

Protecting the Family Treasure from the Devastating Costs of Long-Term Care

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“Planning Your Future for Peace of Mind Now”

Today's Agenda

- Planning for incapacity and what happens if there is no plan
- Protecting assets from the devastating cost of long-term care

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Things We Plan For

- Vacation
- Dinner with friends
- Birthday parties
- But ... what about our future care needs?

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Excuses to Justify Not Planning

- Long term care insurance is too expensive
- I'll use retirement since it will happen at the end of my life
- My kids say I don't need to plan, they'll take care of me.
- I'll move in with my daughter... I raised my kids so now it's time for them to take care of me.... she can quit her job and the government will help
- I'm going to live a long time and I won't need it
- No none in my family ever needed it

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How Much Does Long-Term Care Cost?

- Nursing home (private)
 - \$8,812 (month), \$105,850 (annual)
- Assisted living (private)
 - \$4,023 (month), \$48,270 (annual)
- Adult day-care
 - \$64 (day), \$320 (month) (daily rate times 5 days per week)
- Home health services
 - \$21 (hour), \$840 (month) (hourly rate times 44 hours per week)

Source: Genworth Cost of Care Survey 2015 (Florida)

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Key Questions

- Where do you want to live?
- Who would take care of you?
- How would you pay for it?
 - Self-insure
 - LTC insurance (traditional or hybrid)
 - Government benefits
 - VA
 - Medicaid

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What We Want to Avoid

- Running out of money
- Leaving assets unprotected
- Risking the health of spouse or family caregivers

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What We Want to Do

- Implement a legal plan to protect the assets and savings

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VA Long-Term Care Benefits

- WWII – 1,711,000 veterans
- Korean – 2,275,000 veterans
- Vietnam – 7,391,000 veterans

Source: U.S. Department of Veterans Affairs (2014 Fact Sheet)

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Types of VA

Long-Term Care Benefits

➤ Compensation

- Service connection (i.e. injured during service)
- Awarded based on severity of disability
- Not based on –
 - Income or assets
 - Length of service
- Analogy -- workers compensation

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Types of VA Long-Term Care Benefits

➤ Pension

- Disability benefit for wartime veterans
 - No service connection
 - Analogy -- supplemental security income (SSI)
- Veteran cannot receive compensation benefit and pension benefit at same time

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VA Pension Benefit

- Service requirements
 - Active duty
 - 90 days or more
 - 1 day during wartime
 - No need to be –
 - ✓ In combat
 - ✓ In-country
 - Other than dishonorable discharge
- Medical requirements
- Financial requirements

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How is VA Pension Benefit Paid?

- Monthly cash benefit

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How Big is the Need?

- 11,377,000 total veterans
 - 1,711,000 (WWII)
 - 2,275,000 (Korea)
 - 7,391,000 (Vietnam)
- Current recipients of VA pension benefits
 - 304,579 veterans
 - 200,832 surviving spouses

Source: U.S. Department of Veterans Affairs (2014 Fact Sheet)

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Types of VA Pensions

- Basic service pension
- Enhanced pensions
 - Housebound
 - Aid and Attendance
- Cannot get both allowances at same time

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Who is Entitled to VA Pension Benefits?

- Veterans (service pension)
- Surviving spouses (death pension)

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Medical Criteria

➤ Basic Service Pension

- Either
 - Age 65 or older
 - Under 65 and --
 - Permanently and totally disabled (100% rating)
 - Receiving nursing home care
 - Receiving SSDI

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Medical Criteria

➤ Homebound Allowance

- Must be disabled and confined to the home
 - Disability ratings often tied to ability to maintain gainful employment

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Medical Criteria

➤ Aid and Attendance Allowance (A&A)

- Veteran requires aid and attendance of another person
- A&A standard met if veteran either --
 - Is blind
 - Resides in nursing home
 - Is bedridden
 - Needs help with 2+ ADLs

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Financial Criteria

➤ Assets

- No set limit (subjective test)
 - Could veteran live off assets for reasonable period of time

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Financial Criteria

➤ Assets

- Factors considered by VA --
 - If assets can be converted to cash with little sacrifice
 - Life expectancy
 - Income
 - Number of dependents

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Financial Criteria

➤ Assets

- Over \$80,000 will likely be denied
- Under \$80,000 does not guarantee eligibility (soft limit)
 - \$20,000 is usually safe
- Assets of veteran and spouse are combined

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Financial Criteria

➤ Assets

- Assets not counted --
 - Primary residence and reasonable lot area
 - Household goods
 - Car
 - Burial plans

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Financial Criteria

➤ Assets

- What can be done with excess assets to qualify --
 - Make gift transfers
 - No transfer penalty
 - BUT ... BE CAREFUL ... WATCH OUT FOR MEDICAID
 - Pre-pay funeral/burial plan
 - Pre-pay facility for reasonable amount of time
 - Combination

