


**Elder Law Boot Camp
for CPAs**


Presented by
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**Case
Study 1
Mary Smith**

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If crisis occurred would you qualify for Medicaid?

Meet Mary Smith (daughter)

- Parents Assets = \$430,000
 - House \$150,000
 - Car \$ 10,000
 - Cash \$ 120,000
 - Stocks/Inv \$ 150,000

Mom has to go into a nursing home.

- How much did Mary think they would lose?
- What did Mary's lawyer tell her?
- What did we tell her?




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Case Study 2

The Richards

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What if you plan now (healthy)?

Meet Mr. & Mrs. Richards (Age 75)

- Assets = \$627,000
 - Home \$175,000
 - Cash \$152,000
 - Car/Misc \$ 25,000
 - Stocks/Inv \$275,000

If they give assets away now, how long will it be until they could qualify for Medicaid?


Could they protect their assets sooner?



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**Case
Study 3**


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**Managing
Incapacity**


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Recognizing & Managing Incapacity


- Legal definitions of capacity
- Recognizing incapacity
- Legal implications of dementia



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**Power of Attorney:
In-Depth**


- New CT legislation effective date was 10/1/2015 NOW 10/1/2016
- changes POA execution rules:
 - Need two (2) witnesses
 - If notarized acts as guarantee of valid signature

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**Power of Attorney:
In-Depth (CONTINUED)**


- New POA legislation – is presumed durable
- Special rules for gifts
- Specifying powers
- Revocation

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**Power of Attorney: In-Depth
(CONTINUED)**


- Third party liability
- Third party immunity
- Compensation
- 2 statutory forms
- Out-of-state POAs

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Conservatorship Process


- Voluntary (CGS § 17a-646) v. Involuntary (CGS § 17a-648)
- Important: In CT, you can execute ahead of time a written nomination of who to serve as conservator if needed and/or argue there is no need for a conservator at all due to adequate estate planning! (CGS § 17a-645)



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Conservatorship Process (CONTINUED)

- Petition
- Hearing
- Medical testimony
- Attendance of alleged incapacitated person
- ALSO, the alleged incapacitated person needs their own attorney!



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Using a Trust


- Managing incapacity
- Trustee & successors



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Advance Directives

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Types of Advance Directives

- Health Care Directive
 - Appointment of Health Care Representative
 - Living Will
- DNR/Out of Hospital DNR
- MOLST (Medical Orders For Life-sustaining Treatment)
- Informal Health Care Decision Making

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Statutory Support for Advance Medical Directives (C.G.S. § 19a-575)

- Any person over the age of 18 can execute a document addressing directions for medical treatment, including withholding or withdrawal of medical treatment
- Must be signed, dated, with at least two (2) witnesses

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CT Statutory Advance Medical Directive Forms


- Statutes provide several sample forms:
 - Appointment of Health Care Representative and Living Will combined (C.G.S. § 19a-575); or
 - Appointment of Health Care Representative only (C.G.S. § 19a-577)
- **Declarant can, but does not have to, use statutory forms**



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Health Care Representative defined (C.G.S. § 19a-570(5))


- "Health care representative" means the individual appointed by a declarant pursuant to an appointment of health care representative for the purpose of making health care decisions on behalf of the declarant



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Living Will

- **Document can be personalized, but generally will declare if the condition is deemed terminal or person will be permanently unconscious, declarant wishes to be allowed to die and not to be kept alive through medical support systems.**
 - "Terminal condition" means the final stage of an incurable or irreversible medical condition which, without the administration of a life support system, will result in death within a relatively short time period, in the opinion of the attending physician (C.G.S. § 19a-570(11)).
 - "Permanently unconscious" means an irreversible condition in which the individual is at no time aware of himself or herself or the environment and shows no behavioral response to the environment and includes permanent coma and persistent vegetative state (C.G.S. § 19a-570(10)).



