



The Heart of Alzheimer's Care & Cure

Legal, Financial and Long-Term Care Planning

July 22, 2017

Alzheimer's | **SAN DIEGO**

The Heart of Alzheimer's Care & Cure

Our Mission: to provide San Diego families with care and support, while advancing critical local research for a cure.

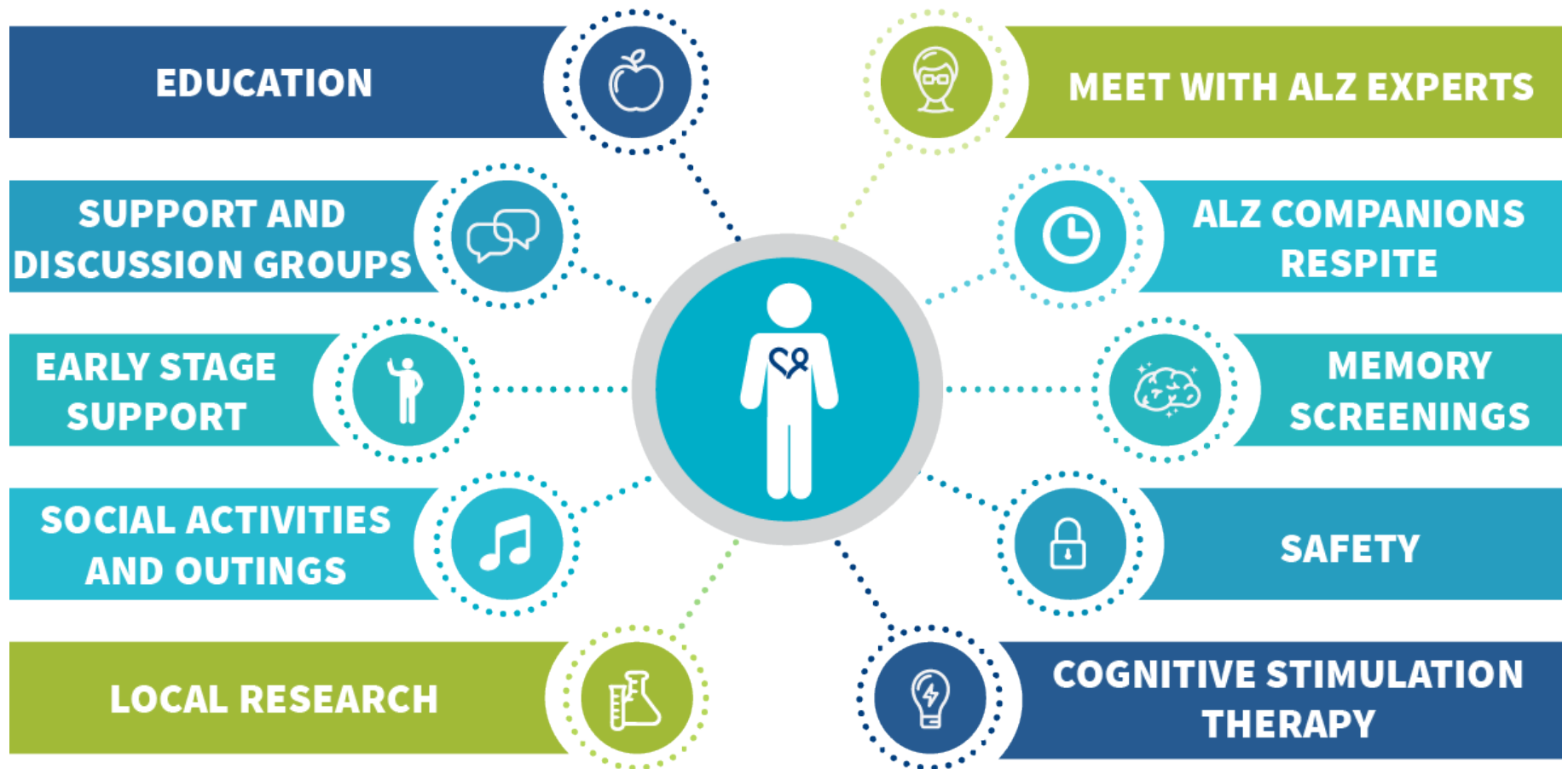
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Local & Independent

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Alzheimer's | **SAN DIEGO**

The Heart of Local Care & Cure



Free in-person support from local experts



San Diego's Largest Alzheimer's Walk!
Sign up FREE: alzsd.org/walk4alz or 858.966.3319

