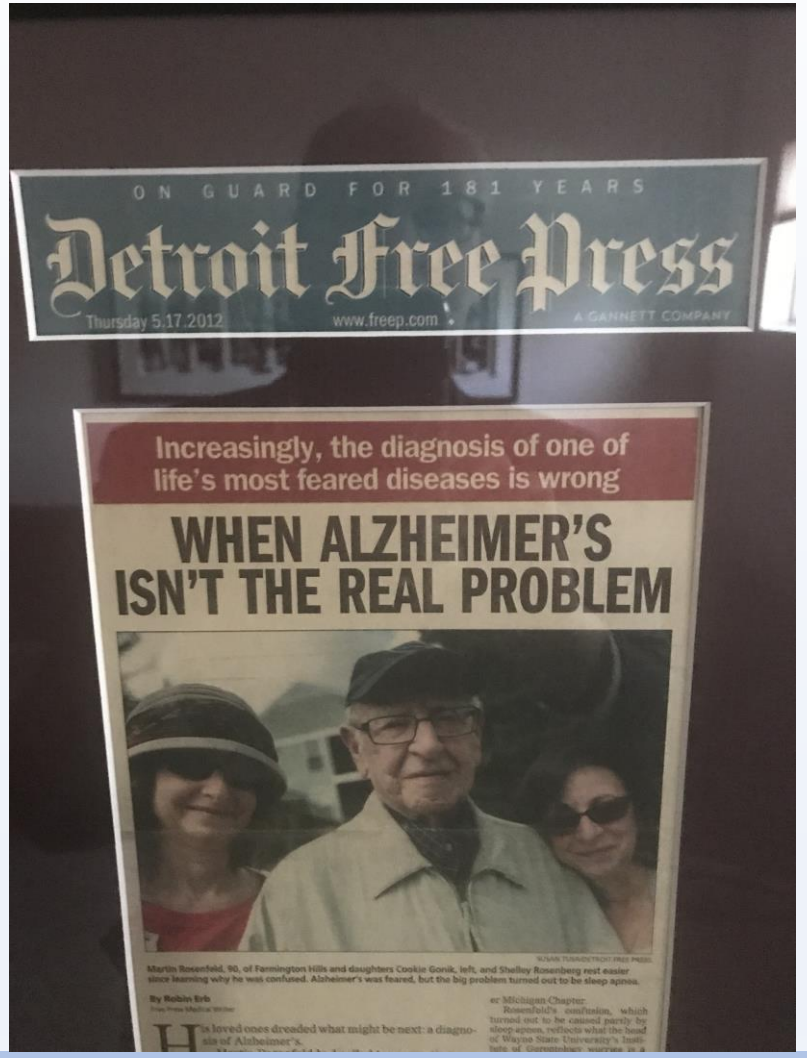

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What to Look for - Medical and Financial Powers

- Is it springing or effective immediately?
- Is there an alternate listed? Advise against co-dpoas.
- Does it address right to withdraw life support and DNR's?
- Does it cover Mental health decisions and HIPAA?
- Most important does it allow UNRESTRICTED gifting?
- To amend, revise or revoke an existing estate plan.
- To establish revocable, irrevocable trusts.
- Don't do it yourself or use a form – one size does not fit all
- Allow for Fax/Photocopy/PDF same as an original
- Digital Assets and to specifically deal with IRA's etc….
- Is it valid in more than one state?

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Durable Power of Attorney Divestment Language

- To gift whether or not I have established a prior gifting history.
- If I am in a long term care facility, or if my attorney-in-fact believes in good faith that my entry to such a facility is both necessary and imminent, my attorney-in-fact shall have the power to direct the Trustee of a Revocable Living Trust of which I am a Settlor, whether said Trust was created on my behalf or by my attorney-in-fact or not, to transfer all or a portion of my trust assets to my attorney-in-fact for the purposes of making gifts herein.
- My agent may make gifts into any trusts created for my child upon his or her disability, as defined in 42 U.S.C. 1382c(a)(3)(A), pursuant to 42 U.S.C. 1396p(c)(2)(B)(iv). Further, my agent may establish a Pooled Income Special Needs Trust for my benefit and all or any portion of my assets into the same.

