


Guiding Families Facing Long-Term Care

Continuum of Care:


- Minimal support by family at home, with some paid attendants, \$1k-2.5k/mo.
- Moderate level support at home or Assisted Living (ALF), \$2.5k-5.5k /mo.
- Extensive care, medically involved, dependence in activities of daily living, \$5.5k-7.5k/mo.



Legal Tools for Asset Protection

Asset Protection Plan for Long Term Care


- Asset Protection Addendum to Power of Attorney
 - Broadens authority for transfers, trusts
 - Waives conflict of interest restrictions
 - "You can do whatever is legal to protect me, my assets and my heirs."
 - May include requirement for approval of more than one person



Legal Tools for Asset Protection

Personal Services Agreement:


- Allows elder's assets to be used for fair payment to a family care giver
- Prevents Medicaid transfer of assets penalty
- Permits VA Aid and Attendance qualification



Legal Tools for Asset Protection

Special purpose legal planning documents used for asset protection:

- **Special Needs Trust**
 - Protects funds for a spouse or disabled child
 - Does not disqualify spouse or the child from Medicaid help.
 - One spouse can protect a surviving spouse through a Special Needs Trust in the Will
- **Irrevocable Trust**
 - May be used to protect investments, farm property or other assets, Medicaid and VA benefit qualification



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More Protection for Family That Plans Together



Strategies for Families Facing Long-Term Care

Joan's case


- Joan suffered stroke, needs help
- Sandy, Joan's daughter, would like her mother to live at her home, but cannot provide all her care
- Joan has \$40,000 in savings and her Social Security



Strategies for Families Facing Long-Term Care

Elder Law Solution


- Joan purchases Pre-Paid Funeral Trusts for herself, her daughter, Sandy, and Sandy's husband for \$30,000.00
- Joan pays for necessary remodeling of Sandy's home to make it accessible to enable Joan to reside in the home for \$10,000.00



Strategies for Families Facing Long-Term Care

Elder Law Solution


- Joan qualifies for Medicaid after
 - No transfer of assets penalty for purchase of a Pre-Paid Funeral Trusts
 - No transfer of assets penalty for remodeling of daughter's home to enable Joan to move in.
- Joan qualifies for in-home services from Medicaid "Waiver" provider while Sandy is at work



Strategies for Families Facing Long-Term Care

Elder Law Solution


- Alternative approach
 - As widow of wartime veteran, Joan could qualify for \$1,130.00 monthly from VA Aid & Attendance program.
 - If VA payment is adequate to cover care costs, it is more flexible than Medicaid and could even be used to pay Sandy for care under a Personal Services Agreement



Strategies for Families Facing Long-Term Care

Elder Law Solution


- With either approach, plan must consider what's ahead:
 - One year later, Joan requires nursing home care at \$6,500/mo.
 - She qualifies for Medicaid with no transfer penalty for her purchase of Funeral Trusts and remodeling of Sandy's home.
 - No Medicaid claim or lien after Joan's death



Government Programs

Medicaid & Long-Term Care:

- Medicare does NOT cover long-term custodial care (only up to 100 days, post-hospital skilled care)
- Medicaid DOES pay for long-term care but has strict limits on assets
- Approximately 7 out of 10 Hoosiers in nursing homes qualified for Medicaid




MEDICAID & LONG TERM CARE

Medicaid "Waiver" program

Medicaid Waiver

In addition to nursing home coverage, the Medicaid "Waiver" program provides in-home and community-based care as an alternative to a nursing home.