OCEANSIDE PIER

October 7, 2017

Check-in 2:30PM • Walk: 4:00PM

BALBOA PARK

October 21, 2017

Check-in 6:30AM • Walk: 8:00AM



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6632 Convoy Court
San Diego, CA 92111



Understanding Dementia

Amy Abrams, MSW/MPH

Alzheimer's San Diego

Normal aging vs. not normal aging

Slower to think

Slower to do

May hesitate more

More likely to
"look before you leap"

Will know a person,
but not their name

May pause when word-finding

New information reminds
me of old information

Consistent personality

Unable to think the same

Unable to "do" as I did before

Unable to start tasks

Unable to think things through

Unable to successfully recall
a person's identity

Words won't come, even with
visual, verbal, or touch cues

Confused about past and present,
or stuck in a moment in time

Different personality and/or behavior

Dementia is not a specific disease

True dementias

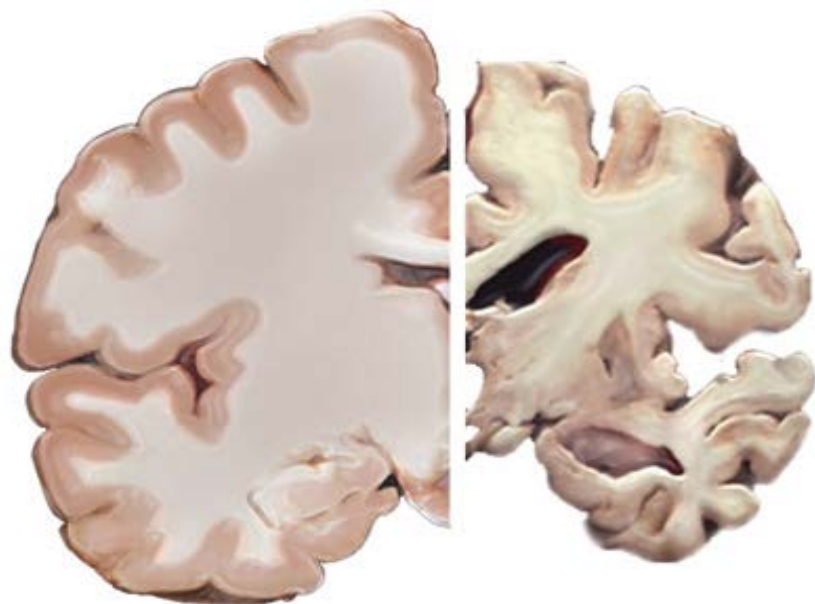
- Alzheimer's disease
- Lewy Body dementia
- Vascular dementia
- Mixed dementia
- Frontotemporal dementia
- Huntington's disease
- Creutzfeldt-Jakob disease
- Parkinson's disease



Treatable or reversible conditions

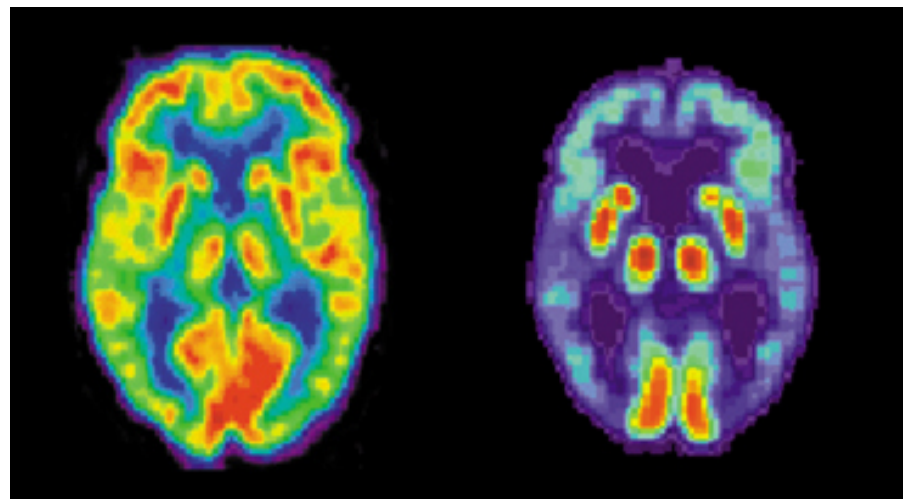
- Depression
- Reactions to medications
- Thyroid problems
- Nutritional deficiencies
- Infections
- Tumors

Brain changes in dementia



Healthy
Brain Tissue

Alzheimer's
Brain Tissue



Healthy
Brain Activity

Alzheimer's
Brain Activity

Progression of the disease

- Generally a long, slow decline in function over time
- Two to 20 years: highly variable
- Symptoms are difficult to predict



Diagnosis



Incapacity

What is the difference?