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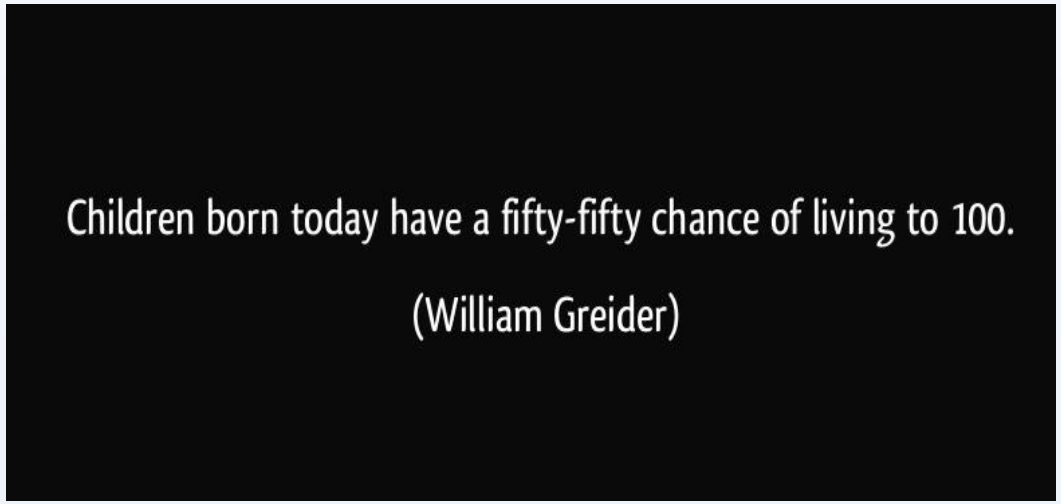
We are Living Longer

"If I'da known I was going to live so long, I'da taken better care of myself."

Mark Twain



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Caregiving

- 12% of 65-year-olds and 50% of all 85-year-olds have Alzheimer's disease.
- 70% of all caregivers over 70 go first!
- More parents to care for than children.
- More than double the annual spending on home care and nursing home care combined.

The safe harbors are the quid quo pro for the enormous cost of care giving.
NOT AS MANY ANYMORE!

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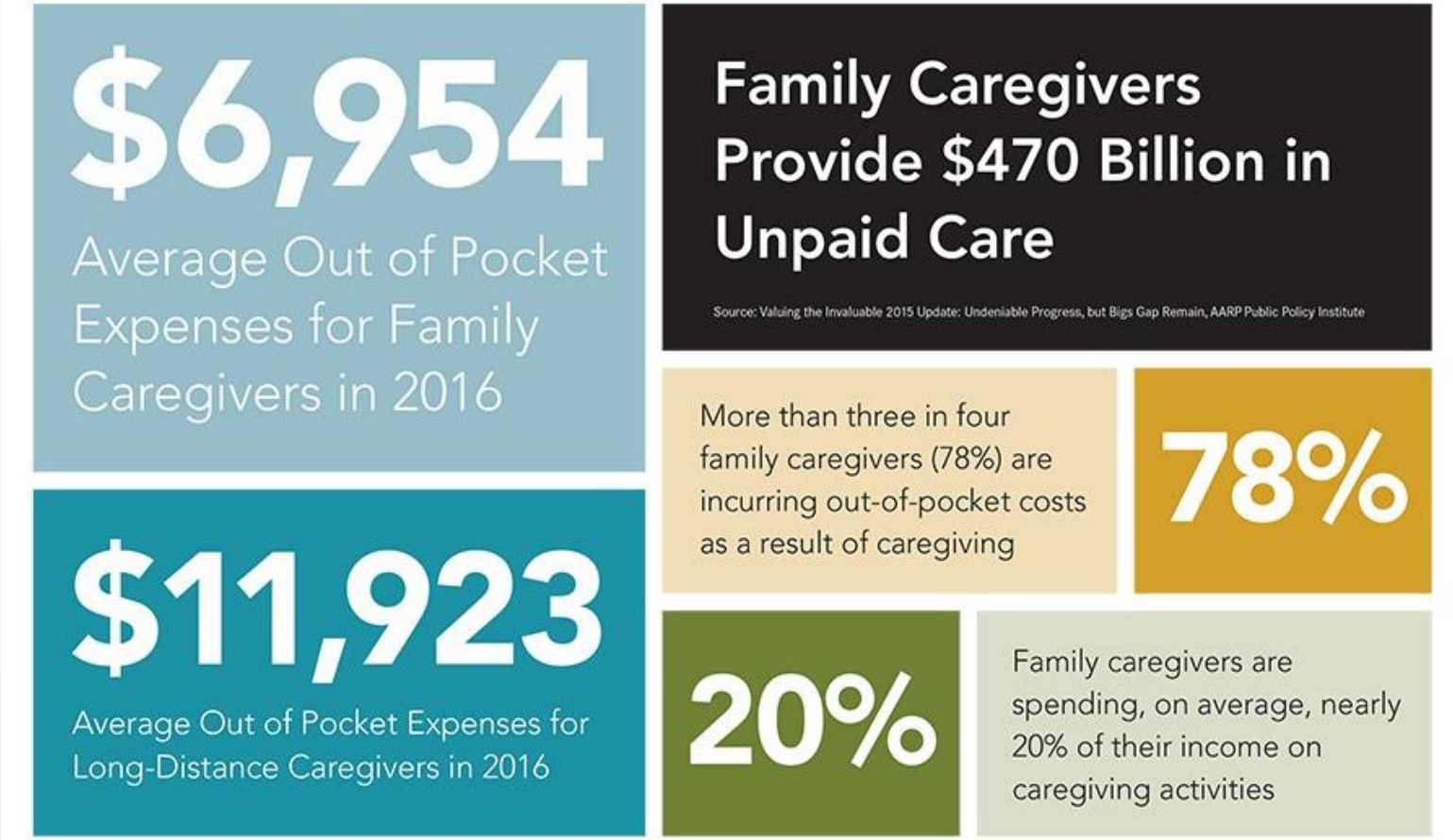
Cost of Caregiving

