Legal Matters®

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Are you covered by Medicare while traveling within the U.S.?

Those who have reached age 65, the typical age of Medicare eligibility, often have more time to spend traveling. Although Medicare coverage is generally not available when beneficiaries are overseas, the news may be better for those exploring destinations closer to home.

If you have the original Medicare, the answer is simple: You can travel anywhere in the U.S. or its territories and receive health services from any doctor or hospital that accepts Medicare. ("Territories" includes Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.) The amount you will pay depends on whether the provider "accepts assignment." Providers that take assignment agree to accept the approved Medicare amount as payment in full, although in the case of outpatient visits you or your Medigap insurer may be left with a 20 percent coinsurance payment, as would be the case for care at home.

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Providers that don't accept assignment may charge you up to 15 percent above the Medicare-approved amount, although this percentage may be lower in some states. In the case of providers that don't accept Medicare at all, you will have to pay the entire cost of care.

If instead of original Medicare you are in a Medicare Advantage plan (a privately run managed care plan), the answer to the question of coverage is more complicated. Depending on your post-retirement plans, this could be a consideration that affects whether you choose original Medicare or an Advantage plan.

For enrollees traveling for less than six months outside their plan's service area, Medicare Advantage plans must cover emergency and urgent care. Charges for such care that is out-of-network cannot

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Wendy A. Craig P.A.

207 East State Street
Black Mountain, NC 28711

828.669.0799
828.669.0055 (fax)

wacraig@wncelderlaw.com
WNCelderlaw.com

Life insurance can play role as part of estate plan

For young families, life insurance can be a great help in replacing lost income. But as people get older it can also serve as part of an estate plan.

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Historically, one main reason to buy life insurance as part of an estate plan was to have cash available to pay estate taxes. Now that the estate tax exemption is so big (in 2016, estates could exempt $5.45 million per individual from taxation), most estates don't pay federal estate taxes, and President Donald Trump and his Republican allies would like to eliminate the estate tax entirely. However, life insurance can still be helpful in a number of other ways:

► **Providing immediate cash**. Life insurance provides cash to use for the payment of debt, burial or estate administration fees. In addition, life insurance can be used to pay state estate taxes, if applicable.

► **Replacing wealth**. Life insurance can replace income or assets lost to pay for long-term care. It can also be used to fund a trust for a minor child or a child with special needs.

► **Buying out business interests**. Life insurance can allow a partner or a family member to buy out the deceased partner's interest in a closely held business to ensure the business can continue.

► **Funding a charity**. Proceeds from a life insurance policy can be used to fund a charity. The policy can be donated directly to the charity, which also has the benefit of giving the donor a charitable income tax deduction. Alternatively, the charity can be named as the beneficiary of the policy.

► **Treating family equally**. A life insurance policy can be used to make sure children receive an equal inheritance. For example, if one child is inheriting a certificate of deposit, a life insurance policy can ensure that the other child receives the same amount.

To find out if you should include life insurance as part of your estate plan, talk to your attorney.

The life estate: a useful tool in the right circumstances

The term "life estate" often comes up in discussions of estate and Medicaid planning. Life estates can be used to avoid probate and to give a house to children without relinquishing the ability to live in it. They also can play an important role in Medicaid planning. But what, exactly, does the term mean and how are life estates used?

A life estate is a form of joint ownership that allows one person to remain in a house until his or her death, when it passes to the other owner. Two or more people each have an ownership interest in a property, but for different periods of time. The person holding the life estate — the life tenant — possesses the property during his or her life. The other owner — the "remainderman" — has a current ownership interest but cannot take possession until the death of the life estate holder. The life tenant has full control of the property during his or her lifetime and has the legal responsibility to maintain the property as well as the right to use it, rent it out and make improvements to it.

When the life tenant dies, the house will not go through probate, since at the life tenant's ownership passes automatically to the holders of the remainder interest. Because the property is not included in the life tenant's probate estate, it can avoid Medicaid estate recovery in states that have not expanded the definition of estate recovery to include non-probate assets. Even if the state does place a lien on the property to recoup Medicaid costs, the lien will be for the value of the life estate, not the full value of the property.

However, although the property will not be included in the *probate* estate, it will be included in the *taxable* estate. Depending on the size of the estate and the state's estate tax threshold, the property may be subject to estate taxation.

The life tenant cannot sell or mortgage the property without the agreement of the remainderman. If the property is sold, the proceeds are divided up between the life tenant and the remainderman. The shares are determined based on the life tenant's age at the time — the older the life tenant, the smaller his or her share.

Be aware that transferring your property and retaining a life estate can trigger a Medicaid ineligibility period if you apply for Medicaid within five years of the transfer. But purchasing a life estate should not result in a transfer penalty if you buy a life estate in someone else's home, pay an appropriate amount for the property and live in the house for more than a year.

