

Elder Law and Special Needs Planning

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Some Myths to Explore

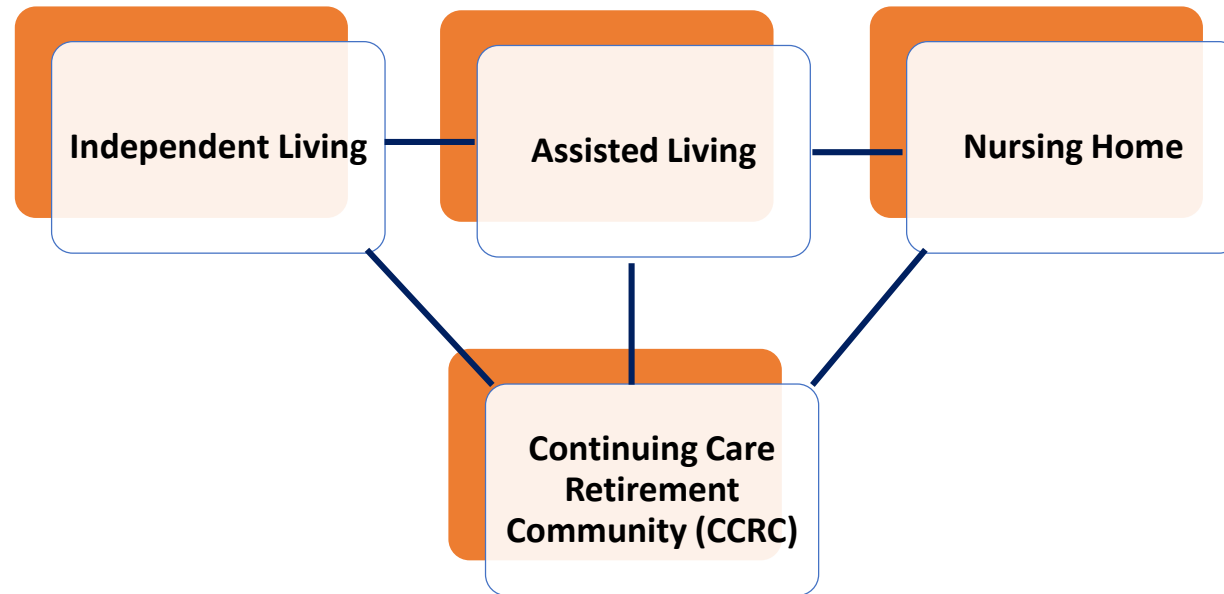
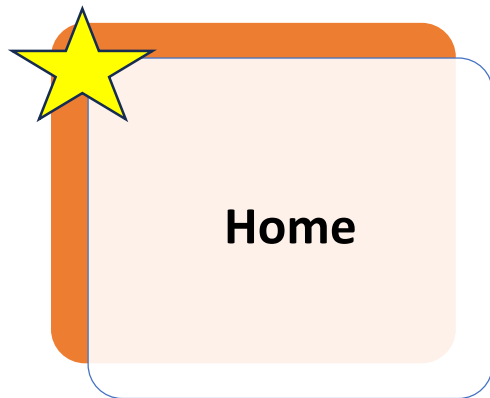
- It won't happen to me
- Medicare will pay most of my long-term care costs
- I can probably self-insure
- My spouse and I can divorce
- I'll wait until I'm "old"
- I can just disinherit my disabled child
- If I do create a SNT, I can name my other children as trustees

What is Long-Term Care?

Long-term care involves a variety of services designed to meet a person's health or personal care needs during a short or long period of time. These services help people live as independently and safely as possible when they can no longer perform everyday activities on their own.

- Acute v. chronic illness
- Heart bypass surgery v. Alzheimer's Disease
- Often no expectation of recovery

Long-Term Care Places



Paying for Long-Term Care

- Private Pay
- LTC Insurance
- Veterans Benefits
- Medicare
- Medicaid

Long-Term Care Insurance

- Covers the cost of long-term care
- Pays for custodial care
- Rigorous physical and cognitive exam
- Benefits based on daily rate; policy maximum
- Inflation rider
- Elimination period
- Benefits – remain in home, preserve assets, greater independence
- Drawbacks – affordability, increasing prices, failure to pay premium, carrier viability

Veterans Benefits

- Aid and Attendance
 - Single Veteran benefit \$2,229/mo.
 - Surviving spouse of Veteran \$1,432/mo.
 - Need 1 of following:
 - Assistance with ADLs;
 - Spend large portion of the day in bed because of illness;
 - In nursing home due to the loss of mental or physical abilities related to a disability; or
 - Blind or nearly blind.
- Housebound:
 - Single Veteran benefit \$1,633/mo.
 - Surviving spouse of Veteran \$1,095/mo.
 - Permanent 100% disability; substantially confined to home

Veterans Benefits

Must meet all of following requirements:

- Discharge other than dishonorable
- Limited income and net worth is less than \$150,538 (not including home or car)
- Served at least 1 day during wartime
- Age 65 or older, or permanent and total disability, or in a nursing home for long-term care because of a disability, or receiving SSI or SSDI

Medicare

Eligibility and enrollment

Parts A, B, “C” and D

- Part A: Hospital coverage and nursing care
- Part B: Outpatient medical insurance
- Part C: Advantage plans
- Part D: Drugs

Medicare

- Medicare Part A only pays for rehabilitation services in a skilled nursing facility and some home health care
- 3 consecutive night hospital stays (not observation status)
- Nursing home admission within 30 days for same condition for which you were hospitalized

Medicare

- Does not pay for non-skilled assistance of ADLs, which make up majority of long-term care services
- Maximum of 100 days, however, average is 22 days
- Days 1-20, no copay
- Days 21-100 \$200/day copay (some Medigap plans cover)