50 million Americans age 18 or older are providing unpaid care to an adult



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What Will Long-Term Care Cost & How Long Will I Need It?

AVERAGE ANNUAL COSTS:

- Nursing Home - $118,000 in reality much more
- Assisted Living ($54,000 – 78,000
- Adult day care (160 hours -$2,000)
- Adult foster care ($48,000 - $60,000)
- Home Care 24/7 - $30 @ hour or $260,000

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Who Needs LTC?

more people than you would think.

Of people who have turned 65, close to 70% will enter a Nursing Home at some time before they die.

- 33% are younger than 65
- Over 65—2 out of 5
- Over 85—4 out of 5
- 4 out of 5 (80%) are female,

(seems more like 90%)

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What is Medicaid?

- A joint federal/state program that can pay a share of nursing home costs for those qualified individuals over 65 or who are disabled.
- Rules vary from state to state but generally eligibility is determined by one's income and how one's assets are arranged.
- Rules are consistent with SSI
- Your allowed to reposition your assets within guidelines to qualify.

It's the ability to Reposition Assets and Still Qualify that Creates the Opportunity to Do Medicaid Planning

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Resources to Pay For Long Term Nursing Care

- Be Rich (cash—assets)
- Be Poor (Medicaid)
- Plan (Medicaid and Veterans Planning)
- Be Insured (LTC Insurance—Stay at home.)

Plan Very Carefully

Everyone Needs a Health Care and Financial Durable Power of Attorney (with Gifting Powers)

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Alternatives to Nursing Home Care

- Home based Medicaid waiver now expanded to AFC and Home for the Aged (In Michigan Strict income limit not a penny over $2,742) Can be a long waiting list and difficulty finding staff
- Assisted Living
- Adult day care
- Adult foster care

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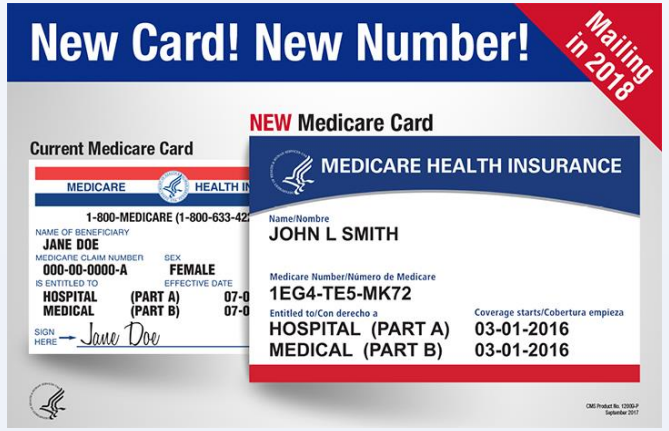
Medicare

- Designed for acute medical costs.
- Covers only 2% of long-term care costs.
- Prior hospital stay of at least 3 days required.
- Must be for skilled of rehab care.
- **JIMMO** the game changer for inpatient OT and PT
  centerformedicareadvocacy.com
- First 20 days at full rate, next 80 there is a $200.00 daily co-pay and after 100 days no further benefit.



