PLANNING FOR PUBLIC BENEFITS

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Goals

- Discuss care and planning options
- Provide an overview of government benefits programs
- Discuss special needs trusts and other planning techniques

Care Options

- Home Care and Independent Living
  - Senior Apartments
  - Part-Time Caregivers
  - Full-Time Caregivers
- Assisted Living
  - Personal Care Home
  - Living with Family
  - Assisted Living Center
- Nursing Home

Financing Long-Term Care

Three ways to pay for long-term care

1. Private Pay
2. Long-term care insurance
3. Government Benefits
   - Medicare
   - Medicaid
   - VA Benefits

Types of Public Benefits

MEANS-TESTED

- Supplemental Security Income (SSI)
- Medicaid

NON-MEANS TESTED

- Social Security Retirement and Survivors Benefits
- Social Security Disability Income (SSDI)
- Medicare

Medicaid Overview

- Several different types of Medicaid programs in Texas – each with different qualification requirements
- Steps can be taken within the law to qualify for Medicaid benefits

NURSING HOME MEDICAID IS THE MOST COMMON BENEFIT PROGRAM IN TEXAS

Medicaid Eligibility Requirements

1. Categorical Requirements
2. Resource Limits
3. Income Eligibility Test

Categorial Requirements

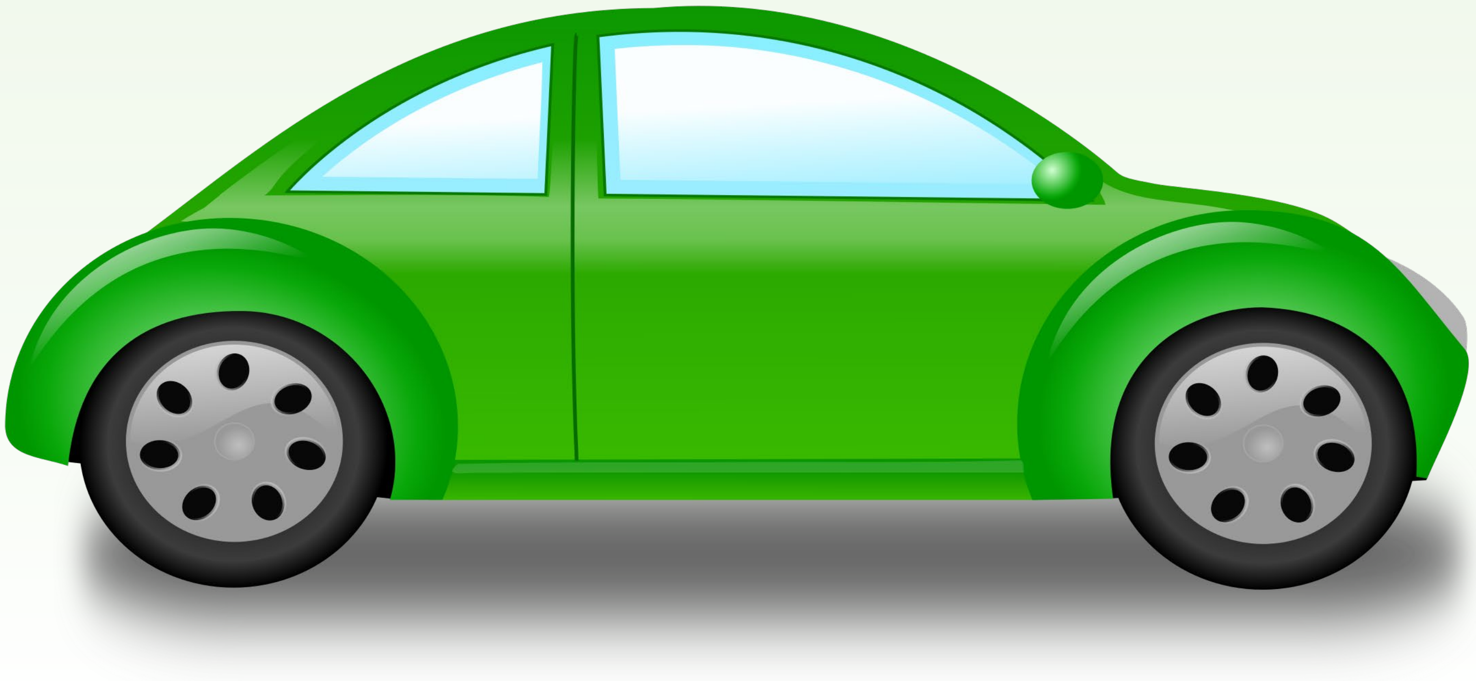
- U.S. Citizen/resident alien
- Texas resident
- 65 years old, blind or disabled
- Medical necessity test
- Medicaid facility
- Medicaid bed