- In-home services
- Adult day services
- Assisted Living Facilities
- Currently, no waiting list for Waiver "slots"




MEDICAID & LONG TERM CARE

Veteran's Benefits for Long-Term Care

Veteran's Benefits & Long-Term Care:

- "Aid and Attendance" program
 - Benefit up to \$1,758 per month for veteran, \$2,085 for couple, or \$1,130 for widow
 - Helps pay for care at home, in assisted living or in nursing home
- Who qualifies?
 - Veteran who served during wartime, or
 - Widow of wartime veteran
 - Limited assets
 - Care costs exceed income
 - In need of care, disabled



Veteran's Benefits for Long-Term Care

Problem:

- Both VA and Medicaid programs have strict limits on personal assets, but requirements are very different
- Asset protection approaches that work for one program may disqualify them from the other

MEDICAID VS VETERAN'S ASSISTANCE




VA "Aid and Attendance"

John's case

- John served in Korean war
- John cares for his wife, who has dementia
- John suffers a stroke and now requires assisted living
- Their income is \$2,500 short of meeting care costs
- Monthly shortfall will quickly deplete the couple's savings

Solution?


- To qualify for VA help, John could transfer 2/3 of his \$200,000 savings to their children



VA & Medicaid

John's problem


- Transfer to children causes disqualification from Medicaid
- As his wife's condition gets worse she needs to go to nursing home, care costs go up by \$6,000/month—Medicaid help is needed



VA & Medicaid

Solution for John

- Take account of the likely progression of chronic mental and physical conditions, including spouse
- Make a legal plan that can meet rules of both VA and Medicaid



Medicaid Qualification

Medicaid Qualification:


- Limits on "countable" resources
- Not all assets are "countable"
 - The home
 - A vehicle
 - Pre-paid funeral
 - Income-producing real estate
 - Certain annuities
- Exempt asset planning can permit Medicaid qualification at the point of need



Medicaid Planning for Couples

Mary & Joe's case


- Joe requires long-term care
- Savings and investments = \$200,000
- They own their home
- Joe's pension and Social Security = \$2,100/mo.
- Mary's income = \$900/mo.



Medicaid Planning for Couples

An elder law plan for Joe & Mary

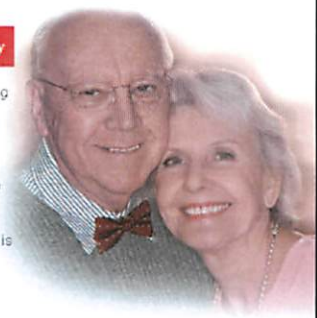
- Invest \$90K in exempt assets temporarily, e.g., real estate in Mary's name
- Joe qualifies for Medicaid without a penalty
- Mary receives monthly "Spousal Allocation" (~ \$1,000 per month from Joe's income) to meet her needs
- Assets moved to Mary's name



Medicaid Planning for Couples

An elder law plan for Joe & Mary


- Later, Mary needs assisted living
- Mary's son, her POA, arranges sale of her home and deposit of proceeds
- Mary's "Spousal Allocation" increases to \$2,100 to meet the cost of her assisted living apartment and services
- Joe's \$6,500 monthly care cost is reduced to \$0



Medicaid Planning for Couples

An elder law plan for Joe & Mary


- Then, Mary pre-deceases Joe
- Mary had *changed her will* to include a special needs trust for Joe
- The savings and investments are split among their children and a "Special Needs Trust" to protect Joe without disqualifying him from Medicaid help



Asset Protection Planning

Medicaid Liens and Claims:


- Asset protection planning – balance two aspects of protection:
 - Protect assets during lifetime
 - Protect assets for heirs
 - Different clients, different priorities
- Estate planning techniques can help: life estates, trusts



Long-Term Care Insurance

Protection For Those Who Can Afford Long-Term Care Insurance:

- Purchase while healthy
- Consider an Indiana "Partnership Plan" to permit Medicaid asset protection and increase protection from premium increases
- For more information: <http://www.in.gov/fssa/ltcp/>
- Consider affordability over long term, poss. rate increases



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Beware of One-Size-Fits-All Solutions:

- Annuities
- Trusts
- Other products sold by non-lawyers as Medicaid protection

ANNUITIES, TRUSTS, other products.


