

Welcome to our first **Elder Law Newsletter**, dedicated to the issues facing our growing population of older adults!



Diane K. Foxman – Chair, Estates & Trust Department

Many of us will face the challenge of helping older loved ones navigate the issues involved with aging. We also need to plan for our own security in the future. Pennsylvania projects that over the next twenty years, its elder population will increase by 7%. In Montgomery County alone, the 65 and over population is expected to increase by over forty-four percent!

We stand ready to help you deal with the legal issues facing you and your aging loved ones. Whether it's helping to protect assets, planning for long-term care, handling nursing home issues, or helping to manage financial affairs, we will guide you through the process with knowledge, compassion and understanding, so that you can focus on what's most important - the lasting enjoyment of those well-deserved golden years.

“The test of a people is how it behaves toward the old. ... [T]he affection and care for the old, the incurable, the helpless are the true goldmines of a culture.”

Abraham J. Heschel
Theologian and Philosopher
1907-1972

What You Can Expect When Your Loved One Enters a Nursing Home

Dennis C. Lumia, Esq.

Although many elderly individuals may continue to live their lives in their own homes, the harsh reality is that over time, many individuals will need to enter a nursing home. At this thought, many individuals panic and are concerned with what will happen to their assets, including their house, cars, or bank accounts, if they or their spouse enters a nursing home. This article's goal is to inform you and, hopefully, offer some relief as to what to expect if you or your spouse ever need to use the services of a nursing home or other “long-term care facility.”

Will Medicare pay for nursing home costs?

Generally, Medicare will only pay a very limited amount of nursing home costs. Medicare may, if certain conditions are met, pay for the first twenty days in a nursing home. After that, the patient is responsible for a daily co-pay, which is currently \$133.50 per day, and Medicare will only participate for up to a total of 100 days in a nursing home per sickness/accident.

Many consider purchasing Medicare Supplemental Plans to cover this “gap,” being the co-pay, which can be costly over time. However, Medicare (or the Supplemental Plans) won't pay for more than 100 days in a nursing home per sickness/accident.

What if we need more time in the nursing home?

As mentioned above, Medicare won't cover more than 100 days in a nursing home for any given illness or accident, and in many cases, it won't even cover that much time. An important option is long-term care insurance. The price will vary on this, and there are many options possible which will alter the cost, including the limits of the policy, whether there is an inflation adjustment to benefits paid to account for inflation, and the length of the so-called “elimination period,” which requires a patient to privately pay for a period of time before the insurance kicks in. If you don't have long-term care insurance and you (or your spouse) is about to enter a nursing home, it is usually too late to purchase the insurance. Typically, you will then have to “spend down,” meaning privately pay for the care, until you reach the asset/income levels at which point Medicaid may cover the costs.

Can we keep our house? What about our car?

For both married and single individuals who apply for Medicaid, whether for themselves or their spouse, you can keep your residence and one car. You can also keep assets with a total value of either \$2,400 or \$8,000, depending on your income. However, if you are single and keep your home, this may create issues. First, since total assets may not exceed either \$2,400 or \$8,000, there may not be sufficient assets to pay the taxes, insurance or upkeep on the home. Second, even if the expenses can be paid, the Commonwealth of Pennsylvania may choose to stake a claim in the house for the amount of money it spent on the patient's care while receiving Medicaid benefits.

Are there any new rules or laws relating to Medicaid?

Yes! In the past, Medicaid would look back 3 years from the date of application for Medicaid benefits to see if any gifts were made by the Medicaid applicant prior to entry into a nursing home. If there were any gifts made during this period, this would create a period of Medicaid ineligibility,

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Seeing Your Aging Parents... A Little Differently

Diane Foxman, Esq.

Tips for Talking to Your Parents About Their Long Term Care

For years, they took care of you. Now it's your turn to take care of them. Talking with your parents about their long-term care is never easy, but when you truly understand where they are in their lives, such conversations can be made easier. Outlined below are some tips on how to broach this subject and how to ensure everyone is on the same page when it comes to your parents' future.



The Sooner, the Better.

As with most major decisions, the sooner you begin the conversation, the greater the opportunity to find the best long-term solutions. Don't procrastinate. Discussing these issues with parents while they are in relatively good health is infinitely more productive than later, when memories may fail, health concerns become more prominent and options become more limited.

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with the length dependent on the value of the gift. Now, the number of years in the look back period has been changed to five years from the date of application for benefits.

Will my family have to pay for my loved one's care?

It depends. If your loved one made a gift during the five year look-back period (over \$500 in any given month), starting at the date of application for Medicaid, this may disqualify your loved one from Medicaid eligibility for a period of time tied to the value of the gift. The gift recipient may even have to return the money so that the money can be used to pay for the loved one's long-term care. Accordingly, if one receives money from a loved one who may soon end up in a nursing home, it is wise to not yet spend that money. It may, after all, need to be returned down the line.

You should be especially aware of the above if you are receiving payments to provide care services for your loved one. In many situations, children will care for their aging parents in the child's home or the parents' home. Sometimes, the children are being paid, albeit informally, by their parent(s) for this care. You should be aware that if that is occurring in your situation, if you do not have a written contract that sets forth the terms and conditions of the services you are providing, these payments may disqualify your loved one from Medicaid as the payments may be deemed a disqualifying "gift." You should consult your attorney if you have questions regarding this, or any other topics mentioned above.

