

# Medicaid Pitfalls for the Non-Medicaid Attorney

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1



2

## How do I know if my client receives public benefits like Medicaid and SSI?

3

## How is Medicaid different than Medicare?

### **Medicare**


- Not means tested
- Does not pay for long term care
  - Except for up to 100 days of skilled nursing care following 3 days inpatient in hospital
- Receive automatically if
  - 65 or older
  - SSDI after waiting period

### **Medicaid**

- Means tested
- Pays for long term care
- Has several programs and may pay for health care as well.

4

## Who Does Medicaid Help?



CHILDREN      PREGNANT WOMEN      ELDERLY      DISABLED

5

## SSI recipients are Medicaid eligible

6

<p>SSI vs SSDI : What are these benefits and how do they differ?</p>	<p><u>Supplemental Security Income</u></p> <ul style="list-style-type: none"> <li>• SSI</li> <li>• Means tested</li> <li>• For the disabled</li> <li>• For those who are 65 and older</li> </ul>	<p><u>Social Security Disability Income</u></p> <ul style="list-style-type: none"> <li>• SSDI</li> <li>• NOT MEANS TESTED</li> <li>• For the disabled</li> <li>• Becomes regular social security retirement at full retirement age</li> </ul>
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7

<p>How to determine if your client is on SSI, SSDI, or both?</p>	<ul style="list-style-type: none"> <li>• SSA Award Letter <ul style="list-style-type: none"> <li>• Mailed every December</li> <li>• Available online at <a href="http://ssa.gov">ssa.gov</a></li> </ul> </li> <li>• When do they receive their check? <ul style="list-style-type: none"> <li>• 1<sup>st</sup> of every month = SSI</li> <li>• 3<sup>rd</sup> of every month = SSI &amp; SSDI</li> <li>• 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> Wednesday – SSDI or social security retirement</li> </ul> </li> </ul>
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8

## Options for Extra Resources – Special Needs Trust

	Pooled Trust	1 <sup>st</sup> Party SNT	3 <sup>rd</sup> Party SNT	ABLE Account
Funding Source	Self	Self	Other	Any
State payback	Yes	Yes	No	Yes
Beneficiaries allowed	No	Yes	Yes	Yes
Disability prior to age 26 required?	No	No	No	Yes
Maximum annual contribution	Unlimited	Unlimited	Unlimited	\$15,000 per year of non-income
Over age 65 contributions?	Probably not	No	Yes	No

