

Elder Law and Estate Planning Basics

PRESENTED BY JANE-MARIE SCHAEFFER

ESTATE PLANNING & ELDER LAW ATTORNEY



7 Southwoods Boulevard, Albany, NY 12211 | 518-465-7581

47 West Harrison Street, Saratoga Springs, NY 12866 | 518-581-8131

Executive Woods, 855 Route 146, Suite 220, Clifton Park, NY 12065 | 518-952-4010

1151 Flatbush Road, Kingston, NY 12401 | 845-338-6405

www.herzoglaw.com

What is Elder Law?



- **Choosing someone to help you make health care decisions**
- **Getting help managing your finances**
- **Choosing someone to manage your affairs if you become incapacitated**
- **Putting an estate plan into place**
- **Planning ahead for your long term care needs**

Everybody Needs Long Term Care

- **The number of seniors needing long term care is growing as Baby Boomers turn age 65**
- **There are currently 44.7 million people in America age 65 and older, representing 14.1% of the US population, and that number is expected to double by 2060**
- **Currently an estimated 12 million people need long term care, and that is estimated to grow to 27 million people by 2050**
- **The lifetime probability of becoming disabled is 68% for people age 65 or older**

Administration on Aging, US Dept. of Health and Human Services, 2013

US Dept of Health and Human Services , US Dept of Labor

AARP Beyond50.2003 A Report to the Nation on Independent Living and Disability, 2003

Long Term Care Spending

In 2016, total spending for long term care was \$163 billion

Total Health Care Spending in US is 3.3 Trillion



How Do I Plan for Long Term Care?

- **Where do you want to receive services?**
- **Who will provide your care?**
- **How will you pay for your care?**

Long Term Care Costs

■ Home Care

- unpaid home care – spouse, children, family, friends
- paid home health aides – average cost \$24 per hour, costs vary depending on number of hours you need

■ Assisted Living

- costs can range from \$4,000 per month to \$7,000 per month, depending on the level of assistance you need

■ Nursing Home

- average cost is \$15,000 per month

Funding Sources for Long Term Care

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



Medicare – What does it Cover?

- **Hospital Stays**
- **Short term stay in nursing home following a hospitalization**
 - First 20 days, Medicare pays 100 %
 - Days 21-100, Co-Pay of \$176.00
 - No coverage after 100 days
- **Limited Home Care Coverage following a hospitalization**
 - Average 4-5 hours per week for a few weeks
- **No coverage for custodial care at home**

Long Term Care Insurance- The Basics

- **Elimination Period – 30, 60 , 90 days**
- **Benefit Period – typically 2 to 5 years**
- **Eligibility to Begin Receiving Benefits**
 - Need assistance with 2 out of 6 ADLs or
 - Cognitive Impairment
- **Daily Benefit Amount – amount policy pays for care**
 - Usually 2 rates
 - one if in nursing home / one if at home
 - Ex. \$300/per day benefit
 - limited to 50% \$150 per day for home care
- **Type of Reimbursement – cash reimbursement**
 - cash to you or payment directly to nursing home or provider

Long Term Care Insurance

Hybrid Policies – combination of long term care policy and life insurance

- If need long term care, can access death benefit amount to pay for long term care
- If don't need long term care, acts as a life insurance policy and provides a death benefit to your heirs

Medicaid



Medicaid:

is a program for the needy – need to be financially eligible to qualify

- In addition to financial eligibility, must be over age 65 or disabled
- What does Medicaid pay for?
 - Home Care
 - Nursing Home Care

Medicaid Income and Asset Limits

Nursing Home Applicant:

	Institutionalized Spouse	Community Spouse
Income	\$50.00	\$3, 216
Assets	15,750	128,640

Exempt Assets

- Principal Residence
- Burial Plot
- Pre-paid irrevocable burial contract
- Life Insurance Policy with a face value up to \$1,500
- One automobile
- Retirement Accounts in Periodic Payment Status



Transfer of Assets

- There is a 5 year lookback period for transfers of assets
- Any transfers for no consideration – **gifts** – are counted
- A penalty period is calculated based on the amount of transfers during the lookback period
- During the penalty period you are ineligible for Medicaid benefits

Transfer Penalty

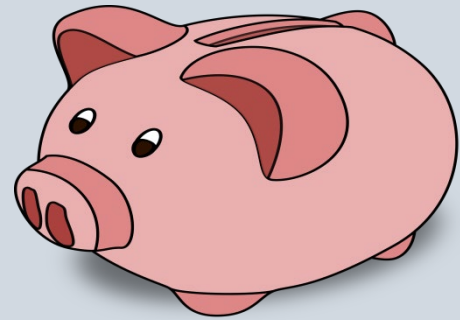
Example

- Florence owns a condo worth \$112,950. She transfers the condo to her daughter on 1/1/2020. Florence applies for Medicaid on 6/1/2020.
- Because the transfer was within the 60 month lookback period, a penalty period is calculated. The penalty is calculated as 10 months ($\$112,950 / \$11,295$)
- Florence is not eligible for Medicaid for 10 months beginning on 6/1/20, the date she applied for Medicaid, and must pay privately during her first 10 months in the nursing home.
- Florence will be eligible for Medicaid on 4/1/2021.