ONE SIZE FITS ALL



Medicaid Transfer of Assets Penalty

Medicaid Transfer of Assets Rule in a Nutshell:


- Look-back period, at date of application, what transfers in past 5 years?
- Penalty is a period when Medicaid will not pay for nursing home care or waived services
- During the 5 years, penalty period only begins to run when person is otherwise qualified for Medicaid nursing home level of care
- Penalty period = transferred amount ÷ \$5,549
- Penalty begins only after "otherwise qualified"



Disqualifying Transfers under Medicaid

Transfers can include:


- Gifts
- Sales at less than fair market value
- Non-qualified promissory notes or un-repaid loans
- Withdrawals, conversions by others
- Annuities or changes to annuities that fail specific Medicaid requirements, such as actuarially sound payout and pay-back to State provision
- Changing real estate to joint title



Acceptable Transfers under Medicaid

Exemptions, Mitigations


- Transfers between spouses cause no penalty
- Transfers to disabled person, directly or in trust
- Certain home transfers and life estates
- Transfer penalty can be shortened or eliminated by transfer back or fair compensation
- Sufficient income to private pay through penalty period can be engineered through annuity or installment promissory note



Asset Protection Planning

Assets can be protected without harsh penalties when done according to a legal plan:



- Not all transfers are subject to penalty, including transfers to a spouse, trust for a disabled family member, or to a live-in caretaker child (exempt transfers)
- Transfer to irrevocable trust protects assets after five years
- Even last-exempt transfers can be done, reserving enough to pay through the penalty period—the "reverse 1/2 a loaf"
- Reserved funds used to create sufficient income for costs during penalty period:
 - annuity, or
 - installment promissory note



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Transfer of Assets

- An Elder Law Plan Considers:
 - Safety of assets after transfer
 - Tax consequences
 - Effect on distribution plan to heirs
 - Should a trust be used?
 - Access to quality care and additional services



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Is Referral Appropriate?



- Mom only has \$20,000...
- Even in low asset case, consider what's at stake
- Identification of options for care, barriers to Medicaid or VA eligibility, hidden assets that disqualify, transfers and getting the timing right.
- What is the cost of getting it wrong?
- Representation in Medicaid or VA application—dealing with the system

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What Help from Elder Law?



- Identifying the issues for care planning, family roles, and legal authority
- Appropriate referrals for medical assessment, care management
- Maximizing existing coverage: Medicaid, insurance, long term care policies
- Cost/benefit of Medicaid, VA, life care at Continuing Care Retirement Community
- Identify barriers to qualification, preventing disqualification
- Help forecasting care trajectory, costs, available assets, and contingencies for care givers and family

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Roles of an elder law attorney




- Asset protection planning
- Protecting estate plan, family relationships, 2nd marriage planning, non-traditional family
- Special needs planning for spouse or family member
- Transactions, deeds, promissory notes, trusts, annuities to implement plan
- Revising wills, trusts, powers of attorney (including care giver's documents) or guardianship to meet current needs, future contingencies
- Application for Medicaid, VA assistance
- Appeals, annual re-certifications
- Revising the plan as circumstances or laws change

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Avoiding Pitfalls:

- My daughter will know what to do
- My kids all get along
- My neighbor told me what to do
- I purchased an annuity or living trust at a seminar
- I can give away \$14,000.00 per year, right?
- I'll just give my property away
- I'll hide it
- I put my son's name on my accounts/house
- I surely don't need an attorney to help with application for a public benefit



Guiding Families Facing Long-Term Care



**Careful Legal Planning
Minimizes Risks to
Assets and Maximizes
Options for Care**



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Elder Law Resources:

- Severns Associates website: www.severns.com
- National Academy of Elder Law Attorneys www.naela.com



MEMBER
Leading the Way in Special Needs and Elder Law

Guiding Families Facing Long-Term Care

Thank you...



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