9

## Timing of Funding of SNT is important:

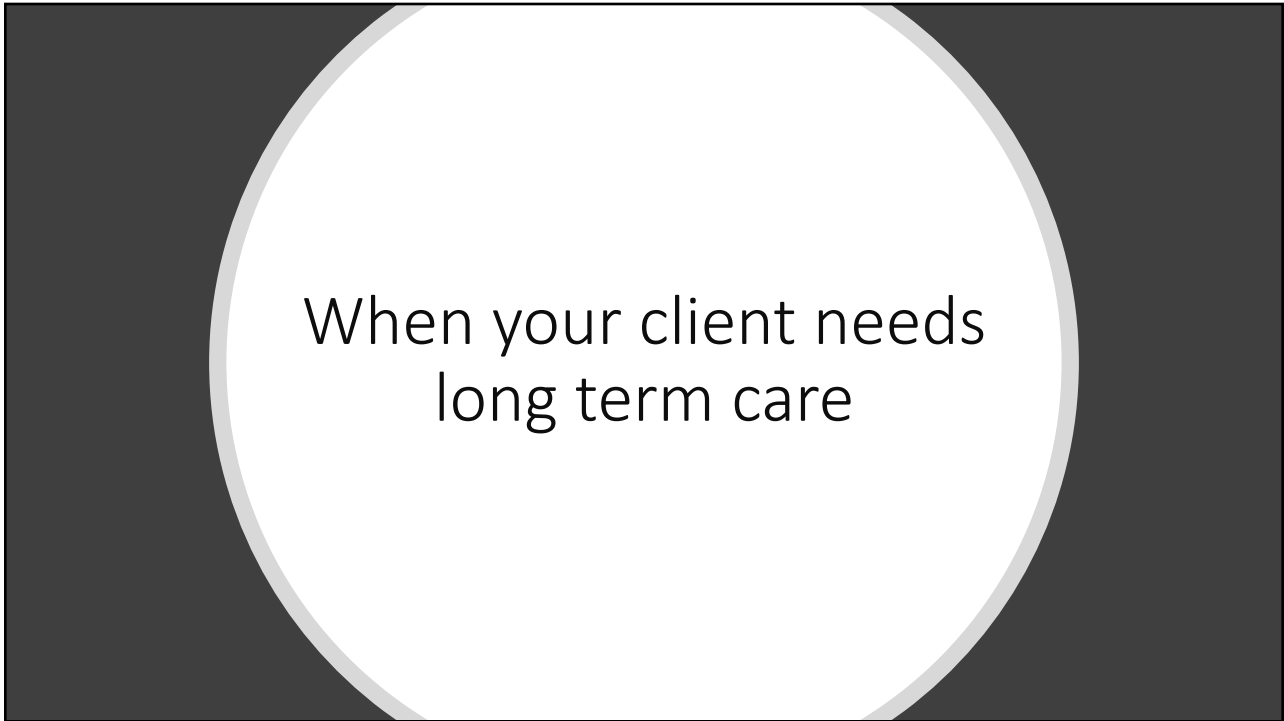
### Medicaid Recipient

- Countable resources are assessed on the last day of the month following receipt.

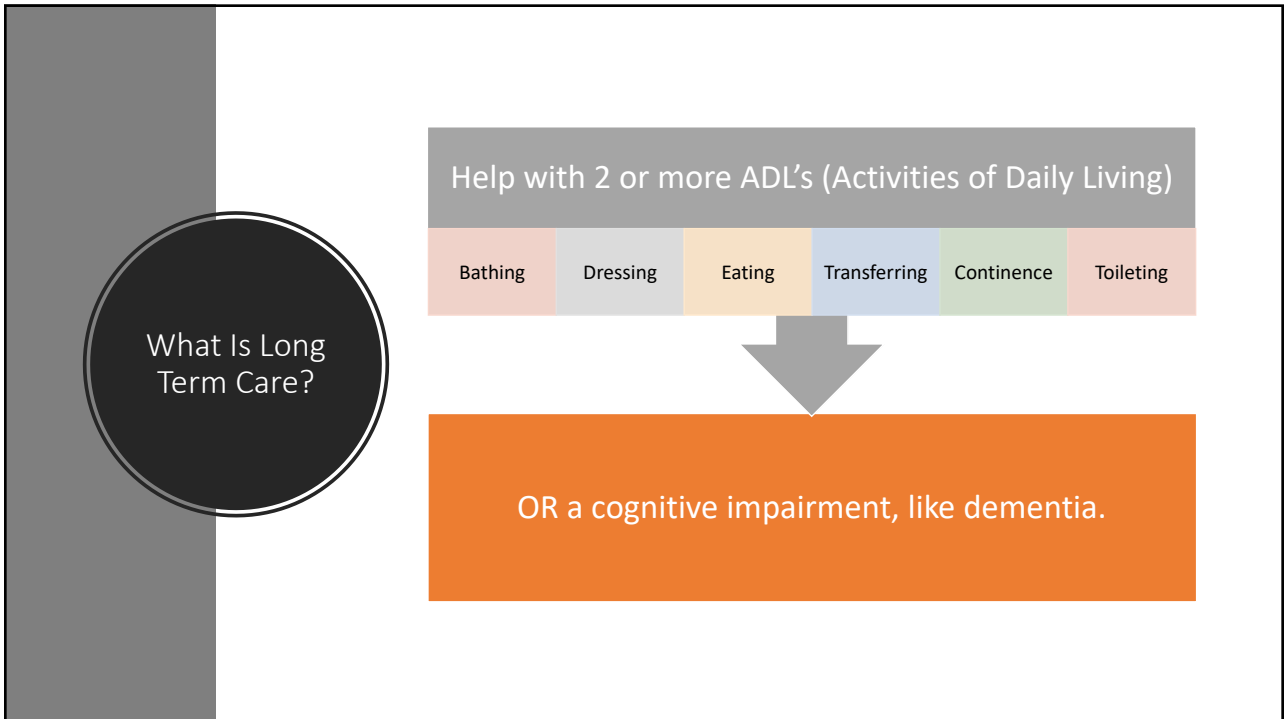
### SSI and Medicaid Recipient

- Countable resources are assessed on the 1<sup>st</sup> day of the month following receipt.

