UNDERSTANDING THE RULES

MEDICAID PAYMENT

FOR

NURSING HOME CARE

This Document Provided exclusively to:

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About This Booklet

The decision to move a family member or loved one into a nursing home is one of the most difficult decisions you can make. Perhaps the move is being made because the family member can no longer care for himself or herself...or has a progressive disease like Alzheimer's...or has had a stroke or heart attack.

No matter the reason, those involved are almost always under great stress. At times like these, it's important that you pause, take a deep breath and understand that there are things you can do. Good information is available and you can make the right choices for you and your loved one.

Understanding the Rules: Medicaid Payment for Nursing Home Care is designed to help provide you with information and answers to some of the questions you will encounter. These are questions which we, as Elder Law attorneys and nursing home professionals, deal with on a daily basis.

Our clients have found this guide to be a valuable resource, and we hope you will find it useful too.

Be aware however, that this booklet was written in the fall of 2006 and updated in 2011 and discusses only Pennsylvania law. The law can and does change often. You must seek the advice of a skilled elder law attorney. We can help. Feel free to call.

DISCLAIMER! PLEASE READ!

This is one of the most complex and complicated areas of law we've ever seen. If you take any action on your own without the continuing guidance and advice of an experienced elder law attorney, you are on your own. You will likely make mistakes and they may cost you dearly. You may not rely solely on the contents of this book as guidance.

The information contained herein does not constitute legal advice; nor does it create an attorney-client relationship. The information contained herein should not be viewed as factual nor valid, particularly because of the changing nature of this area of law. This is a <u>very complicated and complex</u> area of law. You <u>must</u> see a qualified and competent attorney before taking any action.

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Introduction

Americans are living longer than ever before. At the turn of the 20th century, the average life expectancy was about 47 years. As we now begin the 21st century, life expectancy has almost doubled. As a result, we face more challenges and transitions in our lives than those who came before us.

One of the most difficult transitions people face is the change from independent living in their own home or apartment to living in a long term care facility or "nursing home." There are many reasons why this transition is so difficult. One is the loss of home...a home where the person lived for many years with a lifetime of memories. Another is the loss of independence. Still another is the loss of the level of privacy we enjoy at home, since nursing home living is often shared with a roommate.

Most people who make the decision to move to a nursing home do so during a time of great stress. Some have been hospitalized after a stroke, some have fallen and broken a hip, still others have progressive dementia, like Alzheimer's disease, and can no longer be cared for in their own homes. Often times the decision is made by a physician and you have no say over the matter.

Whatever the reason, the spouse or relative who helps a person transition into a nursing home during a time of stress faces the immediate dilemma of how to find the right nursing home. The task is no small one, and a huge sigh of relief can be heard when the right home is found and the loved one is moved into the nursing home. For many, the most difficult task is just beginning: ***How to cope with nursing home bills that may total $5,500 to $8,500 per month or more?***

In America, No One Should Lose Their Home Simply Because They Got Sick.

Not only can you lose your home, without proper planning, you can lose everything you have. Not a week goes by without a client coming to us and telling us that they scrimped and saved their entire lives ... for what?

Don't let this happen to you. This guide is your start. Read it and then contact our office for an appointment to review your family needs.

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Elder Care Planning
As one progresses into the golden years it becomes readily apparent that *golden* has more to do with costs and expenses than it does anything else. The exorbitant cost coupled with a maze of rules, regulations, forms, procedures, and other requirements before you can be frustrating, stressful and expensive.

Medicaid Planning
In Pennsylvania the average cost of nursing home care is over $7,500 per month or $90,000 per year. It isn't long before most families will go through a lifetime of savings. Things are particularly precarious for a married couple when one is in a nursing home paying these large amounts and the other is at home worried about becoming destitute. We help families become eligible for Medicaid without going broke. The rules and regulations in this area are fraught with peril. They are also filled with opportunities for savings unknown to most people. Medicaid has become an insurance policy to cover long term care for the middle class. We have the knowledge and expertise to assist you and your family in assuring that you maximize all that the law affords you. We help make certain that your estate is preserved to its maximum and that you become eligible for Medicaid as quickly as possible.

Estate Administration
The cost associated with one's death does not have to be as high as it often is or believed to be. There are many reasons for this not the least of which is a lack of understanding of the process involved and how to best effectuate the numerous laws to your best advantage. We assist clients in administering estates with particular attention to helping maximize assets for beneficiaries. Even after death, steps can be taken to reduce taxes, facilitate distribution and finalize the affairs of the deceased individual. We offer probate and estate administration services for estates in both Pennsylvania and Florida

Estate Planning
Estate planning means more than simply preparing a Last Will and Testament. In its broad sense, the term "estate planning" entails more than providing for the disposition of your assets upon your death with a minimum amount of taxation. Comprehensive estate planning, of course, provides for that. But, such planning <u>must</u> also provide for administration and protection of assets during a lifetime and for decision making in the event of unforeseen incidents and disabling illness.

An estate plan should contain a Last Will and Testament, a durable health care power of attorney naming an agent (and an alternate) responsible for medical decision-making, a durable financial power of attorney naming an agent (and an alternate) responsible for asset management, bill paying and other financial activities if one is unable to do such things for oneself. In some cases a revocable living trust may be appropriate as well.

Estate planning is not limited to these types of documents. Some estate plans include life estate deeds to real property, specialized trusts for disability and specialized trusts for Medicaid eligibility.

We provide Estate Planning and Administration for both Pennsylvania and Florida Residents.

MEDICAID PLANNING AND DIVISION OF ASSETS

How to Pay for the Nursing Home Without Going Broke

One of the things that concerns people most about nursing home care is how to pay for that care.

There are basically three ways that you can pay the cost of a nursing home:

1. Medicare - Coverage by Medicare is <u>very limited</u>. In order to get Medicare coverage, the person must have been in a hospital for 3 days or more and then discharged within 30 days to a skilled nursing facility where the person receives skilled care. Even then, the maximum is 100 days; there is a copay for days 21-100, and if the individual stops receiving skilled care, Medicare stops.

2. Pay with Your Own Funds - This is the method many people choose at first. Quite simply, it means paying for the cost of a nursing home out of your own pocket. Unfortunately with nursing home bills averaging around $8,000 per month in our area, <u>few people can afford a long term stay in a nursing home</u>. If you are fortunate enough to have Long Term Care Insurance, it may go a long way toward paying the cost of the nursing home. Unfortunately, long term care insurance has only started to become popular in the last couple of years and most people facing a nursing home stay do not have this coverage. For those that do have such coverage, it is often not enough to cover all the costs.

3. Medicaid - This is a primarily federally-funded and state-administered program which pays for the cost of the nursing home if certain asset and income tests are met.

