

# ESTATE AND HEALTHCARE ISSUES FOR SENIORS:

## Medicaid and Medicaid Planning



Instructor:

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I. BASICS OF ESTATE  
PLANNING-COVERED BY  
ROBERT DIETZ, ESQ.

II. MEDICAID OVERVIEW

III. MEDICAID PLANNING



# WHAT IS MEDICAID

- ▶ Blind, disabled, or over 65-year-old individuals seeking government assistance for long term care
- ▶ Two major types of programs
  - ▶ Community based (i.e. Home care)
  - ▶ Institutional based (i.e. Nursing home)

# COMMUNITY MEDICAID

- ▶ NY: Community based long term care services available through Medicaid fee-for-service, managed long term care (MLTC)
- ▶ Applicant must need physical maneuvering with more than two activities of daily living or for persons with dementia/Alzheimer's diagnosis then need at least supervision with more than one activity of daily living
  - ▶ To be assessed by independent physician approved by DOH and not primary
  - ▶ ADL ex.: bathing, personal hygiene, dressing, walking, transfer to toilet, toilet use/incontinence care, bed mobility, eating, etc.
- ▶ Types of services:
  - ▶ Home health care services, private duty nursing services, personal care services, assisted living program services, etc.



# CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM

- Recipients have flexibility and freedom in choosing caregiver
- Allows for family other than spouse to be paid caregivers without licensure or certification
- Aids may perform 'skilled' care otherwise may only be performed by a nurse (ex: suctioning tracheostomies, insulin injections, admin of oxygen and/or meds)
- Old rule: Counties required to notify eligible individuals of the option to join CDPAP
- New rule: DOH blames CDPAP for large MLTC enrollment growth, new applicants for home care will no longer be notified of availability of CDPAP program



# COMMUNITY MEDICAID TRANSFER PENALTY

- ▶ January 1, 2022 Implementation date 30 month transfer of assets lookback period. Phase-in- effective date of October 1, 2020 (i.e. no penalty for post 1/1/2022 applications relating to transfers made prior to 10/1/2020). Does not apply to individuals already receiving services and does not apply to TBI/OPWDD waivers.



# REHABILITATION

- ▶ Hospital admission 3 days = Medicare coverage in Rehab
- ▶ Medicare pays 100% days 1-20
- ▶ Medicare pays 80% days 21-100
- ▶ Supplemental health insurance may pay 20% co-pay
- ▶ Private pay vs. Medicaid to cover 20%
- ▶ Subject to early termination if no longer responding to physical therapy





# INSTITUTIONAL MEDICAID

- ▶ Long term care (i.e. rehabilitation terminated or end of 100 days, whichever sooner)
- ▶ Long term care insurance vs. Private pay vs. Medicaid
- ▶ 60 Month transfer penalty (“5 year lookback”)



# MEDICAID ELIGIBILITY INCOME LIMITS

Examples of income: Social security, pension, net rental income, IRA distributions if they are periodic payments (non-periodic withdrawals and irregular distributions do not count as income, considered a conversion of a resource)

- Institutional Medicaid (Nursing Home)
  - For Single: \$50.00
  - For spouse of applicant seeking nursing home care : \$3,259.50
- Community based Medicaid (Care in the home):
  - Family of 1: \$884.00
  - Family of 2 receiving Medicaid: \$1,300.00

# MEDICAID ELIGIBILITY – EXEMPT INCOME

- Nazi, other persecution payments (except if payments retained into following month, then countable resource)
- Real property sale, if reinvested within reasonable time (less than 6 mos)
- Reverse mortgage
- SSI retroactive lump sum disregarded in month received and for 9 following months (however, SS or SSDI retro payments may be counted as income in month received)
- Tax refunds exempt in month received and following month
- VA aid and attendance



# EXCESS INCOME AND POOLED INCOME TRUST

- Community based Medicaid
- Applicant expenses exceed \$884.00 per month
- Spend down and the Pooled Income Trust
  - Examples: NYSARC, Life, Inc.