Capacity

- Ability to make a decision (specific)
- May change over time
- Determined by physician or attorney

Competence

- Capacity to make decisions (global)
- Does not change over time
- Determined by the courts

When the diagnosis is dementia ...



**It's never too early to start
the conversation**

- Engaging your support system
- Home and personal safety
- Driving
- Advanced care directives
- Long term care planning
- Legal and financial planning



Estate Planning Essentials

Philip Lindsley, CELA*, CLS**

**Certified Elder Law Attorney*

*** Certified Legal Specialist, Estate Planning, Trust and Probate*

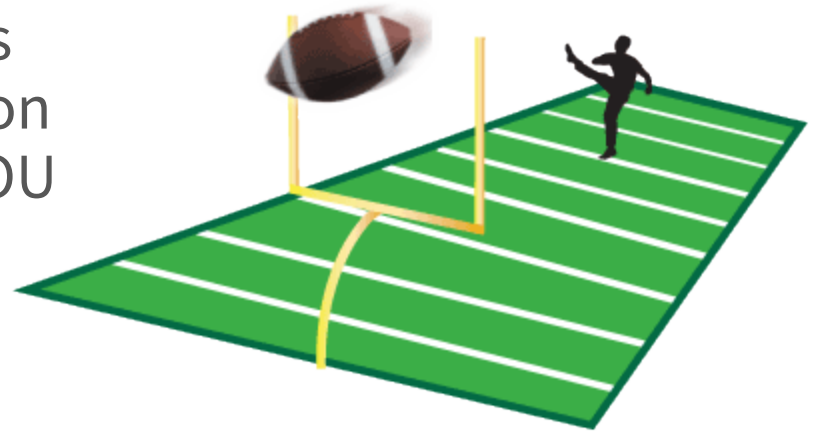
Robert Dieringer, Esq.

Associate Attorney

SAN DIEGO
ELDER LAW
C E N T E R

The Goal of Estate Planning

- Retain control over life decisions
- Provide for your and your family's care and dignity if you become disabled.
- Preserve as much of your assets as is legally possible so that upon your death, they go to whom YOU choose



Inadequate Planning

- You cannot say who would manage your finances if you no longer can.
- No choice in who would make health care decisions for you if you are unable to do so yourself.
- Others decide if you would die a natural death or be kept artificially alive.
- Possible loss of ability to qualify for Long Term Care Medi-Cal and VA benefits, and avoid Medi-Cal recovery actions.
- Others decide who would administer your estate after your death, and how it would be administered.
- Law decides who would inherit your property.



***Are you in control,
or are others?***



The Solution:

An Integrated Estate Plan

	Financial Affairs		Your Body
	property in your trust	property <u>not</u> in your trust	
<i>During Your Lifetime</i>	Trust	Financial Powers of Attorney	Health Care Power of Attorney/Living Will
<i>Upon Your Death</i>	Trust	Pour-over Will	Health Care Power of Attorney/Living Will

A Closer Look at the Parts...



A Living Trust

- Avoids Probate (if funded!)
- Provides for management of assets during disability
- Can provide for public benefits and asset preservation planning
- Protects and expands your options for management of your estate after your death, and protects your family



How a Trust Works

- Created by you, or you and spouse (“Settlors”)
- Managed by Trustee (Usually You)
- **Benefits to the Beneficiary:**
 - In a Living Trust, the Beneficiary is usually the Settlor during his or her lifetime
 - Upon the death of the Settlor, property is distributed to the beneficiaries without probate

How it Protects: During your Life

Details how assets are to be managed during any disability.

You get to decide...

- Who is managing.
- Who is entitled to support.
- The extent and terms of support.
- Your retained rights.



How it Protects: After your Death

Avoids probate, and details how assets should pass after death.

- Terms of spousal support
- Terms of inheritance
- Special Needs or Retained Asset Trusts



If There Already is a Trust, Will it Work?

- Are the assets funded into the trust?
- Is the Trustee appropriate?
- Does the trustee have needed authority?
- Unnecessary “A/B” provisions?
- Does it address “family problems?”



