

1 **The Top Ten Things You Need to Know about Elder Law**

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2 **No. 1 Government Benefits Program**

- Means tested programs- Supplemental Security Income/Medicaid
- Non-means tested programs- Medicare/ Social Security Disability Income

3 **Most Common Means Tested Programs**

- SSI- Supplemental Security Income
- LTC- Long-Term Care
- Medicaid
 - Community \$1 of SSI

4 **Government Benefits: General Eligibility Requirements for Means Tested Programs**

- Nationality and residence requirements
- Age, Blindness and Disability
- Medical Necessity
- Income Limitations (\$841 for SSI in 2022, higher for LTC and Medicaid)
- Resource Limitations (\$2,000)

5 **Government Benefits: Non Means Tested Programs**

- Social Security Disability Insurance (SSDI)
 - Based on earning and work record
- Medicare
 - Federal Health insurance
 - Eligible after receipt of SSDI for 2 years

6 **No. 2 Use of a Qualified Income Trust**

- Only use for qualification of LTC benefits
- Texas is an income cap state
- \$2,523 for individual
- \$5,046 for married couple, both applying
- Failure to establish QIT will result in ineligibility for Medicaid
- Only fixes income problem, never fixes resource eligibility

7 **No. 3 Transfers**

- General Transfer Rules
- Exclusion Gifting
- Disclaimers
- Exceptions to the Transfers of Assets Penalty
- Two-year Caretaker Rule

8 **No. 4 Special Needs Trusts**

- Self-Settled vs. Third Party
- Used to supplement, not supplant government benefits

9 **Self Settled Special Needs Trust**

- (d)(4)(A) Special Needs Trust
- (d)(4)(C) Pooled Special Needs Trust
 - Ex., The Arc of Texas Master Pooled Trust
 - Pay-back provision required

10 **Third Party Special Needs Trust**

- Established by an individual other than the beneficiary
- Pay-back provision is not required
- Consider using in lieu of I love you wills for elderly clients with needs for Long-Term Care

11 **Common Mistakes when drafting and Administering SNTs**

- Inclusion of a Medicaid Pay Back Provision in a Third Party Special Needs Trust
- Drafting a Strict SNT
- Creating a Self-Settled Special Needs Trusts for an individual over the age of 65
- Stating that 3rd Party SNT complies to provisions of (d)(4)(A)

12 **No. 5 Ethical Considerations in Medicaid Planning**

- Failure to consider Medicaid Planning
- Failure to Create a SNT
- Beneficiary Designations not coordinated

13 **No. 6 Spousal Impoverishment Rules**

- Rules regarding Medicaid qualification for spouses when one is in nursing home and other remains in the community

14 **Eligibility for Spousal Impoverishment Rules**

- Institutionalization of one spouse
- Limitations on Income-\$2,523 individual limit
- Limitations on Resources
 - \$27,480 minimum SPRA
 - \$137,400 maximum SPRA

15 **The Spousal Protected Resource Amount**

- When the SPRA is calculated
- How the SPRA is calculated
- How the SPRA can be increased
- The minimum monthly maintenance needs allowance
- Post Eligibility Treatments of the Community Spouse's Resources

16 **No. 7 Medicaid Estate Recovery Program ("MERP")**

- Applicability of Estate Recovery

- Claims Procedure
- Exemptions from Claims
- Surviving spouse
- Disabled child
- Adult unmarried child living in the home for at least one year prior to the time Medicaid recipient's death

17 **No. 8 Veterans' Benefits**

- Two types of VA Disability Compensation
 - Service Connected Disability Compensation
 - Low-Income Disability Payments

18 **VA Benefits: Special Monthly Payments**

- Aid and Attendance Payments
- Housebound Allowance

19 **VA Benefits: Other Available Benefits**

- Healthcare
- Survivor's Benefits ("DIC")
- Burial Benefits
- Texas Veteran's Homes

20 **No. 9 Long-Term Care ("LTC") Insurance**

- LTC insurance vs. Medicaid
- Long-Term Care Partnership

21 **No.10 Exploitation, Abuse and Neglect**

- General Reporting Requirement
- Criminal Statutes
- The Rights of the Elderly Statute
- Other Legal Interventions
 - Guardianships, Representative Payees, mental health commitments

22 **WHAT TO TAKE AWAY**

- Advocate for long-term care insurance
- Investigate VA benefits
- If long-term care is necessary consider discretionary trust for surviving spouse
- MERP only applies to probate estate