Acosta Law Firm, PLLC

Estate Planning & Elder Law

Welcome

DAY 3: Wednesday, April 21, 2021

2:00pm – 4:00PM

Elder Law Boot Camp for Health Care Professionals

Other Public Benefits

MEDICARE ▪ PACE ▪ SOCIAL SECURITY DISABILITY
▪ SUPPLEMENTAL SOCIAL SECURITY ▪ VA BENEFITS

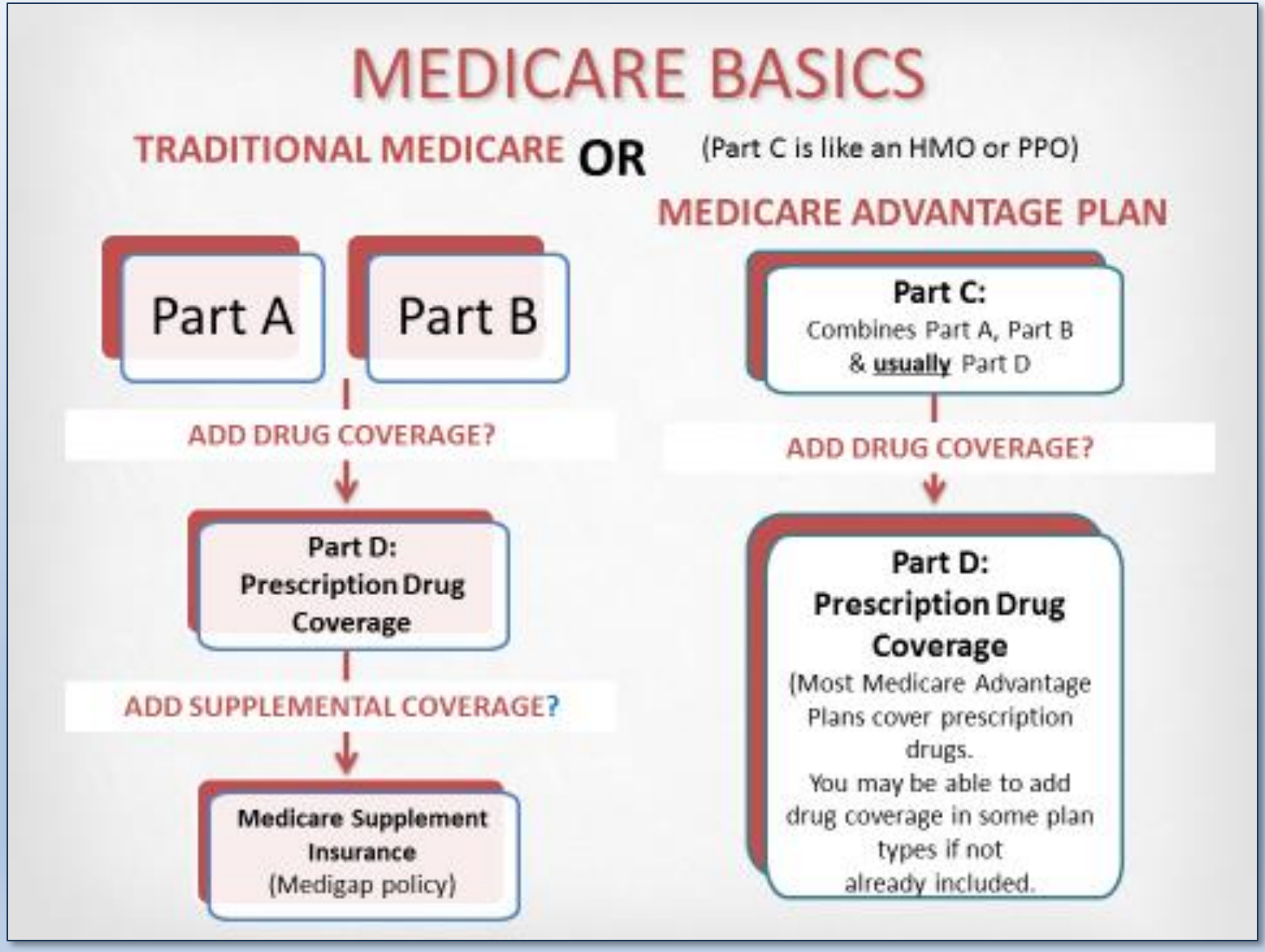
Elder Law Boot Camp for Health Care Professionals

I. MEDICARE

MEDICARE DEFINED

- Federal government healthcare program
- Provides coverage for:
  - People 65 years old and over
  - Disabled persons

MEDICARE BASICS



Medicare Basics

TRADITIONAL MEDICARE

Part A

Part B

ADD DRUG COVERAGE?

Part D: Prescription Drug Coverage

ADD SUPPLEMENTAL COVERAGE?

Medicare Supplement Insurance
(Medigap policy)

OR

(Part C is like an HMO or PPO)

MEDICARE ADVANTAGE PLAN

Part C:
Combines Part A, Part B & **usually** Part D

ADD DRUG COVERAGE?

Part D: Prescription Drug Coverage
(Most Medicare Advantage Plans cover prescription drugs.
You may be able to add drug coverage in some plan types if not already included.

