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Elder Law: Will family home be lost?

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By Julian Gray and Frank Petrich

Mrs. Smith has been caring for the past five years for her husband who suffers from Alzheimer's disease. It has been an emotionally and physically draining battle for her and her family. She swore that she would never put her husband in a nursing home and rearranged their lives to keep her husband in their home for as long as possible.

Unfortunately, she came to realize that her husband's needs are beyond what she can safely (for both of them) provide for him at home. Reluctantly, and after consultation with his physician and her children, she recently placed him in a nursing facility. Aside from the guilt that she endures over this decision, she knows that it is the better choice for both of them.

However, she now has concerns over the cost of his nursing care and the burden it will be on their finances. They both worked very hard over the years to accumulate their modest nest egg in order to enjoy a comfortable retirement.

The average monthly cost of nursing facility care in Pennsylvania is \$7,515 (\$90,200 a year).

Mrs. Smith has also just learned that Medicare does not cover the long-term nursing facility care her husband needs.

She asked the nursing home about Medicaid (a joint federal-state entitlement program) only to have them tell her that she and her husband will basically have to be destitute in order to qualify and that the government may take their home to "repay" Medicaid at their deaths.

Mrs. Smith is distraught because her husband always provided for them and took great pride that if anything happened to him she would be able to protect herself financially.

While Mrs. Smith is not looking for a handout and she is willing to pay her fair share of her husband's nursing care costs, she is afraid that she may live her remaining years in poverty and be kicked out of the home in which she and her husband raised their children and enjoyed many great memories.

Thus, she wants to know what she can do for herself while still having her husband's care needs adequately met.

Dealing with the long-term care needs of a spouse or loved one is an emotional and financial roller coaster. While it is true that Medicare has very limited coverage for nursing home costs, Medicaid (called Medical Assistance in Pennsylvania) is a means-tested safety net program designed to cover these costs for those who qualify.

In Pennsylvania, the Medical Assistance program is administered by the Department of Public Welfare through local county assistance offices.

Clearly, most individuals do not have an extra \$7,500 sitting around each month to spend on nursing home care. (In fact, most folks who do have that kind of money simply hire caregivers in their homes and don't go to nursing homes in the first place!)

So, Mrs. Smith is in the vast majority of people who simply cannot afford this type of care. Thus, well over 60 percent of Pennsylvania nursing home residents utilize Medicaid to help pay for these costs.

The Medical Assistance program in Pennsylvania is a complex web of federal and state rules and regulations that are constantly changing. In fact, a federal court judge has called Medicaid law "a veritable Serbonian bog entered only by the foolhardy or masochistic."

Nonetheless, there are numerous protections under the law for spouses living at home (called community spouses) to protect their resources and the family home. Under the 1988 Medicare Catastrophic Coverage Act, Congress established a system for allocating income and resources between the institutionalized spouse (Mr. Smith) and the community spouse (Mrs. Smith).

For example, and in general, for 2010, a community spouse can keep, at least, one-half of their combined countable resources up to \$109,560. Especially important for Mrs. Smith, her house ("principal place of residence") is specifically excluded from being included as a countable resource.

In addition, what is called a Minimum Monthly Maintenance Needs Allowance is available to the community spouse (the present minimum is \$1,822 a month with a maximum of \$2,739 a month) so that the community spouse does not become impoverished.

Therefore, Mrs. Smith should not make decisions based upon information from only the nursing home or the government, but should contact an experienced elder law attorney to help explain the rules for obtaining Medical Assistance as well as help her plan to protect her and her resources with her husband still receiving the care he needs.

And no, even though her husband may be on Medicaid, he still is entitled to the same level of care as any other nursing home resident. So, while Mrs. Smith has done a great service for her husband in taking care of his needs for as long as she could at home, she is now entering a new phase of her life and needs to plan accordingly.

Julian Gray and Frank Petrich are both Certified Elder Law Attorneys with over 50 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@grayelderlaw.com.

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