



Know When to Make a Referral: Identifying Elder Law and Estate Planning Issues

The purpose of this program is to provide participants with the information necessary to know when they should make a referral. If you have further questions after the program, please contact our panelists.

Attorney-Client Relationship

1. **Who is the Client:** Establish the attorney-client relationship directly with the elder, not with any 3rd party who contacted you on behalf of the elder.
2. **Be Aware of Issues That May Arise:** What do you do when the elder wants someone else at the meeting; family member/friend speaks for the elder; family member/friend feels entitled to be part of the discussion because they are watching out for elder; family member/friend pays the bill?
3. **Capacity:** Does your client have it? The capacity required to execute various planning documents may differ.
4. **Undue Influence and Best Practices to Avoid It:** Meet with your client alone. In the remote environment, this means asking your client if they are alone and may even include asking your client to “scan” the room with their remote device so that you can verify that they are alone. Meet with your client several times.

Estate Planning

5. **Purpose of Estate Planning:** Planning for your incapacity or death (*i.e.*, staying in control).
6. **Online “forms”:** These forms can cause problems bigger and more complicated than not having documents at all.
7. **Most Common Estate Planning Documents:**
 - Medical:** Health Care Proxy, HIPAA Release, and Living Will.
 - Financial:** Power of Attorney, Last Will and Testament, and Trusts.
8. **Intestacy:** If you do not engage in estate planning, the Commonwealth’s default laws will control.

MassHealth (Medicaid)

9. **Timing:** When do you apply for MassHealth long-term care in a nursing home? How about in the community? It is important to know eligibility dates, timing of filing application, etc.
10. **Transfers:** Watch out for gifts within the last 5 years to third parties (not a spouse). These can present issues with eligibility.
11. **Trusts:** Can lead to issues in the eligibility process. Some trusts can protect assets, but many do not.

Other Resources

Executive Office of Elder Affairs: <https://www.mass.gov/orgs/executive-office-of-elder-affairs>
Probate & Family Court: <https://www.mass.gov/orgs/probate-and-family-court>

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