



## Elder Law: Reviewing the costs of long-term care

February 23, 2014 12:00 AM

By Julian Gray and Frank Petrich

Now that the average daily cost in Pennsylvania for nursing home care is at \$288.21 a day (\$105,197 a year) and with the release by the Centers for Medicare and Medicaid Services of the new spousal impoverishment amounts, this is a good time to review some of the basics as they relate to the medical assistance program for long-term care services in Pennsylvania.

Let's look at a fictional married couple. Marie and Ralph, who are concerned about the possible need for long-term care services because of Marie's increasingly declining health situation as she ages. We'll be using some terms specific to the Medicaid program and we'll explain these terms and the numbers associated with them, some of which are new as of Jan. 1.

Ralph and Marie both realize that Ralph, not in the best of health himself, will shortly be unable to care for Marie at home and that she will need a nursing facility, not assisted or personal care, because of her underlying medical problems.

Options to pay for her care are limited. They can pay privately out of their income and/or assets; use long-term care insurance (which they don't have); use Medicare, which is quite distinct from Medical Assistance and which provides very limited nursing facility coverage; or use the Medicaid program.

Medical Assistance is a joint federal-state program that can pay for nursing facility care for one who meets both the financial and medical eligibility criteria. Approximately 70 percent of residents in nursing homes have their care paid for through this program.

The Kaiser Family Foundation, for fiscal year 2011, estimated that of the \$357 billion spent for all long-term services and support, Medicaid paid 40 percent of that amount, with Medicare for post-acute care (such as for one of our spouses who recently had a new hip installed) paying for 21

percent, people paying out-of-pocket for 15 percent, private insurance 7 percent and other public and private sources 18 percent.

Under the 1988 Medicare Catastrophic Coverage Act, Congress established a process of allocating income and resources between an "institutionalized spouse" (Marie) and a "Community Spouse" (Ralph).

The daily annual average costs of nursing facility care in Pennsylvania (\$288.21) is what is known as the "penalty divisor." This is used to divide into the amount of assets one may have transferred or given away in the five years preceding an application for Medical Assistance, which could then create a period of ineligibility for Medical Assistance. The penalty divisor is generally updated each January.

In order to determine Marie's eligibility for Medical Assistance, we first have to determine their countable resources. Their house, which is their "principal place of residence," and their only car are two examples of resources considered "exempt" (noncountable). Everything else they own, either individually or together (except for Ralph's IRA) gets put into a common pot made up of "nonexempt" resources.

Within that pot, Ralph is entitled, as a Community Spouse, to keep half of that amount. This is called the "Community Spouse Resource Allowance" and is subject to a minimum of \$23,448 and a maximum of \$117,240. These amounts are generally adjusted in January.

Let's look at a couple of examples.

1. Our couple has countable resources of \$35,000. Ralph can keep the minimum amount of \$22,728, even though his half would be only \$17,500.
2. If they have total countable resources of \$300,000. Ralph can keep only an amount up to the maximum \$117,240 -- otherwise his half would be \$150,000, which exceeds the limit.

In both of these examples, the amounts greater than what Ralph can keep are to be used for Marie's nursing facility care or to purchase certain additional "exempt assets" -- an irrevocable burial account and a new, replacement car are only two examples of "exempt assets."

Now, we have to look at what Ralph will need in the way of income to live on so he does not become impoverished as a result of Marie being in a nursing facility.

Ralph is entitled to a "Monthly Minimum Maintenance Needs Allowance" of \$1,939 with a "Monthly Maximum Maintenance Needs Allowance" of \$2,931. These figures are adjusted, based upon inflation, in January for the maximum and July for the minimum.

Two examples:

1. Ralph has a monthly Social Security amount of \$1,000 and a pension of \$500. He has no other income. Thus, his income can come up to the \$1,939 a month minimum.
2. If Ralph instead has a monthly pension and Social Security of \$3,500, he exceeds the monthly maximum amount.

We do need to note that there are times when the maximum can be exceeded such as in unique hardship situations (such as if Marie is in a nursing facility and Ralph in an assisted living or personal care facility with the attendant monthly living costs that could range from \$3,000 to \$6,000 a month).

We have briefly simplified the complex and often confusing subject of Medical Assistance for long-term care services. If such services may be in your future, you need to plan early on and not in a crisis.

## **Updates**

\* Improvement Standard -- In *Jimmo v. Sibelius*, a federal court held that improvement in a patient's condition is not required for continuing Medicare coverage in skilled nursing, home health care or outpatient settings. CMS has recently revised its policy manuals to reflect that case.

\* Pennsylvania -- In September, there was an increase to \$10,000 from \$3,500 in the amount of deposit accounts and patient care accounts without the need for either letters testamentary (for an estate's executor) or letters of administration (for one dying without a will). A Certificate of Death will suffice to obtain the monies.

Julian Gray and Frank Petrich are both certified elder law attorneys with over 55 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](mailto:elderlawguys@grayelderlaw.com). Visit [www.grayelderlaw.com](http://www.grayelderlaw.com).