PLANNING FOR LONG TERM CARE--
UNDERSTANDING MEDICAID AND SPECIAL ASSISTANCE

Advance planning for payment for long term care--whether in an assisted living facility, in a nursing home, or at home--is important. Long term care insurance presents the best option. For many individuals, however, long term care insurance is cost prohibitive or not obtainable due to a health condition. In that case, planning to qualify for assistance with payment of care while protecting assets for oneself and one's family is imperative.

Because different programs pay for different levels of care, understanding the distinctions between the programs is important.

I. SPECIAL ASSISTANCE ("SA")

"Special Assistance" is a State/County program that pays for "rest home" or "assisted living" care. Although many people erroneously refer to SA as "Medicaid," it is not Medicaid.

To qualify for SA, an individual can have no more than $2,000.00 in <u>countable</u> assets. A spouse's assets are not counted. A homesite, personal property, household goods, irrevocable burial contract, and one automobile are exempt. Liquid assets are countable.

The gross monthly income of an SA applicant must be $1,247.50 per month or less for a regular room, or $1,580.50 per month or less for a special care (dementia) unit.

SA establishes a three year lookback period for gifts and imposes a sanction period based on the value of the gift.

II. MEDICAID

Medicaid pays for home care through the CAP program; however, waiting lists are long, and it is difficult to meet the physical requirements for this program. Medicaid pays for nursing home level care if an individual meets the asset and income tests. An individual can have only $2,000.00 in "countable" assets ($3,000.00 where both spouses reside in long term care). The homeplace, a life estate, tenant in common property, one essential vehicle, and personal household items are all exempt. Most other assets are counted.

Medicaid will examine assets in <u>either</u> spouse's name to determine if a Medicaid applicant has more than $2,000.00 in countable assets. The spouse who remains at home receives a Community Spouse Resource Allowance (CSRA). This allowance is set at the time one of the spouses enters a nursing home, even if Medicaid is not applied for until later. To determine the CSRA, all <u>countable assets</u> are totaled. The Community Spouse is usually allowed to retain approximately one-half of the couple's countable assets. The other one-half is allocated to the institutionalized spouse, who must either make them exempt or spend them down to the $2,000.00 level. The cap for the Community Spouse Resource Allowance is $115,920.00. Therefore, if spouses own more than $231,840.00 in non-exempt assets, only $115,920.00 is protected.

The lookback period is five (5) years for Medicaid. If a gift has been made during this time period, a sanction results. The time of the sanction is calculated by dividing the value of the transfer by $6,300.00. The resulting number constitutes the months of the sanction period, which begins on the date an individual enters a nursing home, applies for Medicaid, and has less than $2,000.00 in assets. If the property is returned to the potential Medicaid recipient, the sanction is erased. Transfers between spouses are not sanctioned.

After a Medicaid recipient dies, Medicaid will file a claim for payments it has made on behalf of the Medicaid recipient. Property which is part of the probate estate of the deceased is subject to the claims of Medicaid.

Individuals rarely have a problem meeting the income test for Medicaid. In essence, so long as the individual's income is lower than the facility's monthly Medicaid rate for that level of care, an individual is eligible for Medicaid. The spouse who remains at home is also entitled to some income protection which allows the spouse to retain not only the spouse's own income, but to be allocated a certain portion of the patient's income as well.

III. PLANNING

An individual can often meet the SA resource test merely by transferring assets to the spouse who is not in the assisted living facility. In the Medicaid context, if spouses do not plan to enter a facility within the next five years, transfers can be made to children, or to an Irrevocable Trust which cannot pay any principal to the parents. The homesite can often be protected by transferring a remainder interest to the children and having the parents retain a life estate. In addition, children can purchase a one-percent interest in the homesite as joint tenants with right of survivorship and protect it from Medicaid estate recovery. A very specialized Medicaid compliant annuity can often preserve approximately one-half of the liquid assets, even when a parent will enter a facility within five years. If parents transfer liquid assets to children, the transferees should purchase umbrella liability insurance and change their estate planning documents to provide that, if they predecease the parents, the assets which they are holding for the parents are not given to the child's spouse but are held in a Medicaid protective trust for the benefit of the parents under the estate planning documents of the deceased child.

A federal gift tax return is usually required, even if no gift taxes are owed.

In conclusion, planning correctly for the payment of long term care involves balancing the interests of one's family with protecting one's own interests. Early planning is critical--as is consulting with an experienced elder law attorney who can navigate the complex regulations correctly.