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Financial Criteria

➤ Income

- Wages, interest, dividends, social security, IRA withdrawals
- Household income used
- Net income used
 - Gross income minus unreimbursed medical expenses (UME)

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Financial Criteria

➤ Income

- UMEs
 - Out-of-pocket medical expenses
 - Paid by or on behalf of veteran or spouse
 - Expenses must be unreimbursed and unreimbursable

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Financial Criteria

➤ Income

- UMEs must exceed income to get maximum benefit
- If income exceeds UMEs, benefit reduced \$ for \$
- “Income for VA Purposes” (IVAP) (gross income minus UMEs)
 - Goal is to have IVAP of \$0 or less

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How Does the IVAP Work?

- Example – Howard, age 84 and single, is Korean War vet. He is in ALF that costs \$3,500/month. His income is \$2,000/month.
 - IVAP is less than \$0 (\$2,000 minus \$3,500) ... negative IVAP
 - Howard gets maximum benefit without reduction
- Example – Howard is married. Combined household income is \$3,750/month. UMEs are \$3,250/month.
 - IVAP is \$500 (\$3,750 minus \$3,250) ... positive IVAP
 - Maximum benefit is reduced by \$500/month

Note: UMEs must exceed 5% of MAPR to be deductible

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VA Pension Benefit Figures

The Veteran

- Maximum benefit is called “Maximum Annual Pension Rate” (MAPR)
 - Basic Service Pension
 - \$1,075/month (single) (\$12,907/year)
 - \$1,408/month (married) (\$16,902/year)
 - Housebound
 - \$1,314/month (single) (\$15,773/year)
 - \$1,647/month (married) (\$19,770/year)
 - Aid & Attendance
 - \$1,794/month (single) (\$21,531/year)
 - \$2,127/month (married) (\$25,525/year)

Rates effective Jan. 1, 2017
Additional benefit for dependent child

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Gift Transfers

- Used to get rid of excess assets
- No transfer penalty
 - Caution – the ***Medicaid Trap!***
 - VA and Medicaid should be planned-for together
- Veteran must relinquish all rights of ownership (including the right to control and receive income)
- Transfer to a trust is an excellent planning technique
 - *Veterans Asset Preservation Trust (VAPT)*

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Surviving Spouses

- Death pension for surviving spouse
- Requirements
 - Basic pension –
 - Valid marriage at time of veteran spouse's death
 - No remarriage (with limited exception)
 - Deceased veteran spouse met service requirements
 - Surviving spouse meets financial requirements
 - Surviving spouse does not need to meet medical requirements
 - Enhanced pensions (Housebound or Aid & Attendance)
 - Surviving spouse must meet medical requirements
 - Deceased veteran spouse does not need to have met medical requirements

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VA Pension Benefit Figures

Surviving Spouse

- Maximum Annual Pension Rate (MAPR)
 - Basic Service Pension
 - \$721/month (\$8,656/year)
 - Housebound Allowance
 - \$881/month (\$10,580/year)
 - Aid and Attendance Allowance
 - \$1,153/month (\$13,836/year)

Rates effective Jan. 1, 2017
Additional benefit for dependent child

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Changes Are Coming

- New proposed rules introduced Jan. 2015
- If adopted, significant changes will occur, most notably –
 - Lookback period for transfers (3 years)
 - Specific net worth limit
 - Limits on UMEs
 - Penalty periods

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VA Planning and Qualification

- Families should work with trusted experts to --
 - Ensure they understand the VA pension laws
 - **Use VA-accredited attorney**
 - Develop a plan to protect assets so loved ones can qualify for VA pension without spending their life savings
 - Protect assets for the well spouse

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Medicaid

Changing Demographics

- 78 million baby boomers
- Baby boomers are turning 70 at the rate of 10,000 per day
- Persons over 65 total --
 - 45 million today
 - 56 million in 2020
 - 79 million in 2040
- The over-85 population is expected to triple by 2030

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Skilled Nursing Risk

- 70% of people over 65 will need some type of long-term care
- 43% of people over 65 will need skilled nursing care
- Current costs of skilled nursing care are expected to triple in the next 20 years

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The Alzheimer's Factor

- 1 in 8 people over age 65 have Alzheimer's
- Every 70 seconds, someone in America develops Alzheimer's

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Skilled Nursing Payment Options

Medicare

- Medicare pays for up to 100 days of SNF care if –
 - Discharged from hospital to SNF after 3-day stay
 - Client is receiving rehabilitation
 - Medicare will not pay for long-term care
- During the 100-day period, Medicare pays --
 - In full for first 20 days
 - Everything above \$99 per day co-pay for days 21-100
 - Medicare supplemental policy can help with co-payment

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Skilled Nursing Payment Options