Since paying with your own funds is self-explanatory, we'll concentrate on Medicaid and Medicare and on the process known as division of assets.

What About Medicare?

There is a great deal of confusion about Medicare and Medicaid.

Medicare is the federally-funded health insurance program primarily designed for older individuals (i.e. those over age 65). There is a limited long term care component to Medicare. In general, if you've had a hospital stay of at least three days, and then you need to go into a skilled nursing facility (often for rehabilitation), then Medicare may pay for a while.

Typically, in that circumstance, Medicare will pay the full cost of the nursing home stay for the first 20 days and will continue to pay the cost of the nursing home stay for the next 80 days, but with a deductible that's at or over $ 141.50 (in 2011) per day. Often times your Medicare supplement will pay the cost of that deductible. So in the best case scenario, Medicare may pay up to 100 days. In order to qualify for this 100 days of coverage the nursing home resident will generally undergo therapy and must continue to improve.
While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from our

experience, it often falls far short of 100 days. But even if Medicare does cover the 100 day period, what then? What happens after the 100 days of coverage have been used?

At that point, you're back to one of the other alternatives, paying the bills with your own assets (with or without the help of long term care insurance), or Medicaid.

What is Medicaid?

Medicaid is a benefits program which is primarily funded by the federal government and administered by each state. So the Medicaid rules may vary from state to state.

One of the primary benefits of Medicaid is that, unlike Medicare, which only pays for <u>skilled nursing</u>, the Medicaid program will pay for long term custodial care in a nursing home.

Custodial care refers to assistance with the activities of daily living (i.e., activities like dressing, bathing, toileting, preparing meals and so on). The inability of some older persons to manage these activities on their own often results in moving into a nursing home.

Why Plan for Medicaid?

As life expectancy and long term care costs continue to rise, the challenge quickly becomes how to pay for these services. Many people cannot afford to pay $8,000 per month or more for the cost of a nursing home, and those who can pay for a while may find their life savings wiped out in a matter of months, rather than years.

Fortunately, the Medicaid Program is there to help. In fact, in our lifetime, Medicaid has become the long term care insurance of the middle class. But the eligibility to receive Medicaid benefits requires that you pass certain tests on the amount of income and assets that you have. The reason for Medicaid planning is simple...you plan so that if you need it, you will be eligible to receive Medicaid benefits.

Exempt Assets and Countable Assets:

What Can You Keep and What is at Risk?

To qualify for Medicaid, you must pass some fairly strict tests on the amount of assets you can keep. To understand how Medicaid works, we first need to review what are known as exempt and non-exempt (or countable) assets.

Exempt assets are those which Medicaid will not take into account (at least for the time being). While the laws in the states all differ, in Pennsylvania, the following are the primary exempt assets:

- The Home, provided its equity value is less than $500,000. The home must be the principal place of residence. The nursing home resident may be required to show some "Intent to return home" even if this never actually takes place. The house may be subject to estate recovery if not properly planned for. This means that while your home may be exempt while you are alive, you may lose it to the State upon passing away. See Estate Recovery.

- Household and Personal Belongings such as furniture, appliances, jewelry and clothing.

- One Car, there may be some limitation on value.

- A pre-paid funeral, limitation of $ 11,250.00 for Allegheny County but that figure varies by county.

- Burial Plot for you and your spouse.

- Cash Value of Life Insurance policies as long as the face value of all of policies added together does not exceed $1,500. If it does exceed $1,500 in total face amount, then the cash value in these policies is countable.

- Cash (e.g. a small checking or savings account) not to exceed $2,400 for a nursing home, $8,000 for people with income below $2,022 per month.

- IRA or 40 IK of the community spouse (spouse who remains at home). If its owned by the spouse in the nursing home it <u>is countable</u>.

All other assets which are not exempt (i.e.. not listed above) are countable. This includes checking accounts, savings accounts, CDs, money markets, stocks, mutual funds. Bonds, IRAs, pensions, 401Ks, 403Bs, second cars and so on. Basically all money and property, and any item that can be valued and turned into cash, is a countable asset unless it is one of those assets listed above as exempt.

While the Medicaid rules themselves are complicated and tricky, for a single person it's safe to say that you will qualify for Medicaid so long as you have only exempt assets plus a small amount of cash (i.e., $2,400).

Does this mean that if you're single and need Medicaid, you'll have to spend nearly all of your assets to qualify? No. Actually there are a number of strategies which can be used to protect at very least a portion of your estate.

Special Asset Rules for Married Couples

What do you do if your spouse enters into a nursing home? This can be an extremely worrisome event. How does anyone pay $8,000+ per month? What happens to me when our money runs out trying to pay the nursing home? Congress enacted special laws to make certain that the spouse at home, call the Community Spouse or CS has enough assets to live. The spouse in the nursing home is called the Institutionalized Spouse or IS.

Here's how it works. On the date the IS enters the nursing home a special form call form 1572 is filled out. The Department of Public Welfare (called DPW) looks at all of the countable assets. They then split these countable assets in half and instruct the CS that he or she can keep one half of these countable assets, not to exceed $109,560 (in 2011). The CS must spend down the rest of the assets before Medicaid will pick up the tab. So, for example, if the couple has $140,000 in countable assets on the date one of them enters into the nursing home, Medicaid will allow the CS to keep $70,000. If they have $250,000, Medicaid will allow the CS to keep only $109,560.

Remember also that the IRA or 401k of the CS is exempt. This is an extremely tricky area. Let me reiterate that every married couple is strongly encouraged to obtain the services of a qualified elder law attorney. As the CS, you are only going to have a maximum of $109,560 left. What you spend the remaining money on is one of the most important decisions you will make in your life.

In July of 2005, Pennsylvania law was changed to permit the CS to take a portion of these excess assets and allow a CS who qualified to purchase an immediate annuity with a portion of the excess assets when the CS income is insufficient. This topic is far beyond the scope of this book. What is important to remember is that you are advised to hire a qualified elder law attorney as soon as possible when you have an idea that your spouse may soon need nursing home care.

At Zacharia & Brown, we will look at your circumstances, your financial situation, and determine which avenue is correct for you. If there is spend down, and there almost always is, that attorney will assist you in spending your money on the right things. Things you will need for the rest of your life. Remember also that because you are required to spend your money before receiving Medicaid benefits, having an experienced counselor on your side may be the best money you can spend.

Remember, in almost every situation there will be a requirement that you spend down some money. It is wise to take a small chunk of that money you must spend and hire an attorney. In most cases it is money that you would otherwise spend on a nursing home.

Rules Regarding Income

Income includes things such as your monthly social security check, pension proceeds, interest and dividends from investments, monthly annuity payments, and so forth.

Income for the single nursing home resident.
For an unmarried individual, all of the income, with the exception of two items, is paid to the nursing home. Medicaid pays on top of that amount to the nursing home.