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When is a HCPOA and/or Living Will operative?
(C.G.S. § 19a-579)

- Document is furnished to attending physician; and
- Attending physician determines declarant is incapacitated.
- Also, once so determined, physician must disclose in writing upon request of named representative

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	HCPOA	Living Will	DNR
Who may create?	•18+, emancipated minor, married or high school grad •Capacity	•18+, emancipated minor, married or a school grad •Capacity	Individual with end stage medical condition or their HC representative
Who signs?	Principal	Principal	Physician
Who may revoke?	Principal with capacity	Principal with or without capacity	Principal with or without capacity
When effective?	Upon Incapacity	End-stage medical condition only	When cardiac or respiratory arrest
Binding on medical personnel?	Yes* (provider may object)	Yes* (provider may object)	Yes
Binding on emergency personnel?	No	No	Yes (out of hospital DNR)

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Who makes decisions?

	End Stage Medical Condition	Life Threatening, but Treatable	General Health Care Decisions
Patient	Yes	Yes	Yes
Health Care Representative*	Yes	Yes	Yes
Conservator	Yes	Yes	Yes

* In CT, a physician's opinion that the declarant is incapacitated is needed before the Health Care Representative has legal authority to act
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Issues with Advance Directives


- Compliance
- Revocation
- Countermanding decisions of the agent



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Medicaid for Long-term Care


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Medicaid

- Established in 1965 along with Medicare
- Federal Program
- Administered by states



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Medicaid Eligibility Criteria

- Citizen, CT resident
- 65+, blind or disabled
- Medically eligible
- Assets <\$1,600

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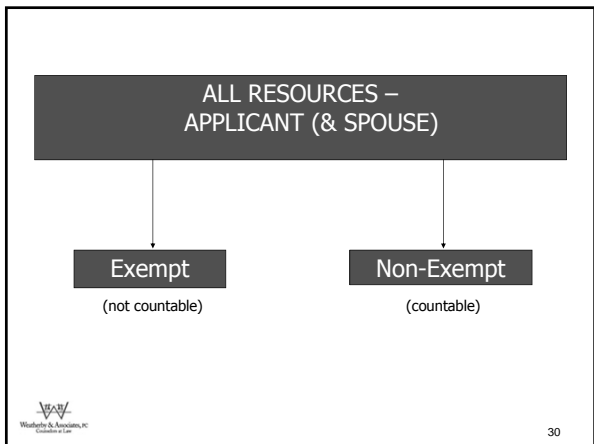
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After Qualification

- Program pays for nursing facility care, or
- CT Home Care Program for Elders
- Recipient's income paid to nursing facility, except for:
 - \$60/month, personal needs allowance (in CT)
 - Health insurance premium
 - Income to spouse, if applicable
 - Other deductions may apply


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Common Exempt Resources


- Residence (maybe)
- Property – Trade or Business
 - Essential to Self Support
- Non Business property
 - Essential to Self Support
- Household Goods/Personal Effects
- Motor Vehicle



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Common Exempt Resources (continued)


- Life Insurance Policies – face value up to \$1,500
- Term Insurance
- Burial Spaces
- Irrevocable Burial Reserve plus “soft goods”



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Asset Transfers


- Exempt
- For value
- Gifts



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Common Exempt Transfers


- To spouse, or to another for sole benefit of spouse
- To child if disabled, under 21 or blind
- House to caregiver child or sibling of applicant with equity interest in residence



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Transfers for Value

- If legitimate and not exorbitant, no period of ineligibility
- Examples: nursing care, living expenses prior to admission, legal fees
- Purchases of exempt resources




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Gifts in General

Definition

- **transfer of asset**, by applicant or spouse, for less than fair market value
- Period of ineligibility may be imposed if made within look-back period




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Gifts Period of Ineligibility

Calculation:


- Amount gifted ÷ penalty divisor = months and days of ineligibility
- 2016/2017 divisor in CT is \$12,388 (may increase July 1)



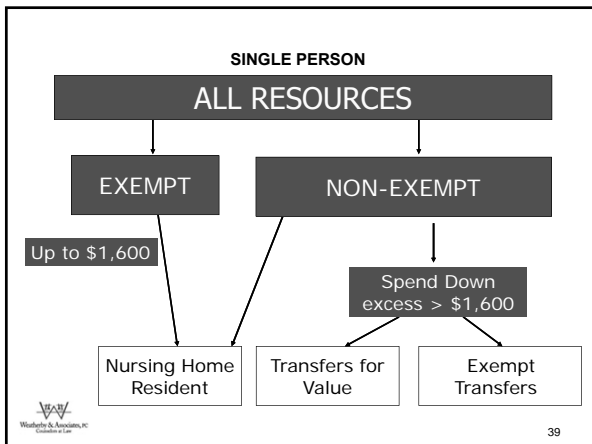
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Look-Back Period

