

January 20, 2015:

Financial Planners & Medicaid

Daniel Timins, Esq., CFP®

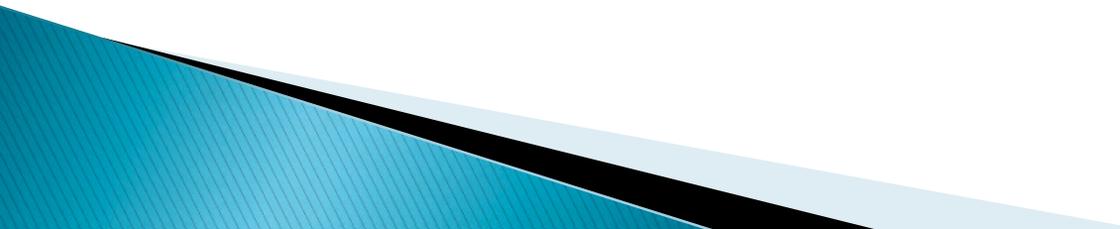
dan@timinslaw.com

450 7th Avenue, Suite 1500

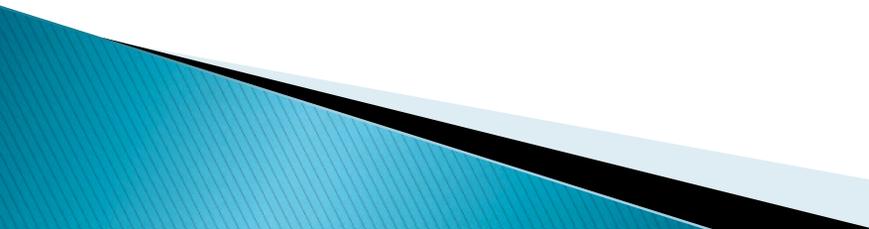
New York, NY 10123

(212) 683-3560

Disclaimer

- ▶ All information contained in these pages is for informational purposes only. It should not be considered legal advice. Please consult an attorney before taking any steps based on this information.
- 

Medicaid: Why Should Planners Care?

1. Clients are asking about it
 2. Children are demanding it (for parents)
 3. Preserves wealth for another generation
 4. Allows the Planner to:
 1. create a relationship with the children
 2. maintain AUM for another generation
- 

MEDICAID

- ▶ A government program that pays for people needing help with ADLs
- ▶ Reminder: NOT Medicare
 - MEDICARE:
 - An “Entitlement Program” – you paid for it, you get it
 - Pays for HEALTH care
 - MEDICAID:
 - A “Needs Based Program”
 - “Means Tested” must meet asset & income limitation requirements

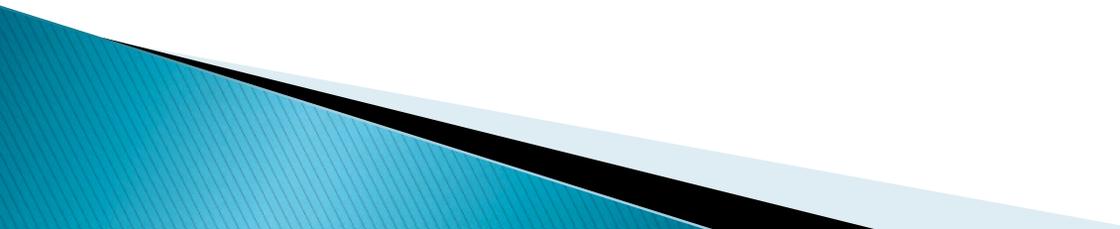
The Need: Activities of Daily Living

▶ ACTIVITIES OF DAILY LIVING (“ADLs”)

- Transferring (I.e. Walking)
- Bathing
- Dressing
- Eating
- Continence
- Toileting



How is the Planner Still Relevant?

1. Proper income generation still required
 2. Knowledge of Basis / Capital Gains taxes is more important than ever
 3. Identifying ALL of the assets is ESSENTIAL
 4. Identifying ALL of the gifting is ESSENTIAL
- 

Types of Medicaid

The type of Medicaid benefit you receive determines “look back” periods (I.e. the penalty for transferring assets)

Home / Community Care

Personal care, physical therapy, home health care and home health aid services; clinical or out-patient basis; includes physicians, dentists, pharmaceutical, nursery



Institutional

Hospitals, medical facilities, nursing homes



Financial Eligibility Requirements for an Individual

ASSETS

\$14,850 in the recipient's name

EXCEPTIONS:

- "Burial Allowance" of \$1,500
- Life Insurance: \$1,500 cash value
- Personal Property (unlimited)
- Client's House (ONLY for Home & Community care)
- Supplemental Needs Trusts
- Medicaid Trusts
- Retirement Plans (IRAs) are exempted from assets if they are in "payout status" (Required Minimum Distributions or Separate and Equal Periodic Payments if recipient is under age 59 ½), in which case payments are included in Income

MONTHLY INCOME

HOME CARE: \$825 per month

- Any excess income must go to the recipient's "SPEND DOWN"

INSTITUTIONAL (at a Nursing Home): ALL of the recipient's monthly income in excess of \$50 must be paid to the NH to offset Medicaid payments



Transfer Penalties

Department of Social Services and Medicaid impose a “Lookback Period” for transferring assets outside of the proposed recipient’s name

Home & Community Care 3 MONTH Lookback

One Strategy:
Transfer all financial assets (except \$14,850) to a non-spouse, wait one month for bank statements to be updated, then apply for Home Care.