Exempt Transfers

- Transfers to Spouse
- Transfer to Disabled Child
- Transfer of Home to a Caregiver Child

Irrevocable Trusts



-
- An Irrevocable Trust can be used to protect your assets and pass them to your children, if you plan far enough in advance.
 - The trust must be created and funded **5 years** before you need to apply for Medicaid to avoid the lookback period.

Irrevocable Trusts

What is an Irrevocable Trust?

- Grantor – one who creates and funds the trust
- Trustee – person in charge of the trust
- Beneficiary – person who received the assets in the trust

Irrevocable Trusts

For the trust to qualify to protect your assets:

- **Trustee** – cannot be you or your spouse – can be children or other relatives. You reserve the right to change the trustee.
- **Trust Income** – you receive all the income from the trust
- **Principal Residence** – you maintain a life estate in your house
- **Trust Principal** – You cannot receive principal distributions from the trust (unless you do a Partial Revocation of Trust)
- **Upon your death** – trust assets go to your beneficiary/s

Irrevocable Trust

- If the trust is properly structured, then after 5 years have passed, the assets in the trust are exempt for Medicaid purposes
- You can apply for Medicaid and the assets in the trust will not be counted or have to be spent down for Medicaid



Funding your Irrevocable Trust

What assets should you place into your trust?

- Home
- Stocks
- Bonds
- Investment accounts
- Life Insurance with Cash Value
- Extra Savings, Money Market or CDs

What assets to keep out of your trust?

- Checking account
- Money to live on, fun money, walking around money

Community Medicaid

- There is no lookback period when you apply for Community Medicaid
- You can transfer assets to a trust this month, and then apply for Community Medicaid next month with no penalty

Community Medicaid

Community Applicant

	Single	Couple
Income	\$ 895	\$ 3,216
Assets	15,750	\$128,640

Any excess income over the allowed amount is called a spenddown, and can be placed into a Pooled Supplemental Needs Trust

Types of Community Medicaid

- Personal Care Services
- Consumer Directed Personal Assistance Program
- Waiver Programs
- Managed Long Term Care

Crisis Planning

What if you need nursing home care before
the 5 years have passed since you
transferred assets?

Crisis Planning

Strategies:

- Partial Revocation of Trust
- Transfer assets to spouse and spousal refusal
- Gift/Promissory Note plan – can save about ½ of assets

Other Estate Planning Documents

- Power of Attorney
- Health Care Proxy
- Will



Power of Attorney

- Principal (you) appoints an Agent (spouse, child, friend) to manage your financial and legal affairs if you become incapacitated
- If there is no Power of Attorney and you become incapacitated, then you must petition the court to have a Guardian appointed

Health Care Proxy



Health Care Proxy

Allows you to appoint an agent (family or friend) to make health care decisions for you if you become incapacitated

Living Will

This is a separate document that can be signed separately or with your Health Care Proxy that gives your agent your wishes as to end of life care

Last Will and Testament

- Your Last Will and Testament directs who receives your property after your death
- Executor— person who oversees everything, gathers assets, pays debts and then distributes balance to beneficiaries
- Probate Process – your will must be submitted to court, appropriate people notified of the existence of the will, and if no objections the court appoints an Executor.

Probate and Non-Probate Property

Your will is only effective over probate property – property that is in your individual name, and that does not have a designated beneficiary

Non-probate Property – not governed by will

- Joint bank accounts
- Real Estate owned jointly
- Retirement accounts with named beneficiaries
- Life Insurance with named beneficiaries

Life Insurance

- **Why have life insurance?**
 - Funeral costs
 - Payoff debts
 - Provide inheritance for children and grandchildren
 - Income Replacement –
 - Provide income for surviving spouse after first spouse's death
- **Types of Life Insurance**
 - Term
 - Whole Life
 - Variable
- **Beneficiaries**

Revocable Living Trusts

- Revocable Living Trusts are created by you (Grantor) and are managed by you as Trustee until you become incapacitated
- You appoint a Successor Trustee to take over management of the trust when you can no longer do so
- Upon your death, the trust avoids probate
- The Successor Trustee (appointed by you) takes over management of the trust and distributes your assets to your beneficiaries

Funding Revocable Living Trust

- Great tool for consolidation of assets!
- Have all of your financial accounts managed in one place
- What goes into your trust?
 - Home
 - Bank accounts – checking, saving, money market, CD
 - Mutual funds
 - Stocks and bonds

Listen to us
on

Magic
590 - 1410 am
100.5 - 96.9 fm

Saturday
from
8 am to 9 am

Listen to past shows
on WBPM podcast
www.929wbpm.com

Free Consultations

- Review Your Documents
- Help you choose the Estate & Tax Plan that's right for YOU
- Assist with Medicaid Application or Long-Term Care Plan
- *Assist with Estate Administration/*
Probate after death of loved one
- We DO make house calls

Don't Wait Until It's too Late

Stay Connected  