The Will



- A Pour Over Will passes any property not funded into trust or without beneficiary designations into the Trust.
- If there is no Trust, the Will won't "pour over," but will name heirs to the estate and the terms.

Financial Powers of Attorney

You Will Decide...

- General powers granted to agent
- Special powers (example; Medi-Cal and public benefit planning language)
- Springing or immediate
- If springing, method of determining incapacity

“I Already Have an Estate Plan!”

Great! We recommend you have an attorney review it to make sure it is up to date, does what you want, AND...

- HAS “public benefits planning language” if you or your spouse might some day need to qualify for Long Term Care Medi-Cal or VA Aide and Attendance benefits
- Doesn’t have any unnecessary “bypass” or “A/B Trusts.

Include Special Benefit Planning Language

- Assets in standard revocable living trusts are counted by Medi-Cal and VA Aide and Attendance benefits calculations. This can disqualify you from needed benefits.
- However...your trust and power of attorney CAN provide for eligibility and recovery avoidance should Medi-Cal or VA long term care benefits program qualification ever be desirable.

The Unified Credit

<u>YEAR</u>	<u>AMOUNT</u>
1998	\$625,000
1999	\$650,000
2000-2001	\$675,000
2002-2003	\$1,000,000
2004-2005	\$1,500,000
2006-2008	\$2,000,000
2009	\$3,500,000
2010	\$ infinite
2011	\$5,000,000
2013	\$5,250,000 (portable)
2014	\$5,340,000 (portable)
2015	\$5,430,000 (portable)
2016	\$5,450,000 (portable)



At the Time of the First Death in an “AB” or Bypass Trust

Revocable

- Survivor’s Trust, “A” Trust
- Features and Functions

Irrevocable

- Disclaimer Trust, Bypass Trust, Credit Shelter Trust, Marital Property Trust, “B” Trust
- Features and Functions

Current Problems with Bypass Planning

- Artifact of old low credit exemptions. Current exemption over \$5 million, with portability. Over \$11 million credit for married couple without A/B trust.
- Old bypass trust may cause unnecessary taxes, administrative hassles and fees and restrictions on access to funds for surviving spouse.

Current Problems with Bypass Planning

- May also cause problems with surviving spouse's ability to do planning for Medi-Cal or VA benefits.
- Will inhibit surviving spouse's ability to change beneficiaries if needed.
- Still may make sense for “blended families,” and other non-tax reasons.

Current Problems with Bypass Planning

- If you have a trust more than 2-3 years old that may have “A/B trust” or bypass provision, have it reviewed by your estate planning or elder law attorney
- Ensure it has desired public benefits planning language



Public Benefit Planning Strategies: In Summary

- Integrated Estate Plans can protect you and your family. You get to make the rules.
- Consider Medi-Cal planning authority in your trust and powers of attorney. “Put the tools in the tool box!”
- Avoid or get rid of A/B trust language if you do not have a good reason for it.
- Know your rights, and get competent advice. If the estate plan involves long term care issues, see Elder Law Attorney to review your existing plan, or to develop a new one.

STRETCH BREAK!



Long Term Care Medi-Cal and Veterans Benefits: How to Qualify

Philip Lindsley, CELA, CLS

San Diego Elder Law Center

LONG TERM CARE OPTIONS

1. Home
2. In Home with supportive services
3. Independent Living
4. RCFEs: Assisted Living & Board and Care;
CCRCs
5. Skilled Nursing Facilities (SNFs)

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WHO PAYS FOR SNF CARE?

Medicare will, if....

- Over 65, or with qualifying disability
- Eligibility established by work history

...With serious limitations:

- Three-day hospitalization for same or related condition within prior 30 days required
- Maximum coverage 100 days, but average coverage is less.
- Skilled care requirements

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WHO ELSE PAYS FOR SNFs?

Supplemental Insurance/MediGap

- First 20 days paid by Medicare
- 21-100...Medicare co-pay portion may be paid Medi-Gap or “Advantage” (HMO) plan

Long Term Care Insurance

- Rare, expensive, and will have limitations
- Private Pay
- \$8,000 per month and up

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LONG TERM CARE MEDI-CAL

- Actual institutionalization
- Not a “poverty based” program. Substantial protection for middle class.
- No income test. “Share of Cost” only
- **Special “Spousal Protection Rules.”**
 - Congressional History: MCCA 1988
 - Divorce vs. Spousal Protection
 - Special Asset and Income Protection
 - Since 1988 Divorce almost never best option (29 years!)