The first item is $45.00 that the nursing home resident is allowed to keep. It is termed a personal needs allowance. The second item is an amount necessary to pay for the nursing home resident's medical or health insurance. Just because an individual is on Medicaid does not mean that their health care or medical insurance is not necessary. To the contrary, the person is required to maintain their own health insurance. In the event the nursing home resident needs to go to the hospital or needs some other sort of medical care, that insurance will pay. Understand that Medicaid is the payer of last resort. If there is anyone else that can pay, they are required by law to pay before Medicaid.

Income for the married nursing home resident.
Now things can get *very complicated.* In the case of the married couple there are terms used to identify each person. The spouse in the nursing home is called the institutionalized spouse (IS). The spouse who remains at home is call the community spouse (CS). For the most part, the same rules apply for the married couples' income as it does for the single person. However, in the event there is a married couple where the CS does not have enough income to pay the monthly bills, special rules apply to make certain that the CS can continue to pay the monthly bills.

There is a term you should know. We call it MMMNA. MMMNA stands for minimum monthly maintenance needs allowance. It is a standard used to determine what is the minimum amount of monthly income is needed by the CS to live. Currently, in 2011, the amount is a minimum of $1,822.00. This number changes each July 1. It can go up based upon a complicated formula that takes into account the CS's monthly shelter costs; mortgage, rent, condo fees, real estate taxes, homeowners insurance, utilities, etc.

If a CS has $500 per month in income and has a MMMNA set at the base amount of $ 1,822, that CS will be permitted to take $1,322 from the IS's income each month. That is once the assets are spent down and the IS is eligible for Medicaid. Keep in mind that, as we've said throughout this booklet, that there are many traps to be wary of. For example, before a CS decides to spend down the assets and begin taking a portion of the IS's income, the CS must take a look at what income he or she will receive if the IS dies. Many a person has been caught in the trap of spending down their life savings only to learn that their institutionalized spouse's income died along with that spouse. He or she is now in a position of having spent much of their life savings and doesn't have enough monthly income to pay the bills.

For a married couple, a qualified elder law attorney will help you determine whether the CS has enough income to live and, if he or she does not, whether it would be of greater benefit for the CS to spend down and take income from the IS, or to purchase an annuity that will pay the CS for the remainder of his or her lifetime.

Again, this is a **very complicated** area and requires the assistance of a qualified elder law attorney. You're not saving yourself anything by trying to go it alone.

Estate Recovery

If you are not careful, you could go onto Medicaid and **lose your home when you die.** Medicaid is both federal and state law. Federal law requires that each state enact legislation that upon the passing of a person on Medicaid, the state will have a priority position to get paid back for the value of Medicaid services provided. In Pennsylvania that recovery is currently limited to what goes through the Medicaid recipient's Will. There are usually only two assets, any term life insurance that the person had and failed to name a beneficiary or the named beneficiary is deceased, and the Home.

People often talk about losing their Home to the nursing home or to the State. It is Estate Recovery of which they are speaking. Many people are shocked to find that once their loved one passes away that the State has a large claim against the house. And the state must get paid back first. They will often state that "I was told that Mom could keep her house and still go on Medicaid." That is true. What was not explained was that the State would have a claim against the house, unless it was properly planned for.

Medicaid Planning for Single People

Case Study No. 1

Sally Johnson feels worn out. Four years ago her father died and for the past three years she has been caring for her aging mother.

At first, it was little things...grocery shopping, trips to the doctor, help with her medication, things like that. But as her mom's health deteriorated, Sally's burden has increased. The last six months have been brutal. That's because Sally had to move her Mom to a nursing home. Mom couldn't live at home any more.

Sally thought her job would be easier once the nursing home staff took over but it hasn't turned out that way. As the oldest daughter, Sally still feels responsible, even though technically someone else is now responsible for mom's care. Sally feels like she has to be there. So she visits her Mom six days a week.

Sally is running herself ragged and Mom is running out of money. Mom has about $50,000 left, and at $6,200 per month for the nursing home, Sally knows Mom's money won't last long. When the money runs out, who will be there to pay for Mom's nursing home? Sure. Sally has heard Medicaid will cover the nursing home, but she's also heard Medicaid won't cover everything. What then?

Sally is quite distraught. "Is there anything else I can do?" Yes, you tell her, there are steps she can take.

Perhaps given Sally's high degree of involvement, a personal care contract should be considered. Sally and her mom can enter into a formal agreement where Sally becomes Mom's care manager. Even though Mom is in the nursing home, if done properly Mom can pay Sally for her care management services.

For example, if Sally spends approximately 1 ½ hours per day caring for Mom, that's nine hours per week. (i.e. six days per week times 1.5 hours per visit). Mom can agree to pay Sally $10 per hour or $90 per week for her services.

In and of itself, that wouldn't be very exciting. But consider that Mom and Sally can enter into a Lifetime Care Contract and it gets interesting. Mom can agree to have Sally act as her care manager for as long as Mom lives. In other words, Mom can pay Sally $4,320 per year (i.e. $360 per month times 12 months) and Mom can make this payment in a lump sum for Mom's life expectancy. So if Mom has a life expectancy of 11 years, she can pay Sally $47,520 (i.e.. $4,320 per year times 11 years) and she can pay the $47,520 upfront, in one lump sum.

This will allow Sally to provide Mom the care she needs and still allow Mom to qualify for Medicaid. Please understand that this is the "short version" and that this type of planning must be handled in a very specific manner, but when done properly, it can be used to solve Sally's dilemma.

This is just one example of the type of planning that can be done. There are actually a number of strategies which could be helpful. As with any Medicaid planning it's especially important to seek the assistance of a knowledgeable Elder Law attorney.

The Case for Planning Ahead

Case Study No. 2

Emma Smith's husband Jack passed away several years ago. She is 73 years old and basically in good physical and mental condition. She and Jack purchased a summer cottage years ago and their children continue to enjoy it. They always said how important it was that the cottage always stays in the family.

Emma's concern is that if she did become ill, that cottage, because it was not her home, would be a countable asset and she may have to sell it if she needed Medicaid payment for nursing home expenses.

In addition to the cottage, she also has her house, several paid up life insurance policies, stocks, bonds, and a few CDs. She uses the interest from the CDs to help pay her monthly bills.

Emma wanted to know how she can help protect her assets without giving them away.

After a consultation, she decides to utilize a special trust called an Irrevocable Income Only Trust (described later in this booklet).

Emma decides to put the cottage, her home, the life insurance and the CDs into the trust. She names her oldest child as the trustee.

By utilizing this specialized trust, Emma can protect these lifetime investments for her children. She will have to wait out five (5) years after the transfer before she will be even able to apply for Medicaid. She believes that the additional assets she has retained in her own name will help pay those costs if they are ever necessary within the five year period.

