4 Essential Documents Everyone Needs & Special Needs Planning

Presented on Behalf of:
West Chester University Care Giver Support Group
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Presented by: Joshua R. Wilkins, Esq.

ANDERSON ELDER LAW
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What Do Elder Law Attorneys Do, Anyway?

- ***Traditional Practice Areas:***
  - Estate Planning Documents for all ages and asset levels
    - Wills, or Living Trusts
    - Powers of Attorney
  - Estate Administration for all size estates
  - Trust Administration
  - Guardianships
- ***Specialized Practice Areas:***
  - Financing Long-term Care & Public Benefits
  - Special Needs Planning including Supplemental and Special Needs Trusts
  - Coordination of financial, legal and medical issues in time of crisis or preplanning for disability

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Traditional Estate Planning Issues

- **What is a *<u>great</u>* set of documents?**
  - General Durable Power of Attorney
  - Health Care Power of Attorney
  - Living Will
  - Living Trust vs. Will

- **Can someone with a diagnosis of Alzheimer's execute legal documents?**
  - Different levels of capacity
  - Self-determination

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What Makes a Great Power of Attorney?

- **What is a POA?**
- **What is <u>not</u> a POA?**
- **What makes a *<u>great</u>* POA?**
  - Choice of Agent
  - Consider Gifting Authority
  - Complies with State Law *
  - When is it effective?

- **Training your agent(s)**

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Changes to Powers of Attorney in Pennsylvania

- Act 95 became law on July 2, 2014 to clarify:
  - Acceptance of POA
  - Creation and Execution of POA
  - Duties of Agent
- Documents executed *after* January 1, 2015 must comply with:
  - Updated notice
  - Updated acknowledgements
  - Signature formalities
  - Modifiable Agent's duties
  - Specific language requirements for estate planning and maintenance
    - General grant of power vs. Specific grant of power
    - "Hot Powers"

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What Makes a Great Health Care Power of Attorney?

- **What is a Living Will?**
- **What is <u>not</u> a Living Will?**
  - How is it different than a HCPOA?
  - What is a DNR order? What is a POLST?
- **What makes a *<u>great</u>* Living Will?**
  - Point is discussion
  - Coordination of agent with HCPOA
  - When effective?
  - Contact information for HCP
  - Copy delivered to PCP
- **Training your agent(s)**

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What Makes a Great Will?

- **What is a Will?**
- **What is <u>not</u> a Will?**
- **What makes a *<u>great</u>* Will/Estate Plan?**
  - Complete and accurate asset list
  - Coordination of beneficiary designations and joint accounts
  - Living Trusts in some situations
- **Training your Executor/Trustee.**

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How To Be Your Own Best Advocate

- **Legal Issues**
  - Drafting Documents
  - Selection of Fiduciaries
  - "Training" Fiduciaries

- **Insurance & Financing Issues**
  - Health Insurance
  - Public Benefits
- **Care Coordination Issues**
- **Dispute Resolution**
  - Family Members
  - Family & Facility

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Financing Long-Term Care

- **Understanding the Continuum of Care**
  - Home health care
  - Adult Day Services
  - Assisted Living
  - Nursing Home
- **Understanding the possible funding sources for Long-Term Care**
  - Medicare
  - Medicaid
  - Veterans Benefits
  - Long-term Care Insurance

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Critical Medicaid Information

- **Medicare is not Medicaid**
- **Medicaid is a welfare program with eligibility rules for assets, health (and income for community services)**
- **Changes to Medicaid Eligibility Rules**
  - Gift Transfers
  - Annuities
  - Treatment of Primary Residence
  - Medicaid exceptions for the benefit of spouses and some children, and siblings
- **Applying for Medicaid-Tips & Traps**
  - Documentation
  - Timing
  - Adult Children Issues

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OVERVIEW OF PUBLIC BENEFITS

- Four Basic Programs:
  - – Social Security Disability (SSDI)
  - – Medicare
  - – Supplemental Security Income (SSI)
  - – Medicaid
- All four are federally-funded programs providing benefits for the Aged, Blind and Disabled (**ABD**)

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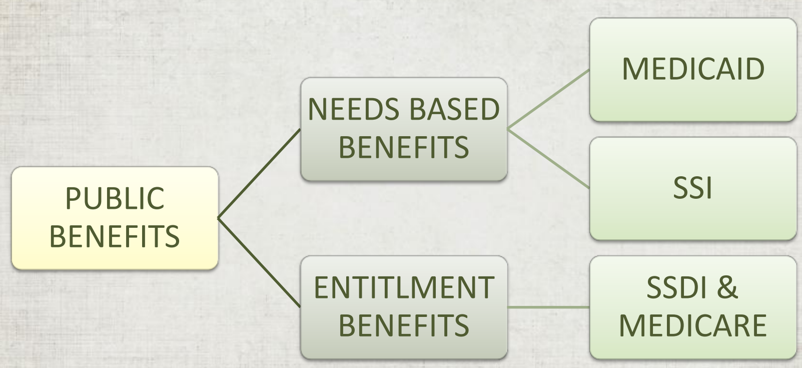
OVERVIEW OF PUBLIC BENEFITS