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SPOUSAL PROTECTION RULES

There is both an asset protection rule and an income protection rule for spouses

CSRA – Community Spouse Resource Allowance.

2017 = \$ 120,900

MMMNA – Min. Monthly Maintenance Needs Allowance

2017 = \$3,023

Share of Cost Calculation
After acquired property



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MEDI-CAL ASSET LIMITATIONS

WELL SPOUSE

\$*120,900 CSRA

+ exempt property

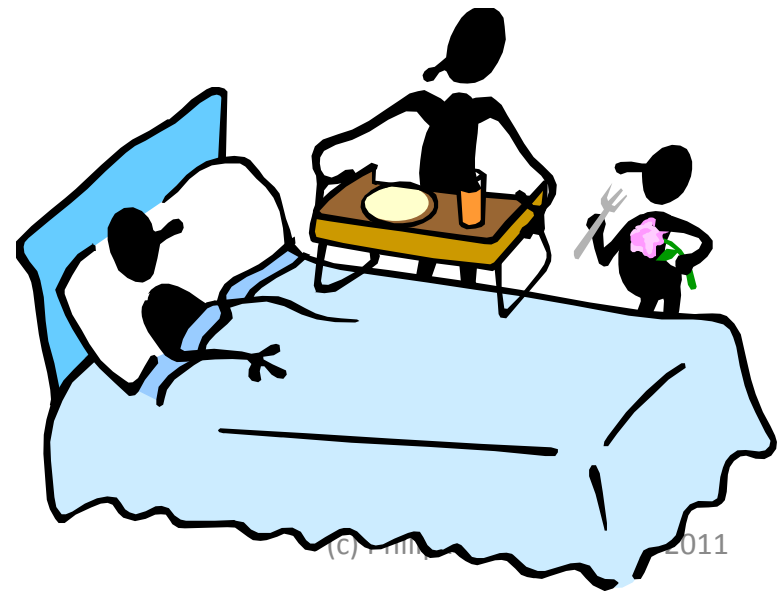
- home
- retirement accts
- qualified annuities
- personal property
- business property

*Can be increased

ILL SPOUSE (or single)

\$2,000

+ exempt



WHY MEDI-CAL PLANNING?

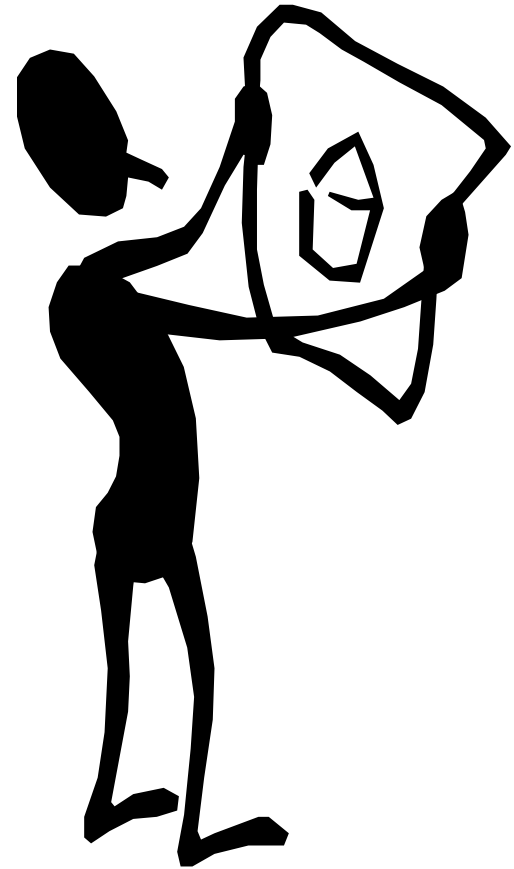
- Medicare and supplemental insurance exhausted.
- No long term care insurance, or it has also been exhausted or has limited coverage.
- Private pay not a good option for client....



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PLANNING OVERVIEW

- Obtain eligibility without total spend down
- Protect at-home spouse
- Minimize share of cost
- Recovery avoidance



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EXEMPT PROPERTY

- **Principal Residence**

- No equity limitation now
 - Equity limits when DRA adopted in CA (Now \$828,000)
- Multi-unit & contiguous property
- Intent to return
 - Totally subjective measure in CA currently

- **Personal Property**

- **Motor Vehicle**

- No value limitation
- No requirement that applicant drive

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EXEMPT PROPERTY

- **Burial Arrangements**
 - Irrevocable: No limit
 - Revocable: \$1,500.00
- **Property used in trade or business**
 - Includes land, buildings, vehicles, inventory, etc.
- **IRAs and Pensions**
 - Well Spouse: Exempt
 - Ill Spouse: Principal not counted if in payout
- **Some Annuities (Beware!!)**

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PLUS “CSRA”

Community Spouse Resource Allowance (CSRA)

- Spouse allowed to exempt otherwise non-exempt property.
- In the year 2017 = \$120,900.
- This amount can often be substantially increased.