10



11



12

What is the projected need for long term care at age 65?





- 52% of us will require long term care.
- 19% of us will need that care for less than 1 year.
- 14% of those need that care for more than 5 years.




<https://aspe.hhs.gov/basic-report/long-term-services-and-supports-older-americans-risks-and-financing-research-brief>

13

Where can you receive Long Term Care?

-  Home
-  Independent Living
-  Assisted Living
-  Nursing Home

14




### Average Monthly Long Term Care costs in Lawrence, KS in 2018\*:

- Home Health Aide: \$3,623
- Assisted Living Facility: \$5,265
- Nursing Home:
  - Semi-Private - \$6,494
  - Private - \$7,087

\* <https://www.genworth.com/aging-and-you/finances/cost-of-care.html>

15

## How do we pay for long term care?

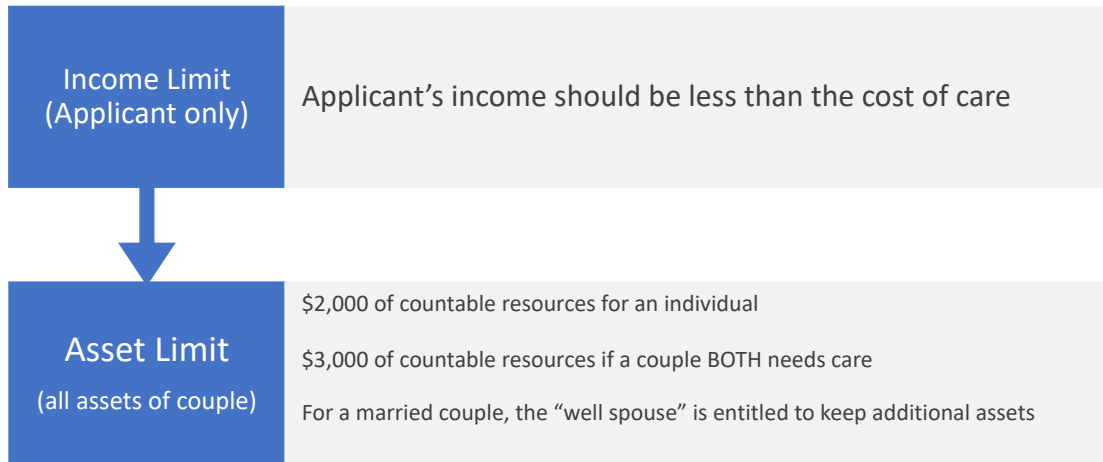


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graph LR; A[Private Pay] --> B[Long Term Care Insurance]; B --> C[VA Aid and Attendance]; C --> D[Medicaid]
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16



## Medicaid means testing for long term care:



17

## What assets does Medicaid count?

### Countable

- Bank accounts
- Non-residential real estate
- Most whole life insurance
- Investments
- Applicant's retirement plan
- Assets in a revocable trust
- Most everything else

### Non-countable

- Home
- Household goods
- Well-spouse retirement accounts
- Some funeral agreements
- One vehicle
- Income producing assets

18

## Meet Betty

### Assets:

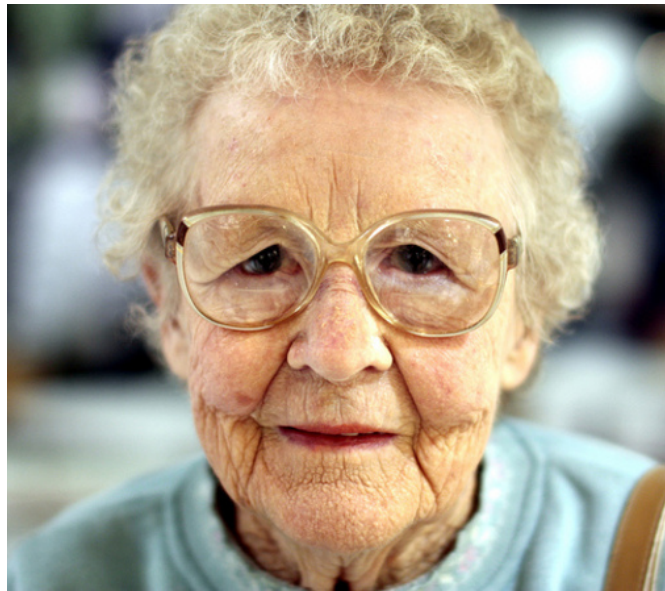
- \$120,000 house
- \$2,500 car
- Household goods
- \$10,000 bank account
- \$6,000 credit card debt

### Income:

- \$1500 a month in Social Security

### Countable Assets:

\$10,000



19

If Betty is in a nursing home, how can she qualify for Medicaid?