# MEDICAID ELIGIBILITY RESOURCE LIMITS

Examples of resources: properties other than primary residence, cash, life insurance cash surrender values, stocks, bonds, nonqualified annuities, retirement accounts if not on period payment status

- Institutional Medicaid (Nursing Home):
  - Individual: \$15,900.00
  - Married: Spouse of an applicant seeking coverage for nursing home care is permitted to retain the greater of  $\frac{1}{2}$  of resources up to cap of \$130,380.00 or \$74,820.00
- Community based Medicaid:
  - Family of 1: \$15,900.00
  - Family of 2 receiving medicaid: \$23,400.00

# MEDICAID ELIGIBILITY- EXEMPT RESOURCES

- ▶ Home exempt: if equity below \$906,000 OR if community spouse/disabled or minor child reside there
- ▶ Real property sale, if reinvested within reasonable time (less than 6 mos)
- ▶ Life Insurance cash surrender value (*if face value is less than \$1500*)
- ▶ 1 vehicle for community spouse
- ▶ Certain Trusts
- ▶ Exempt Medicaid annuities (must be irrevocable, no right to withdraw principal, payments must be actuarially sound)
- ▶ Reasonable amount of household goods
- ▶ Repairs to home



# MEDICAID ELIGIBILITY- EXEMPT RESOURCES CONTINUED

- ▶ Irrevocable pre-paid burial expenses for applicant
- ▶ Irrevocable pre-paid funeral agreement of burial space items for immediate family members
  - ▶ Immediate family members: spouse, minor and adult children, stepchildren, siblings & their spouses, parents & step-parents
  - ▶ Burial space items: gravesite, crypt, vault, mausoleum, casket, urn, opening/closing grave, perpetual care of gravesite, headstone, and engraving

# TRANSFER PENALTY

Total amount transferred for less than Fair market value  
(FMV)

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Monthly regional nursing home rate  
*(\$13,206 Dutchess County rate as of 1/1/20)*

=

No. of Months ineligible for Medicaid Coverage of  
Institutional care

*Example: \$100K/\$13,206 = 7.57 months*





# EXCEPTIONS TO TRANSFER PENALTY

- Transfers to Spouse
- Transfers to child who is certified blind or disabled , or to a SNT
- Transfers to a SNT established for benefit of
  - Applicant if under age 65;
  - Applicant's disabled adult child; or
  - Mandatory state Medicaid program payback provision
- FMV transfers
- All assets transferred for less than FMV that have been returned to the individual
- Transfers that occurred prior to lookback

# EXCEPTIONS CONTINUED...

- ▶ Purchase of a life estate (\*1 year rule)
- ▶ Purchase of a promissory note, loan or mortgage
- ▶ Transfers of the home to:
  - ▶ A spouse;
  - ▶ Child under 21 or disabled or blind;
  - ▶ Adult child if he lived in home for previous 2 yrs and cared for individual; OR
  - ▶ Sibling w/ equity interest who lived in home for previous 1 yr
  - ▶ *NOTE: sibling and caretaker child exceptions for home transfer is not exempt transfer under community medicaid lookback rules*
- ▶ Undue Hardship



# EMERGENCY MEDICAID PLANNING

- Pre-paid funeral arrangements
- Pay off mortgage or debt
- Caregiver agreements
- Purchase Life Estate in someone else's home (*caveat: have to live there 1 yr*)
- Caregiver home transfer
- Gift/Promissory Note
- Spousal refusal and pitfalls
- Supplemental Needs Trust
- Private pay for home care, buying time to meet lookback periods for assets transferred within lookback



# MEDICAID PLANNING AND ASSET PROTECTION PLANNING AHEAD!

- ▶ Irrevocable income only trusts
- ▶ Life Estate deed
- ▶ Purchasing Life Estate in child's home
- ▶ Caregiver agreements
- ▶ Gifting
- ▶ Supplemental needs Trust
- ▶ Pre-paid funeral Trust
- ▶ Long-term care insurance



# JOINT OWNERSHIP

## Pros vs. Cons

- Avoids probate
- Successors have immediate access
- Lose control
- Cannot devise share by will
- Successors have immediate access
- Not a Medicaid planning technique- no protection

