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Elder Law: Tap resources for institutional care

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You may have heard about the concerns expressed about "busting the buck" in reference to $1 invested in a money market fund potentially having a value of less than $1. Here in Pennsylvania, we now have the distinction of having the average statewide annual cost for nursing facility care surpassing the $100,000 threshold as of Jan. 1. This is according to the state Department of Welfare, which calculates this figure (also called the "penalty divisor") based upon a daily nursing home rate of $276.40. How many of us can afford this expense?

While the National Center for Health Statistics says the average life expectancy has risen to 81.1 years for women and 76.3 years for men, the Social Security Administration estimates that a woman at age 65 can expect to live, on average, to age 85 while a man at age 65 can expect to live, on average until age 83. However, these are just that; averages. It's been estimated that 1 out of every 4 people age 65 today will live past age 90, and 1 out of 10 will live past age 95. We should live so long (as long as we're healthy).

Unfortunately, the probability that a person will need some form of institutional care (personal, assisted living, nursing) increases as we age.

If you're a married couple and you're concerned about the possible need for long-term care services for you and/or your spouse, we'll try to give you an example of how your need for nursing care can impact your finances.

We'll take one of our favorite couples, Ralph and Marie. They are both 70. Ralph was diagnosed three years ago with Alzheimer's disease, and his condition -- even with Marie caring for him at home -- has deteriorated to the point where he is going to need nursing facility care.

Their options for paying for his care are limited. They can pay privately out of their monies (remember, the median net worth for someone their ages is around $200,000, which includes the value of their house), pay through long-term care insurance (only about 6 percent of the population have it, and Ralph and Marie don't), Medical Assistance or the Medicare program (Medicare provides only very limited nursing facility coverage -- up to only 100 days).

Let's begin with the 2013 average daily Pennsylvania nursing facility cost of $276.40 (and remember this is just an average, with urban areas like Pittsburgh generally being higher). This "penalty divisor" amount is used to divide into the amount of money Ralph and Marie may have gifted (given away) in the five years preceding an application for Medical Assistance, which then creates the number of days of ineligibility for Medical Assistance.

Medical Assistance is a joint federal-state program that can pay for nursing facility care for someone 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.

Let's review some of the basics of this payment method for married couples. Under the 1988 Medicare Catastrophic Coverage Act, Congress established a process of allocating income and resources between the "Institutionalized Spouse" (Ralph) and the "Community Spouse" (Marie).

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

Once we've calculated the pot, Marie 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 $23,184 and a maximum of $115,920. These amounts are generally adjusted in January of each year. Two examples:

1. They have total countable resources of $40,000. Marie can keep $23,184 because it is the minimum (although more than half of the $40,000).

2. They have total countable resources of $250,000. Marie can keep only an amount up to the maximum ($115,920).

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

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

She is allowed a "Monthly Minimum Maintenance Needs Allowance" of $1,892 a month (as of July 1, 2012) with a "Monthly Maximum Maintenance Needs Allowance" of $2,898 a month (as of Jan. 1). These figures are adjusted, based upon inflation; the "Maximum" in January and the "Minimum" in July (go figure as to the two different time periods). Two examples:

1. Marie has a monthly Social Security income of $600. She has no other income. Thus, between combinations of Marie's Social Security, Ralph's pension and the possible purchase from their countable resources of a Medical Assistance Qualified annuity (which we will discuss in another column), her income can become the $1,892 a month minimum.

2. Marie has a monthly pension and Social Security of $3,000. Thus, she already meets the monthly maximum amount to which she would be entitled.

However, there are times when the maximum can be exceeded such as unique hardship situations (for example: One spouse is in a nursing facility and the other in assisted living with its own significant monthly living costs, which can range from $3,500 to $6,000).

This is a brief overview of a very complex subject. There are many variables when trying to determine what resources a Community Spouse can keep -- and additionally purchase -- and how to generate sufficient income for the Community Spouse so as not to be impoverished.

If you or someone you know has been in this type of a situation, you know the stress, uncertainty and tension accompanying some very difficult decision making. Get through it by seeking the appropriate advice, listening to it and then following it (unfortunately, not everyone does and there are often some pretty nasty pieces to pick up and put together as a result).

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