Resource Limits

- $2,000.00 in countable resources for individual or one spouse applying (if both in a facility)
- $3,000.00 in countable resources for couple applying
- More generous allowances for spousal impoverishment (i.e. one spouse in the nursing home, one spouse at home)
  - $125,420.00 (maximum)
  - $25,284.00 (minimum)
  - Can expand the protected resource amount
- Countable vs. Exempt resources

EXCLUDED RESOURCES

EXCLUDED RESOURCES



EXCLUDED RESOURCES

- Burial spaces for applicant and certain family members
- Business Property
- Irrevocable pre-need funeral contract
- Life insurance (up to $1500 per person)
- New Rules for IRAs!!!!

Excess Resources

- Whether single or married, excess resources may be spent down, transferred (with limitations) or converted to an exempt form.
- Spousal impoverishment adjustments
- Strategy must fit the circumstances

Basic Planning Techniques

- Transfers – BE CAREFUL!!!!!
- Converting or establishing resources as exempt or inaccessible
- Increasing protected resource amount for Community Spouse
- Application of valuation techniques
- Identifying and utilizing obscure rules or benefits

Transfer Reporting Requirement

- Transfers can incur a penalty period and/or may fall under a criminal statute
- 60-month look-back period
- Transfers include gifts to charities and children!!!!!!

Income Eligibility Test

- Texas is an “income cap state”
  - Single Applicant - $2,313.00
  - Married applicant, with one spouse applying - $2,313.00
  - Married applicants, both spouses applying - $4,626.00
- Name on the check rule

WHAT HAPPENS IF YOU ARE OVER THE INCOME CAP?

The Miller Trust

- Miller Trust or Qualified Income Trust (“QIT”) is a device that solves the income problem
- Makes is possible for an individual who is over the income cap to qualify for Medicaid benefits
- Only for certain long-term care programs

How the Trust Works

- Income is directed each month to the QIT. All income received by the trust is not considered countable income.
- Reduces "countable" income to an amount that is within the income cap
- Does not reduce the amount of the co-payment to the facility/provider
- Only makes an individual eligible for Medicaid benefits

Miller Trust Limitations

- Trust must contain a Medicaid pay-back provision (Exception Trust)
  - When the Medicaid recipient dies, all amounts left in the trust up to the total amount of medical care paid by Medicaid are paid to the state
  - However, there is often very little left in the trust for Medicaid to collect
- Income only trust – does not solve excess resources issue
- Resources cannot be placed in a QIT, except for a nominal amount necessary to set up the account

Medicaid Estate Recovery Program

- Effective March 1, 2005
- Applies to Medicaid long-term care recipients, age 55 or over, who initially applied for Medicaid after March 1, 2005
- Exceptions to Medicaid estate recovery:
  - Surviving spouse
  - Disabled child
  - Unmarried child living in the home for 1 year prior to death
  - Child under the age of 21

STEPS CAN BE TAKEN TO AVOID ESTATE RECOVERY

Special Needs Trusts

- Trust that contains provisions to ensure that the beneficiary remains eligible for public benefits
- Not a support trust – “supplemental, not supplant”
- Distributions can be made for any purpose, other than food and shelter
- Care must be given to distributions to ensure that the distribution does not result in a reduction or elimination of public benefits

Types of Special Needs Trusts

SELF-SETTLED

- 42 U.S.C. §1396p(d)(4)(A)
- Funded with beneficiaries own money
- Must contain a pay-back provision to the state of Texas
- Only for individuals under the age of 65

THIRD-PARTY

- Testamentary or Inter Vivos Trust
- Funded with money from person other than the beneficiary
- No pay-back provision
- No age limit

Special Needs Trust v. ABLE Account

- ABLE accounts are similar to 529 college savings accounts
- No more than $15,000 per year in contributions (third-party and self-settled)
- Mandatory pay-back (even for 3rd-Party funds)
- Now available in Texas!!!!!!
- Used as a savings account and funds in the ABLE account are not considered a countable resource for eligibility purposes
- Use in connection with special needs trusts

Other Important Documents

- Statutory Durable Power of Attorney
- Medical Power of Attorney
- HIPAA Authorization
- Advance Directive to Physicians
- Last Will and Testament

Planning Techniques

- Spouses
  - Partition Agreements
  - Testamentary Trusts
  - Transfers between spouses
- Children with Special Needs
  - Testamentary Trusts
  - Discuss care options

Conclusion

- Carefully review all income and asset information when advising clients on long-term care needs
- Discuss the availability of public benefits and the potential for spend down techniques for excess resources
- Discuss a special needs trust, ABLE account or both
- Don’t assume that a client won’t qualify for benefits because of high resources, especially if the client is married