Medicaid

- Medicaid Myths –
 - “It is illegal to give away your money”
 - “You can’t make any gifts within 5 years of applying”
 - “They will take everything including my house”
 - “They will go after my kids for the money”
 - “You cannot plan once you are in a nursing home”

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Six Major Rules of Medicaid

- (1) Residency
- (2) Medical Test
- (3) Income Test
- (4) Asset Test
- (5) Estate Recovery
- (6) Transfers of Assets

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Residency

- Must be Florida resident

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Medical Test

- Must be –
 - Age 65 or older
 - Need skilled nursing care
 - Exception – waiver programs

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Income Test

- Single applicant
 - \$2,205 income limit (2017)
 - If income exceeds limit, QIT required
 - All income flows through QIT and is paid out to facility except –
 - \$105/month personal needs allowance (2017)
 - Amounts needed to pay for uncovered medical costs (such as health insurance premiums, deductibles, co-pays)
 - Community spouse’s Minimum Monthly Maintenance Needs Allowance (MMMNA)
 - QIT established in month of application
 - QIT must be approved by the State
- Income = wages, pensions, dividends, annuity pmts., social security

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Income Test

➤ Community Spouse

- Income is not counted
- Allowed Minimum Monthly Maintenance Needs Allowance (MMMNA)
 - Minimum income allowable for community spouse
 - MMMNA = \$2,003/month (2017)
- If income is less than \$2,003/month, shortfall can be made up by allocating portion of applicant's income to community spouse
 - Means less of applicant's income gets paid to SNF

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Asset Test

- Single applicant --
 - \$2,000 of countable assets
- Community spouse –
 - \$121,220 of countable assets (2017)
 - Community Spouse Resource Allowance (CSRA)

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Asset Test

What is a Countable Asset?

- Bank accounts
 - Entire balance of joint accounts considered owned by applicant
- Cash value of permanent life insurance if face value is over \$2,500
- Qualified plans (IRAs, 401ks) if not in pay-out status
- Assets owned by the applicant's revocable living trust are still treated as countable assets

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Asset Test

What is an Exempt Asset?

- Home
 - Primary residence with intent to return
 - Equity value less than \$560,000 (2017)
 - Exceptions -- home is occupied by community spouse, child under 21, or blind/disabled child of any age
- Vehicles (2)
- Tangible personal property
 - Wedding and engagement rings of any value
 - Household goods and personal belongings up to \$2,000

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Asset Test

What is an Exempt Asset?

- Qualified plans (IRAs, 401ks) if in pay-out status
 - Distributions are income
- Prepaid funeral and burial plans for applicant and community spouse
 - Up to \$2,500 for revocable plan
 - Any amount for irrevocable plan
- Rental property
 - Rent treated as income

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Asset Test

What is an Exempt Asset?

- Medicaid-compliant annuity
 - Convert countable assets to income stream
 - Must be Medicaid-compliant
 - Immediate annuity
 - Irrevocable and non-assignable
 - State is designated as primary beneficiary to recoup benefits paid
- Can convert a countable IRA (i.e. one that is not in pay-out status) to an annuity (i.e. income stream)
 - Tax-free rollover

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Estate Recovery

- Medicaid files claim in deceased applicant's estate to recover cost of benefits paid
- Medicaid can only recover against "probate" assets
 - Homestead is not a "probate" asset if passed to spouse or descendants
- Medicaid cannot recover community spouse's assets

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Transfers of Assets

- Gift transfers trigger penalty period
 - 60-month look-back period
- Penalty period is not the same as the look-back period

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Transfers of Assets

- The following common transfers will cause a penalty period --
 - Annual gifting
 - Adding a child as joint owner of an account or real estate

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Crisis Planning

- Scenario
 - Client is in SNF or in a hospital soon to be transferred to SNF
 - Client is paying out-of-pocket for care
 - High stress situation for family and client
- Goal
 - Qualify for Medicaid quickly while protecting as many assets as possible

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Crisis Planning

Strategies to Become Medicaid Eligible

- Invest in exempt assets (i.e. home, car, burial plan, etc.)
- Enter in personal service contract
- Make exempt gift transfers
 - Transfer home or other assets any asset to community spouse

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Crisis Planning

Strategies to Become Medicaid Eligible

- Spend down
- Annuity + gift strategy
 - Convert some of assets into income stream (annuity)
 - Gift other assets
 - Outright gift vs. trust
 - Medicaid Asset Preservation Trust
 - Applicant gives up right to principal and income
 - Children often serve as trustees and beneficiaries
 - Advantages
 - Beneficiary creditor protection
 - Tax benefits (basis step-up, Sec. 121 exclusion)
 - Homestead preserved
 - Indirect use of trust funds

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Proactive Planning

➤ Scenario

- Client has no immediate health crisis
- Protect some assets now
- Hope to beat 5-year clock