- Depends on date when application for benefits is filed
- 60 months
 - (1) transfers to trust or
 - (2) transfers to individual made on or after February 8, 2006




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**Community Spouse
Resource Allowance (CSRA)**


- An amount of resources allowed for CS use = 1/2 non-exempt resources
- Subject to (in CT):
 - Minimum \$24,180
 - Maximum \$120,900

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**Monthly Maintenance
Needs Allowance (MMNA)**


- An amount of income allowed for CS = 150% of federal poverty level for family of two + an excess shelter allowance
- Current numbers (in CT) for 2017:
 - Minimum - \$2,002.50
 - Maximum - \$3,022.50

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MMNA (CONTINUED)

MMNA may exceed the maximum if CS has "exceptional circumstances resulting in significant financial duress."
Requires a fair hearing.
C.G.S. Sec § 17b-261(g)


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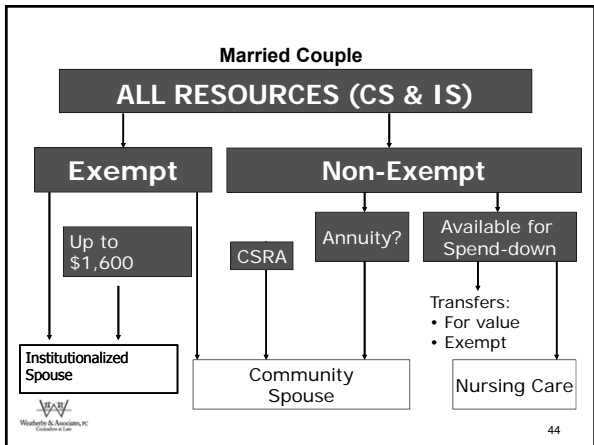
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Medicaid Compliant Annuity

- DSS will approve purchase of annuity for community spouse if:
 - Irrevocable and Non-Assignable
 - Pays out equal payments over life expectancy of annuitant
 - DSS must be named remainder beneficiary at least to extent benefits were paid

See CT DSS UPM Sec. 3029.12


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Example

1. Mary and Bob in assisted living.

Monthly living expenses: \$5,500

Mary's income: \$1,600/month


Bob's income: \$2,100/month


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Case Study Facts (CONTINUED)

2. Bob's Alzheimer's condition worsens,
moved to nursing unit
New monthly expenses:


Mary:	\$ 3,120
Bob:	<u>\$13,500</u>
Total Expenses:	\$16,620

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Case Study Facts (CONTINUED)

3. Non-exempt resources:
\$190,000

4. Projected survivor income:
\$2,300/month
(If Bob Dies)

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**Scenario #1 –
No Planning or Appeal**

Result:

1. CSRA \$ 95,000.00
MMNA \$ 3,022.50

2. Denial due to excess resources


3. After excess is spent, Mary and Bob
reapply.

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**Scenario #1 –
 No Planning or Appeal** (CONTINUED)

4. CS approved income:

- Mary's income \$1,600.00
- Interest on CSRA \$ 118.75
 (\$95,000 @ 1.5% ÷ 12)
- Income from Bob \$1,122.25
- \$2,841.00




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**Scenario #1 –
 No Planning or Appeal** (CONTINUED)

5. Mary's income if Bob dies


- Survivor income \$2,300.00
- Interest on CSRA \$ 118.75
 (diminishing)
-
- \$2,418.75



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Scenario #2 – Help With Rules

- Assume Medicaid compliant annuity paying \$820/month would cost \$68,000.
- The couple uses excess resources to purchase such annuity with \$68,000, naming Mary as the owner.
- Remaining \$48,000 spent down (or not).