Hamburg, Rubin, Mullin, Maxwell & Lupin provide detail-orientated, experienced elder law and estates attorneys who are well-versed in Medicaid and Medicare eligibility rules. Please consult us with any questions which may arise in your family's long-term care planning and estates needs. ■

PREEMPTIVE PREPARATION with Powers of Attorney and Living Wills

Andrew P. Grau

If a family member becomes incapacitated and is unable to communicate or otherwise handle his or her personal affairs, that person will need to have somebody appointed to manage financial and medical matters. Incapacity can strike suddenly through a physical injury or mental illness, or it can develop over time through a degenerative process such as dementia. It is important for everyone to have a plan in place in the event of incapacity, and it is even more crucial for elderly individuals, since they are more likely to fall victim to incapacity.



Unfortunately for many, Guardianship is not a choice but a necessity. If somebody is stricken by incapacity and has not already executed Powers of Attorney, then Guardianship is the only option. Planning ahead through Power of Attorney documents enables an individual to appoint an Agent who will handle all financial and medical affairs if that individual becomes incapacitated. The biggest advantage of utilizing Powers of Attorney is that the individual is able to make it absolutely clear who he or she wants to be the Agent. The Agent then has the authority to act immediately without going through the lengthy, expensive and stressful process of a Guardianship appointment.

In addition to naming an Agent to act in the event of incapacity, it is a good idea to have a Living Will. In a Living Will, an individual provides instructions for how he or she will be treated, if unable to communicate, while in either a terminally ill or permanently unconscious state. Like Powers of Attorney, a Living Will ensures that the individual's wishes are known and respected. Most are familiar with the Terry Schiavo case, which would have been avoided if Terry had a prepared a Living Will before she fell ill.

A little preemptive planning now can save a great deal of conflict, cost and inconvenience down the road. Powers of Attorney and Living Wills are very inexpensive compared to Guardianship proceedings. We can prepare these documents quickly after a consultation, and for a married couple the total cost is only a few hundred dollars. Peace of mind is important. By executing legal documents now, the question of what will happen if the unexpected or unfortunate occurs can be put to rest. Our estate planning attorneys are happy to meet with you or one of your loved ones to discuss these issues further. ■

Many believe that if they become incapacitated their spouse or another close family member will handle financial and medical decision-making for them. However, under the law this type of authority is not granted by virtue of relationships. If a woman's husband becomes incapacitated, in order for her to obtain the authority to manage his financial and healthcare matters, she must either be appointed as his Guardian or she must have already been named as his Agent in financial and healthcare Power of Attorney documents.

Becoming a Guardian is a time-consuming and expensive process which involves petitioning the Court, participating in a hearing, and answering questions posed by an attorney or the judge. Guardianship proceedings can cost well over \$1,000 even when the hearing is uncontested and everyone is on the same page about who should be the Guardian. If there is disagreement over who should be the Guardian, then the hearing and appointment process becomes extremely complicated and very expensive. After a Guardian is appointed, he or she is required to file annual accountings with the Court, and this adds further to the inconvenience of choosing the Guardianship route.

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Get Everyone Involved.

Not just yourself and your parents, but all siblings and other family members as well. Ascertain their opinions and their concerns before starting the conversation with your parents. While feelings may differ, it's important that the family be unified before proceeding with the appropriate plans.

Empathize.

It's amazing what can be accomplished when we put ourselves in someone else's shoes. Express your concern, show them you wish to help, and understand that your parents still wish to maintain control over their lives. Somewhere down the road, you may have to take a stronger approach, but for now, it's important to respect their independence as much as possible.

Listen.

The conversation should not be a one-way street. Ask your parents their opinions and their own ideas. Avoid questions that require Yes/No responses. Try and respect their wishes as much as possible.

Exchange Information.

Ask your parents where important papers, such as wills, living wills, health care proxies, and financial records are kept. This can provide the opening to talk in greater detail about specific areas of their future that may need to be addressed. Similarly, you can help your parents a great deal by acting as a resource for them – providing critical reading materials and researching alternative financial, health care and housing alternatives. They may be unaware that they are eligible for certain government programs, the limitations of Medicare and Medicaid, long-term care insurance options or community services that may be available to them.

If Necessary, Enlist a Third Party.

Sometimes the best of intentions are misunderstood. If you are making little progress in talking to your parents or are being met with strong resistance, try including an objective third party (e.g., geriatric care manager, financial planner, attorney) to offer additional insight and assistance.

Care.

It seems so simple, but it's also so true. Caring comes through in the way you act and talk with those who nurtured you and took care of you, allowing you to get to where you are today. Be patient and reassure them that you will always be there for them.



Of course, if you are reading this, you probably already know that. ■

If you believe that a family member or someone you know is being taken advantage of financially, you can help resolve the problem by alerting the proper authorities. Elderly individuals are especially susceptible to financial fraud. Montgomery County Aging and Adult Services can be reached at 610-278-3601, and its Elder Abuse Hotline is 1-800-734-2020.

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