A: PARTS A AND B:

BASIC MEDICARE

Medicare: Parts A & B

- Go to any provider who accepts Medicare
- Deductibles apply
  - Not all costs covered
  - Many people have (recommended) supplemental health insurance to cover co-pays/deductibles

Part A Covers:

- Hospital stays
- Skilled nursing
  - First 100 days after a 3-day hospital admission for each spell of illness
  - Admitted to SNF within 30 days of hospital discharge
  - Doctor must certify need for that level of care
  - **First 20 days** Medicare covers 100%.
    Days 21-100 you pay co-pay.
    After day 100 you pay full amount.
- Psychiatric

A Word about Skilled Nursing

Jimmo vs. Sebelius Settlement

Services are coverable by Medicare if the services are needed to maintain the individual's condition, or prevent or slow their decline

Part A Covers:

- Home health care
  (STANDARD: inability or great difficulty leaving home)
  - Ordered by doctor
  - Written plan of care
  - Recipient must be confined to home
  - Home health agency must be Medicare certified
  - Patient must require intermittent skilled nursing, OR skilled PT or ST services
  - You pay nothing for covered services
  - You pay 20% of Medicare approved and nothing for durable medical equipment

Part A Covers:

- Hospice care
  - Mostly provided in patient's home, but can use facility
  - Initial 90-day period, second 90-day period
  - Doctor must certify patient is terminally ill
  - Re-certify every 60 days by doctor (unlimited)
  - Terminal illness: less than 6 months to live
  - Covers: drugs for pain relief, symptom management, medical, nursing, social services, some durable medical equipment and spiritual & grief counseling

Part B Covers:
(Part B is optional)

Preventative services for those in non-institutional settings

- Visits to doctor
- PT, OT, ST
- Outpatient services
- Diagnosis / Screenings
- Home Health care
- Medical equipment
- Ambulance services

Medicare Does Not Cover Most:

- Dental care
- Eye care
- Foot care
- Cosmetic surgery
- Hearing aids

B.

ENROLLMENT FOR MEDICARE PARTS A & B

(Traditional Medicare)

Enrollment Eligibility

- Citizen or permanent resident of U.S.
- AND
- 65 years old or older
- OR
- On Social Security Disability for 25 months straight
- OR
- Diagnosis of:
  - Lou Gehrig's Disease (ALS)
  - End Stage Renal Disease

Initial Enrollment

- 2 Ways to Enroll:
- #1: Automatic, if receiving:
  - Social Security
  - Social Security Disability
  - Railroad Retirement Benefits
- #2: Application: Initial Enrollment Period

  (must apply unless meet above requirements)
  - Apply within 3 months before turning age 65, or
  - The month beneficiary turns 65, or
  - Within three months after turning 65

3 Delayed Enrollment Periods

- #1: Delayed Enrollment Period

  (may skip initial enrollment period if:)

  - Individual or spouse is actively employed
  - AND
  - Covered under group health insurance
- #2: Special Enrollment
  - Enroll when group health insurance ends
  - Enroll within 8 months of group health insurance ending

3 Delayed Enrollment Periods

Continued

#3: General Enrollment Period

(for those who missed initial enrollment period and are not eligible for delayed enrollment #1 or #2)

- Enroll: Jan. 1 - Mar. 31 calendar year: coverage will begin July 1.
- Penalty assessed for late enrollment on Part A & B premiums
  - *PART A: Penalty is10% additional premium for twice the number of years that you could have had Part A but did not.*
  - *PART B: Penalty is 10% for each full 12-month period that you could have had Part B but did not.*

C.

Enhancements to Traditional Medicare:

Medigap, Part C & Part D

Medicare Advantage Plans cover
Part A, B & USUALLY Part D

Medigap

- Covers out of pocket costs that traditional Medicare Parts A & B do not
  - All plans must have Part A coverage
  - Plans can not vary from one company to another
  - Companies set their own prices (approved by NY Insurance Department)
  - Must have Medicare Parts A & B to apply for plan
  - Open enrollment: guaranteed right to buy any available Medigap policy in your state regardless of health status
  - Some cover medical care outside of U.S. (Traditional Medicare does not)

Medicare Part C

- a/k/a Medicare Advantage Plans
  - Medicare approved insurance offered through private companies
    - AARP
    - EMPIRE
  - Managed care
  - Provider network

Medicare Part C

a/k/a Medicare Advantage Plans

- Features:
  - Not supported coverage like Medigap
  - Medicare contracts with a plan provider to cover an individual's Medicare benefits
  - Services must be at a minimum equal to Medicare Parts A & B (bundled, **except for Hospice care**)
  - Normally additional coverage
    - *Dental, vision, gym memberships etc*
  - Many include Part D
  - Medical emergencies always covered
    - *Billed as in-network, even if NOT in-network (Florida)*

Medicare Part C
a/k/a Medicare Advantage Plans

- General enrollment
  - Apply within 3 months before turning age 65, or
  - The month beneficiary turns 65, or
  - Within three months after turning 65
- New
  - Between Oct. 15 – Dec. 7, can join, **switch or change plans**
  - Between Jan. 1 – Mar. 31, 2019 can leave Medicare Advantage Plan and **switch to Traditional** Medicare