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Scenario #2 – Help With Rules
 (CONTINUED)

Result:

1. CSRA \$95,000.00
2. MMNA \$ 3,022.50*


*Presumes the facts allow us to qualify for the maximum. Many times it is not possible to get the maximum.



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Scenario #2 – Help With Rules
 (CONTINUED)


3. CS approved income:
 - Mary's income \$1,600.00
 - Interest on CSRA \$ 118.75
 (\$95,000 @ 1.5% ÷ 12)
 - Annuity Income \$ 820.00
 - Income from Bob \$ 581.25
 - \$3,120.00



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Scenario #2 – Help With Rules
 (CONTINUED)

4. Mary's income if Bob dies
 - Survivor income \$2,300.00
 - Annuity income \$ 820.00
 - Interest on CSRA \$ 118.75
 - \$3,238.75



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Resources Subject to Estate Recovery

- Probate assets
- Life insurance payable to estate
- Other Sources
 - Legally Liable Relative

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Other Public Benefits

MEDICARE • SOCIAL SECURITY DISABILITY •
SUPPLEMENTAL SOCIAL SECURITY • VA BENEFITS

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**I.
Medicare**

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Medicare defined


- Federal government health care program
- Provides coverage for:
 - People 65 years old and over
 - Disabled persons

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Medicare Basics

TRADITIONAL MEDICARE OR MEDICARE ADVANTAGE PLAN


<p>Part A Part B</p> <p>ADD DRUG COVERAGE?</p> <p>Part D: Prescription Drug Coverage</p> <p>ADD SUPPLEMENTAL COVERAGE?</p> <p>Medicare Supplement Insurance: (Medigap Policy)</p>	<p>Part C: Combines Part A, Part B & <u>usually</u> Part D</p> <p>(Part C is like an HMO or PPO)</p> <p>ADD DRUG COVERAGE?</p> <p>Part D: Prescription Drug Coverage (Most Medicare Advantage Plans cover prescription drugs. You may be able to add drug coverage in some plan types if not already included.)</p>
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A Word about Skilled Nursing

Jimmo vs. Sebelius Settlement:

Services are coverable by Medicare if the services are needed to maintain the individual's condition, or prevent or slow their decline

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Paying for Long-Term Care

- Medicare (limited)
- Private pay from assets/income
- Long-term care insurance
- Veterans Benefits
- Medicaid

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Long Term Care Insurance

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Long Term Care Insurance

- Traditional Policies
 - Partnership
- Life Insurance Based Policies
- Annuity Based Policies

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**Veterans
Aid & Attendance Benefits**



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Who's eligible?

- Veteran
- Widowed spouse
- Dependent or disabled child




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A: Military Service Requirements

#1: 90 Days active duty service

#2: 1 Day during wartime

#3: Other than dishonorable discharge



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B: Care Needed Requirements

- Need assistance with 2 or more Activities of Daily Living (ADLs):
 Bathing / Showering ▪ Dressing ▪ Eating ▪ Toileting ▪ Incontinence ▪ Walking ▪ Transferring ▪ Supervision To Prevent Injury, Wandering, Or Falls

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2016 "Maximum" Rates

Single Veteran	\$1,788 per month	\$21,466 per year
Married Veteran	\$2,120 per month	\$25,447 per year
Widowed Spouse	\$1,149 per month	\$13,794 per year
Vet married to Vet	\$2,837 per month	\$34,049 per year

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Getting Help


- Service organization
- Accredited Agent
- VA accredited attorney

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■ QUICK RECAP



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**Caregiver
Support**


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Caregivers


- Two classes of caregivers
 - Family Caregivers
 - Third Party



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Caregiver Agreements


- An agreement between caregiver(s) and care recipient to provide care and/or lodging for care recipient.



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Valid Caregiver Agreements

- Written
 - rebuts presumption done out of love and affection
- Fair consideration (a/k/a compensation)
 - for Family Caregiver Agreement compare services and housing to community rates (local SNFs ALFs, HHAs)
- Specify Services
- Length of Services
- Executed by both parties
 - DSS: wants to see that actual care recipient signed Family agreement; not POA if POA is also a caregiver



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**Caregiver agreements
used to qualify for benefits**

A. Medicaid Spend-down
Spend down while waiting to become Medicaid financially eligible and apply for lower level CTHCPE program while completing spend down.
Make lump sum payment even if medically eligible for Medicaid home waiver services, but transfer deemed gift. Started clock running on ineligibility period and possible still get some CTHCPE benefits.