By putting the cottage and home into the trust, Emma can continue to use and occupy the cottage.

The trust provides that she will have the exclusive right to live in the home for as long as she wishes although she cannot sell it, only her child as trustee would have the power to do that.

The CDs gets transferred to the trust as well. The trust provides that she gets all of the income from the trust. Because of that wording, each month the bank takes the interest payment from the CDs and puts it in Emma's bank account.

The life insurance is also owned by the trust. It still is insurance on her life and the policy still gets paid to all of her children as she wishes. Because the trust, and not Emma, own the policies, she has no access to the cash value and they will not count against her if she ever applies for Medicaid after the passing of five (5) years.

These trusts are remarkable tools and should be considered by many families who wish to plan ahead.

One word of caution, these are <u>NOT</u> revocable living trusts that you may have heard about before. These are specialized tools that can only be provided by experienced elder law attorneys. For more information, look later in this booklet in the section dealing with Specialized Planning Tools.

Division of Assets Medicaid Planning for Married Couples

Division of Assets is the name commonly used for the Spousal Impoverishment provisions of the Catastrophic Coverage Act of 1988. It applies only to couples. The intent of the law was to change the eligibility requirements for Medicaid in situations where one spouse needs nursing home care while the other spouse remains in the community, (i.e. at home). The law, in effect, recognizes that it makes little sense to impoverish both spouses when only one needs to qualify for Medicaid assistance for nursing home care.

As a result of this recognition, division of assets was born. Basically, in a division of assets, the couple gathers all of their countable assets together in a review. The exempt assets which we discussed earlier are not counted.

The countable assets are then divided in two, with the at-home or community spouse allowed to keep one-half of all countable assets up to about $109,560. The other half of the countable assets must be "spent down" until less than $2,400 remains. The amount of the countable assets which the at home spouse gets to keep is called the Community' Spouse Resource Allowance (CSRA).

Each state also establishes a monthly income floor for the CS or at-home spouse. This is called the Minimum Monthly Maintenance Needs Allowance. This permits the community spouse to keep a minimum monthly income ranging from about $1,822 to $2,739.00.

If the community spouse does not have at least $1,822 in income, then he or she is allowed to take the income of the nursing home spouse in an amount large enough to reach the Minimum Monthly Maintenance Needs Allowance (i.e. up to at least $1,822). The nursing home spouse's remaining income goes to the nursing home. This avoids the necessity (hopefully) for the at-home spouse to dip into savings each month which would result in gradual impoverishment.

To illustrate, let's assume the at-home spouse receives $800 per month in Social Security. Let's also assume that her needs are calculated to be the minimum of $1,822. With her Social Security she is $1,022 short each month.

In this case, the community spouse will receive $1,022 (the shortfall amount) per month from the nursing home Spouse's Social Security and the rest of the nursing home spouse's income will then go to pay for the cost of his care.

Once again, this does not mean that there are not other planning alternatives which the couple can pursue. Consider the following case studies:

Case Study No. 3

Ralph and Alice were high school sweethearts who lived in Pittsburgh their entire adult lives. Two weeks ago Ralph and Alice celebrated their 51st Anniversary. Yesterday Ralph, who has Alzheimer's, wandered away from home. Hours later he was found sitting on a street corner talking incoherently. He was taken to a hospital where he is being treated for dehydration.

Alice comes to see you after their family doctor tells her she needs to place Ralph in a nursing home. She tells you they both grew up during the Depression and have always tried to save something each month. Their assets, totaling $120,000, not including their house worth $80,000, are as follows:

Savings Account	$35,000
CD's	$65,000
Money Market Account	$ 17,000
Checking Account	$ 3,000

Ralph gets a Social Security check for $800 each month; Alice's check is $300. Her eyes fill with tears as she says " At $7,000 to the nursing home every month, our entire life savings will be gone in less than three years!" What's more, she's afraid she won't be able to pay her monthly bills because a neighbor told her that the nursing home will be entitled to all of Ralph's social security check.

There is some good news for Alice. She has a lot of options. It's possible she will get to keep all of Ralph's income and use a portion of the assets that she would otherwise have to spend on the nursing home to purchase an annuity for herself that will pay her cash for the remainder of her life. Following that, the Medicaid program will pay Ralph's nursing home costs. While the process may take a little while, the end result will be worth it. She might also be able to keep a portion of the assets under the fair hearing provisions of the law. Although it might look simple on its face, a case like this is extremely complicated because of all the options available to Alice.

What About Gift Taxes?

As discussed earlier, many people have heard of the Federal Gift Tax provision that allows them to give away $ 13,000 per year without paying any gift taxes. What they do not know is that this refers to a Gift Tax exemption. Each U.S. citizen has a $1 million life time exemption from gift taxes. So, if you give away more than $13,000 to any one individual in any one year, the amount in excess will only reduce your life time exemption. Remember, different laws apply for different reasons. While there is no tax penalty or payment for making gifts for 99% of the people (non-millionaires), there will be medicaid penalties.

Can HI Just Give My Assets Away?

Many people wonder, can't I give my assets away? The answer is, maybe, but only if it's done just right. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility. In Pennsylvania, for example, every $7,514.74 given away during the five years prior to a Medicaid application creates a one month period of ineligibility. The penalty begins to run when you are receiving nursing home type services and are out of money. It is a huge dilemma. If things are done properly, you will not lose everything. Your family can retain a portion of your assets. The key is to hire a qualified elder law attorney to assist you. Don't be concerned about the cost of the attorney. It is money you would otherwise spend on the nursing home.

Next consider the following case study:

Case Study No. 4
Can Financial Gifts to Children
Protect Your Assets from Medicaid?

After her 73-year-old husband, Harold, suffers a paralyzing stroke, Mildred and her daughter, Joan, need advice. Dark circles have formed under Mildred's eyes. Her hair is disheveled. Joan holds her hand. "The doctor says Harold needs long-term care in a nursing home," Mildred says. "I have some money in savings, but not enough. I don't want to lose my house and all our hard-earned money. I don't know what to do."

Joan has heard about Medicaid benefits for nursing homes, but doesn't want her mother left destitute in order for Harold to qualify for them. Joan wants to ensure that her father's medical needs are met, but she also wants to preserve Mildred's assets.

"Can't Mom just give her money to me as a gift?" she asks. "Can't she give away $13,000 a year? I could keep the money for her so she doesn't lose it when Dad applies for Medicaid."

Joan has confused general estate and tax laws with the issue of asset transfers and Medicaid eligibility. A "gift" to a child in this case is actually a transfer and Medicaid has very specific rules about transfers.