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The Nursing Home “Game”

- Healthy & Wealthy.
- Waiting List Game: Discriminate between Medicaid and Private Pay patient at time of admission.
- Private ticket required.
- Your family is the policeman of the quality your care. “The squeaky wheel gets the grease.”
- Implement strategies to protect the assets for Single Persons (Divestment - Half of Loaf or Conversion)
- Strategies to Protect Assets for a Married Couple - Protective Court Order, Conversion, Sole Benefit Trust or Name on the Check.

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Non-Countable (exempt) Assets

- $2,000 Cash
- Home under 688K if not in a Living Trust (limit no longer applies to a spouse in the home) max: 1,033,000
- All personal property & jewelry
- One car
- Approx. $13,760 Irrevocable Funeral Contract set off by Life Insurance maximum cash value of $1,500 and $1,500 in Burial Account (For NH Person).
- Burial Space (For CS and Immediate Family)
- OBRA 1993 Payback Trust or Pooled Income Trust
- Actuarially Sound Annuity (payback provisions in Michigan)

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The at Home Spouse May Keep

- Assets—at least $29,724 or 50% of the first $297,640 of the total joint countable assets (max. $148,620) (Community Spousal Resource Allowance or Snapshot)
- Income—amount that can be diverted from the Nursing Home Spouse to At Home Spouse: $2,288 plus shelter expense or a possible max. $3,715

  —INCOME AND ASSETS Can be increased by court order, by creating a Sole Benefit Trust for Assets or by Name on the Check

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Spend Down factors to consider

- Tax deductibility of cost of care
- Capital gains tax: Carry-over basis -vs- step-up in basis
- Taxable income of qualified assets
- Life expectancy of nursing home resident

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Is It Available?

- Available means the legal right to use or dispose of the asset. This is a Countable Asset and Effects Medicaid Eligibility. Example: word “or”.
- Jointly owned assets; An asset that has more than one owner. Usually effects Medicaid Eligibility. (unless JUST SAY NO is used.)

Adrian Power and Light

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Married Couple – Sole Benefit Trust

- What is a Trust for Sole Benefit of the Community Spouse?
- Special Irrevocable Trust Created by the Well Spouse for the Well Spouse's Benefit Using the Well Spouse's Social Security Number
- Not a taxable event.
- Pays to the Well Spouse Over Their Life Expectancy or Less
- Protect 100% of a Married Couples Assets Except Income Tax of Qualified Assets (New strategy – name on the check)
- Almost Too Good to Be True

Unanimously approved by the Michigan Supreme Court – Hegadorn

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Strategies – Married

Convert Assets into income by purchasing a Medicaid Friendly Single Premium Immediate Annuity

Medicaid allows the Well Spouse as much income they receive including name on the check.

BRMM's WIN

VANSACH Landmark Case Defining Court Protection to Increase Income or Assets for a Married Couple (now rarely used)

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SAVING THE ASSETS

To obtain the best quality of care, least restrictive setting at least cost

- Spending for care, goods and services
- Conversion
- Gifting: half-a-loaf (but under 5-year lookback must be very, very careful)
- Court protection or Sole Benefit Trust or Special Annuity and now name on the check

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Conversion …change from Non-exempt to Exempt

- Purchase New Home, Improve or Repair Existing Home (Community Spouse can sell after eligibility)
- Purchase Goods and Services including Burial Planning
- Payoff Existing Mortgage or Any other Debt
- Purchase MEDICAID FRIENDLY Immediate Annuity
- Establish Special Needs Trust
- Personal Service Contract or Personal Home Care Contract

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Gifting: Unforgiving Five-Year Lookback

May 1, 2020

Semi-healthy grandma gives or pays $40,000 to:

- granddaughter for college
- Son who lost job for food and shelter
- Church donation
- Daughter to take care of her

May 1, 2023

Grandma has stroke or severe dementia pays privately for care and is out of money

Oct 1, 2023

Grandma applies for Medicaid

Answer: not eligible for 4 months from date of application even though she is out of money.