Medicare Part C
a/k/a Medicare Advantage Plans

- Special enrollment
  - General rule: must stay enrolled for the calendar month that your coverage begins
  - Exceptions:
    - *Move out of service area*
    - *Have Medicaid*
- New 5-star special enrollment
  - Starting Dec. 8, 2011 you can switch to a 5-star rated Medicare Advantage Plan at any time during the year if available in your area

Medicare Part D

- Two ways to get Part D coverage
  - Medicare Prescription Drug Plans (PDP's)
    - *PDP's add coverage to traditional Medicare*
  - Medicare Advantage Plans
    - *Offered as part of bundled package*

Medicare Part D Enrollment

- Initial enrollment
  - Apply within 3 months before turning age 65, or
  - The month beneficiary turns 65, or
  - Within three months after turning 65
- Open enrollment
  - Oct. 15 – Dec. 7 (can join, switch or change plans)
  - 5-Star at any time during the current year

More Medicare Information

- Center for Medicare and Medicaid Services: www.medicare.gov/publications/pubs/pdf/10050.pdf
- Overall 5-Star ratings available at: www.medicare.gov/find-a-plan
- 2019 Medicare & You: The Official U.S. Government Medicare Handbook. https://www.medicare.gov/sites/default/files/2018-09/10050-medicare-and-you.pdf

PART II:

Social Security Disability (SSDI)
AND
Supplemental
Social Security Income (SSI)

SSDI: What Is It?

- Entitlement program (a/k/a Insurance)
- No asset limit for eligibility
- Not affected by unearned income like SSI

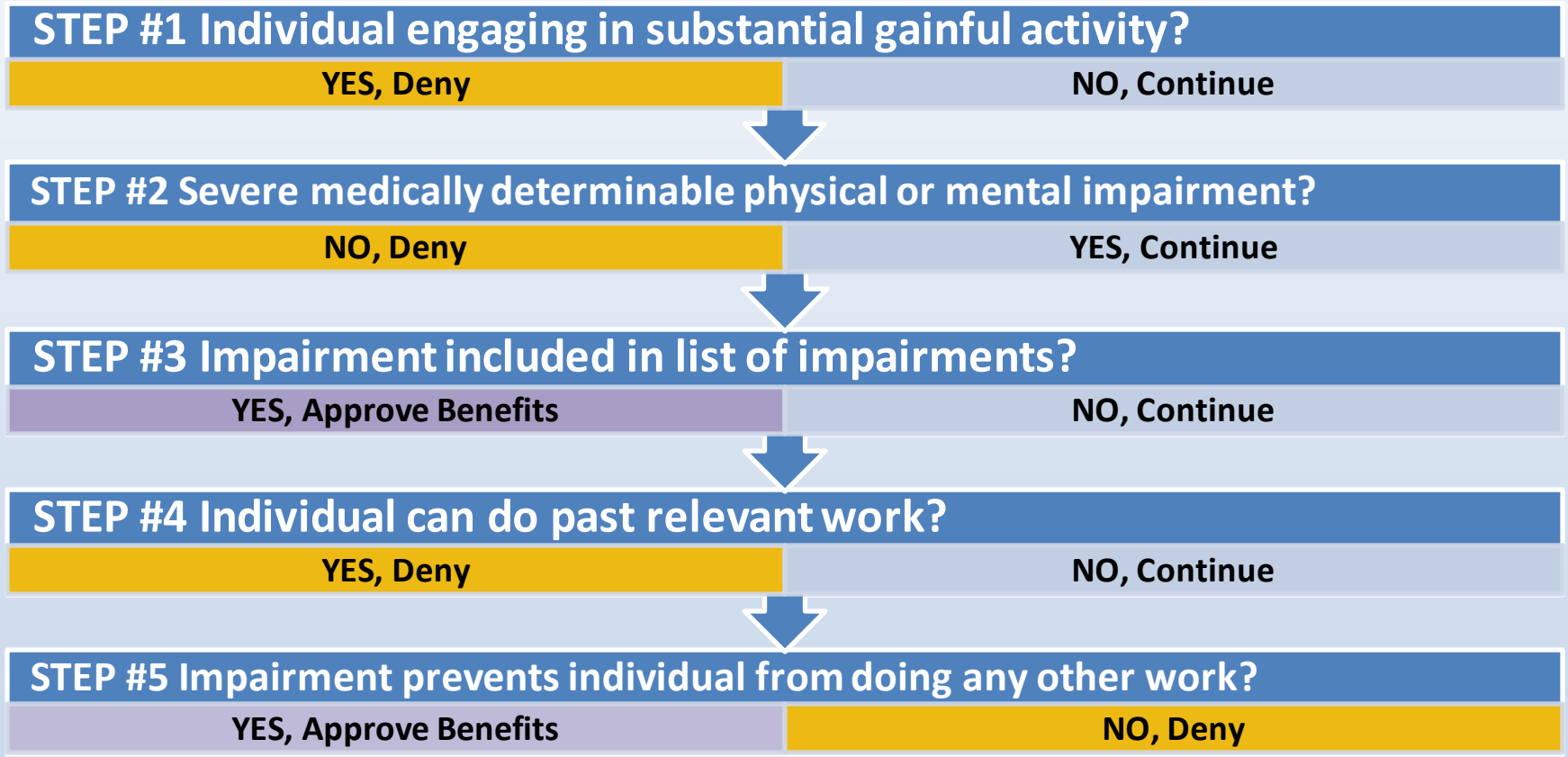
SSDI: Eligibility Requirements

- Forty (40) SSA work credits
  - 20 of which musts have been earned in last 10 years ending in the year before disability occurred
- Exceptions:
  - Work credits change yearly
  - Work credits less if disability begins between age 24 and 31
- Benefit amount based upon Social Security taxes paid on your earnings (wage/salary)