B. Veterans Benefits
Personal caregiver agreements create legitimate UME and may help qualify vet for VA aid and attendance benefits

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**Estate Planning to Address
Elder Law Issues**

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ESTATE PLANNING


- Preserving & Protecting
- Transfers
- Tax planning

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**ESTATE PLANNING
CHALLENGES**


- Last through retirement
- Avoid loss & depletion
- Pay for care
- Avoid undue influence
- Legacy

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ESTATE ASSET PLAN DOCUMENTS


- Will = probate
- Revocable trust
- Irrevocable trust
- Special needs trust

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WHY IRREVOCABLE?

- VA
- Medicaid

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Steve & Sue Estate

Home	Stocks (Investment Accounts)	IRA	Cash/bank accounts
\$200,000	\$150,000	\$100,000	\$150,000

Total Estate \$600,000

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If Care IS Needed
Best Case Scenario

One needs care, the other is at home
(Assume \$600,000 Estate with no pre-planning)

SAVE		\$322,500 Protected
Medicaid Applicant	\$1,600	
Spouse (CSRA)	\$120,900	
House (exempt)	\$200,000	
Total Protected	\$322,500	\$277,500 At Risk

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If Care IS Needed
Other Scenarios

- Single Medicaid applicant; or
- Surviving Spouse needs care; or
- Both spouses need care

(Assume \$600,000 Estate with no pre-planning)	SAVE	SAVE
	Single Medicaid Applicant	Both are Medicaid Applicants***
	\$1,600	\$2,400
	\$1,600 Protected	\$2,400 Protected
	\$1,600	\$2,400
	\$598,400 At Risk	\$597,600 At Risk

*** CT Medicaid rules provide the limit is only \$2,400 for both members of a couple applying for Medicaid, not \$1,600 for each


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Using Irrevocable Trusts

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What goes in the Irrevocable Trust?


IN TRUST(S)	AMOUNT
House	\$200,000
Investment Accounts	\$150,000
Cash/bank account(s)	\$100,000
NOT IN TRUST(S)	AMOUNT
IRA	\$100,000
Cash/bank account(s)	\$50,000

How much should go into the Irrevocable Trust and how much to leave out?

How much cash should be left outside of the Irrevocable Trust?
 The amount should be a conservative estimate of how much will be needed to pay anticipated expenses over the upcoming five (5) year period after the trust is funded. We have used **\$150,000** in this example to keep outside the trust.

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With Planning, If Care IS Needed

Best Case Scenario:
 One needs care NOW, other stays healthy


ASSETS

Put into trust (house, investments, and cash accounts)	\$450,000
Medicaid applicant (exempt)	\$1,600
Maximum Spend-down after Medicaid application	(\$27,500)
Spouse's Medicaid CSRA (IRA + other assets)	\$119,220
Total Protected	\$570,820
Total Spent	\$27,500

Assumes \$600,000 not otherwise spent during 5 year Medicaid look back period

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With Planning, If Care IS Needed


Other Scenarios:
•Single / Survivor needs care OR both need

Single applies Medicaid		Both apply Medicaid	
In Trust	\$450,000	In Trust	\$450,000
Single Medicaid applicant (exempt)	\$1,600	Both apply Medicaid (exempt)	\$2,400
Total Protected	\$451,600	Total Protected	\$452,400
At risk	\$148,400	At risk	\$147,600

Assumes \$600,000 not otherwise spent during 5 year Medicaid look back period




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Compare No Planning to Irrevocable Trust Planning

Best Case Scenario

No Pre-Planning	vs.	<u>With</u> Trusts
\$320,820 Protected		\$570,820 Protected
\$279,180 At Risk		\$29,180 At Risk




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Compare No Planning to Irrevocable Trust Planning