- Remember her countable assets cannot exceed \$2,000. She can:
  - Pay off her credit card debt
  - Pay the nursing home
  - Prepay for a funeral
  - Make improvements to her home
  - Pay an attorney to help her qualify




20

What if Betty gives her home to her daughter?


A 3D white figure is shown with a large red prohibition sign (a circle with a diagonal slash) overlaid on it, signifying a restriction or prohibition.

21

The Trouble with Medicaid and Gifts is the 5 year look back period

A cartoon illustration of Homer Simpson with a shocked expression, shouting with his mouth wide open. He is standing in front of a nuclear power plant with two cooling towers emitting smoke. The scene is set against a blue sky with white clouds.

22



## Medicaid 5 year look back

- Penalty does not begin until otherwise eligible for Medicaid
- Penalty based on \$211.56 per day
- Betty gives \$120,000 house to daughter
- 4 ½ years later
  - Betty in nursing home
  - Less than \$2,000 to her name
  - Applies for Medicaid
- This is when penalty starts
- $\$120,000 / \$211.56 = 19$  month penalty
- ***Medicaid won't pay for 19 months!***

23



Sometimes it is possible to cure the gift,

sometimes it isn't.

24



When or to whom can Betty give her home and not incur a transfer penalty to:

- 
- Anyone 5 years before applying for Medicaid, or
  - Her spouse, or
  - Her child who is under age 21, or her adult child who is blind or disabled, or
  - Her sibling who has equity interest in home and who was residing in the home for at least 1 year before Betty went to nursing home, or
  - Her adult child who was residing in the home for at least 2 years immediately before Betty went to the nursing home and child's care kept Betty out of nursing home during that time.

25



Should Betty keep the house?

- 
- Home is exempt for eligibility purposes if Betty has an intent to return home.
  - Medicaid wants paid back through estate recovery. If Betty lives long enough, Medicaid's lien will be so big that there is no equity in the house.
  - Betty is in nursing home and has no money to pay for taxes, insurance and upkeep.
  - Do her children want to keep up the property?
  - If the house is sold, some of the proceeds may be protected.

26

Protect House from estate recovery with a Medicaid-Compliant Irrevocable Trust

- Funded with assets 5 years prior to application
- Owner must be willing to relinquish control of house to another


 A close-up photograph of a hand holding a set of keys. One of the keys has a silver keychain attached, which is shaped like a small house with two windows and a door. The background is a soft-focus outdoor scene with greenery and a building.

27

Paying children for care and housing can cause gift problems too! Medicaid expects written contracts to be in place before services begin.

An elder law attorney can help draft a contract that complies with Medicaid and VA rules and allows the children to be paid for helping parents.


 A photograph of two women smiling. On the left is a younger woman with long, curly brown hair, wearing a light-colored top. On the right is an elderly woman with short, curly white hair, wearing a red turtleneck and a dark, textured cardigan. They are standing outdoors with trees and foliage in the background.

28



29

## Copay

In a nursing home, Betty keeps \$62 a month for her personal needs and enough to pay for her health insurance. The rest she pays to the nursing home.

At home under HCBS, Betty keeps \$1,177 for her personal needs including food and shelter and enough to pay for her health insurance. The rest she pays for her in home care.

30

## Meet Ron and Sally

- Ron and Sally have 3 children.
- Ron's monthly income is \$5,000
- Sally's monthly income is \$600
- They own a home and car
- They have countable resources of \$100,000
- Ron has dementia and was just admitted to a nursing home.
- How is Sally going to make ends meet?



31

## Community Spouse Resource Allowance

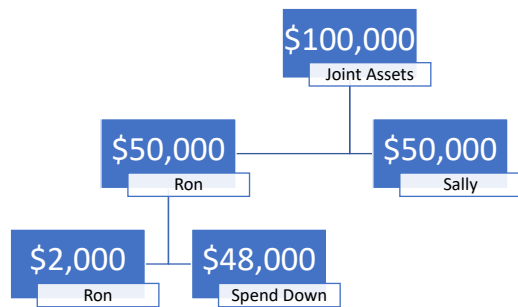
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32



What if Ron and Sally had \$100,000 in assets?