DOWNSIDE: If the recipient needs Nursing Home care the 5 Year Lookback rule applies

Nursing Home

5 Year Lookback Period, and the Homestead can be attached by Medicaid

EXAMPLE: In January, 2011 Mary transfers her Coop and most of her assets to her son Joe (total of \$280,000), and applies for Home Care. In March 2015 Mary goes to a Nursing Home. She failed to make the 5 year Lookback (4 years & 2 months). Nursing Home Care in Manhattan equals approximately \$12,000 per month.

$$\frac{\$280,000 \text{ (amount gifted)}}{\$12,000 \text{ (monthly benefit)}} = 23.3 \text{ MONTH "Penalty Period"}$$

Medicaid will not pay Mary’s Nursing Home benefits for 23 months. ..and Joe is liable. Joe should have paid for Mary’s care for 10 more months to get through Mary’s Lookback Period.

MEDICAID TRUSTS

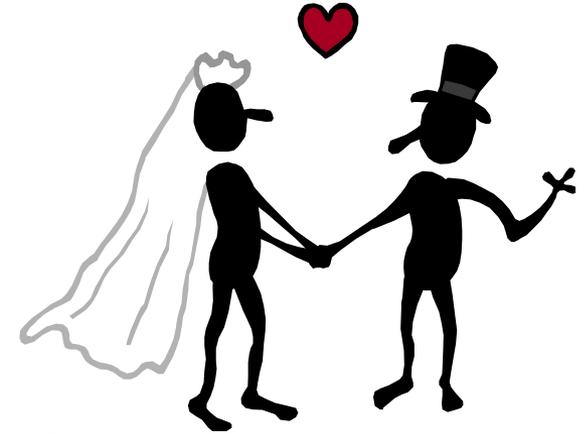
- ▶ Elder client is Beneficiary / Creator, child(ren) is the Trustee
- ▶ NO principle can be distributed, income distributions are optional
 - A pure “Asset Transfer vehicle”
 - Perfect for illiquid assets, such as real estate
- ▶ Look-Back Period still applies
 - Does NOT work at the last minute – need to plan
- ▶ Step-up in basis is maintained at client’s death
- ▶ Assets are protected from client’s creditors
- ▶ Deed & account changes required; separate tax return may be needed for invested assets

Other Planning Options

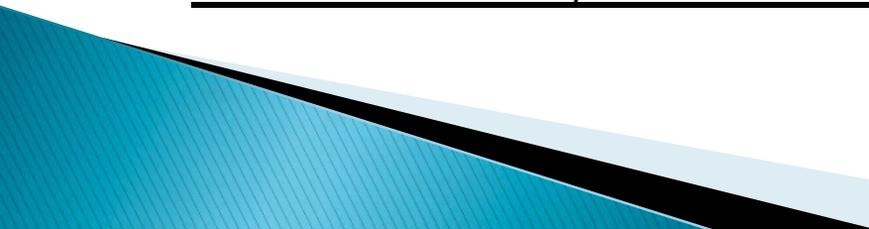
- ▶ For 3rd Party Money (Ex: Parent's \$)
 - Inter Vivos Supplementary Needs Trusts
 - Testamentary SNTs (in Will)
- ▶ For 1st Party Money (the Recipient's \$)
 - Pooled Trusts (payback provisions apply)
 - Inter Vivos SNTs (payback provisions apply)
 - Promissory Notes (protects 40%–45%)

What About the “Well” Spouse?

- ▶ The “Community Spouse” is entitled to some assets and income, but they are limited
- ▶ If spouse is in a Nursing Home:
 - \$2,931 of income per month
 - \$74,820 – \$117,240 of resources
- ▶ If spouse has Home Care:
 - Combined income of \$1,192 per month
- ▶ During the Medicaid Application process the well spouse may exercise a “Spousal Refusal” to avoid inclusion of his/her assets and income
 - Medicaid may accept this, but will have a claim against the well spouse when he/she dies
- ▶ New “Spousal Impoverishment” rules avoid liens



Tips for “Older” / Sick Clients

- ▶ Execute POAs & HCPs early
 - ▶ Gift early / Fund Trusts early
 - ▶ Pre-pay burials
 - ▶ Look into child / sibling care givers for homestead exemption
 - ▶ Look at disabled parent / child pairs
 - ▶ Fund IRAs / Retirement as much as possible
- 

Reminder: What Does NOT Work

- ▶ Roth IRA Conversations do NOT avoid RMDs / 72t SEPP
 - STILL have to take RMDs
- ▶ Commercial Annuities are HORRIBLE for Medicaid Planning (unless in IRAs)
- ▶ Large cash values in Life Insurance policies are also bad – \$1,500 limit

YIKES! Care Givers

- ▶ An Employee?
 - You “Hire” someone at 30 Hours Per Week
 - Need Worker’s Comp
 - Withhold for Payroll Taxes
 - Should have a Time Card

- ▶ If You Don’t...
 - Worker’s Comp can GET YOU
 - IRS / NY Tax authority can GET YOU
 - Care Giver can GET YOU

BEWARE! (Caregiver Buzz Words)

- ▶ “This is a family friend”
- ▶ “She only accepts cash”
- ▶ “We pay her under the table”
- ▶ “Mom doesn’t like _____”
- ▶ “We have known her forever”
- ▶ “A friend recommended her”
- ▶ “She can work 24 / 7”

Care Giver Prep

1. Hire an OUTSIDE Social Worker
 - Not biased toward care hours
2. Use an AGENCY for Care Givers
3. IF you choose an unlicensed Care Giver:
 - Background Check!!!
 - Do ALL things on prior page
 - Keep receipts: Care may be Tax Deductible
 - Do NOT pay cash