

FHCA 2019 Annual Conference & Trade Show

CE Session #64 – Medicaid and VA Benefit Planning for Nursing Centers and Assisted Living Facilities

Thursday, August 8 – 1:00 to 2:00 p.m.
Celebration 5-6 – Finance/Development

Upon completion of this presentation, the learner will be able to:

- Educate on how Medicaid and VA benefit planning can help them have more paying and happy clients
- Inform on the core basics of Medicaid and VA benefit planning so that they can spot issues and opportunities for their residents and potential residents
- Provide a list of best practices for management to safeguard themselves from delinquent accounts as well as shielding themselves from liability and lawsuits

Seminar Description:

The session will educate skilled nursing and assisted living personnel on key elements of Medicaid and VA benefit planning that could help them have more paying residents and less delinquent accounts. In addition, there will be an emphasis on safe guarding one's center from being sued due to negligent referrals, Medicaid and VA application denials and improper planning advice. The session's speaker has written a book called the "7 Strategies to Have Paying Residents & Avoid Lawsuits" and will reveal his practical strategies and advice throughout the session.

Presenter Bio(s):

Jason A. Penrod is the 20th attorney to become Board Certified as an Elder Law Expert by the Florida Bar and the National Elder Law Foundation. He is the founder of Family Elder Law with offices in Central Florida and his firm specializes in Medicaid & VA benefit planning for long term care. In addition, Jason is the author of the book titled "7 Strategies to Have More Paying Residents & Avoid Lawsuits."

Medicaid & VA Benefit Planning for Nursing Homes and Assisted Living Facilities

August 8, 2019
Florida Health Care Association



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Who am I and Why am I here?

- Board Certified Expert by Florida Bar & National Elder Law Foundation
- Jason A. Penrod, Founder of Family Elder Law
- Trained Nursing Home Business Managers regarding Medicaid & Collections
- Offices in Lake Wales, Lakeland, and Sebring
- Buffalo Sports Fan Enthusiast (Empathize with my pain ☺)



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How Do People Pay for Your Care?

- Private Pay
- Long-Term Care Insurance
- Medicare (albeit short term)
- VA Benefits
- Medicaid



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ICP Medicaid and Home & Community Based Waiver Medicaid

- 3 Tests for Qualification
 - Medical Test—Are you bad off enough to be here?
 - Income Test—Is gross “countable” income under \$2,313/month?
 - Asset Test—Are your “countable” assets under \$2,000?



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Income Qualification

- GROSS (Not Net) Income < \$2,313
- Social Security received is typically Net Amount—(Medicare Part B Premium of \$136)—Be Careful
- Insist Upon Seeing Written Verification of Income Amounts



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Over Income—Now What?

- Applicant Executes either a Qualified Income Trust or Pooled Trust
- Excess Income is Deposited into QIT or Pooled Trust
- SNF or ALF is paid out of QIT or Pooled Trust



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Income Issues

- Only certain people can execute a QIT without judicial authority
- Does applicant's Power of Attorney have "trust creation" power?
- QIT or Pooled Trust **must be funded each month** with excess income
- Miss a month of funding—Miss a month of eligibility



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Income Tips & Strategies

- Thorough Intake to Capture All Sources of Income
- If over income, and applicant can't execute QIT—have POA checked immediately by an Elder Law Attorney
- If QIT, and haven't received payment by certain date, follow up
- Assist Community Spouse with Community Spouse Income Allowance (CSIA)
- If CSIA is insufficient for Spouse—realize there are methods for increasing it.



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Asset Qualification

- Applicant under \$2,000 in “countable” assets
- If married, Community Spouse needs to be under \$126,420



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5 Year Look-Back Period for Transfers

- Transfers between spouses are exempt
- Gifts to children within Look-Back may be penalizing unless child recipient is blind and/or disabled
- Penalty Divisor = \$9,171
- \$91,710 Gift = Ten (10) month penalty
- Can remedy a gift IF recipient can return the money



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So What Doesn't Count?

- Principal Residence (*intent to return*)—under \$585,000 equity
- Irrevocable Prepaid Burial Arrangements
- Burial Savings Accounts



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So What Counts as an Asset?

- Checking & Savings Accounts
- Brokerage Accounts
- Stocks & Bonds
- CDs
- Life Insurance with Cash Value Over \$2,500
- Marketable Real Estate



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Maybe Not Countable

- IRAs & Retirement Accounts
- Rental Property
- Unmarketable real estate



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Asset Tips & Strategies

- Refer to a Board Certified Elder Law Attorney as early as possible
- Thorough Intake—Start Broadly and then Be More Specific
- Ask About Transfers—Better to know now rather than later



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Avoid Litigation

- Protect Yourself—Beware of “Self-Medicaiders” & FRAUD
- Refer to Competent Elder Law Attorneys (Board Certified if possible)
- Be Careful Not to Engage In Unlicensed Practice of Law & Of Those That Do



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You May Be Performing the Unlicensed Practice of Law if You...

- 2015 Florida Supreme Court Advisory Opinion
- Render legal advice regarding the implementation of FL law to obtain Medicaid benefits
- Advise individuals on the appropriate legal strategies available for spending down and restructuring assets
- Advise on the need for a QIT and/or Personal Services Contract
- Draft and determine the need for, the preparation of, and the execution of a QIT



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Beware of Who You Refer To

- Are they Unlicensed Medicaid Planners? *You may know some.*
- Do your residents ever meet with the attorney (if there is one)?
- What kind of law does the attorney practice?
- Beware of Negligent Referral Lawsuit



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VA Benefits

- Compensation Benefits

Versus

- Pension (Aid & Attendance) Benefits



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VA Pension Eligibility

- Aid & Attendance for Veterans \$1,881/month
- Aid & Attendance for Married Veterans \$2,230/month
- Widow's Pension \$1,209



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VA Pension Benefit Eligibility

- Service During War Time Period (1 Day is enough)
- Served for 90 consecutive days or more
- Anything but dishonorably discharged



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Sweeping VA Rule Changes

- Implementation of A Look-Back Period
- Institution of a Countable Resource Cap
- Penalizes Most Annuity Planning



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VA Pension Rules

- 3 Year Lookback (October 18, 2018 and beyond)
- \$127,061 in Countable Resources
- Real Property Interest Doesn't Count



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Income Eligibility (IVAP)

- Helps
- Reduces
- Improves



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Countable Resources



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Thank you & God Bless!



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