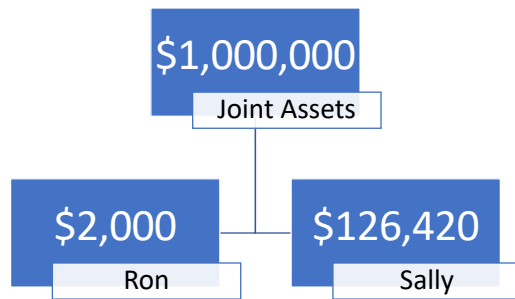
- Medicaid says that Sally is entitled to keep half the value of the total countable assets, or \$50,000.
- Ron keeps \$2,000
- \$100,000 - \$2,000 for Ron - \$50,000 for Sally = **\$48,000 that must be spent down.**

33

Do not spend down until snapshot has been triggered - or you will have to spend down again!

34

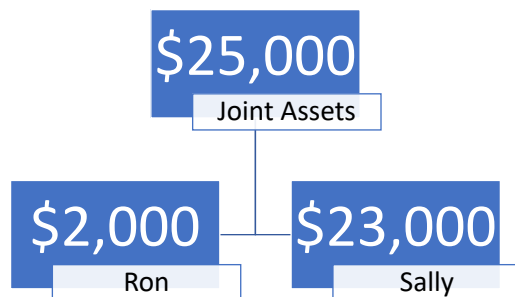
What if Ron and Sally had \$1,000,000 in assets?



- Medicaid says that Sally is entitled to keep half the value of the total countable assets up to a maximum of \$126,420.
- Ron keeps \$2,000
- \$1,000,000 - \$2,000 for Ron - \$126,420 for Sally = **\$873,580 that must be spent down.**

35

What if Ron and Sally had \$25,000 in assets?



- Medicaid says that Sally is entitled to keep a minimum of \$25,284.
- Ron is entitled to keep a minimum of \$2,000
- Ron and Sally are entitled to keep more than they have. **They will not have to spend down.**

36

How can Ron and Sally spend down their money to qualify for Medicaid?

- Pay off debts
- Prepaid funeral plan
- Pay nursing home
- Sally could take a trip around the world, with or without Ron
- Sally could buy income producing property
- Sally could purchase a medicaid compliant annuity that turns assets into income

37

Minimum  
Monthly  
Maintenance  
Needs  
Allowance

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38

Sally does not have to live on \$600 a month.

- Medicaid allows Sally to keep some of Ron's income to bring her total income up to \$2,114 per month.
- If she has excess shelter expenses, such as a mortgage, or high taxes and insurance on the home, her income could be brought up to \$3,160 per month.



39

## Veterans Aid and Attendance Benefit

- Tax free benefit for Veterans *and their surviving spouses* up to \$2,230 per month.
- Asset limit of \$127,061
- Income limit
- 3 year look back period