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exceed $65 or whatever you would have paid for an in-network provider.

Whether you will be covered for anything more than emergency or urgent care depends on the plan's geographic service area, its rules about travel outside of that area and what type of plan it is.

If your plan is of the PPO (Preferred Provider Organization) variety, it must cover care delivered by providers who aren't in the plan's network or service area, although you will usually pay more for out-of-network care.

Plans that follow the HMO (Health Maintenance Organization) model usually do not cover care from out-of-network providers. If your HMO plan does cover your providers, be sure to follow the plan's rules or you may find that you're not covered.

If you are outside your plan's service area for six months or more, you will likely be automatically disenrolled and returned to original Medicare unless you choose another Medicare Advantage plan. However, some plans will allow you to travel outside the service area for up to a year. If your plan has such a travel benefit, check what geographic areas and types of care are covered.

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For more information on travelling while on a Medicare Advantage, plan you can check out the Medicare Rights Center website, www.medicareinteractive.org.

Don't wait until it's too late to execute a power of attorney

A durable power of attorney is an extremely important estate planning tool, often more important than a will. If you become incapacitated due to dementia or some other reason, this crucial document allows a person you appoint (your "attorney-in-fact" or "agent") to act in place of you (the "principal") for financial purposes. The agent under the power of attorney can quickly step in and take care of your affairs.

But in order to execute a power of attorney and name an agent to stand in your shoes, you need to have capacity. Regrettably, many people delay completing this vital estate planning step until it's too late and they no longer are legally capable of doing it.

What happens then? Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time and costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship the representative may have to seek court permission to take planning steps that he or she could have implemented immediately under a simple durable power of attorney.

This is why it's so important that you have a durable power of attorney in place before the capacity to execute the document is lost. The standard of capacity varies from jurisdiction to jurisdiction. In some instances this threshold can be quite low: The client need only know that he trusts the agent to manage his financial affairs. In others the rule is that since the agent generally has the right to enter into contracts on behalf of the principal, the principal should have the capacity to enter into contracts as well, and the threshold for entering into contracts is fairly high.

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If you do not have someone you trust to appoint as your agent, it may be more appropriate to have the probate court looking over the shoulder of the person who is handling your affairs through a guardianship or conservatorship. In that case, you may execute a limited durable power of attorney that simply nominates the person you want to serve as your conservator or guardian. Most states require the court to respect your nomination "except for good cause or disqualification."

Because you need a third party to assess capacity and because you need to be certain that the formal legal requirements are followed, it can be risky to prepare and execute legal documents on your own without representation. To execute a durable power of attorney before it's too late, contact your attorney.

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Black Mountain, NC 28711

828.669.0799
828.669.0055 (fax)

wacraig@wncelderlaw.com
WNCelderlaw.com

Reverse mortgages increasingly available for high-value homes

Seniors with pricier homes now have an increased ability to get a bigger reverse mortgage in order to raise cash for retirement. As the housing market has improved, so-called jumbo reverse mortgages are becoming more popular even though they carry some risk.

Reverse mortgages allow homeowners who are at least 62 years of age to borrow money on their house. The homeowner receives a sum of money from the lender, based largely on the value of the house, the age of the borrower and current interest rates. The loan does not need to be paid back until the last surviving homeowner dies, sells the house or permanently moves out. Homeowners can use money from a reverse mortgage to pay for improvements to their home, to allow them to delay taking Social Security or to pay for home health care, among other things.

The most widely available reverse mortgage product is the Home Equity Conversion Mortgage (HECM), the only reverse mortgage program insured by the Federal Housing Administration (FHA). However, the FHA sets a ceiling on the amount that can be borrowed against a single-family house, which is determined on a county-by-county basis. The national limit on the amount a homeowner can borrow is $625,000.

High-end borrowers must look to the proprietary reverse mortgage market, which imposes no loan limits. Proprietary or jumbo reverse mortgages allow buyers to borrow millions of dollars. For example, American Advisors Group, a reverse mortgage lender, allows borrowers to obtain a reverse mortgage on properties valued up to $6 million. Qualified borrowers can borrow up to $3 million in loan proceeds. While HECM loans limit the amount a borrower can have access to in the first year, these jumbo mortgages may allow the borrower to access the entire loan right away.

The downside of a jumbo reverse mortgage is that it is not insured, so it doesn't have to have the protections set by the federal government for HECM reverse mortgages. For example, loan counseling isn't required and fees are not restricted.

During the housing market collapse most lenders stopped offering jumbo reverse mortgages, although as the market has improved the jumbo is returning. But a reverse mortgage is not the right step for everyone. Talk to your attorney about whether it makes sense for you.