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COUNTED ASSETS

All property not exempt, and available

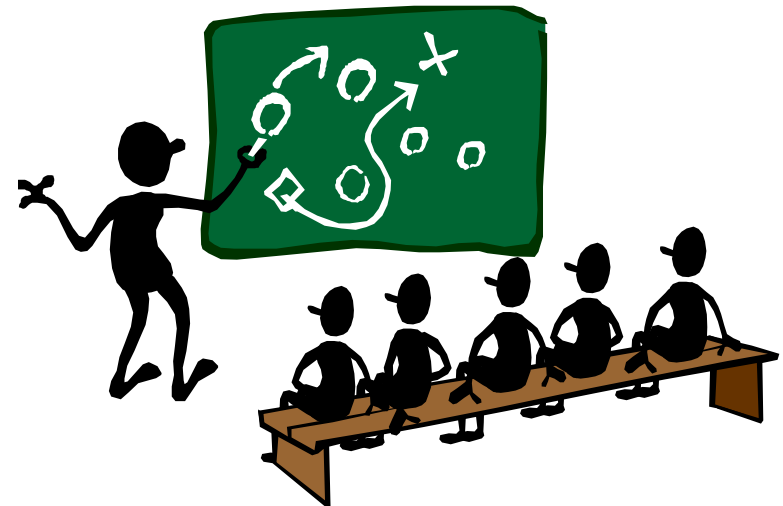
Examples:

- Other Real Property (not residence)
 - Assessed value!!
- More than one motor vehicle
- Bank accounts
- Stocks, bonds, mutual funds (not in IRA or Pension)
- Whole life insurance policies
 - Cash surrender value, not face value.

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STRATEGIES FOR EXCESS ASSETS

- With advance planning, get in-home care
- Convert non-exempt property to exempt
- Spend down to eligibility. Enjoy!!
- Gifting strategies (beware!)
- Special Needs Trusts
- Expand “CSRA”
- Many other options!



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JOHN AND MARY SPOUSE'S ASSETS

Home = \$350,000

Wells Fargo CD = \$20,000

Fidelity Funds = \$125,000

Camry = \$12,000

Buick = \$3,000

Life Insurance = \$50,000 face/\$10,000 cash value

IRA (well spouse) = \$160,000

IRA (ill spouse) = \$40,000

Palmdale Lot FMV = \$20,000/Assessed = \$5,000

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JOHN AND MARY SPOUSE'S ASSETS

EXEMPT

Home - \$350,000

Camry - \$12,000

IRA (well spouse) - \$160,000

IRA (ill spouse) - \$40,000

NON-EXEMPT

Fidelity Fund - \$125,000

CD - \$20,000

Buick - \$3,000

Life Insurance - \$10,000

Palmdale Lot - \$5,000

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JOHN AND MARY SPOUSE'S NON-EXEMPT ASSETS

Total Countable Assets		\$ 163,000
Less CSRA* (Mary - well)	-	\$ 120,900
Less Allowance (John - ill)	-	<u>\$ 2,000</u>
Total Excess Assets:		\$ 40,100

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JOHN AND MARY SPOUSE'S EXCESS ASSETS = \$ 40,100

- Pay Mortgage?
- Repair Home?
- Burial Plan?
- New Vehicle?
- CSRA increase for Mary?



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JOHN AND MARY SPOUSE

What if...

\$350,000 excess assets?

- Home Repairs – 25,000
- Burial Plan – 10,000
- New Van – 35,000

\$ 350,000

- \$ 25,000

- \$ 10,000

- \$ 35,000

Total = \$ 280,000

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INCREASE CSRA

Definitions

- **CSRA** (Community Spouse Resource Allowance)
2017 = \$ 120,900
- **MMMNA** (Minimum Monthly Maintenance Needs Allowance) 2017= \$ 3,023

CSRA Appeal

- Well Spouse is entitled to increase his/her CSRA in an amount sufficient to generate enough income to make up any difference between MMMNA and their actual income.

