

Elder Law: Planning Your Legacy Now



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Disclaimer: This presentation and information in it is for educational purposes only and is not legal advice. If you want to know how it impacts you specifically, you should speak with an attorney directly.

Presenter Biography



Kevin Horner is an associate attorney with Galligan & Manning. He has practiced elder law, estate planning and estate administration for over 10 years and is admitted to practice law in four states. He has presented extensively on these topics to clients and other professionals in seminars, public presentations, audio shows, radio and video segments at Kevin's Korner and on the Galligan & Manning Youtube channel.

Topics to Cover

- ▶ What issues do elderly clients face ? Aging, disability and protecting your legacy
- ▶ Long-Term care planning and how to pay for it
 - ▶ Private pay (you... or maybe family?)
 - ▶ Private insurance (will it be enough and can you get it?)
 - ▶ Medicaid or other government benefits



Why Focus on Elder Law Now: Aging

- ▶ As of 2016, actuary mortality tables showed increased longevity for 65 year-olds:
 - ▶ 65 Year Old Males = 21.6 years to age 86.6
(up from 19.6 years; 10.4% increase)
 - ▶ 65 Year Old Females = 23.8 years to age 88.8
(up from 21.4 years; 11.3% increase)
- ▶ In 1965 average life expectancy for a male was 66.8; for a female it was 73.7
- ▶ Average life expectancy currently is 78.6 years

More Statistics

- Baby Boomers began turning 70 in 2016 at the rate of 10,000 per Day – in 2017 they're were 78 million ages 53 to 71
- In 2020 there will be 56 million seniors
- In 2040 there will be 79.7 million seniors
- By 2050, the U.S. Census Bureau predicts there will be 86.7 Million citizens age 65 and older living in the U.S. – 21% of the total population



What Problems Does Aging Present?

- Diminished health or ability to care for yourself and your finances
 - Can be addressed through estate planning techniques
- Health concerns and preferences
 - Have a conversation with your loved ones now so they know your wishes in advance

What Problems Does Aging Present?



- ▶ Clients live longer than ever, but are they prepared to face the challenges of living into their 80's, 90's and 100's?
- ▶ A major study suggested that almost 70% of individuals 65 or older would need a long-term care stay at some point in their lives
- ▶ In 2017, the national median cost for a private room in a skilled nursing facility was \$97,455, or about \$8,000 per month. The average stay is slightly more than two years.
- ▶ In Texas, the current average is approximately \$6,000 per month

Impact on Caregivers

- ▶ 1 in 5 Adults is a caregiver of an older American
- ▶ Women in particular are at risk
- ▶ Health risks: Increased stress, anxiety and dementia, high blood pressure and increased risk of heart disease
- ▶ Cost to caregiver affects their own long-term care planning
- ▶ Further, with changing demographics, you may not have local caregivers and be forced to hire professional services

Where to Live?

► Stay at Home

- Most people prefer this until health dictates otherwise
- Who will provide occasional care? Family? Professional care giver?

► Independent Living/Personal Care

- May be a facility with many residents, senior apartments, etc.
- Residents have little to no medical need

► Assisted Living

- Residents need help with some activities of daily living
- Memory Wards are typically assisted living

► Skilled Nursing Facility

- Highest level of medical assistance, require medical supervision

Long-Term Care: How Do We Pay?

- Self Insure (Private Pay)
- Private Long-Term Care Insurance
- Government Benefits Programs Available?
 - Medicaid
 - Possibly Veterans' Benefits



How Do We Pay?: Self Insure

- ▶ Some states require family to contribute or pay for care if the applicant can't, Texas is considering it
- ▶ With changing demographics you have to plan beyond Social Security
- ▶ Continuing Care Retirement Communities
 - ▶ Pay a large buy-in amount that has a refund
 - ▶ Pay monthly and the site has a continuum of care that allows you to age in place

How Do We Pay?: Long-Term Care Insurance

- Long-Term care insurance
 - Potentially a great option, if affordable
 - Typically pays a daily amount towards care once health conditions are met and waiting period expires
 - Can be very affordable if obtained early enough
 - Partnership Program Policy
 - Joint effort by insurance companies and Texas to offer a long-term care policy
 - When the policy is exhausted, assets are disregarded for Medicaid purposes

Medicare v. Medicaid

Medicare

- ▶ Medicare is an entitled federal healthcare insurance program which most people enroll in when they reach age 65
 - ▶ May be available younger based upon disability
- ▶ Because it is an entitlement program, clients do not need to be financially eligible for it
- ▶ Medicare has multiple parts which pay for expenses such as extended hospital stays, hospice and some nursing homes for a limited time to rehabilitate from health concerns
- ▶ NOT DESIGNED FOR LONG-TERM CARE

Medicare v. Medicaid Cont.