SSDI: Eligibility Requirements
Continued

- Inability to be engaged in any substantial gainful employment because of:
  - Medically determined physical or mental impairment which is expected to result in:
    - Death
    - OR
    - Continuous disability of 12 months or more

SSDI: Determine Eligibility by 5-Part Sequential Test



SSDI CONTINUED

TRIAL WORK PROGRAM

- Individual on SSDI can test ability to work
- Total of 9 months of work within a rolling 60-month period while retaining full benefits

Disabled Child Benefits

- Eligibility for children
  - May receive disability benefits on parent's work record if:
    - Child is (or was) dependent on the parent
    - Child is under age 18
    - OR
    - Over age 18 and has a disability that began before age 22 (if parent's benefit rate is higher)

SSDI Benefits Available To Spouse

- A spouse may qualify for benefits based on a worker's record if:
  - Worker entitled to retirement or disability benefits; AND
  - The spouse has filed an application for spouse's benefits; AND
  - The spouse is NOT entitled to retirement or disability benefits; AND
  - Spouse is age 62 or older.
  - At any age is caring for a disabled child or child under 16 years old

Benefit For Divorced Spouse

- A spouse may qualify for benefits based on a worker's record if:
  - Married to the worker for at least 10 years prior to the divorce; AND
  - If NOT currently married; AND
  - If at least 62 years old.

Disability Benefits for Widow(er)

- To be eligible a widow(er) must:
- Have attained age 50, but NOT attained age 60; AND
- Be under a disability test began before the prescribed period for benefits ends.

Supplemental Social Security Income (SSI)

- What is SSI?
  - Cash Assistance
- Federal needs-based program for people who:
  - Have insufficient work history to qualify for SSDI
  - OR
  - Only receive a small amount of Social Security benefits
  - **AND**
  - Disabled (or elderly)
    - Purpose to provide minimum level of monthly income

Categorical Eligibility

- Aged
  - 65 or older
- Blind
  - Vision of 20/200 or less (or tunnel vision of 20 degrees or less)

Categorical Eligibility

Disabled (Meet Social Security definition)

A. Unable to engage in substantial gainful activity due to medically determinable condition
B. Impairment can be expected to last at least 12 months in a row or result in death
C. Unlike SSDI, no minimum age limit
   - Child under 18 is eligible if her or she meets conditions A & B above
   - Not based on quarters worked like SSDI

Determining Disability Sequential test

STEP #1 Individual engaging in substantial gainful activity?

YES, Deny	NO, Continue

STEP #2 Non-severe (very minor) medical impairment?

YES, Deny	NO, Continue

STEP #3 Severe impairment included in auto-pay list of impairments?

YES, Approve Benefits	NO, Continue

STEP #4 Individual can do past relevant work?

YES, Deny	NO, Continue

STEP #5 Any other work claimant can perform full-time?

NO, Approve Benefits	YES, Deny

Financial Eligibility Requirements

- **Income: Must not have countable income above:**
  - Single: $750
  - Married: $1,125
- **Resources: Must not have countable resources above:**
  - Single: $2,000
  - Married: $3,000

Definition of Income

- Anything received by claimant during calendar month
  - Used for food or shelter
  - May be cash or in-kind
- Four types of income
  - Earned/Unearned
  - In-Kind support
  - Maintenance
  - Deemed

Resources Defined

Any of the following owned by claimant or claimant's spouse:

- Cash
- Liquid assets
- Real or personal property that can be converted to cash
  - *If claimant has power to liquidate property, it is considered a resource*

Resource Exclusions

- House
- Household goods
  - Except items acquired for their value/for investments
  - Except clothing, books, jewelry
- One automobile
- Special Needs Trusts
- Life Insurance with face value of less than $1500 (see exceptions)

Penalty for Transfer of Assets

- 36 months
- Penalty for transfer of assets for less than FMV within 36 months of application
- Penalty calculation:
  - Gift: FBR to a single person
  - 10,000 ÷ 750 = 13.33 month ineligibility
- Maximum ineligibility period (appeal) at 36 months

Cure Ineligibility By Return of Gifts

Acceptable

Applying for Benefits

- In-person at Social Security office
- On-Line: www.ssa.gov
- Phone: 1-800-772-1213
  - For SSDI it is best to file online, BUT be sure to print the receipt immediately after hitting the submit button; that is the only proof of filing and you cannot return to that page after you leave it.
  - SSI applications cannot be filed online.

Representative Payee

Use when people need help managing their money

- Social Security's Representative Payment Program provides financial management for Social Security and SSI benefits who are incapable of managing their payments

Representative Payee

CONTINUED

Main responsibility

- Pay for current and foreseeable needs of beneficiary and save benefits not needed to meet present needs

Representative Payee

CONTINUED

How to apply to become representative payee

- Contact nearest Social Security Office
- Complete SSA-11 Application
- Must complete application in a face-to-face interview

Fees & Expenses for Serving

- Fee
  - Unless you are a qualified organizational payee who has appeared and been approved by SSA
  - Form SSA-445
- Expenses
  - May be reimbursed actual out of pocket expenses
    - Ex., transporting beneficiary to appointments, postage to pay bills

Part III: Veterans Benefits

VETERAN'S BENEFITS

Paying for Long-Term Care

- Medicare (limited)
- Private pay from assets/income
- Long-term care insurance
- Veterans Benefits
- Medicaid

Veterans Aid & Attendance Benefits

Who's eligible?

