

# ELDER LAW & LONG-TERM CARE PLANNING

Erin W. Peirce

**LEU & PEIRCE** PLLC  
ELDER LAW ATTORNEYS

# What is Elder Law?

- ▶ Focused on aging and protecting seniors and persons with disabilities
- ▶ Several areas of law
  - ▶ Estate Planning
  - ▶ Probate
  - ▶ **Public Benefits Planning**
    - ▶ Medicaid
    - ▶ **Veteran's Benefits**
  - ▶ Special Needs Planning - Supplemental Needs Trusts
  - ▶ Elder Exploitation and Abuse
    - ▶ Capacity Issues
    - ▶ Guardianships
    - ▶ Will Contests
    - ▶ Probate Litigation

# Estate Planning - Legal Documents

- ▶ Statutory Durable Power of Attorney
- ▶ Medical Power of Attorney
- ▶ HIPAA Authorization
- ▶ Directive to Physicians
- ▶ Declaration of Guardian
- ▶ Appointment of Agent for Remains
- ▶ Will
  - ▶ Revocable Living Trust
  - ▶ Transfer on Death Deeds
  - ▶ Supplemental Needs Trusts

# Probate

- ▶ Court process to administer Estates
  - ▶ Not all estates go through probate
  - ▶ “Avoiding Probate”
  - ▶ Beneficiary designations
- ▶ Wills v. Heirship Proceedings
- ▶ Executors v. Administrators
  - ▶ Dependent
  - ▶ Independent
- ▶ Costs and Process varies by County and by Court in DFW

# Long-Term Care Planning

- ▶ 3 ways to pay for Long-Term Care
  - ▶ Private Pay
    - ▶ Average Assisted Living DFW \$5,000/month
    - ▶ Average In Home Care DFW \$30/hour
  - ▶ Long-Term Care Insurance
  - ▶ Public Benefits
    - ▶ Medicaid
    - ▶ Veteran's Benefits

# Medicare

- ▶ Medicare is health insurance and pays a very limited amount for long-term care
  - ▶ Medicare Advantage Plan
    - ▶ 20 days (room/board/therapy)
    - ▶ Day 21 → Private Pay (\$150 - \$275/day)
  - ▶ Traditional Medicare
    - ▶ 20 days (room/board/therapy)
    - ▶ 80 days with \$204/day copayment
    - ▶ Medicare Supplement/Medigap Plan - pays copayment
    - ▶ Day 100 → Private Pay or Medicaid

# Medicaid Basics

- ▶ Federally funded, state-managed
- ▶ 70% of Texas nursing home residents
- ▶ Primary coverage
  - ▶ Skilled nursing facility
  - ▶ Limited assisted living/memory care (Star+Plus Waiver)
  - ▶ Community Attendant Services
- ▶ 5-year look back on asset transfers

# Medicaid Eligibility

- ▶ U.S. citizen/Texas resident
- ▶ Blind, disabled, or 65+
- ▶ Medical necessity for skilled nursing
- ▶ 30 days in Medicaid-certified facility
- ▶ Medicaid bed available
- ▶ Income eligible (below income cap)
- ▶ Resource (asset) eligible



# Medicaid Numbers

- ▶ \$2,829 - Income cap (need QIT/Miller Trust)
- ▶ \$3,853.50 - MMMNA for Community Spouse
- ▶ Asset limits
  - ▶ \$2,000 - Single individual
  - ▶ \$3,000 - Married couple who both need care
  - ▶ \$30,828 - \$154,140 - Spousal protected resource amount range
    - ▶ Expansion of Spousal protected resource allowed if income is below MMMNA
- ▶ \$75 - Personal Needs Allowance

# Medicaid Resource Exclusions

- ▶ Residential homestead - valued less than \$713,000
  - ▶ Must be in individual names, not revocable living trust
  - ▶ In Texas (unless Community Spouse living in another state)
- ▶ One automobile used for transportation
- ▶ Personal and household goods
- ▶ Prepaid, irrevocable funeral contract
- ▶ Burial plots
- ▶ \$1,500 burial fund
- ▶ Some annuities (be careful to confirm rules)
- ▶ IRAs from which receiving RMDs

# Medicaid Spend Down Strategies

- ▶ Private pay for care
- ▶ Residential Homestead
  - ▶ Pay off mortgage
  - ▶ Necessary repairs
- ▶ Purchase an Automobile - Applicant's or Spouse's Name
- ▶ Purchase prepaid funeral plan (applicant/spouse)
  - ▶ Waiver of Right to Cancel
- ▶ Purchase burial plots (immediate family)
- ▶ Purchase anything the applicant (or spouse) wants or needs
- ▶ Pay off debt (credit cards, etc.)
- ▶ Convert 401(k) to IRA if 72 or over and start RMDs
- ▶ Contribute to college education accounts for heirs under 21
  - ▶ Tuition Savings Programs (e.g., 529 College Savings Plan)
  - ▶ Uniform Transfer to Minors Act ("UTMA") Account
- ▶ Purchase annuities (be careful to meet applicable rules)
- ▶ Purchase/invest in excluded resources

