Busting Myths about Veteran's Benefits and Medicaid

As our Greatest Generation ages we are seeing more veterans, spouses, and bewildered adult children searching for answers about accessing and financing long-term care. In 2000, there were about 10 million veterans over the age of 65. About half of those were WWII veterans and more than 3 million were veterans of the Korean War.[1]

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We have many folks who want to know if they are entitled to help from the government in paying for long-term care.

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Truth or Fiction?

A joint account titled to Momma and daughter should be divided in half when Momma needs long-term care. This is **False** if Momma applies for Medicaid.[2] All of the funds belong to Momma, unless daughter can show that she deposited funds into the account. In applying for VA aid and attendance, the VA will consider only Momma's half, in most cases.

Truth or Fiction?

It's "legal" to give up to $13,000 to each of your children each year. While this is **True** for gift tax purposes, giving away assets jeopardizes a client's access to Medicaid.[3] When a client applies for Medicaid within five years following such a gift, Medicaid will deny payment for care for a length of time, called the penalty period.[4]

So far, the Veteran's Administration does not penalize transfers, but that doesn't make giving away assets to children a wise choice. Just because one can does not mean one should. Making gifts or using irrevocable trusts should be done sparingly and only if the client has plenty of assets — or great long-term care insurance — to assure that present and future care and quality of life will not be jeopardized.

Truth or Fiction?

Purchasing an annuity will help you get Medicaid or VA aid and attendance. Like so many aspects of the law, this statement is **True and False**. (It would help to have a little skull n' crossbones flash whenever annuity and paying for nursing home care are mentioned in the same breath.) The correct answer is "it depends." A single-premium irrevocable annuity is one tool in the elder law attorney's tool chest, but it must be carefully wielded. This is especially true since the Deficit Reduction Act of 2005 (passed Feb. 8, 2006) changed the Medicaid rules. The VA will view an annuity as a stream of income, but if the income exceeds the beneficiary's "medical expenses," then the aid and attendance benefit will not be rewarded to the veteran.

Truth or Fiction?

Long-term care insurance is too expensive, and they don't pay anyway. False. Long-term care insurance has come a long way in the past 30 years. We encourage our younger (older than 65ish) clients to purchase long-term care insurance because it virtually ensures that families will take advantage of the care resources available to an aging parent or relative.

Truth or Fiction?

If you have a prenuptial agreement, then the "well" spouse's assets are not counted when applying for Medicaid or VA benefits. False. A prenuptial agreement does not protect a well spouse's assets from the cost of long-term care. Both the Medicaid and VA eligibility counselors will consider the couple's assets; however, the Medicaid program will exempt retirement accounts of the "well" spouse. So, if your older clients are considering marriage, encourage them to consider buying long-term care insurance.

Accessing public benefits is a labyrinth of rules, regulations, and rumor-mongering. Often, the initial outcome of a case depends on what happens between the ears of the county eligibility counselor. An attorney who knows public benefits law may shed the spotlight of truth in a world of tall tales to access the benefits to which the client is entitled.

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Notes

1. http://www1va.gov/vetdata/docs/agesexdata.pdf and http://www1.va.gov/vetdata/docs/pos.pdf.
2. Tenn. Medicaid Manual, page 177.
3. Tenn. Medicaid Manual, page 213.
4. See *Tennessee Bar Journal* article "How The Deficit Reduction Act of 2005 affects Medicaid Recipients," Vol. 42, No. 5, May 2006, pp. 18-21.