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COMPUTATION FOR CSRA INCREASE

- $\text{MMMNA} - \text{actual income} = \text{shortfall}$
- $\text{Shortfall} \times 12 \text{ months} = \text{annual shortfall}$
- $\text{Annual shortfall} \div \text{average 1 year CD interest rate}$
- Equals amount in CSRA necessary to generate income to meet MMMNA



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MARY SPOUSE'S CSRA INCREASE

(Asset First Test - Applied in Court Hearing)

- Minimum Monthly Maintenance Needs Allowance (MMMNA) = \$ 3,023
- Monthly Income (well spouse) - \$ <1200>
- Monthly Income (Ill spouse) \$ 1,300 not counted
- Monthly Income needed to achieve MMMNA (shortfall) = \$ 1,823
- Yearly Income needed (\$1,781 shortfall x 12 months) = \$ 21,876
- Interest Rate (1 year CD) ÷ 2.5%
- “Expanded” CSRA = \$ 875,040

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EXAMPLES OF CSRA EXPANSIONS

(Assumes 1 year CD at 2.5%)

Total Income or Asset First Income

Expanded CSRA

\$ 2,000

\$ 491,040

\$ 1,500

\$ 731,040

\$ 1,000

\$ 971,040

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JOHN AND MARY SPOUSE

- **What if...**

\$350,000 excess assets?

- Home Repairs – 25,000
- Burial Plan – 10,000
- New Van – 35,000
- New Home – ?

\$ 350,000

- \$ 25,000

- \$ 10,000

- \$ 35,000

New Total = \$ 280,000

Expanded CSRA of \$854,880
more than enough to shelter all!

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“Can I give my excess assets to the kids?”

I'll tell you a little about “gifts” IF....
you promise not to try and do this yourself!!!



(Appreciate what you don't know.
See a qualified Elder Law Attorney.)

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CAN I GIFT MY ASSESTS?

Yes, but in most circumstances, this will result in more bad things than good:

- Substantial penalties and periods of ineligibility for Medi-Cal.
- Ugly tax bills much worse than what you thought you were saving.
- The person you gave the gift to, hoping they'd still help you out with there new found wealth, doesn't.
- And, the gifting rules are changing and will be much worse. It is uncertain when new rules will be implemented.

Gifting can be workable part of a Medi-Cal plan, but the rules are technical, and there are costly traps for the unwary. See an elder law attorney.

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BENEFITS OF ADVANCED PLANNING

Most of what we do is in a crisis. With advanced planning, we can address...

- Most Family Trusts have benefits disqualifying language. This can be fixed with advanced planning.
- Existing Trusts with “AB” and other provisions that not only don’t help, but harm when in crisis. This can be fixed with advanced planning
- Most Powers of Attorney, even with “full general powers” are inadequate for some Medi-Cal planning options. Ties family hands, and takes options off the table. This can be fixed with advanced planning.
- Integrated Estate Plan with Benefit Preservation language.

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Get the right tools in your toolbox!

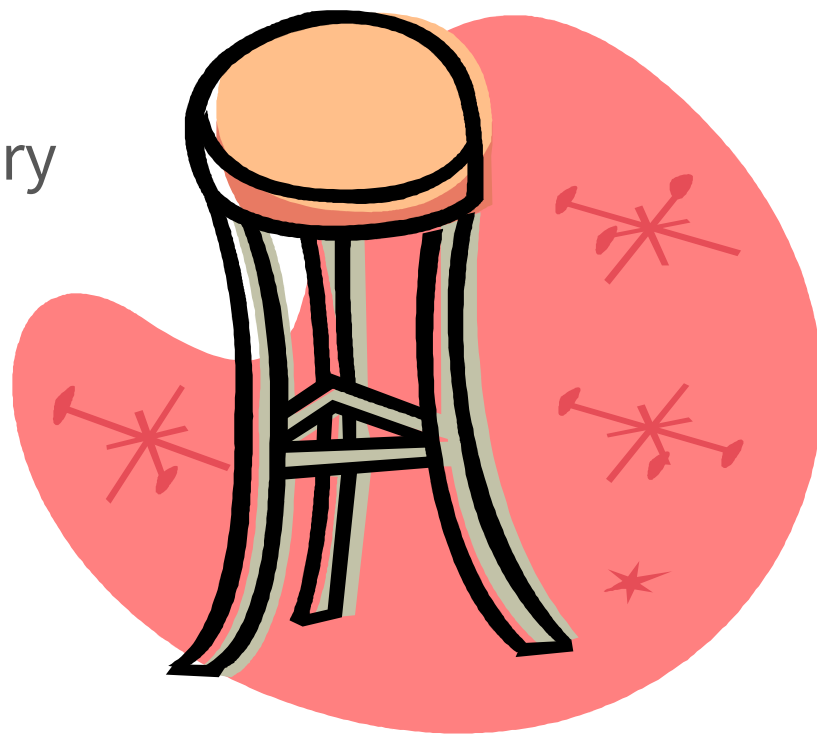
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THE 3 PARTS OF MEDI-CAL PLANNING