# GIFTING

## Pros vs. Cons

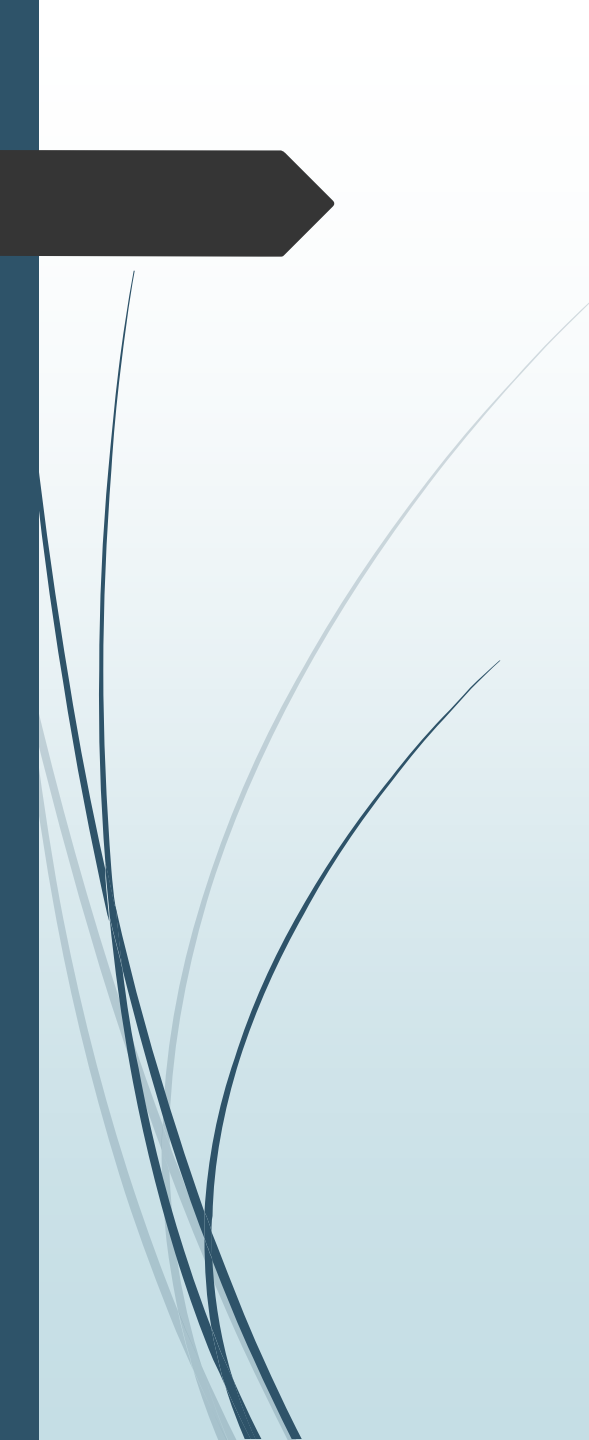
- Avoid Probate
- Protect assets from long term care expense\*
  - If institutional Medicaid, must be gifted 5 yrs in advance;
  - If community Medicaid, must be gifted 2 ½ yrs in advance
- Potential for serious abuse
- Lose control of assets
- Does not protect assets if gifted within the lookback periods
- Exposes recipient to lawsuits by nursing home
- Includable in estate of 'gift recipient' if dies first



# LIFE ESTATES

## Pros vs. Cons

- Avoid Probate
- Medicaid protection for house (\*5 year lookback)
- Inexpensive
- Maintain star exemption
- Less control
- If sold while life tenant receiving medicaid, proceeds not 100% exempt
- Capital gains tax if sold while life tenant is alive
- Can't revoke gift
- Only applies to one residence and not to substituted residence

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# NAMING BENEFICIARIES

## Pros vs. Cons

- Avoid Probate
- No cost
- Retain control
- No protection from Nursing Home



# IRREVOCABLE TRUSTS

## Pros vs. Cons

- Avoid Probate
- Medicaid protection (\*5 year lookback for institutional medicaid; 2 ½ year lookback for community medicaid)
- Retain life estate rights to real estate; retain income rights to investments
- Retain star exemption
- No capital gains tax if sold during life and life estate has zero value
- Step up in tax basis at death
- Possible to revoke gift
- Less control over principal



# IRREVOCAABLE TRUSTS

- Can change Trustee
- Can reserve right to change beneficiary
- NY allows trust amendment and revocation with consent of beneficiaries
- Reserve right to life estate in properties
- Reserve right to all income
- Income taxable to Grantor, no separate tax return necessary while Grantor alive
- Can allow for distributions to beneficiaries during trust term
- Can transfer real estate, cash, stocks, bonds, nonqualified investments



THANK YOU!

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