ELDER LAW PRE-PLANNING

I. WHAT IS MEDICAID AND WHO DOES IT HELP?

A. Medicaid is a wide-ranging, jointly funded state and federal health care program for families and individuals of all ages who qualify. There are a few different types of Medicaid programs.

1. In-Home Care (Pace and Michigan Waiver).

2. Nursing Home Care.

B. Qualifications.

1. Asset Level Test.

a. The method or process of transferring (or spending) an applicant's assets to get to Medicaid qualifying asset level. Countable assets include cash, stocks, bonds, investments, credit union, savings, and checking accounts, and real estate in which one does not reside.

i. As of 2020, the individual asset limit is $2,000.00.

ii. As of 2020, a married couple's asset limit is $128,640.00.

2. Income Level Test.

a. The method or process of transferring (or spending) an applicant's income to get to Medicaid qualifying income level. For Medicaid eligibility purposes, any income that a Medicaid applicant receives is counted. This income can come from any source, such as employment wages, alimony payments, pension payments, Social Security Disability Income, Social Security Income, IRA withdrawals, and stock dividends.

i. Michigan has no income cap.

3. Exemptions.

a. For Medicaid eligibility, there are many assets that are considered exempt (non-countable). Exemptions include personal belongings, household furnishings, an automobile, certain irrevocable trusts, and one's primary home, given specific criteria is met.

b. The home is exempt if the Medicaid applicant resides in it or has "intent" to reside in it in the future, and his / her equity interest in the home is not more than $595,000 (in 2020). (Equity interest refers to the amount of the home's value owned by the applicant.)

c. If a non-applicant spouse lives in the home, it is also exempt, and this holds true regardless of where the applicant resides or the applicant's equity interest in the home.

C. 5 Year "Look Back."

1. The period of time Medicaid will look at all financial records of the Medicaid applicant. The look back period begins on the look back date.

2. The look back period is sixty (60) months.

D. Estate Recovery.

1. Michigan is one of the few states where they do not automatically place a lien on your home when you apply for Medicaid. Estate recovery only occurs when you go through probate. If you avoid probate, you avoid estate recovery.

II. WHEN DO YOU NEED LONG-TERM CARE PLANNING?

A. When you have lost the ability to do 3 ADLs (Activities of Daily Living).

1. Bathing

2. Dressing

3. Using the toilet

4. Transferring (to or from bed or chair)

5. Ambulation

6. Eating

B. How to pay for long-term care.

1. Private pay

2. Friends and family

3. Long-term care insurance

4. Medicaid

III. HOW ASSET PROTECTION PLANNING CAN PROTECT YOU

A. Living Trusts.

1. Revocable Living Trusts

a. Avoid probate

b. Private matter

c. Planning flexibility

d. Asset protection for beneficiaries

2. Irrevocable Living Trusts.

a. Asset Protection Trust

i. Avoid probate

ii. Private matter

iii. Planning flexibility

iv. Assets protected for you **and** your beneficiaries from long-term care costs, law suits, creditors and bankruptcy.

B. Asset Protection Trust.

1. The purpose of an Asset Protection Irrevocable Trust is to keep the principal that is transferred to the trust protected from creditors, predators, and long-term care costs. By transferring assets to the irrevocable trust, the Grantor gives up no management control over those assets. Trust assets included in the Grantor's estate at death receive a full step-up in basis to beneficiaries.

2. The trust has been created to be a "grantor trust" pursuant to Sections 671, et seq., of the Internal Revenue Code. As a grantor trust, all income and expenses of the trust will pass through the Grantor during their lifetime, meaning they will

be responsible for paying the income taxes on the trust income, whether or not the income is distributed to them. The Grantor can also retain rights to modify certain aspects of this trust.

3. The Grantors can also be the trustees of their trust during their lifetime. The key benefits of letting them be trustees, and the ones most important to clients, are that they can maintain the ability to control the assets, continue to manage the investments of the assets, and keep them in the form they are currently in or change them as they desire along the way. Once the Grantors have passed, then their successor trustee steps into their shoes to administer the trust.

4. Until the Grantors pass away, the trustee is authorized, but not required, to use the income from the trust for the best interests of the Grantor, and the income and principal of the trust for the best interests of their beneficiaries, and their issue, in the trustee's discretion. (Please note that trust assets may be distributed to beneficiaries who are not in being at the time the trust is created.) It is important to know that the principal cannot be distributed to any Grantor, but can be distributed to their beneficiaries during their lifetime.

5. Think of it this way, if the Grantors can get to the assets so easily, so can others. Each Grantor shall have the lifetime power effective at any time to: (1) appoint the entire principal and any accrued and undistributed net income of the trust, and (2) change the beneficiaries, amount, bequests and/or the timing, manner or method of distribution as they may wish.

C. Crisis Planning.

1. There are still assets that can be protected if someone is already in a long-term care facility, depending on the asset level. This is called Crisis Planning.

D. Example:

1. Mr. and Mrs. Richards Pre-Planning with Asset Protection Trust.

2. Total assets at risk (with no plan) is $577,000. If they Pre-Plan with an Asset Protection Trust, they immediately Protect $449,000. The balance is at risk, but only for 37 months. After 37 months, they can start protecting $3,459/month until month 60, when it's all protected, all $577,000 from long-term care costs.