- Veteran
- Widowed spouse
- Dependent or disabled child

A: Military Service Requirements

#1: 90 Days active duty service

#2: 1 Day during wartime

#3: Other than dishonorable discharge

B: Care Need Requirements

- Need assistance with 2 or more Activities of Daily Living (ADLs)

Bathing ▪ Dressing ▪ Toileting Transferring ▪ Eating ▪ Grooming Walking ▪ Taking Meds

C: Financial Requirements

#1: Limited household assets

- Net worth, life expectancy
  unreimbursed medical expenses

#2: Countable Income for VA purposes

- Countable vs. non-countable

2021 Veterans Benefits Rates

	ANNUAL MAX BASIC RATE	MONTHLY
Veteran, no dependent, and Aid & Attendance	$23,232	$1,936
Veteran, one dependent, and Aid & Attendance	$27,540	$2,295
Widow, no dependent and Aid & Attendance	$14,928	$1,244
Veteran married to Veteran, Both Aid & Attendance	$36,852	$3,071

Unreimbursed Medical Expenses

- Can affect ability to obtain maximum rate
- Examples:
  - Assisted living fees
  - Independent living fees (if for protective reasons)
  - Health insurance premiums
  - Co-pays
  - Prescriptions
  - Hospital bills

Transfer of Assets to Qualify

- VA and Medicaid asset transfer rules are different
- Must keep an eye toward Medicaid when doing VA planning
- BUT- NEW VA Proposed LAW

Getting Help

- Service organization
- VA accredited attorney

Estate Planning to Address Elder Law Issues

Elder Law Boot Camp for Health Care Professionals

What Is An Estate?

- Tax purposes
- Probate v. non-probate

Financial Planning

- Investments
- Retirement
- Insurance
- Tax planning
- Preserving & growing

Estate Planning

- Preserving & protecting
- Tax planning
- Transfers

Estate Challenges

- Last through retirement
- Avoid loss & depletion
- Pay for care
- Avoid undue influence
- Legacy

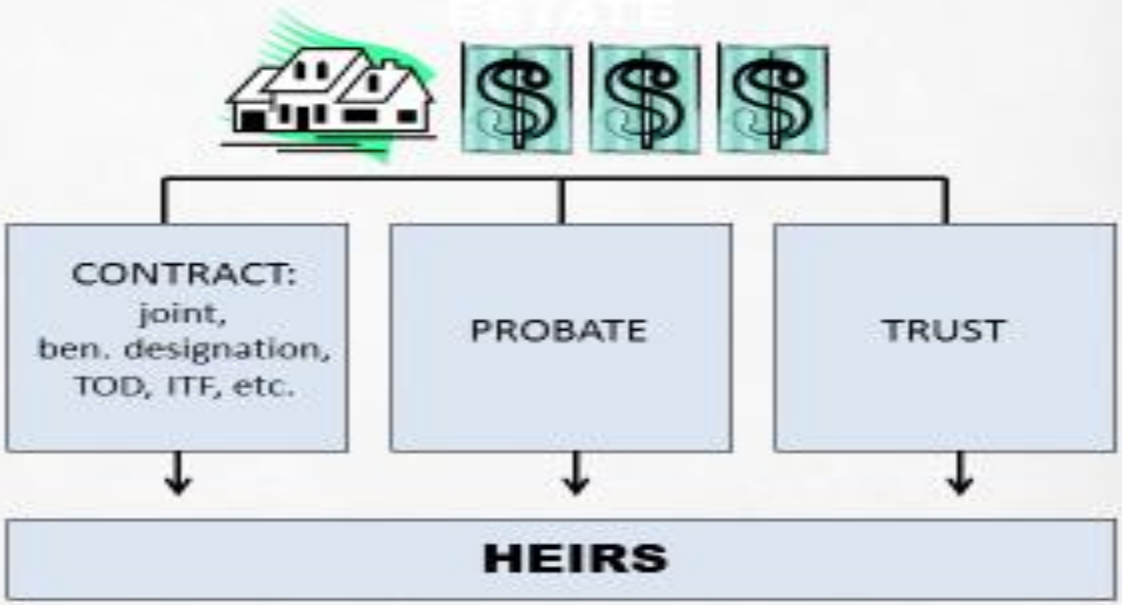
Useful Tools

- IRA, 401(k), 403(b), etc.
- LTC insurance
- Life insurance
- Irrevocable burial reserve

Long Term Care Insurance

- How it works
- Underwriting
- Variations
- NY Partnership Program

What happens to your Estate when you die?