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	Entitlement Benefits	*Needs-Based Benefits*
Cash Assistance	**Social Security Disability (SSDI)**	**Supplemental Security Income (SSI)**
Medical Assistance	**Medicare (MC)**	**Medicaid (MA)**

SUPPLEMENTAL NEEDS TRUSTS

- **What is a Supplemental Needs Trust?**
  - Third Party Trust vs. First Party Trust
  - No Payback is required for Supplemental Needs Trust
- **How to establish a Supplemental Needs Trust**
  - Testamentary:
    - Created as part of a Will
    - Funded only at death
  - Intervivos:
    - Created as a stand alone document
    - Revocable vs. Irrevocable
- **How to Keep a Trust Flexible**
  - Trust Amendments & Trust Protectors
  - Trust Relief Valve

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FUNDING YOUR TRUST

- **How much is enough?**
  - Allocation of assets between siblings
  - Budget for Care Plan
  - Coordination of public benefits & insurance
- **Choice of Assets**
  - Title Review of Assets
  - Joint Accounts
  - Qualified Accounts
  - Life Insurance
- **Potential Gifts from Other Family Members**

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Pay-back Trust
42 U.S. C. Sec. 1396p(d)(4)(A)

- Properly drafted Payback Trust
- Intervivos – Irrevocable
- Who can create?
- Disabled Beneficiary must be under age 65.
- Payback means payback of Medicaid after death.

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Pooled Trust
42 U.S.C. Sec. 1396p(d)(4)(C)

- What is a Pooled Trust?
  - Corporate Trustee
  - Pooled management of assets
  - Joinder Agreement
  - Upon death of beneficiary, who receives balance of trust assets?

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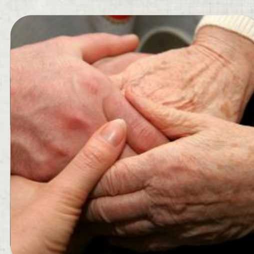
POOR PLANNING

- No decisions or planning done
- Disinherit special needs child and assume siblings will do the "right thing"
- Simple Will for complex situation
- Disregard types of assets



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PROPER PLANNING

- Will that refers to your Supplemental Needs Trust
- Coordination of beneficiary designations
- Perfect choice of fiduciaries and successors
- Letter of Intent
- Involve team and family

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Top 5 Things for Families to Do to Prepare for the Future

- **Get your estate planning papers updated ASAP, and be sure to consider gifting authority in the POA.**
- **Understand the continuum and have your care plan and support developed.**
- **Train your “substitute decision makers” over time so you balance your need for control with your need for assistance.**
- **Understand it is NEVER too late to consider Long-Term Care planning.**
- **Once you do the top 4 things, don’t forget to enjoy life!**

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LINDA M. ANDERSON, JD, LL.M., CELA, VA ACCREDITED

- Linda is 1 of approximately 40 certified as an Elder Law Attorney in Pennsylvania and has her Masters in Taxation from Villanova.
- Selected by her peers as a "Super Lawyer" as featured in Philadelphia Magazine since 2004, one of the Top 50 female lawyers in Pennsylvania since 2007, & included in the Best Lawyers in America since 2009.
- Received Martindale Hubbell's prestigious "AV" rating.
- Appointed as a Fellow of ACTEC (The American College of Trust and Estate Counsel).
- Serves on the Board of Directors for the Pennsylvania Association of Elder Law Attorneys (PAELA), received the 2012 PAELA Member of the Year Award, and is currently the Vice President of PAELA.
- Linda is the past Chair of the Elder Law Section of the Pennsylvania Bar Association (April, 2009) and continues to serve on the Elder Law Section Council.
- Serves as a co-chair of the Delaware County Bar Association, Elder Law Committee.
- Invited member of the Special Needs Alliance and is a member of the Association of Life Care Planning Law Firms.
- Accredited attorney with the Department of Veteran Affairs.

OTHER STAFF MEMBERS

The staff members of Anderson Elder Law are highly trained and experienced in the specialized areas of Elder Law which include long-term care and special needs planning, as well as estate and trust planning and administration. But, more importantly our staff includes many members with significant life experiences related to our practice areas. These shared experiences are the foundation for our commitment to provide the highest quality legal services to protect our clients' self-determination, family, and resources.

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