Who will pay for her care??

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How the 5-year lookback works

Typically, the penalty divisor is linked to the cost of one month of a nursing home, some states use the daily cost. In Michigan, the penalty divisor is $9,939 (as of 2023)

Lookback begins from the date of the application not date of gift

Can be penalized longer than 5 years if application is timed improperly

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DIVESTMENT - OUTRIGHT

- Cleanest approach
- Loss of control
- Tax consequences
- Their problems become your problems
- Fraught with issues

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Divestment and Earlier movement of assets

- The decision to forego potential quality of life in otherwise affordable non-Medicaid NH semi-private room
- That Medicaid benefits as we know them will be available when the time comes
- Capital gains costs
- Uncapping property taxes
- More guesswork = Increased Risk to Elders
- Resources reserved will not be adequate to pay for care as anticipated/ calculated
- Kids make off with it, get divorced, etc.
- More opportunity for reliance on legal advice to go awry and create hardships – pointing fingers back on advisor
- The need for non-NH level care will not materialize.

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Allowable Gifts Not Subject to 5-year Rule

- Transfers between spouses
- Transfer to Blind or Disabled Child
- Transfer to Trust for a disabled individual under 65 years old
- Pooled SNT if under 65 years old. In some states, you can use pooled SNT for applicant over 65 years old. In Michigan you cannot.
- Self-settled SNT if under 65 years old and trust provides for Medicaid repayment

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Allowable Gifts Not Subject to 5-year Rule

- Transfer home child under 21 years old
- Transfer home to caretaker child who has lived in the house for 2 years prior to the applicant moving to a nursing home and the child provided care to keep the applicant out of the nursing home during that time (A recent case provided that the child doesn't have to give up job and care for parent 24/7, the child can hire aides for the time at work.)
- Transfer to a sibling with an equity interest in the home and who has lived there for one at least one year prior to applicant moving into the nursing home
- Transfers for a Purpose Other Than to Obtain SSI/Medicaid. Though the presumption is a transfer was made for the purpose of obtaining benefit but that can be overcome only by convincing evidence that the transfer was exclusively for another purpose.

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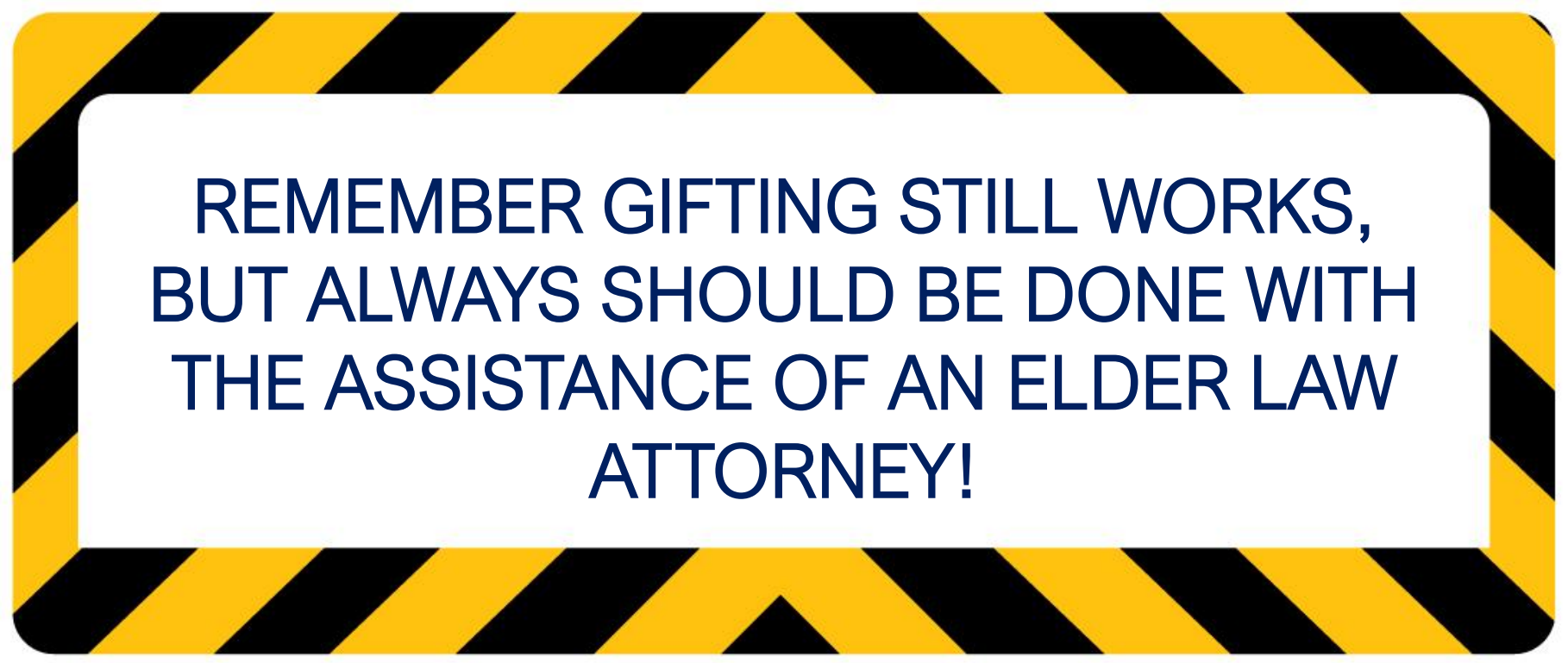
Gifting



