

Wills, Trusts,
and Estates

Class 2

Planning for Incapacity

- *Cruzan** and the right to refuse medical treatment (personal right only)
- Hospital can require “clear and convincing evidence” of patient’s wishes before “pulling the plug.”

**Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261 (1990)

Planning for Incapacity (cont.)

- Documents relevant to planning for incapacity:
 - Healthcare Proxy:
 - A document that grants the right to a relative or friend to make healthcare decisions for a person (e.g. what kind of treatments to refuse or accept, which medicines to take etc.)
 - Requirements:
 - the names of the principal and agent;
 - statement of intent giving the agent authority to make health care decisions on the principal's behalf;
 - signature and date by the principal; and
 - the signature of two witnesses who observe the execution of the healthcare proxy, specifically stating that the principal acted willingly and free from duress.

Planning for Incapacity (cont.)

- Living Will
 - A document that specifies what kind of treatments are acceptable to the signer
- Power of Attorney
 - Document that allows another person to make financial decisions for the signer
 - Durable: Remains in effect even if the signer becomes incapacitated
 - Non-durable: Is only effective as long as the testator is competent

Elder Law and Healthcare: Medicare

- **Medicare** is government subsidized health insurance.
- **Eligibility:**
 - age 65 years or older and eligible for social security retirement benefits (40 work credits).
- OR
- Disabled and receiving social security disability benefits.
- **Income and Assets:**
 - Irrelevant!!
 - Premiums and/or co-pays are required (though are generally small)

Elder Law and Healthcare: Medicare (cont.)

- **Coverage:**
 - Hospital stays.
 - Doctor care.
 - Certain prescription drug benefits etc.
- Funded by the federal government through Medicare tax.

Elder Law and Healthcare: Medicaid

- **Medicaid** is the healthcare equivalent of welfare.
 - It is paying for healthcare for people who cannot afford to do so themselves.
 - Funded by federal and state authorities and administered on the state level.

Elder Law and Healthcare: Medicaid (cont.)

- Eligibility is based on:
 - Income
 - The income threshold is based on the federal poverty rate and the number of people in the household. The exact number varies from state to state. It is generally quite low; i.e., \$650/month for a single person.
 - Assets that are “available” to the applicant
 - Available resource threshold: also very low; about \$3,000 (varies by state).

Quiz Time!

Medicaid: Available Resources

- What is **not** an available resource?
 - A home in which a community spouse or disabled child lives.
 - A home in which the applicant lives if s/he is planning to return home.
 - A trust for the benefit of the applicant that need not pay for the applicant's healthcare.
 - IRA money, beyond the required distributions.
 - Reparations payments from axis countries for hardships endured during World War II.
- What **is** an available resource?
 - Everything that the applicant has access to.

Medicaid After The Deficit Reduction Act of 2006

- 60 month period of ineligibility for long term care (nursing home) Medicaid is caused by any gift.
- The period of ineligibility starts from the date of the application and its length is based on the amount of the transfer and the amount that long term care (nursing home) services cost in the jurisdiction.
- Equity in the home in which the applicant lives over \$500,000 is considered an available resource.
- A life estate in a house is an available resource (i.e., it must be sold to pay for healthcare expenses).