At the time Harold applies for Medicaid, the state will "look back" 5 years to see if any gifts have been made. The state won't let you just give away your money or your property to qualify for Medicaid. Any gifts or transfers for less than fair market value which are uncovered in the look-back period will cause a delay in Harold's eligibility for Medicaid.

In Pennsylvania, for example, every $7,514.74 given away during the 5 years prior to a Medicaid application creates a 30 day period of ineligibility. So if Harold and Mildred give their daughter $13,000, Harold will be ineligible for Medicaid for almost 2 months.

So what can Harold and Mildred do? They can institute a gifting program, save a good portion of their estate, and still qualify for Medicaid. But they have to set it up just right. The rules are very "nit-picky". Generally, if done properly, you can save about one-quarter to one-half of the assets this way. You MUST consult a knowledgeable elder law attorney on how to set it up. You also must be very careful on which assets are gifted and the form of the gift, outright vs. in (a special) trust account.

Will I Lose My Home?

Many people who apply for Medicaid benefits to pay for nursing home costs ask this question. For many the home constitutes much or most of their life savings. Often it is all the couple has to pass on to their children.

Under Medicaid eligibility rules, the home is an exempt asset. This means its value is not taken into account when calculating eligibility for Medicaid benefits. But under a change made in 1993, (Omnibus Budget Reconciliation Act of 1993) states are required to setup an Estate Recovery Unit to seek recovery of all Medicaid payments from the estates of those who receive coverage. Because the home is the single largest asset which a couple can keep, while still qualifying for Medicaid, it is also the main target of estate recovery in most states.

Here's how the process works. While the community spouse (i.e., at home) is living in the home, it remains an exempt asset. It is critical at this point to retitle the home solely in the name of the CS and to change his or her Will to avoid the possibility that the CS may predecease the IS. If that does not occur and the CS dies first,the Estate Recovery laws allow the state to demand repayment of benefits paid to the nursing home spouse upon the death of the IS. Under OBRA-93. the states have broad authority to seek payment for Medicaid services rendered from virtually any property owned by the Medicaid recipient. Pennsylvania presently limits recovery to the probate estate (those assets that flow tlirough the Will). They do have the ability under federal law to expand estate recovery

Fortunately there are ways to protect your property in Pennsylvania. The solutions can range from re-titling assets to selling or even gifting them. Since the Medicaid rules are constantly changing, you should call Zacharia & Brown or otherwise seek help from an experienced Elder Law attorney to help you in your planning.

In Conclusion

As you can see, there are a number of strategies that you can use to qualify for Medicaid and still preserve some or all of the estate you've spent a lifetime building.

These strategies are legal. They are moral. They are ethical. Please be advised, however, that Medicaid planning requires a great deal of knowledge on the ins and outs of the system. Work with an experienced advisor who knows the rules and can advise you accordingly.

In the previous pages, we've talked about how to find the right nursing home, how to get good care there, and how' to pay for it without going broke. But where do you actually start looking? Where should you begin your search? We can help. Call Zacharia and Brown at (724) 942-6200 or our East Hills Office at (412) 751-5670 to schedule an appointment.

Essential Legal Documents

For decades Estate Planning consisted primarily of planning to minimize taxes. Those individuals with some acquired wealth wanted to preserve as much of their estate as possible for their loved ones and didn't want to lose even a portion of it to taxes.

Today, taxes are not a concern like they used to be. Even then, taxes would consume only a portion of your life savings and never your home.

An extended long term care stay in a nursing home can take every dime you have including your home. You need to be prepared for the possibility of such a stay. Every estate plan should have the following:

Last Will and Testament

Your Will needs to contain language to protect against the possibility that your spouse may be in a nursing home and receiving Medicaid benefits. If you should pass away first and your Will states that everything goes to your spouse, your spouse will be removed from the Medicaid program and your family may lose everything.

Our Will contains a protective provision that essentially provides that if your spouse is in a nursing facility and receiving services, he or she gets only the minimum amount required by law or their portion goes into a special needs trust to supplement, not supplant Medicaid benefits.

General Durable Power of Attorney

As we have told thousands of individuals and clients, we consider the general durable power of attorney to be the most important legal document you can have. They are not all the same. Because of the issues of long term care your power of attorney must address many issues not covered adequately in most.

For example, the power of attorney needs to address issues such as gifting to preserve assets if you are in a nursing home, assignment of ownership of life insurance, changes to your IRA beneficiaries, annuities, personal care agreements, and much, much more.

Health Care Power of Attorney

With recent changes in the law concerning privacy, it has become increasingly difficult to obtain medical information about a loved one. Our Health Care Power of Attorney addresses these concerns and includes within it a Living Will.

Additional Legal Strategies

The preceding section discussed those documents that provide the essential foundation of any estate plan. In addition to those, there are other documents and strategies that can assist in protecting your estate against long term care costs.

Deed with Retained Life Estate

For many people, setting up a "life estate" is the most simple and appropriate alternative for protecting the home from estate recovery. A life estate is a form of joint ownership of property between two or more people. They each have an ownership interest in the property, but for different periods of time. The person holding the life estate possesses the property currently and for the rest of his or her life. The other owner has a future or "remainder" interest in the property. He or she has a current ownership interest but cannot take possession until the end of the life estate, which occurs at the death of the life estate holder. As with any other transfer, creating a life estate deed can trigger a Medicaid ineligibility period.

The key to a Life Estate deed is that when the owner of the life estate passes away, the home gets inherited by the heirs immediately with no need for probate. Most importantly, because the heirs inherit the home by virtue of the deed and not by the Will, there is no estate recovery against the home under current law.

It is a great way to maintain absolute control over the home and protect it from being lost to the State. The downside is, the home cannot be sold until the owner passes away. Thus, if the life estate holder enters into a nursing home, someone will have to live in the home until the owner passes.

Irrevocable Income Only Trust (HOT)

On February 8, 2006 the President signed the Deficit Reduction Act of 2006 (DEFRA). This law extends the lookback period to 5 years and delays the start date for any disqualification period to the date you enter the nursing home or the date that you have less than $2,400, whichever is later. This means that now, more than ever, advance planning is necessary for those who wish to protect their home and assets from the skyrocketing cost of nursing home care.

We are not talking about a revocable living trust. This trust is a specialized trust that is established to protect assets from exposure to long term care costs while minimizing taxes. The benefits of transferring your home into an Irrevocable Income Only Trust (HOT) is that it will avoid probate, minimize the capital gains taxes for your children and, most importantly, protect the home and any other assets in the trust from nursing home years costs once five years passes from the date the assets are placed in the trust.