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Why Gifting Can be a Bad Idea

Besides Possible Disqualification **years later**

- Divorce – Gift to your daughter: half of your assets go to buy your favorite soon to be ex in-law a new BMW.
- Financial Difficulties - every family has financial down times. Your daughter is thinking “I’m going to inherit the money anyways…”
- Misuse of the funds—“It looked like the best stock pick of the century.”
- Caregiving - I just wanted to pay my daughter for my care, who knew we had to have a care contract.

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Why Gifting Can be a Bad Idea

- College financial aid - your grandson is not eligible for financial aid because you shifted assets to his father.
- Cost-basis – the stock you gave to your son cost you $10,000. It is now worth $100,000 a share. Your son will have a $90,000 capital gain when he sells the stock.
- Early death of adult child - the unthinkable happens – your child predeceases you. Your assets are now in the hands of the in-laws.

More often than not will result in a Penalty for Medicaid!

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Half-a Loaf Planning

Dad - $330K in assets and $3,500 income
(Not Married – Widowed)

- Dad with Dementia needs nursing home care
- Home FMV $200,000
- $330,000 in countable assets
- Dad's income SS and pension – $3,500 a month
- Cost of Care in Nursing Home $10,000 a month
- Shortfall to pay care $6,500 a month.

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Dad - $300K in assets and $3,500 income

- Gift $200,000 which results in a 20 - month penalty
- Home exempt, consider renting: 65% of rental income is exempt
- Remaining $130,000 is converted to income using a Medicaid annuity which will pay for his care during the penalized 20 months at $6,500 a month
- Apply for Medicaid to trigger penalty
- After 20-month penalty expires Eligible for Medicaid

Without planning, broke in 46 months

With Planning SAVE $200,000 and eligible in 20 months

SAVED Approx 66%

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Be Careful of the Subtle Gift

These are all considered gifts under Medicaid law

- Gifts to charity, children and organizations.
- Set up joint back account with child, then the parent's name is removed.
- Adding a child's name to an investment account.
- Quit Claim home to child.
- College fund for grandchild.
- Annual $17,000 gifts to children.
- Most importantly paying a caregiver without a proper notarized care contract is now considered a divestment/gift

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All STATES HAVE ESTATE RECOVERY

- Probate only
- Certain exemptions exempt if occupied by spouse, child (blind, disabled, under 21), caretaker relative, sibling that is also joint owner.

CAN AVOID EASILY WITH A LADY BIRD/ENHANCED LIFE OR TRANSFER OF DEATH DEED: BUT MUST PLAN!

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LADY BIRD/ENHANCED LIFE OR TRANSFER OF DEATH DEED

Advantages:

No probate

No Capital Gains

No Estate Recovery

No Medicaid Gift Consequences

No uncapping of property tax

Home still protected asset under Medicaid

A husband and wife retain Tenancy by the Entireties creditor protection

Grantor does not share in the problems of future beneficiaries (creditors).

Can name a Trust as beneficiary of deed.

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Veterans Benefits

Aid and attendant care otherwise known as improved pension benefit. For some can be the difference from one staying out of a nursing home and remain in a residential setting.

