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Elder Care Law – The Basics of Creating a Plan

- Paying for Long Term Care
- Estate Planning Documents
 - ◆ Asset Management
 - ◆ Health Care Decision Making
 - ◆ Distribution upon death

Paying for Long Term Care

- Private Pay
- Long Term Care Insurance
- Medicare
- Medicaid

Private Pay

- The national average daily rate for a private room in a nursing home is \$229, semi-private room is \$205 or \$74,800-\$83,600/year (5.5% increase since last year)
- Quickly depletes assets

Long Term Care Insurance

- Coverage for chronic illnesses or disabilities if need assistance with activities of daily living and/or skilled nursing care; homecare and nursing care
- Cannot qualify with preexisting conditions or already in a nursing home - health screening
- Costly
- Rarely covers entire cost of nursing home care or 24/7 homecare

Medicare

- Covers up to 100 days of skilled nursing or rehabilitative care after a 3 day hospitalization
- Days 1 – 20 are covered fully
- Days 21 – 100 have a co-pay
- Only covered for as long as you meet level of care

Overview of Medicaid Long Term Care

- Subsidizes the cost of **nursing home** care for individuals who meet the eligibility requirements.

Medical Eligibility Standard

- ◆ Skilled Nursing Services
- ◆ Hands on assistance with two or more Activities of Daily Living which include:
 - ◆ Bathing
 - ◆ Dressing
 - ◆ Mobility
 - ◆ Toileting/continence
 - ◆ Eating

Instrumental Activities of Daily Living

Behavioral Issues

Level of Care Determinations

- KePro, through a contract with the State of Maryland, reviews the information submitted by the provider (the 3871B) to make a level of care determination.
- Advisory opinion

Eligibility Criteria: Income

- Available income (after allowable deductions) must be less than the private pay cost of the nursing care
- Some states have an income cap

RESOURCES: Individuals

- An individual applicant can have no more than \$2,500 in countable resources as of the first day of the month in which benefits are requested.

Bank Accounts

- Medical Assistance presumes that funds in joint accounts are owned solely by the applicant or the applicant's spouse.
- If the non-spouse joint owner can demonstrate regular and proportionate contributions of his or her own funds, he or she can receive a pro rata share.

Excluded Resources

- One burial plot
- Irrevocable pre-need funeral trust
- Whole life insurance with face value of \$1,500 and a cash value of less than \$1,500
- Term life insurance without limit if no cash value

Home Property

- A home is excluded if was the applicant's residence
 - ◆ immediately prior to institutionalization and
 - ◆ the applicant intends to return home.
 - ◆ equity interest is no greater than \$500,000

Liens on Home Property

- unless, living in the home is:
 - ◆ unmarried child under 21
 - ◆ blind or disabled child
 - ◆ sibling with an equity interest in the home and who resided in the home for at least one year prior to institutionalization of the applicant
 - ◆ spouse

Married Persons

- A certain amount is protected for the 'community spouse'.
- Snapshot taken first day of month of nursing home placement

Community Spouse Resource Allowance (CSRA)

- As of January 1, 2010, the greater of the following may be retained by the community spouse:
 - ◆ \$21,912; or
 - ◆ $\frac{1}{2}$ of countable resources that existed as of the SRA up to a maximum of \$109,560

Spend down

- Paying medical expenses
- Pay off debt
- Home Repairs
- Purchase Car
- Purchase pre need funeral trusts
- Annuity
- Gifting

Single Premium Immediate Annuities

- Monthly fixed income payments
- Duration shorter than the annuitant's life expectancy
- Payments must equal or exceed the purchase price over the term certain
- Irrevocable and non-assignable
- State named as first beneficiary

Transfer of Assets (Gifting)

Exempt Transfers

- Transfers of any resource, at any time:
 - ◆ To the applicant's spouse
 - ◆ To the applicant's blind or disabled child
 - ◆ To a trust established for the sole benefit of the applicant's blind or disabled child

Exempt Trusts- Special Needs Trusts

- Funded with the assets of a disabled applicant under 65 if created for the applicant by parent, grandparent, guardian or court
- Trust is established by an applicant or the applicant's spouse for a disabled child.
- Trust is established by the applicant or the applicant's spouse for a disabled individual under the age of 65.
- Pooled Trusts

Exempt Transfer of House

- Transfer of a house to
 - ◆ A Spouse
 - ◆ Blind or disabled child or child under 21
 - ◆ A sibling with an equity interest in the home who has resided there at least 1 year prior to applicant's institutionalization
 - ◆ A child whose care for the applicant during the 2 years prior to institutionalization permitted the applicant to reside at home. The threshold question is whether the applicant could have entered a nursing home due to medical need.