Medicaid

- ▶ It is a joint federal and state program that offers a variety of benefits to eligible individuals, including discounted health insurance, disability coverage, long-term care and more
- ▶ In Texas, over 4 Million people use Medicaid benefits of some type
- ▶ Medicaid provides extensive long-term care benefits and is the primary government benefit for nursing home care
- ▶ The financial requirements for Medicaid are very strict, so in order to utilize benefits, clients must carefully follow the financial guidelines and properly plan.

Texas Medicaid Programs

► Community Based Services

- Medically require help with two or more Activities of Daily Living (ADL's)

► Star Plus Waiver

- More substantial care in residence, personal care, adult foster care or assisted living
- Has a substantial waiting list. Consider getting on waiting list before you need it?
- Medically require help with two or more ADL's

► Skilled Nursing Home

- Must need greater medical care than an untrained individual can provide and require a licensed nurse
- Pays for medical care in nursing home with the applicant paying a co-pay

Texas Medicaid Financial Eligibility (as of 2019)

| | Income Limit | Asset Limit |
|---------------------------------|--|--|
| Single Applicant | \$2,313 per month | \$2,000 countable assets |
| Married (one spouse applying) | \$2,313 per month with spousal allowance | Up to \$126,420 of countable assets, with planning |
| Married (both spouses applying) | \$4,626 per month | \$3,000 countable assets |

Income: Is There Ever Too Much?

- In Medicaid, too much income is not often a problem
- What is income?
 - Income of the applicant specifically
- Also, if one spouse is applying, there is a spousal community allowance for the well spouse
 - Applying spouse may transfer income to community spouse so they receive up to \$3,160.50



What Assets Count?

| Countable | Exempt |
|---|--|
| Cash | Residence (up to \$585,000 equity for single applicant) |
| Checking and savings Accounts | 1 vehicle |
| Mutual funds/money market accounts | Personal property and effects (clothing, furniture, etc) |
| Life insurance with cash value in excess of \$1,500 | Retirement funds (if over 70½ and in payout status) |
| Stock, shares or interests in businesses (LLC's, Corp. etc) | Term or burial life insurance |
| Other financial accounts that have cash value | Certain irrevocable burial plans and contracts |
| Anything held for investment purposes | Burial plots for certain family members |
| Generally an asset is countable unless an exemption applies | Jointly owned property you can't sell without undue hardship |
| | Property essential to self-support (e.g. a business) |

Note: Definitely not an exhaustive list and many have limitations!

The Dreaded 5 Year Look-Back

- Medicaid reviews transactions made in the 5 years prior to an application for Medicaid
- Transfers for less than full value are deemed gifts (unless exempt)
- If you make gifts within that time period, you are assessed an eligibility penalty equal to the value of the gifts divided by a penalty
- Some transfers are excluded, such as transfers between spouses and de minimis transfers

Medicaid Estate Recovery

- ▶ Medicaid is entitled to reimbursement for the benefit amount it provided you from your probate estate as required by Federal law
- ▶ This claim is a priority claim paid before your beneficiaries receive their share (with some exceptions)
- ▶ When you are allowed so few assets, what is even left?
 - ▶ The HOUSE!
 - ▶ Cars or personal property
 - ▶ Other exempt assets

Potential Solutions: Income

- ▶ Despite the income cap rule, there are ways to reduce income and become eligible for most Medicaid benefits
 - ▶ Miller's Trust or a QIT (Qualified Income Trust)
 - ▶ It allows you to become income eligible by redirecting the monthly income in excess of the limit to the trust
 - ▶ Utilize as much of the community spouse allowance as possible