➤ Prototypical client

- Sam, age 70, has recently retired
- Sam is in relatively good health, owns his home outright, and has \$350,000 in liquid assets
- Sam can either be married or single
- Sam has only done basic estate planning – has not talked with anyone about long-term care

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Proactive Planning

➤ Strategy

- Transfers into irrevocable trust
 - Medicaid Asset Preservation Trust
 - Medicaid Family Protection Trust
 - Focuses on legacy planning and beneficiary asset protection
 - Also works as Medicaid planning tool if needed

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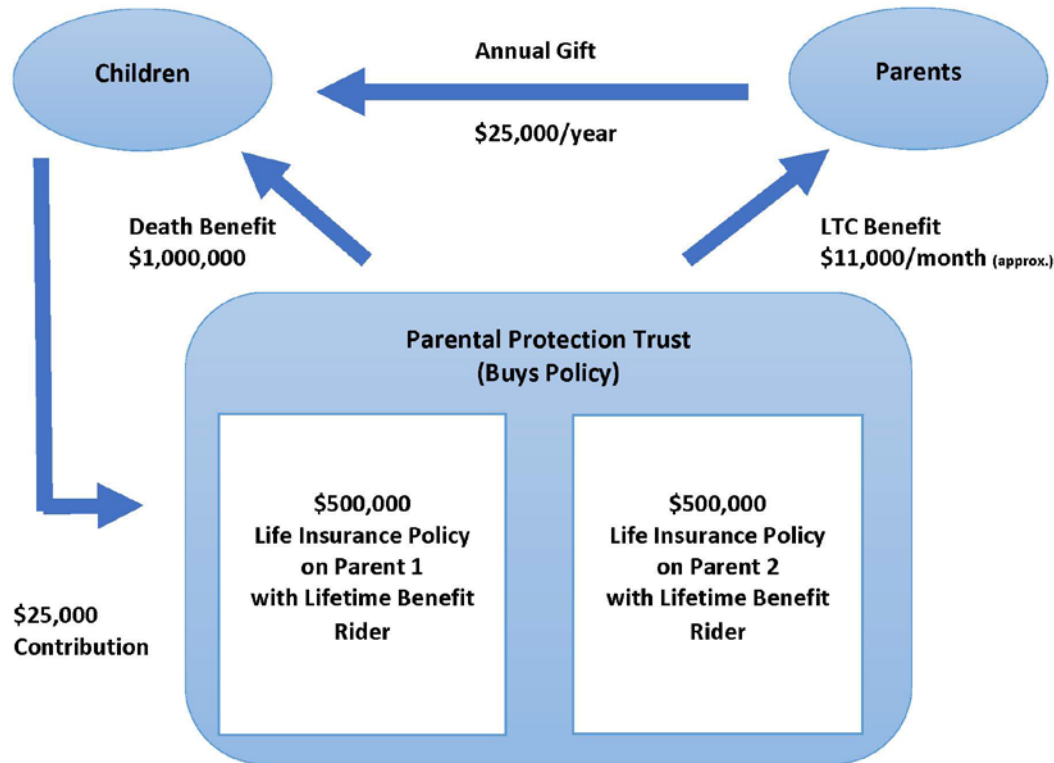
Proactive Planning

➤ Parental Protection Trust

- A type of 3rd party special needs trust
- Created by children fbo parent(s)
- Children are trustees
- Trust funded by children with gift from parent(s)
- Trustees use gifted money to buy life insurance policy with LTC rider
 - Separate policy for each parent
 - LTC rider must be indemnity-based
- Trust pays LTC benefit to parent(s) if needed for LTC
- Unused death benefit is payable to trust at death of parent(s) and stays in trust fbo children

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Parental Protection Trust



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Medicaid and VA Planning

- Families should work with trusted experts to --
 - Know and can explain the Medicaid and VA pension laws
 - Develop a plan to protect assets

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Where Elder Law Attorney Comes In

- Make client aware of the benefits
- Compare VA and Medicaid benefits
- Help client qualify financially
- Help client get medical documentation to qualify medically
- Implement planning recommendations
- File application
- Help client with overall estate planning (will, trust, power of attorney, healthcare directive)
 - Medicaid and VA planning is NEVER done in a vacuum

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Planning is Critical

- The client has worked hard for what they have
- Long-term care costs could wipe out everything a client has saved during their lifetime
- There are ways within the law to prevent that from happening

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Planning is Critical

- Absence of good planning risks --
 - Losing control of your future
 - Spending more money than necessary
 - Having fewer assets to leave to loved ones
 - Missing opportunities for benefits
 - Lacking peace of mind

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Summary

- Create a plan for your future
- Don't wait ... start now

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Summary

➤ Just don't be



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Thanks for coming!
Any Questions?



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