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ESTATE AND LONG TERM CARE PLANNING

Presented by: Sarah E. Heck, Attorney at Law

This information is being presented on March 14, 2020. Laws change constantly, and the information in this outline should not be assumed to be correct on any date hereafter. No person should undertake any of the planning strategies or transactions discussed in this presentation without first consulting with an experienced elder law attorney.

1. Financial Powers of Attorney

- <u>Absolutely critical</u> for avoiding restrictive guardianships and allowing trusted persons to make financial and legal decisions in the event of impairment/incapacity.

- Necessary powers to allow for effective long-term care and estate planning include gifting, loaning assets, establishing irrevocable trusts, and making TOD designations.

- Powers should take effect immediately without the need for medical certification of incapacity.

2. Transfer on Death Deeds/Do I Need a Trust?

- Trusts are no longer the only way to avoid probate.

- When considering a trust, ask: What is the goal of the trust? Possible reasons for using a trust include protecting minor or disabled beneficiaries, preventing assets from depletion by beneficiaries, legacy planning for important assets, and promoting an orderly process for estate settlement.

- <u>Most situations do not require a trust.</u> Use TOD/POD beneficiary designations to simplify estate distribution and avoid probate without using a trust.

- Transfer on Death Deed—allows property owners to designate beneficiaries for real estate and avoid probate.

3. Overview of Medicaid for Long Term Care—Pt. 1—Basic Eligibility Rules

- No income limit for Medicaid for long term care. This is a common misconception. Having too much income is not a basis to deny coverage for nursing home care.

- Asset limits: $2,000 for person in nursing home; $3,000 for married couple in nursing home. If there is a spouse at home, spouse can keep half of "countable assets" up to approximately $126,000.

- State does not "take" assets. If an individual is over the asset limit, Medicaid simply will not cover cost of care.

- In general, all assets are counted. Exceptions:

  --Home and all other real estate in sole name of at-home spouse
  --Retirement accounts (IRA, Roth, 401(k), etc.) in sole name of at-home spouse (this policy may be changing, but we don't know right now)
  --One vehicle
  --Most tangible personal property, jewelry, furnishings, etc.

- Spouse at home can "spend down" non-exempt countable assets by loaning assets, purchasing prepaid funeral, purchasing vehicle, repairing/improving home.

- Spouse at home can keep all his/her monthly income. All income of person in nursing home except $52 must go to the facility. Exception: in some cases, spouse at home can be allocated a portion of nursing home spouse's income.

- If applicant is single, some assets can be gifted, with the rest held in reserve to pay for care during the penalty period.

- "Waiver" services—Medicaid will pay for in-home care or assisted living. Must meet all financial eligibility criteria and work with CICOA to assess care needs and develop plan of care.

4. Overview of Medicaid for Long Term Care—Pt. 2—Protecting Assets

- Transferring assets subject to **five-year lookback**. If transfer occurred within the lookback, a penalty will be imposed and Medicaid coverage for LTC will be denied.

- Transfer can be made to an irrevocable trust to protect assets from exposure to transferee's liabilities.

- Exceptions:

  --Transfer to minor or adult child who is on SSI or Social Security disability
  --Transfer of home to child who has been living with and caring for the parent for two years such that parent avoided nursing home placement.

- Other ways to protect assets:

  --Personal Care Agreement.
  --Purchase of life estate in child's home.
  --Create a testamentary trust for spouse who may need LTC in future.