Potential Solutions: Assets

- ▶ For asset techniques especially, BE CAREFUL!!!!!!!
 - ▶ All of these techniques have very specific rules that must be followed
 - ▶ Spend down countable assets by buying exempt assets
 - ▶ There are some permitted transfers to third parties such as eligible disabled children or special trusts called Sole Benefit Trusts for such children (note: that beneficiary may also face estate recovery)
 - ▶ Trusts may play a role, such as Supplemental Needs Trusts

Potential Solutions: Gifts

- ▶ Gifts made during the 5 year look back may be curable
 - ▶ Potentially have the donee return the gift – on the big assumption they still have it
 - ▶ Potentially have the donee pay for the care
 - ▶ Wait to apply until after the 5 years after the gift to apply
 - ▶ For example, a \$200,000 gift made 4 years before an application for benefits would result in almost a 3 year penalty. It is better to wait 1 more year before applying
 - ▶ Find an independent reason that the gift is excludable

Potential Solutions: Estate Recovery

- ▶ Protect certain assets through transfers on death
 - ▶ Residence
 - ▶ Texas Medicaid permits the use of a “Lady Bird Deed” or a transfer on death deed for exempt residences
 - ▶ Because the house is not part of the probate estate, it is not subject to estate recovery
 - ▶ Vehicles
 - ▶ Texas law currently permits transfer on death vehicle titles
 - ▶ Similar to the Lady Bird Deed, the vehicle is not part of the probate and not subject to estate recovery

Example Problem: The Facts

- ▶ Single 75 Year Old Client with 3 adult children (one with a disability) needs Skilled Nursing Care. The home she wants costs \$7,000 a month and has a Medicaid bed
- ▶ Residence worth \$550,000 with \$50,000 on mortgage
- ▶ Collects \$4,000 a month in pensions, 401 (k) disbursements and Social Security
- ▶ Bank account worth \$50,000
- ▶ Mutual Fund worth \$250,000
- ▶ 401 (k) worth \$500,000
- ▶ Personal Property
- ▶ One vehicle
- ▶ Transferred a second car worth \$5,000 to son 3 year ago
- ▶ Are they eligible now? NO
 - ▶ Too much income, too much resource and transfer penalty



Example Problem: Some Solutions!

- ▶ Prepare a Qualified Income Trust to redirect excess income
 - ▶ Income Good!
- ▶ Excess assets of \$50,000 bank account and \$250,000 mutual fund
 - ▶ Pay off Mortgage (\$50,000)
 - ▶ Repair the Roof, other maintenance and repairs in home (\$50,000)
 - ▶ Buy a irrevocable preneed burial plan (\$20,000)
 - ▶ Buy burial plot for each child \$10,000 per each = (\$30,000)
 - ▶ Consider other personal property items
 - ▶ Make a gift to the disabled daughter of the balance or in a trust
 - ▶ Possible gifts to all of the children?
 - ▶ You come eligible by resolving your needs and passed potentially \$150,000 to family!
 - ▶ Resources good!
- ▶ Transfer of car? Have the son pay the penalty period
 - ▶ Penalty period good!

Even Better!

- ▶ Let's not forget Medicaid recovery and probate concerns!
- ▶ Use a revocable living trust to avoid probate
 - ▶ Leave everything to the 3 children in trust
- ▶ Sign a Lady Bird Deed and transfer on death title transferring the car and house to the trust upon death, avoiding recovery
- ▶ 401(k) death benefit goes to the 3 trusts established for the children to maximize their benefits
- ▶ This satisfies estate planning, incapacity planning, Medicaid eligibility, probate and Medicaid recovery avoidance and potentially tax planning

What We Can Do for You

- ▶ Incorporate long-term care planning into Estate Plan
- ▶ Advise you on Eligibility and provide Opinion Letters
- ▶ Help you become eligible when you need it
- ▶ Help you Stay up to Date- Newsletters, seminars, social media
- ▶ Provide peace of mind for you and your family
- ▶ Protect your Legacy!!!



Conclusion



- Consider your personal and long-term goals and wishes
- Identify issues that you need to address to reach those goals
- You might not need long-term care services now, but likely will in the future, so plan now
- Make sure you are considering Elder Law in your planning so that you can protect your legacy and get the care you deserve
- Schedule a consultation to determine the plan that is best for you

Thank you!



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