- Accelerate Eligibility
- Minimize Share of Cost
- Minimize Estate Recovery



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SHARE OF COST

Ill spouse's income above monthly allowance and allowable deductions paid to facility

- Name on Check Rule
 - Spouse's income not counted. No maximum
- Deduction for monthly allowance
- Deduction for health insurance
- Deduction for Spousal Support
 - If spouse's income less than MMMNA (\$2,981)

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SHARE OF COST (Continued)

- Deduction for unpaid medical bills at time of application
 - (Hunt v. Kizer)
- Deduction for uncovered supplies or services part of care plan
 - (Johnson v. Rank)
- Consider minimizing the ill spouse's income
 - Reposition assets
 - Take minimum IRA. Double check!

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ESTATE RECOVERY –Old Rules

State can attempt to recover after death of Medi-Cal recipient for amount of benefits paid after age 55, or for SNF.

There were some exceptions:

- No recovery during life of surviving spouse
- No recovery if there is a disabled child
 - No age limit. Can be disabled adult child
- No recovery if asset not in the “expanded” estate of the Medi-Cal beneficiary at the time of their death
- Hardship waivers

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ESTATE RECOVERY As of 1/1/2017

State can attempt to recover after death of Medi-Cal recipient for amount of benefits paid after age 55, or for SNF.

There are significant exceptions:

- No recovery if surviving spouse – ever.
- No recovery if there is a disabled child
 - No age limit. Can be disabled adult child
- No recovery if asset not in the “probate” estate of the Medi-Cal beneficiary at the time of their death
- Assets in trusts not recoverable. Includes revocable trusts
- Property with beneficiary or joint tenant not recoverable

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COMMON ADVOCACY ISSUES

- No discrimination against Medi-Cal residents
- Cannot discharge, or even change room because you applied for Medi-Cal
- Most facilities accept LTC Medi-Cal



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THE TRUTH ABOUT VA BENEFITS

Cash Monthly Benefit (“Aid & Attendance”):

- \$2,120.00 per month for Veteran and Spouse.
- \$1,788.00 per month for Veteran.
- \$1,149.00 per month for Surviving Spouse of Veteran.
- \$2,837.00 per month for Veteran married to a Veteran.

VA looks at

- Served in the military during wartime
- Resources (assets)
- Income versus medical/care expenses

BEWARE OF COMPANIES PROMISING BENEFITS

- Annuity salesmen in disguise
- Assisted Living Facility sponsored “VA Advisors”
 - Both can lead to BIG Medi-Cal problems later!

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ELIGIBILITY FOR A BASIC PENSION

- Veteran is age 65 or older, or is permanently and totally disabled
- Discharged under conditions other than dishonorable
- Served 90 days, at least 1 day of which was during a war time period
- Meets net worth and income limit tests



PERIODS OF WAR

WW II:	12/7/41 through 12/31/46
Korea :	6/27/50 through 1/31/55
In Vietnam:	2/28/61 through 5/7/75
Vietnam era:	8/5/64 through 5/7/75
Persian Gulf:	8/2/1990 to date

APPLYING FOR VA BENEFITS

- Can submit informal claim of intent
 - Sets award date
- Approval can take several months or longer. You need a back up plan.
- Will be retroactive
- Submit through VSO or VA certified attorney
- Have original DD 214 and supporting documents

IN SUMMARY....

- Many people can qualify for Long Term Care Medi-Cal, but don't know it
- With proper planning, the State won't "take your home" or recover for benefits paid.
- Know your rights, and get competent advice
- You are "deputized" to help your friends know their rights and get good advice!

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Finding Certified Elder Law Attorneys

- www.nelf.org
- www.naela.org
- www.alzsd.org
- www.sandiegoelderlaw.com



Questions & Answers

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San Diego Elder Law Center

Philip Lindsley, CELA, CLS

San Diego Elder Law Center

Thank You!

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