Estate Plan Documents

- Will - probate
- Revocable trust
- Irrevocable trust
- Special needs trust

Appendix C

	ABLE ACCOUNT	SPECIAL NEEDS TRUST
Onset of disability	Qualifying disability exists prior to age 26	No requirement
Age of Beneficiary	No requirement	First Party Trust: Trust established prior to age 65 Third Party Trust: No requirement
Who May Establish	Beneficiary, parent, guardian, agent	Third Party Trust: Anyone except beneficiary First Party Trust: Parent, grandparent, guardian, court, and now the beneficiary thanks to the Special Needs Trust Fairness Act, passed on 12/13/16 as part of the 21st Century Cures Act (P.L. 114-255) First Party Pooled Trust: Beneficiary, parent, grandparent, guardian, court
Number of Accounts	One per beneficiary	Unlimited
Fees	Financial institution fees	Attorney and trustee fees
Contribution Limits	$14,000/year (federal gift tax limit); Total capped at state limit for 529 college savings accounts; SSI payments suspended when assets total $100k	Unlimited
Investment Options	Investment strategies may be changed twice annually	No restrictions
Valid Distributions	Broadly defined "disability expenses," including basic living expenses	Any expenses for sole benefit or beneficiary, with certain implications for distributions for food and/or shelter
Taxes	Earned income is tax-free and distributions are not taxed as long as they are used for Qualified Disability Expenses.	First Party Trusts are generally treated as grantor trusts and income is taxable to the beneficiary, subject to the beneficiary's own deductions, exemptions, etc. Often, the amount of income generated by trust holdings will be below taxable limits. Third Party Trusts can use a variety of planning strategies to minimize taxes that may be due. Proper drafting and advice will help minimize the tac concerns
Medicaid Payback Upon Death of Beneficiary	Remaining funds must reimburse state for Medicaid benefits	First Party Trusts: Remaining funds must reimburse state for Medicaid benefits. Third Party Trusts: No payback

Undue Influence

- **What is it?**
  - **Undue influence** occurs when an individual is able to persuade another's decisions due to the relationship between the two parties
- **Why a problem?**

UNDUE INFLUENCE Continued

- **Avoiding**
  - Thorough planning
  - Family involvement
  - Irrevocable trust

BREAK
15 Minutes

Elder Law Boot Camp for Health Care Professionals

Why Irrevocable?

- VA
- Medicaid

John & Jane Estate

Home	Stocks *(Investment Accounts)*	IRAs	Checking & Savings
$200,000	$150,000	$40,000 $40,000 $80,000	$170,000

Total Estate $600,000

If Care **IS** Needed

Best Case Scenario

One needs care, the other survives

$228,400

$371,600

SAVE

Applicant	$8,000
Spouse	$123,600
House	$200,000
1 IRA	$40,000
	$371,600

Assume
$600,000 Estate
NO PRE-PLANNING

If Care **IS** Needed

Other Scenarios

- Survivor needs care, or
- Both need care, or
- Single

Assume
$600,000 Estate
NO PRE-PLANNING

SAVE

Applicant	$8,000
	$8,000

Irrevocable Trusts

Home

$200,000

Investments

$75,000

Investments

$75,000

Checking & Savings

$130,000

IN TRUST(s)	AMOUNT	INCOME
House	$200,000	
Investment Account	$75,000	✓
Investment Account	$75,000	✓
Savings & CDs	$130,000	✓
	$480,000	
KEEP		
IRAs	$80,000	✓
Checking & Savings	$40,000	✓
	$120,000	

With Planning, If Care **IS** Needed

Best Case Scenario

One needs care, the other survives

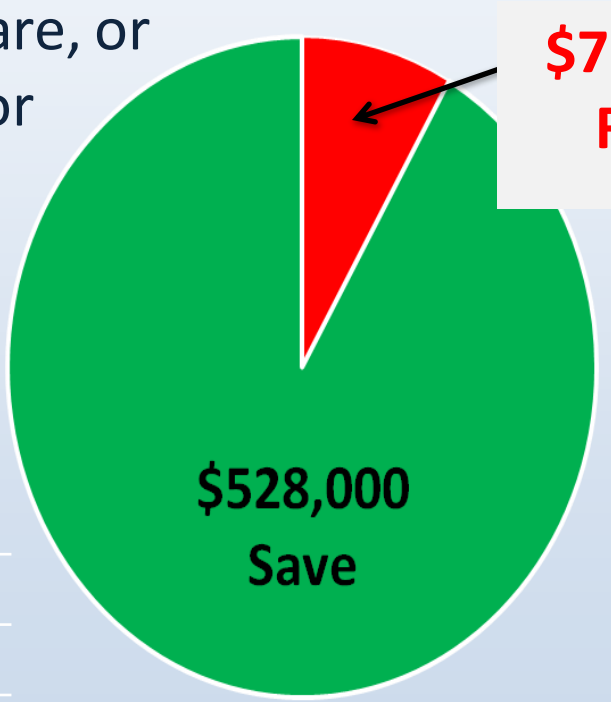
Assume
$600,000 Estate
WITH
Irrevocable Trusts
After 5 Years

SAVE	
Applicant	$8,000
Spouse	$40,000
Spouse IRA	$40,000
In TRUST	$480,000
	$568,000

With Planning, If Care **IS** Needed

Other Scenarios

- Survivor needs care, or
- Both need care, or
- Single



Assume
$600,000 Estate
WITH
Irrevocable Trusts
After 5 Years

SAVE	
Applicant	$8,000
IRA of 1st to die	$40,000
In TRUST	$480,000
	$528,000

Compare No Planning to Irrevocable Trust Planning

Assume
$600,000 Estate
AFTER 5 YEARS

Best Case Scenario

No Pre-Planning

vs.