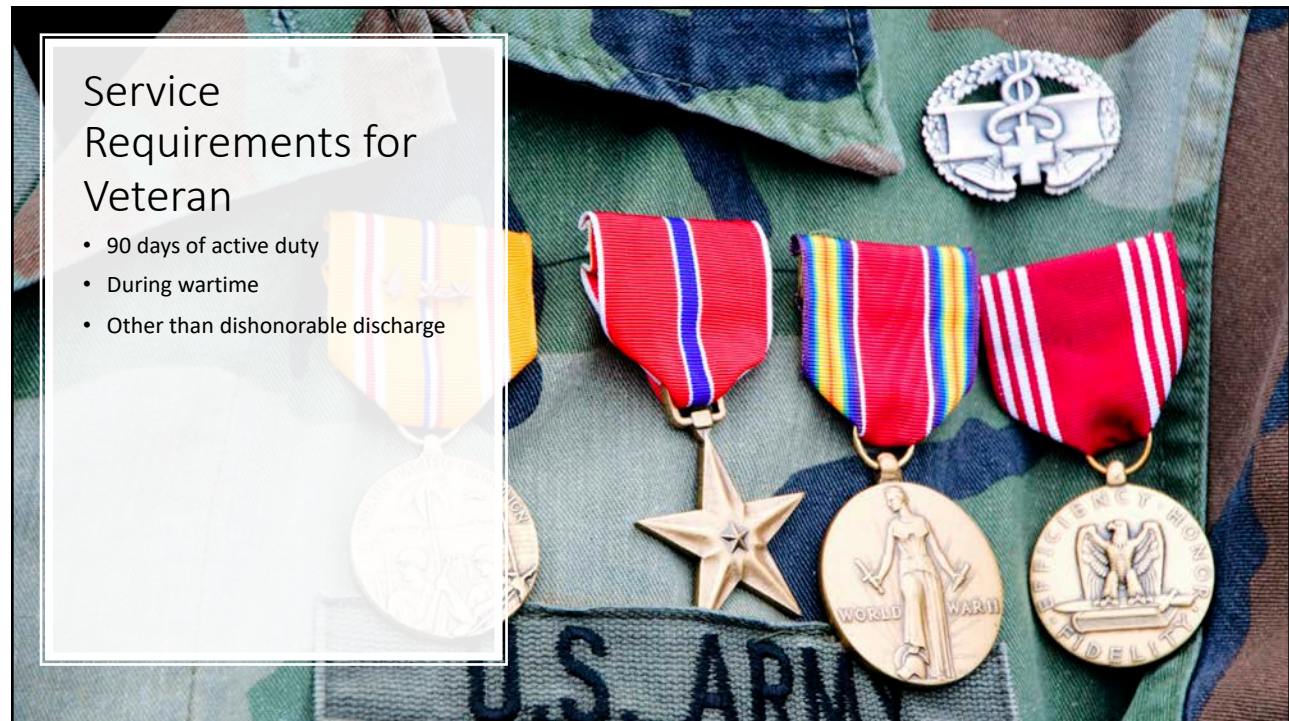
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## VA Income – Tax Free Benefit

For Whom:	Max Monthly*
Veteran with a spouse	\$2,230
Single Veteran	\$1,881
Surviving spouse of Veteran	\$1,209
Spouse of a Veteran	\$1,477

To qualify for the maximum benefit, essentially your monthly medical expenses must exceed your monthly income

41



42

## Declared States of War

Wars:	Eligible Dates:
WWI	04/16/1917 – 11/11/1918
WWII	12/07/1941 – 12/31/1946*
Korea	06/27/1950 – 01/31/1955
Vietnam	08/05/1964 – 05/07/1975**
Gulf/Iraq	08/02/1990 – present

\*End date for Merchant Marines is 08/15/1945

\*\*Start date for those in-country is 02/28/1961

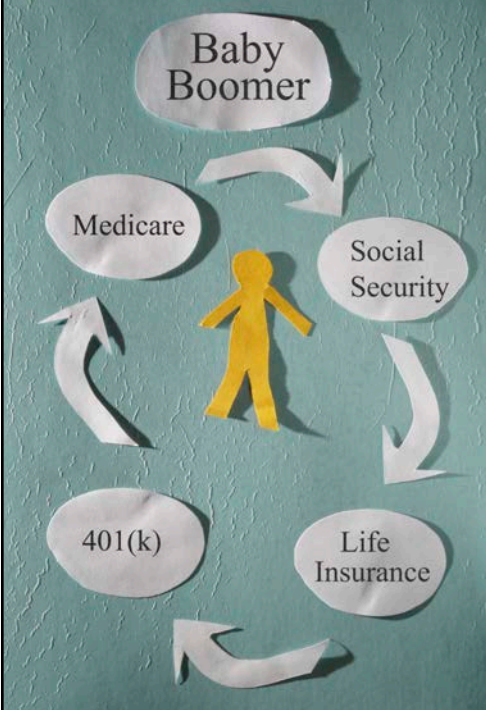
43

What if Sally, the healthy spouse, dies first?

She must leave Ron at least the spousal elective share or Ron might be penalized for making a gift.



44



The diagram features a central yellow paper cutout of a person. Surrounding this figure are four white oval labels: 'Baby Boomer' at the top, 'Medicare' on the left, 'Social Security' on the right, and '401(k)' at the bottom left. 'Life Insurance' is also present at the bottom right. White arrows indicate a clockwise flow of assets from the Baby Boomer to Medicare, then to Social Security, then to Life Insurance, then to 401(k), and finally back to the Baby Boomer.

INADVERTANTLY GIVING BAD ADVICE ON "DIVISION OF ASSETS"

- Moving money around
- Giving assets away
- Spending down too early

45



46