Medicaid

- General medical vs. long term care
- Payer of last resort
- Federal/state program - administered through state and county agencies
- Federal minimum standards, but states allowed flexibility
- Access to desired facility

Medicaid – Resource and Income Limits

- Applicant:
 - Nonexempt assets: \$2,000 – \$30,182 (\$130k in California!)
 - Monthly income: \$50 – \$2,742
 - Exempt assets
 - Home equity \$688,000 - \$1,033,000
 - Funeral/burial agreements
 - Retirement accounts (if in payout status and not all states)
- Spouse:
 - Community Spouse Resource Allowance (CSRA) \$29,724 – \$148,620
 - Minimum Monthly Maintenance Needs Allowance (MMMNA) \$2,288.75 – \$3,715.50

Medicaid

- Trusts (revocable vs. irrevocable)
- Gifts
- Spenddown
- Look back and penalty period
 - 60 months, penalty period starts when you are in the nursing home and otherwise eligible for Medicaid but for the asset transfer
 - Exempt transfers (spouse, disabled child)
- Estate recovery

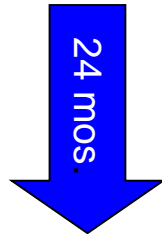
Americans with Disabilities

- More than 56 MILLION Americans living with a disability
 - Mental
 - Cognitive
 - Physical
 - 19% of U.S. population
- 1 in 6 (or about 17%) of children ages 3 to 17 have one or more developmental disabilities
- 1 in 44 children have autism
 - (1 in 27 boys and 1 in 116 girls)

Understanding Maze of Public Benefits

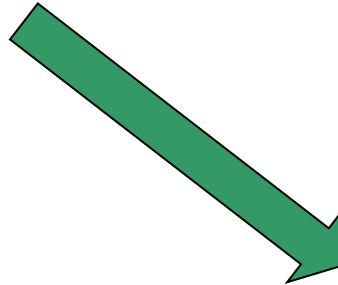
- **Social Security Disability Insurance (SSDI)**

- Unable to perform SGA (\$1,470/mo)
- No asset test
- Based upon own work history – OR
- Retirement, disability or death of parent and disability onset before age 22



- **Medicare**

- General medical
- Premiums, co-payments and deductibles



- **Supplemental Security Income (SSI)**

- Asset limit of \$2,000 and
- Income (\$914 MFBR)
 - Food and shelter
 - In-kind Support and Maintenance (\$304.66)
 - Some state supplements



- **Medicaid**

- Except for 209(b) states
- Often necessary for state-funded residential and day programs

Types of Special Needs Trusts

- First-party (“self-settled” “d4A” or “payback”)
- Third-party
- Sole benefit
- Testamentary for Spouse
- Qualified income (“Miller” or “d4B”)
- Pooled (“d4C”)

First-Party SNTs

- 42 USC 1396p(d)(4)(A)
- Strict definition of disability applied
- Inheritance, personal injury award, child support
- Established by parent, grandparent, individual, court or beneficiary themselves
- Under age 65
- Medicaid payback
- Grantor Trust

First-Party SNTs

- Structure settlement annuity
 - Tax free payments over a defined period
 - Unsophisticated trustee
 - Upfront cash needs; anticipated monthly/yearly expenses
 - Commutation clause upon death – protect Medicaid's interest
- Ongoing oversight
 - Court
 - Medicaid
 - Annual accountings
- Who is the Trustee?
 - Corporate trustee field is dwindling
 - Unsophisticated beneficiaries and families; bonding requirement
 - Unreasonable demands
 - Trustee resigns

Third-Party SNTs

- Discretionary, non-support, no HEMS
- No age requirement
- No Crummey withdrawal rights
- No payback (client chooses remaindermen)
- Testamentary vs. Lifetime (revocable vs. irrevocable)
- Trustee selection

Third-Party SNTs

- Allocation of estate assets
 - Retirement vs. nonretirement assets
 - LIFE INSURANCE
- Coordinate beneficiary designations
- Coordinate with other relatives' planning
- Taxation
 - Grantor Trust
 - Complex
 - Qualified Disability Trust

SECURE Act

- Stretch IRA gone except for certain beneficiaries
 - Maximum 10-year payout
- EDBs – life expectancy payout still available
 - Spouse
 - Disabled individual
 - Chronically ill individual
 - Individual who is within 10 years of age
 - Minor child until age 21 (then 10 year rule applies) – grandchild not included
 - 10 year rule applies upon death of EDB

Third-Party SNT as IRA Beneficiary

- Accumulation trust (not conduit)
- No distributions to anyone other than the disabled/chronically ill individual during lifetime (no pot trust)
- No required distribution
- Payment/reimbursement to third party OK
- Charity may be remainder beneficiary (not DAF or PF)

Supported Decision Making (SDM)

- Alternative to guardianship
- Look at least restrictive alternative
- Common misconception that all individuals with cognitive disabilities need court-appointed guardians
- Right to make own decisions is critical to autonomy
- Individual with disability selects advisors or supporters to help gather information, make and communicate decisions
- Individual does not give up right to make his own decisions
- Can be used in conjunction with advance directives
- Many states have adopted SDM legislation

Supported Decision Making Agreement

- Areas of support needed - financial, health care, living arrangements, etc.
- Who will provide support - trusted people in that person's life
- Type of support needed - gathering information, weighing alternatives, consequence of decisions, communicating to others
- How support will be provided - in person, Facetime, text, group meetings, etc.
- Acceptance by third parties who might otherwise refuse to deal with someone, or question such person's ability to enter into a contract
- Advance directives still needed



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Thank you