This is the way it works; the trust is established and signed, then a deed is prepared transferring the home to the trust. At this point there is a decision to be made. Do we want to transfer the entire property into the trust or, do we want to retain a life estate and transfer the remainder into the trust? If the individuals are healthy and are not concerned about nursing home placement and the possible five year disqualification period, we like to transfer the entire property into the trust. Retaining a life estate and transferring the remainder into the trust can substantially reduce the disqualification period. If a life estate is retained and the property is sold during the parent's lifetime, they will receive a portion of the money and the amount attributable to the remainder interest will go to the trust and will be protected. The cash received by the parents will be eligible for the capital gain exclusion mentioned above but the cash will no longer be protected. Had the entire property been transferred into the trust at the beginning, the entire proceeds would be eligible for the gain exclusion and be protected from potential nursing home costs. This comes in handy when parents want to down-size and sell their home and buy a smaller one. In this case the trust would purchase the new house and the nursing home protection will continue.

Once the property is in the trust, everything goes on exactly as before. You still pay the taxes, mortgage and repairs. Your income tax reporting is exactly as it was before. For tax purposes, the creator of the trust is considered the owner of the property for income tax purposes. No special income tax return is required. Everything is reported as before, on your individual income tax return.

For Medicaid purposes however the house and anything else in the trust is considered not yours and is protected from nursing home costs after the passing of five years from the date of transfer.

Here's how it works. You set up the trust. A trust is a contractual agreement between you and another. Your give (or grant) the property to the trustee who is in charge of managing the property. The trustee can be, and usually is, one of your children or a close and trusted person.

While you are living, you get all of the income from the trust. For purposes of real estate, income means the exclusive right to the use and possession of any real property during you lifetime. You cannot be forced to leave the residence. You could also be given the right to veto any sale or lease. Depending on your county, you may still have the right to all real property tax exemptions which are available.

Your homeowners insurance company will have to be notified and the trust should be named as an additional insured. We have not seen this ever cause any type of increase in premium or any change for that matter.

It almost sounds too good to be true, doesn't it? Well there are two downsides. The first is that, as with anything else, there is a five year lookback. The transfer of the house to the trust will have been considered a gift. You may have to wait out five years before applying for Medicaid. The second downside is that you cannot sell the house. The trustee, however, can sell it.

What about vacation property?

If you own vacation property, a house by the lake, a cabin in the mountains, etc., if you ever need to apply for Medicaid benefits for nursing home care, that vacation property will be considered a countable asset. In other words, you may be forced to sell it. This HOT trust is the perfect fit. In addition to the home, the HOT can hold vacation property as well. All the same rules apply.

What about life insurance?

The cash value of life insurance is considered a countable asset and may have to be sold if you are applying for Medicaid benefits for nursing home care. The HOT can hold life insurance as well.

What about other investments in the trust?

The trust is not limited to real estate and life insurance, it is the perfect tool to help assure that your children receive an inheritance while assuring that you continue to get all the income.

For example, you establish an HOT and transfer some stock and a CD. The trust will be considered the owner of the stock and CD and each month or quarter as the case may be, the interest payments and dividends will continue to be paid directly to you.

Summary

An IIOT can be a great way to protect your home, other real estate, and an inheritance for your family. Many people put their home and an investment in the trust. They continue to live in and enjoy their home as well as continue to get the monthly interest payments from the investment. As with anything else there is a five year wait before those assets can be considered fully protected. This is a special trust and must be established by a qualified elder law attorney. Call today to see if an IIOT can work for you.

Personal Care Agreement

A Personal Care Agreement is one whereby an individual contracts with another, usually a child or close friend or relative, to provide care for the individual with all of the essentials of life. The individual can pay the care giver up front for a calculated period of time. As with everything else, this is a very special agreement and must be designed by a qualified elder law attorney.

Family Care Agreement

A Family Care Agreement in one created by the children of an individual. The children fund the agreement, usually a trust, with gifted money, and agree to pay for the parent's care for as long as is needed or until benefits such as Medicaid are available.

Gifting Strategies

Far too many people believe that just because a loved one is in a nursing home and spending down it is "too late." It is never too late. As experienced elder law attorneys we can still save a significant portion of your estate even if it is small and you're already in the nursing home. The key is to act and to act quickly.

Other Strategies

There are many other strategies not listed in this document. Call our office for more information or to schedule a consultation.

What to do Next?

1. Call our Office for an Appointment, East Hills - (412) 751 -5670 or the South Hills (724) - 942-6200.

2. Fill out the Questionnaire and bring it with you.

3. Bring copies of the existing estate plan; Will, Powers of Attorney, etc.

4. Bring a copy of any deed to any real estate owned.

5. At the meeting, all family members who have an interest should be in attendance. Agreement from all family members is required.

6. DO NOT WAIT. In Pennsylvania that cost of a nursing home for one day is $259.76. If you put things off for 10 days, you will have lost $2,600!

Two Offices to Serve You

4500 Walnut Street, McKeesport, Pa 15132
(412) 751-5670

We are located on Route 48 about 200 yards South of Olympia Shopping Center. Follow Route 48 South through White Oak. When you pass Olympia Shopping Center and McDonalds, we are about 100 yards up on the right.

South Hills Office

111 West McMurray Road, McMurray, PA 15317
(724) 942-6200

We are located near the Donaldson's Crossroads intersection of Rt. 19 (Washington Road) and McMurray Road, directly behind the CVS Pharmacy.

Reference Sections

The following pages of information contain reference information for you. It includes:

HOUSING OPTIONS.

This section briefly describes the different types of housing and what each means. It also contains a section on how you might better understand how your needs are determined.

AREA AGENCY ON AGING OFFICES

Each County has a special division called the Department of Aging that offer a wide variety of assistance to seniors for which there is no charge. The address, telephone numbers, website address and other numbers are included. When you see the word APPRISE, that is a special program designed to assist seniors with health insurance information. The OMBUDSMEN is the person you go to when you are having trouble with a nursing home or state agency.

SPECIAL PROGRAMS FOR LIVING AT HOME

One of the fasteszt growing areas of long term care are called Home and Community Based Waiver Programs. In this section we discuss the Pennsylvania Department of Aging Waiver Program (PDA Waiver) and Community Life's Community Based Program. Both of these programs are for older citizens who are in need of nursing home type care but want to remain in their home and have someone there to assist them in staying at home.

LEGAL RIGHTS OF NURSING HOME RESIDENTS

In 1987 Congress passed a special law call the Nursing Home Reform Act. It lists the 12 special laws that provide special rights for nursing home residents.

Housing Options

Domiciliary Care Services for Adults

Domiciliary care is a supervised living arrangement in a home-like environment for adults who are unable to live alone because of demonstrated difficulties: (1) in accomplishing activities of daily living; (2) in social or personal adjustment; or (3) resulting from disabilities. The Area Agency on Aging, is responsible for assessment and placement of residents in Domiciliary care homes. They also certify Domiciliary care homes. Residents are eligible for a domiciliary care supplement payment if they are eligible for Supplemental Security Income (SSI) or have an income less than the combined federal/state payment for domiciliary care and are not related to the provider. People who are not eligible for the supplement may reside in domiciliary care homes as private pay residents.