With Trusts

Compare No Planning to Irrevocable Trust Planning

Assume
$600,000 Estate
AFTER 5 YEARS

Other Scenarios

No Pre-Planning

vs.

With Trusts

Why Irrevocable?

- Scams
- Undue influence
- Creditors
- Lawsuits
- Beneficiary problems

Why Irrevocable?

Continued

- Preferable to gifting
  - Control – who get what, and when; retained powers
  - Income
  - Protection from beneficiaries losing it
  - Tax advantages
- More user-friendly these days

Irrevocable Burial Reserves

- Definition
- Use
- Restrictions

Supplemental Needs Trusts

Funding a Supplemental Needs Trust

FIRST PARTY SETTLED

- Use the disabled individual's own funds
  - Examples: Personal injury settlement, any money accumulated prior to disability
- Payback Required
- Can now be created by the individual with a disability if they have capacity

THIRD PARTY SETTLED

- Use the funds of anyone but the disabled individual
  - Examples: parents and other family members, birthday gifts
- No Payback Required - Settlor can control disposition upon death of disabled individual

When can I create a SNT?

INTERVIVOS

- During the settlor's lifetime
  - All FP settled SNTs are inter vivos

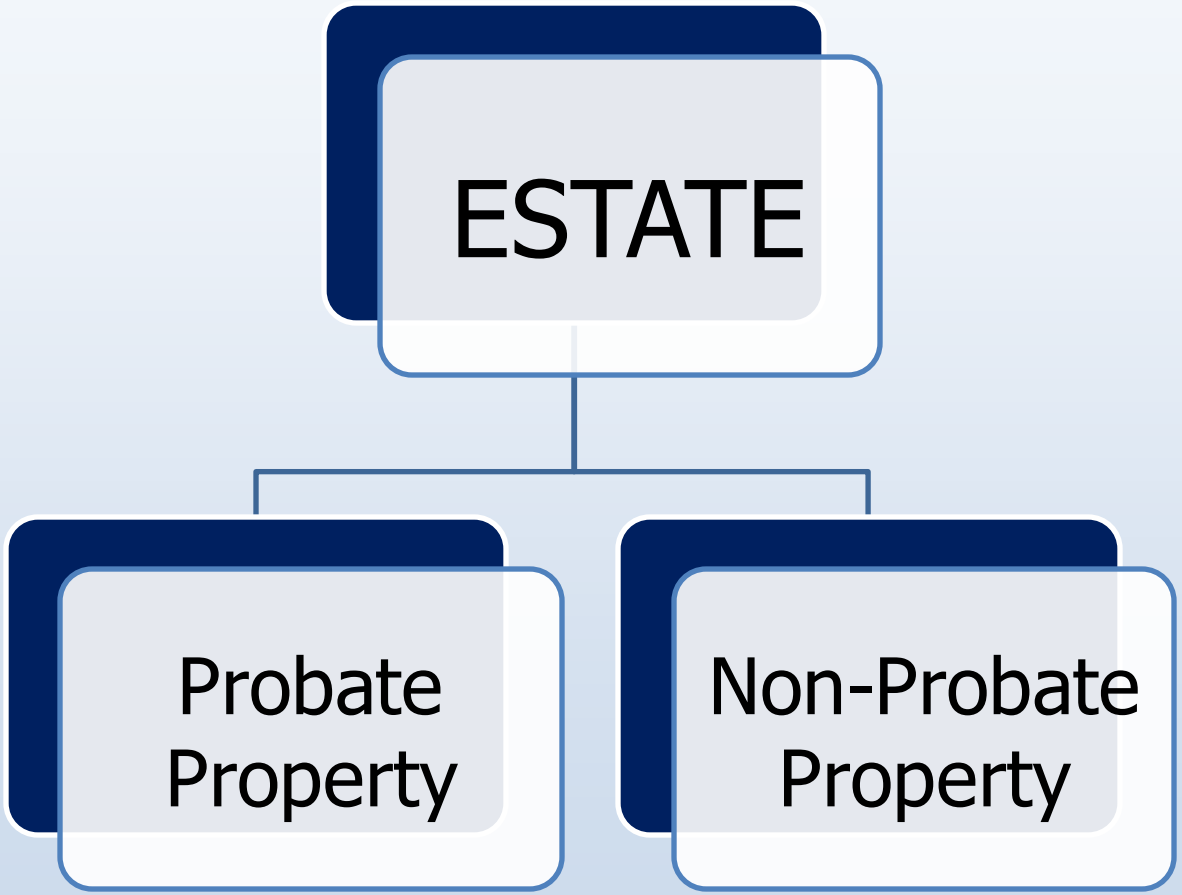
TESTAMENTARY

- By will
  - Created to protect the inheritance of a disabled person

Important Technical Requirements

- Governed by Federal Laws and Regulations
- Limited Purpose – “supplement not supplant”
- Sole Benefit Requirement
- Irrevocable
- Distribution Standards

What do I have in my Estate?