# Types of VA Benefits

- ▶ Health care
  - ▶ Provided at VA Locations
  - ▶ 24 continuous months of active duty
  - ▶ Tricare
- ▶ Disability Compensation (Service-Connected Disability)
- ▶ Pension (Non Service-Connected Disability Pension)
- ▶ Adult Day Care Programs
- ▶ Burials and memorials
  - ▶ VA National Cemetery - all Veterans
  - ▶ Burial Allowance

# Disability or Compensation

## *(Service-Connected)*

- ▶ Eligible if served on active duty *and*
  - ▶ Sick or injured during active-duty *or*
  - ▶ Disability related to active-duty service appearing after service ended
    - ▶ Presumptive Conditions - Illnesses caused by contact with contaminants
- ▶ Pays based on disability and disability rating
- ▶ Non-taxable benefit pays directly to Veteran
- ▶ Not Needs-based
- ▶ Continues for surviving spouse/dependent child if connected to cause of death of Veteran

# VA Pension Benefits

## *(Non Service-Connected Disability Pension)*

- ▶ Federally funded and regulated
- ▶ Rules are same throughout the U.S.
- ▶ Pays up to \$2,727/month for a married Veteran
- ▶ Pays directly to Veteran to
  - ▶ Reimbursement for any type of care - skilled, assisted living, memory care, home care
- ▶ Needs-based benefits
  - ▶ Evaluates net worth, income and care expenses to determine eligibility
- ▶ 3 year look back period on transfers

# VA Pension Benefits

- ▶ Eligibility: 90 days continuous active duty
- ▶ Wartime period service requirement: 1 day only
  - ▶ World War II (December 7, 1941 - December 31, 1946)
  - ▶ Korean conflict (June 27, 1950 - January 31, 1955)
  - ▶ Vietnam era (February 28, 1961 - May 7, 1975 for Veterans who served in the Republic of Vietnam during that period; otherwise August 5, 1964 - May 7, 1975)
  - ▶ Gulf War (August 2, 1990 - through a future date)
- ▶ Provides benefits for surviving spouses (if not remarried)

# 2024 VA Pension Benefit Rates

	Single Veteran	Married Veteran	Surviving Spouse
Basic Pension	\$1,379	\$1,806	\$925
Housebound	\$1,685	\$2,112	\$1,130
Aid & Attendance	\$2,300	\$2,727	\$1,538



# Income for VA Purposes

**Income - Medical/Care Expenses = Income for VA Purposes (IVAP)**

▶ Amount of Benefit paid is determined by Negative or Positive IVAP

\$3,000 Income  
- \$5,000 Care Expenses  

---

(\$2,000) IVAP

\$3,000 Income (Family Income)  
- \$2,000 Care Expenses  

---

\$1,000 IVAP

If IVAP Negative - Full Benefit  
\$2,727 at Aid & Attendance  
(\$2,727 - (\$2,000) = (\$727))

If IVAP Positive - Benefit is Difference  
\$1,727 at Aid & Attendance  
(\$2,727 - \$1,000 = \$1,727)

# Care Expenses for VA Pension Benefits

- ▶ Approved Care Expenses Reduce IVAP
  - ▶ Assisted Living
  - ▶ Home care (family caregivers, but beware)
  - ▶ Skilled Nursing (evaluate with Medicaid benefits)
  - ▶ Medicare Premiums (and Supplements)
  - ▶ Prescriptions
  - ▶ Supplies (Depends, etc.)
  - ▶ Nutritional Supplements (Ensure, Vitamins, Etc.)
  - ▶ Independent Living (certain circumstances)

# VA Net Worth

- ▶ Net Worth = Fair Market Value of all property owned by claimant and dependents + Annual Income
- ▶ Currently: \$155,356 limit
  - ▶ Increases every year with SS COLA
  - ▶ Same for single or married, regardless of age and life expectancy
  - ▶ Annual Income reduced by Care Expenses
- ▶ Does NOT include value of house + 2 acres, multiple cars
- ▶ Reduced by mortgages/encumbrances
- ▶ Transfers of Assets over Net Worth will be penalized

# Exceptions to Transfer Penalty

- ▶ No hardship exception
- ▶ Transfers as result of fraud or unfair business practices - must report to licensing agency (targeting poachers)
- ▶ Transfer to irrevocable trust established for child permanently incapable of self-support prior to age 18
- ▶ Transfer of non-covered assets
  - ▶ Less than \$155,356 net worth limit
  - ▶ *Exempt assets (home, vehicles)*
  - ▶ OK to transfer non-covered assets to Irrevocable Trust
- ▶ Annuities are no longer allowed.

# TAKEAWAY

- ▶ Get to know your clients.
- ▶ Help them with their long-term plan
  - ▶ Estate Planning
  - ▶ Long-term care
  - ▶ Public Benefits
  - ▶ Elder Abuse/Capacity Issues
- ▶ Be able to Issue spot
  - ▶ Benefits Available
  - ▶ Supplemental Needs Trusts
  - ▶ Protection for beneficiaries
  - ▶ Protections for Clients
- ▶ Know your resources
- ▶ Stay educated and current



Erin W. Peirce  
[epeirce@leulawfirm.com](mailto:epeirce@leulawfirm.com)  
972.996.2540