Personal Care Homes /Assisted Living Facilities

Personal care homes, sometimes called assisted living facilities, offer room and board and assistance with the activities of daily living (such as bathing, grooming and meal preparation). They are inspected and licensed by the Department of Public Welfare. Older people or their families who are thinking about moving to a personal care home, should consider only those homes with a current license from the Department of Public Welfare. It is also important to have a contract with the home operator which lists the services to be provided and the cost of each service.

Nursing Homes

Pennsylvania's Department of Health, Division of Nursing Care Facilities is responsible for the licensing and oversight of Pennsylvania's nursing care facilities. As of April 30, 2001 there were 776 facilities with a total bed capacity of over 96,000. The Department conducts over 5,000 inspections a year. These include licensure and certifications surveys, follow-up surveys and complaint investigations. The Department also operates and maintains the federally mandated Nurse Aide Registry which contains information on over 154,000 nurse aides in Pennsylvania.

Determining Your Needs

The types of care and services you may need depend on how much assistance you need with your activities of daily living. These activities are essential to day-to-day functioning and include but are not limited to, Bathing, Dressing, Grooming, Eating, Getting in and Out of Bed, and Using the Toilet. The types of care and services you may need can also depend on how much assistance you need with activities related to an illness or disability. These activities may include but not be limited to things like taking medications, caring for surgical wounds and using assistive devices or equipment. If you are unable to do one or more of these activities without assistance, it usually means you need some long term care and services. Figuring out what care and services you may need can be a complicated process. But you don't have to do it alone. There are many resources and agencies available to help. Contact the Area Agency on Aging in your County. Long term care and services can be provided in many different settings, not just in nursing homes or centers where you must live to get the services. A wide variety of care and services are available, from medical care to assistance with bathing and dressing, to assistance with household chores. Some care and services are available in more than one setting. In recent years, more and more people are choosing to stay in their homes and arrangements are being made for the care and services to come to them. You may receive a combination of the services to enable you to live independently for as long as possible: Think about where you want to receive your care and services.

Area Agency on Aging Directory

Offices in South-Western Pennsylvania

Pennsylvania Department of Aging
555 Walnut Street
5th Floor
Harrisburg, PA 17101
Contact Phone #: (717) 783-1550
Email: aging(g),state.pa.us
www.aging.state.pa.us/

Allegheny County

Allegheny Co. AAA
441 Smithfield Street
Second Floor
Pittsburgh, PA 15222-2219
SeniorLine: (412) 350-5460
Toll Free: (800) 344-4319
Tel: (412) 350-4234
Fax: (412) 350-3091
TDD/TTY: (412) 350-2727
Website: www.county.allegheny.pa.us/dhs/AAA/aaa.asp
Email: SeniorLine@dhs.county.allegheny.pa.us
Health Insurance Assistance (Apprise): (412) 734-9330
Ombudsmen: (412) 350-5791 Protective
Services: (412) 350-6905 or (800) 344-4319

Armstrong County

Armstrong County AAA
326 South Water Street
Kittanning, PA 16201
Tel: (724) 548-3290
Toll Free: (800) 368-1066
Fax: (724) 548-3296
Web Site: www.co.armstrong.pa.us
E-mail: aaa@co.armstrong.pa.us
Apprise: (800) 368-1066 or (724) 548-3290
Ombudsmen: (724) 548-3290
Protective Services: (800) 732-6618

Beaver County

Beaver Co. Office on Aging
1020 8th Avenue
Beaver Falls, PA 15010
Tel: (724) 266-7701 or (724) 847-2262
Fax: (724) 847-3490
Web Site: www.bcoa.us
Email: Aging@BCOA.US
Apprise Email: srosatone@bcoa.us
Apprise: (724) 728-7707
Ombudsmen: (724) 847-2262
Protective Services: (800) 272-0567

Butler County

Butler County AAA
111Sunny view Circle, Suite 101
Butler, PA 16001-3547
Tel: (724) 282-3008
Toll Free: (888) 367-2434
Fax:(724)282-1466
Website: www.co.butler.pa.us
Email: lmonday@co.butler.pa.us
Apprise: (888) 367-2434 or (724) 282-3008
Ombudsmen: (724) 282-3008
Protective Services: (724) 283-6955

Fayette, Greene, Washington Counties

Southwestern PA AAA, Inc.
Fayette, Greene, Washington Counties
305 Chamber Plaza
Charleroi,PA 15022-1607
Tel: (724) 489-8080
Toll Free: (888) 300-2704
Fax: (724) 483-9360
Web Site: www.swpa-aaa.org
Email: contact@swpa-aaa.org

Apprise: (888) 300-2704 ext. 4438 or (724) 489-8080
Ombudsmen: (724) 489-8080 ext. 4424
Protective Services: (800) 537-2424

Lawrence County
Lawrence County AAA
Shenley Square
2706 Mercer Road
New Castle, PA 16105-1422
Tel: (724) 658-3729
Fax:(724)658-7532
Web Site: www.ccpgh.org/challenges
Email: lawcoage@ccpgh.org

Apprise: (724) 658-5661 or (724) 658-3279
Ombudsmen: (724) 658-3729
Protective Services: (724) 658-3729

Westmoreland County
AAA of Westmoreland County
200 South Main Street
Greensburg, PA 15601
Tel: (724) 830-4444
Toll Free: (800) 442-8000
Fax:(724)830-4513
Website: www.co.westmoreland.pa.us
E-mail: mhelinsk@co.westmoreland.pa.us

Apprise: (800) 262-2103 Or (724) 925-4213
Ombudsmen: (724) 837-3437
Protective Services: (800) 442-8000

Community Life Program

Community Life is a Medicaid funded program for persons who are nursing home eligible but wish to stay in their home. The eligibility requirements are persons who are:

- At least 55 years of age
- Eligible for Medicaid or able to pay privately
- Determined to be clinically eligible for our program by the Allegheny County Area Agency on Aging
- Living within their service area
- Able to live safely in their home with our services

How do I enroll in Community LIFE?

Call 412-664-1448 (McKeesport) or 412-464-2101 (Homestead) and ask to speak to an Intake Specialist. The staff will fully explain the program. If you are interested, they will schedule a home visit to assess your needs and initiate the application process.

How much does it cost?

If participants are eligible for Medicaid, there is no cost for the program. There are no co-pays or deductibles. If a person does not qualify for Medicaid, there is an option to private pay.

What services does Community LIFE provide?

The Community LIFE services include: All medical and hospital care, prescriptions, adult day care, social services, in-home support and services, physical and occupational therapies, medical supplies and durable medical equipment, transportation, meals, podiatry, optometry, and audiology.