Asset Protection provides the only means of saving money for future generations

- Availability of protection method depends on laws and regulations of the jurisdiction where applying for benefits
- Wise to consult an Elder Law attorney in the state where applicant resides

Look Back Period

- For all transfers occurring on or after February 8, 2006 the look back period is five years.

Penalty Start Date

- In the past, penalty for gifting started on the date the gift was made

- For transfers occurring on or after February 8, 2006 the penalty start date is the 1st day of the month otherwise eligible for benefits. This means that the person:
 - ◆ Meets a nursing facility level of care
 - ◆ Is financially eligible for benefits
 - ◆ Meets all other eligibility requirements
 - ◆ Is in a nursing home or applying for a waiver program

Transfer Penalty

- The penalty is one month of ineligibility for every \$6,800 transferred.
- Gift of \$13,600= 2 month penalty
- Gift of \$68,000= 10 month penalty

Methods of Asset Protection within the 5 year lookback

- Gift and Return

Maryland requires that return funds must be placed into the person's name.

Other states permit payment of person's bills or expenses

- Gift and Annuity

- Gift and Promissory Note

ESTATE PLANNING

Preparation of documents to appoint others if become disabled to:

Manage Assets

Make medical decisions

Upon death make sure assets are distributed properly

Joint Accounts

Each owner has access to the account and can manage the funds in the account

Risks

- Any joint owner can take money out of the account
- Exposes assets to joint owners' creditors
- Disposition of assets at death governed by the account titling not by Will

Last Will and Testament

- Assets without co- owner or beneficiary
- Names Personal Representative
- Pay debts, taxes, transfer to beneficiaries
- Formalities
 - Age 18
 - Competent
 - In writing
 - Signed
 - 2 Witnesses

State's "Default" Last Will and Testament

- If decedent is survived by:
 - Spouse and minor children- spouse receives one-half, children share remaining half
 - Spouse and adult children-spouse receive \$15,000 plus one-half, children divide the balance (interest of deceased child passes to issue of that child)
 - Spouse and parents of the decedent- spouse receives \$15,000 and divides rest with parents
 - No heirs- to Medical Assistance/Board of Education

Power of Attorney

- Document in which a **COMPETENT** individual (the grantor) gives specific powers to an agent (the attorney-in-fact) to act on the individual's behalf
- Must **TRUST** your agents

Authority of Agent

- **Co or Joint**

All agents must make all decisions together.

- **Primary and Alternate**

The primary agent has the sole power to act. The alternate can only act if the primary agent is either unable or unwilling to serve.

- **Joint & Several:** Each agent can make decisions alone or in conjunction with the other agents.

Durable

- Power of Attorney does not terminate upon incapacity of the grantor

Recommendations for Power of Attorney

- Maryland Statutory Power of Attorney
- Listing of Assets
- Listing Real Property
- Gifting Authority
- Effectiveness

Advantages of Power of Attorney

- Effective Management of Affairs
- No Court Supervision
- Post-disability Planning
- Inexpensive
- Avoids Guardianship

Guardianship of Property

- **Requires 2 Physician Certificates**
- **Costly- attorneys fees, filing fees, bond, commissions**
- **Requires a Court Hearing**
- **Public -Notice to Interested Persons**
- **Annual Reporting**
- **Court is the ultimate Guardian**

Healthcare Decision making

- Based on the premise of Informed Consent

Living Will

- Written instructions of an individual's wishes regarding health care and end of life

The Conditions addressed in Living Wills

- End Stage Condition
- Persistent Vegetative State
- Terminal Condition
- **Guidance or binding on agent**

Advance Directive

- Designates health care agents
- The health care agent has priority decision making power

Surrogate Decision Making

- If individuals have not expressed their wishes in advance, the law allows other persons close to them, “surrogates,” to make health care decisions on their behalf.

Surrogate Decision Making Priority

- The following individuals can act as surrogate decision makers in order of priority
 - ◆ guardian of the person
 - ◆ spouse
 - ◆ adult child (if there is more than one adult child all adult children must agree)
 - ◆ parent
 - ◆ adult sibling
 - ◆ a close friend or relative

SUMMARY

Paying for Long Term Care

Estate Planning Documents

Will

Power of Attorney

Advance Directive

Living Will

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