SESSION 6
ASSET-ELIGIBILITY STRATEGIES (PART I)
Understanding the Spenddown

1. Countable to Non-Countable Conversion
   • Categorize all assets.
   • Determine the total amount of countable assets.
   • Determine our protected amounts (ICRA and CSRA).
   • Determine the total excess resources or total spenddown.
   • **Goal:** Covert countable assets to non-countable assets to make excess resources $0 or less.
Understanding the Spenddown (continued)

2. Secondary Planning Consideration

• Primary goal: Achieve Medicaid eligibility at lowest cost to patient.

• Secondary goals: These are personal to the individual’s circumstance and they drive decisions:
  – Provide for the community spouse.
  – Protect a family home or family farm.
  – Provide for loved ones with special needs.
  – Etc.
• Most planning is evaluating the tradeoffs.
• Secondary goals often fly against the best practices for reducing the spenddown.
• Client will need to make educated choices about priorities.
3. Fair-Market Transactions

- Most people think excess resources need to be spent down on only the nursing home.
- Medicaid planning ignores valid fair-market value transactions.
- These are transactions where a good or service must be paid for at going rates (or what a reasonable seller would sell for and what a reasonable buyer would pay for an item).
Understanding the Spenddown (continued)

• A fair-market transaction is not considered a divestment.

• **Essence of most Medicaid Planning principles is the fair-market purchase of a non-countable assets with countable funds.**

• Note: General commercial transactions do not have to be accounted for unless their size triggers additional scrutiny.
4. Error Margin

• Medicaid Planning should be done conservatively.
• When determining the spenddown, try to use precise figures.
• Calculate spenddown at slightly more than the numbers say in order to account for minor fluctuations if value or forgotten about assets.
• Ignore the ICRA when doing married couple planning (builds you an automatic buffer).
Basic Asset-Eligibility Strategies

- Simple maneuvers which take advantage of the basics of fair-market value transactions.
- The protected-asset categories covered in Session 4 establish a small number of safe havens.
- The goal is through one or more series of these transactions to steer assets from the countable resource column into a protected resource.
- Sometimes one or more of these simple strategies is sufficient to establish eligibility.
1. Tangible Personal Property
   - Most basic form of asset conversion.
   - Using liquid assets to purchase personal property items.
   - We refer to this as a “shopping spree.”
   - Only practical to a point.
     - Just having stuff that’s not useful serves no purpose.
     - Stuff that cannot be liquidated has little value.
     - Most clients are loath to convert their hard-earned money into junk.
• Be careful of sizable transaction.
• Have clients always keep receipts.
• Beware purchase of precious metals or investment-grade personal assets, as they may be deemed as investments and not as personal property.
2. Homestead Advantages

- Residence is protected asset, so it can be a place to sink unprotected resources.
- Need to be conscious of the limits ($525,000 for 2012).
- Two ways to put money into a house:
  - Home renovations.
  - Upgrade home.
• Home Renovations
  – Pay a contractor to perform upgrades to a home.
  – Upgrades can be significant; could add a whole wing on the house as long as it doesn’t bring the value up to or near the cap.
  – Timing critical: Some state limit paying today for updates made in the future.
  – Construction work actually has to begin before money spent is considered “spent.”
  – Otherwise, if you changed your mind and could get a refund, the money would be considered available.
Basic Asset-Eligibility Strategies (continued)

• **New Home (Upgrade Home)**
  – Only one home protected
  – Sell existing protected home and invest proceeds into new house.
  – Also add unprotected cash to the proceeds to purchase a house of greater value.
  – Applicable for upgrading a home up to or near the cap.
Basic Asset-Eligibility Strategies (continued)

- Practical Limitations to Home Upgrade:
  - Most want less not more house to deal with.
  - The cap limits the amount you can upgrade.
  - Timing can cause serious problems:
    - Can you sell in time?
  - For situations where the state will recover against the house, no sense in putting money in the house only to later have it seized.
3. Upgrade Vehicle

- One vehicle is protected.
- No limit on protected vehicle.
- If it’s likely a new vehicle will be needed in the future, better to buy it before assets are tied up in other protection devices.
- Vehicle must still be primary vehicle for patient or patient’s spouse.
- Most vehicles are easy to transfer on death.
- Great if community spouse driving a lot to NH.
Basic Asset-Eligibility Strategies (continued)

• Practical Limitations to Vehicle Upgrade:
  – Vehicle still needs to be insured.
  – Vehicles don’t retain their value well.
  – If someone else is going to drive the vehicle, liability risks.
  – Buying an institutionalized person a high-value vehicle only makes sense if the vehicle might be used to transport the individual.
    • Conversion Van v. Ferrari
  – Social stigma concerns.
4. Pre-Pay Funeral/Burial

- Money can be set aside in burial fund (up to $1,500).
- Burial space can be purchased for:
  - The patient and the patient’s spouse, if any.
  - Whether by blood, adoption or marriage, the patient’s and/or patient’s spouse’s:
    - Parents.
    - Minor and adult children.
    - Siblings.
    - The spouse of each person listed above.
Basic Asset-Eligibility Strategies (continued)

• Irrevocable Funeral Trust

• Almost all states impose a limit on the amount of money that can be placed in a funeral trust.

• These limits are approximately equal to the average cost of a funeral and range from $4,000 - $15,000.

• The money inside the trust can be for a pre-paid funeral contract with funeral home or can have irrevocably assigned final expense policy.
Basic Asset-Eligibility Strategies (continued)

• Funeral trust can pay for wide range of funeral related services:
  – Caskets
  – Hearse transportation
  – Car and limousine services
  – Funeral direction services
  – Embalming
  – Dressing and cosmetology
  – Funeral home services
  – Burial plot
  – Cemetery services and fees
  – Headstone
  – Obituary Notices
  – Flowers
  – Death certificates
  – Transportation for family members
  – Memorial following the burial
Basic Asset-Eligibility Strategies (continued)

- **Goods and Services States:** Certain states require a cost "justification" from a certified funeral director.
- The justification breaks down the contract into what parts are or could be used for which services.
- Funeral directors usually charge a fee for this if it’s for a contract they did not write.
Basic Asset-Eligibility Strategies (continued)

- Sample form:
Basic Asset-Eligibility Strategies (continued)

• Be sure to use it up (or let the client know they have to).

• Anything left over in the funeral trust after the funeral expenses have been covered is either:
  – Available for estate recovery; or
  – Required to be paid over to the Medicaid agency.
5. Long-Term Care Partnership Program

- Prior to DRA, LTCPP limited to a few test states.
- After DRA, LTCPP open to all states.
- Most have a program.
- Long-term care insurance plan must qualify as a partnership plan policy.
- Total coverage amount over the lifetime of the policy becomes an enhanced protected amount when qualifying for Medicaid.
Basic Asset-Eligibility Strategies (continued)

• Most states limit estate recovery against the enhanced protected amount, in addition to protecting it from the spenddown.

• Standard LTCI issues still exist:
  – No guarantee of coverage because of underwriting
  – Premiums are very expensive, especially if purchased late in life.

• Section 15 of the Guidebook (Estate Recovery) has a state summary which includes information on LTCPP.
Questions

• Questions???