What goes on at the Day Center?

The Day Center provides on-site medical and nursing care, plus rehabilitation therapy. This is where participants can see or talk to the doctor or nurses. The Day Center is also a place for seniors to socialize, participate in activities, special programs and entertainment, and share meals. The center has a large activity area complete with fireplace and a personal care shower area, which also boasts a whirlpool, a favorite of the participants. The services of a beautician are also available.

What happens if I join Community LIFE and I don't like it? Will I be able to quit?

Community LIFE is a program of choice, and you may disenroll from the program if you wish. Their social worker will assist you in returning to the services you were receiving before enrolling in Community LIFE.

Does anyone live at Community LIFE?

No one lives at Community LIFE. Participants live in their own homes, or with family members.

What happens if I am no longer able to stay **in my home?**

Community LIFE will do everything possible to keep you in your own home. However, if you are no longer able to remain safely in your own home, Community LIFE will assist in finding an alternative housing arrangement, or if absolutely necessary, placement in a nursing facility.

THE PDA WAIVER

PDA Waiver is a long term care program that assists frail elderly Pennsylvanians with the services they need to live independently in their own homes and communities.

Consider these benefits as you read about the PDA Waiver:

- Provides an alternative to long term care in a nursing facility;
- Allows you to receive services in your home and community;
- Offers a wide array of services;
- Gives consumer choice of approved services and providers;
- Qualifies participants for other Medical Assistance benefits; and
- Provides on-going support and assistance from the local Area Agency on Aging.

WHAT IS THE WAIVER PROGRAM?

It is administered by the Pennsylvania Department of Aging and provided statewide by your local Area Agency on Aging, the program provides long term care services to frail older adults as an alternative to nursing facilities.

WHAT SERVICES ARE AVAILABLE?

Home health and personal care services, home support, attendant care, respite care, adult day care, transportation, home modifications, specialized medical equipment and supplies, counseling, extended state plan physician services, home delivered meals, personal emergency response, and companions. Care management and service coordination is provided by your local Area Agency on Aging.

WHO IS ELIGIBLE?

You must be a resident of Pennsylvania, at least 60 years of age, and meet all of the following criteria:

Require the level of care of a nursing facility; (A consumer must be assessed and determined eligible for nursing facility care. The determination is based on a medical evaluation conducted by the consumer's physician, and an assessment conducted by the Area Agency on Aging.) Can be served in the community by available health and social services;

Meet the financial requirements, as determined by your local County Assistance Office - income at or below **$2,022.00** per month, which is 300% of the 2011 **SSI** benefit level (for 2005 the income limit was $1737.00), and assets at or below **$8,000.00.** The Department of Public Welfare, through the local County Assistance Office, assesses the income and assets of the consumer and determines the consumer's initial and on-going financial eligibility for waiver. Only income and assets of the consumer are considered; and Agree to the requirements and responsibilities of the program.

HOW DOES THE PROGRAM WORK?

Each PDA Waiver consumer will have the support and assistance of their local Area Agency on Aging. The agency's staff will regularly assess your needs; help develop and maintain an adequate and appropriate plan of care; assist in selecting Medical Assistance and program approved services and product providers, and monitor the quality of those services provided.

WHAT DOES THE PROGRAM COST?

There are no consumer payments or co-payments to the providers for the purchase of approved services. Since consumers in the PDA Waiver receive Long Term Care services funded by Medical Assistance, Estate Recovery does apply. Call you r Area Agency on Aging for more information.

The Legal Rights of Nursing Home Residents

While residents in nursing homes have no lesser rights than anyone else, the combination of an institutional setting and the disability that put the person in the facility in the first place often results in a loss of dignity and the absence of proper care.

As a result, in 1987 Congress enacted the Nursing Home Reform Law that has since been incorporated into the Medicare and Medicaid regulations. In its broadest terms, it requires that every nursing home resident be given whatever services are necessary to function at the highest level possible. The law gives residents a number of specific rights:

1. Residents have the right to be free of unnecessary physical or chemical restraints, vests, hand mitts, seat belts and other physical restraints. And antipsychotic drugs, sedatives, and other chemical restraints are impermissible, except when authorized by a physician, in writing, for a specified and limited period of time.

2. To assist residents, facilities must inform them of the name, specialty, and means of contacting the physician responsible for the resident's care. Residents have the right to participate in care planning meetings.

3. When a resident experiences any deterioration in health, or when a physician wishes to change the resident's treatment, the facility must inform the resident, and the resident's physician, legal representative or interested family member.

4. The resident has the right to gain access to all his or her records within one business day, and a right to copies of those records at a cost that is reasonable in that community. The facility must explain how to examine these records, or how to transfer the authority to obtain records to another person.

5. The facility must provide a written description of legal rights, explaining state laws regarding living wills, durable powers of attorney for health care and other advance directives, along with the facility's policy on carrying out these directives.

6. At the time of admission and during the stay, nursing homes must fully inform residents of the services available in the facility, and of related charges. Nursing homes may charge for services and items in addition to the basic daily rate, but only if they already have disclosed which services and items will incur an additional charge, and how much that charge will be.

7. The resident has a right to privacy, which is a right that extends to all aspects of care, including care for personal needs, visits with family and friends, and communication with others through telephone and mail. Residents must have areas for receiving private calls or visitors so that no one may intrude and to preserve the privacy of their roommates.

8. Residents have the right to share a room with a spouse, gather with other residents without staff present, and meet state and local nursing home ombudsperson or any other agency representatives. They may leave the nursing home, or belong to any church or social group. Within the home, residents have a right to manage their own financial affairs, free of any requirement that they deposit personal funds with the facility.

9. Residents also can get up and go to bed when they choose, eat a variety of snacks outside meal times, decide what to wear, choose activities, and decide how to spend their time. The nursing home must offer a choice at main meals, because individual tastes and needs vary. Residents, not staff, determine their hours of sleep and visits to the bathroom. Residents may self-administer medication.

10. Residents may bring personal possessions to the nursing home such as clothing, furnishings and jewelry. Residents may expect staff to take responsibility for assisting in the protection of items or locating lost items, and should inquire about facility policies for replacing missing items. Residents should expect kind, courteous, and professional behavior from staff. Staff should treat residents like adults.

11. Nursing home residents may not be moved to a different room, a different nursing home, a hospital, back home or anywhere else without advance notice, an opportunity for appeal and a showing that such a move is in the best interest of the resident or necessary for the health of other nursing home residents.

12. The resident has a right to be free of interference, coercion, discrimination, and reprisal in exercising his or her rights. Being assertive and identifying problems usually brings good results, and nursing homes have a responsibility not only to assist residents in raising individual concerns, but also to respond promptly to those concerns.