Other Scenarios


No Pre-Planning	vs.	<u>With</u> Trusts
\$1,600 / \$2,400 Protected		\$451,600 / \$452,400 Protected
\$598,400 / \$597,600 At Risk		\$148,400 / \$147,600 At Risk




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Asset-Based Long Term Care to Protect IRAs


Patty (age 63)




\$250,000
IRA



\$370,000
Checking/CD's



\$300,000
Stocks & Bonds




✓ **Patty is recently widowed**
 ✓ **Never wants to go into Nursing Home**

These examples are hypothetical, and are not intended to provide a recommendation for any specific financial product, nor is this information intended to be used as the sole basis for financial decisions, nor should it be construed as advice designed to meet the particular needs of an individual's situation.


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Patty's Strategy




\$250,000

Transferred
From IRA





\$480,000
Partially Tax-Free
for LTC
Or at Death



By transitioning her money...

\$9,600 monthly benefit is paid partially Tax-Free for:

- ✓ Home Health Care
- ✓ Assisted Living
- ✓ Skilled Care
- ✓ 100% Full Refund of Premium

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WHY IRREVOCABLE?

- Scams
- Undue influence
- Creditors
- Lawsuits
- Beneficiary problems
 - (Divorce, Bankruptcy, Lawsuits)

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WHY IRREVOCABLE? (CONTINUED)

- Preferable to gifting
 - Control – who gets what, and when; retained powers
 - Income
 - Protection from beneficiaries losing it
 - Tax advantages
- More user-friendly these days (NOT YOUR GRANDFATHER'S TRUST)

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Supplemental Needs Trusts

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Funding a Supplemental Needs Trust

FIRST PARTY SETTLED


- Use the disabled individual's own funds
 - Examples: Personal injury settlement, any money accumulated prior to disability
- If funds are from an inheritance a Payback may be required before formation of SNT
- Payback Required
- Court approval required with continued court supervision

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Funding a Supplemental Needs Trust

THIRD PARTY SETTLED


- Use the funds of anyone but the disabled individual
 - Examples: parents and other family members, birthday gifts
- No Payback Required - Settlor can control disposition upon death of disabled individual



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When can I create a SNT?


<p><u>INTERVIVOS</u></p> <ul style="list-style-type: none">■ During the settlor's lifetime<ul style="list-style-type: none">■ All FP settled SNTs are intervivos	<p><u>TESTAMENTARY</u></p> <ul style="list-style-type: none">■ By will<ul style="list-style-type: none">■ Created to protect the inheritance of a disabled person
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Important Technical Requirements


- Governed by Federal Laws and Regulations
- Limited Purpose – “supplement not supplant”
- Sole Benefit Requirement
- Irrevocable
- Distribution Standards



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**Proposed
Solution to
Case Study 1
Mary Smith**

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**If crisis occurred would you
qualify for Medicaid?**

Meet Mary Smith (daughter)

- Parents Assets = \$430,000
 - House \$150,000
 - Car \$ 10,000
 - Cash \$ 120,000
 - Stocks/Inv \$ 150,000

Mom has to go into a nursing home.


- How much did Mary think they would lose?
- What did Mary's lawyer tell her?
- What did we tell her?



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**Proposed
Solution to
Case Study 2**

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What if you plan now (healthy)?

Meet Mr. & Mrs. Richards (Age 75)

- Assets = \$627,000
 - Home \$175,000
 - Cash \$152,000
 - Car/Misc \$ 25,000
 - Stocks/Inv \$275,000

If they give assets away now, how long will it be until they could qualify for Medicaid?
Could they protect their assets sooner?



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Mr. & Mrs. Richards: Protection Plan

Total assets at risk (no plan) \$624,000

- With plan
 - Immediately Protect \$294,324
 - 24 months after the plan is in place and still healthy we begin to protect additional assets at the rate of \$12,950 per month until month 60
 - If a crisis strikes one spouse we can speed up the plan and protect \$624,000 immediately for the well spouse

After month 60 it's... Its All Safe!


even when both need care
We all have our OWN Numbers!



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**Proposed
Solution to
Case Study 3**

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Thanks for Attending!
Questions?

Please Complete:

- Evaluation Form