ESTATE
Probate Property
Non-Probate Property

Probate vs. Non-Probate

Probate Property

- Anything owned in one person's name alone
- Property without a designated beneficiary OR with the owner's estate named as beneficiary

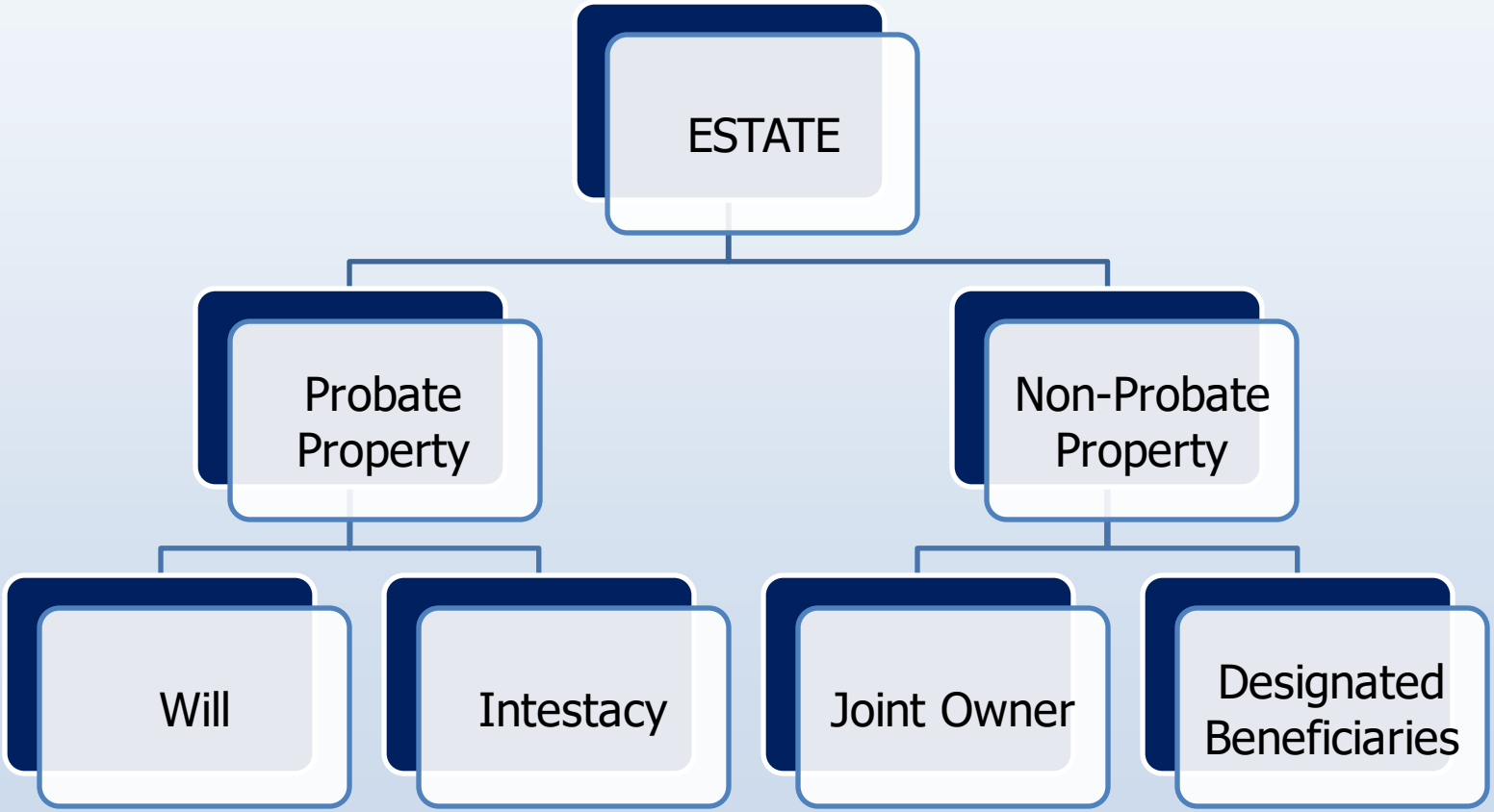
Non-Probate

- Joint Property with right of survivorship (e.g.: house owned by two spouses, joint bank accounts)
- Designated Beneficiary (e.g.: life insurance, IRAs, trusts)
- “Payable upon death” accounts

Probate vs. Non-Probate
What is the difference?

- Taxes
- Expenses of the estate (legal fees, executor's commission)
- Privacy
- Simplicity
- Creditor protection

Telling property where to go



Wills vs. Intestacy

Wills vs. Intestacy

WILLS

The testator directs to whom property will be distributed, how that property is distributed and who is in charge of distribution

INTESTACY

The law directs that the decedent's property should pass to their "natural objects of bounty"

Wills vs. Intestacy

WILLS

- Direct payment of taxes and tax planning
- Create trusts to insulate inheritances
- Specific bequests of sentimental property

INTESTACY

- No tax planning
- Does not reflect family dynamic, relationships
- Outright distributions to all beneficiaries
- Indiscriminate division of property

CLOSING REMARKS

Acosta Law Firm, PLLC

Estate Planning & Elder Law

Thanks for Attending our Virtual Workshop!

Next Virtual Workshop Date:

Day 4: Wednesday, April 28, 2021

2:00pm-4:00pm

This four-part virtual series is eligible for 7 continuing education credits. Attendees must attend all four sessions to receive their credits. (i.e.. Partial credit will not be given for attending less than all four sessions.).

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