3-year lookback
Cap on Assets of $150,538 which includes income
Penalty maximum of 5 years
Penalty divisor - $2,642 vs Medicaid of $9,939
Home can sit on more than 2 acres of land

As a result of the 2018 drastic new laws many Vets and their families are no longer able to qualify.

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Long Term Care Planning

Advise your clients to:

- Contact an elder law attorney—all attorneys are not the same. Medicaid laws change constantly.
- Make sure to have Estate Planning done ahead of time, if possible. These documents should have long term care language in them!
- If a nursing home is appropriate, make sure that your client's loved one is in a private pay/Medicaid certified facility.
- Evaluate long term care insurance or hybrid long term care investment. If you already have a policy, have it reviewed. If you do not have one and can afford it and have the health to acquire it – buy it!

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Long Term Care

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LTC Insurance

Very simple buy LTC or Hybrid LTC Insurance. While benefit is paying for the Nursing Home care, a lump sum gift is made. Maximum penalty is 60 months if Medicaid application is appropriately filed. On the 60th month after 5 yr LTC policy benefits expire, Medicaid takes over.

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House in the Trust … House Out of the Trust

Now you see it and now you don't!

Proactive Planning for a married couple with little assets and a home

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Houdini Strategy – Saving it All!

- Bob age 70, early dx of Alzheimer's, physically ok and still mentally competent, nursing home in the future.
- Mary age 67, physically ok and mentally competent.

ASSETS	
Jointly owned home	$200,000
Joint bank account and invest.	$ 90,000
Bob's IRA	$ 30,000
Mary's IRA	$ 20,000
Total	$340,000

MONTHLY INCOME	
Bob -- Social Security	$ 1,300
Pension	$ 500
Mary - Social Security	$ 700
Total	$ 2,500

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Bob and Mary's Plan

1. Bob and Mary PROACTIVELY establish a complete estate plan

    Patient Advocate

    Durable Power of Attorney w/ gifting powers

    Living Trust

2. Bob and Mary transfer home to Living Trust.

    Home becomes a COUNTABLE ASSET.

3. Apply ONLY for Protected Allowance and not Medicaid.

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RESULT - SAVE IT ALL!

1. Protected Allowance is 50% of Total Countable assets (which includes the home) or $150,000 whichever is less. Bob and Mary can keep up to $150,000.
2. Retransfer home out of trust to Mary. Result home protected. Mary does Lady Bird Deed to protect home from Estate Recovery and Probate.
3. Mary keeps all the assets, the home and all of the income, Bob's as well as her own.

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Married Couple – Planning

Married 50 yrs and have assets:

Home	$ 370,000
Bank account and investments of	$ 250,000
IRA/401k of Mary	$ 150,000

Income: Bob SS and Pension	$ 3,000
Mary SS	$ 1,200

Protected: Home and $140,000
Cost of Care $10,000 a month
Monthly Short fall after Mary's Living Expenses of $9,000

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Married Couple – Planning

- Apply for Protected Spouse Allowance
- Home and $150,000 exempt
- At Risk Asset - $260,000
- Without any planning Bob eligible for Medicaid in 40 months
- With planning, eligible for Medicaid *IMMEDIATELY*

HOW: Establish Sole Benefit Trust

RESULT Immediately Eligible

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Married Couple – Planning

Married 50 yrs and have assets:

Home	$ 370,000
Bank account and investments of	$ 200,000
IRA – Bob's	$ 400,000

(Need to liquidate IRA @ 35% taxable income = $140,000 in taxes)

Income: Bob SS	$ 3,000
Mary SS and Pension (school teacher)	$ 4,500

Protected: Home and $150,000

Cost of Care $10,000 a month

Monthly Short fall after Mary's Living Expenses of $7,500

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Married Couple – Planning

- Apply for Protected Spouse Allowance
- Home and $140,000 exempt
- At Risk Asset - $460,000
- Without any planning Bob eligible for Medicaid in 61months
- With planning, eligible for Medicaid IMMEDIATELY – Mary Keeps the home, all the assets and her income from her SS and Pension, does not have to liquidate Bob's IRA and receives $3,500 a month for 10 years.

HOW: Establish Sole Benefit Trust for bank account and investments and name on check to Mary from Bob's IRA.

RESULT Immediately Eligible

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Thank You for the Privilege of Your Time and Attending!

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Questions?

Feel free to email me at
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