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Elder Law: Married and concerned about one of you going to a nursing home?

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At $126,420 a year ($342.58/day), which is now the Pennsylvania statewide cost for nursing home care, we're talking some real money.

And that sets up some concerns for those who are married and worried about one spouse going to a nursing home.

Because it has been over three years since we addressed this topic, it's worth a refresher on some of the concepts associated with nursing home care paid for by the state's Medical Assistance program. The program is a joint federal-state one that will pay for nursing facility care for someone who meets both the financial and medical eligibility criteria.

Almost 70% of residents in Pa. nursing homes have their care paid for through this program. Who among us can afford $126,000 per year on an ongoing basis?

Let's take one couple, Tom and Louise, who have been married to each other for over 50 years and live in the same home they bought when they first got married.

Tom has had some major health issues over the last few years and it's uncertain if Louise can continue to care for him at home.

Tom also has met one of the major Medical Assistance threshold criteria. He is "nursing home facility clinically eligible," which means that a physician certifies that due to diagnosed illness, injury or disability, Tom requires the level of care and services typically provided by an institution (not assisted living nor personal care).

With their financial and insurance options to pay for Tom's care being constrained, they know they will have to rely on the Medical Assistance program to pay for Tom's nursing facility care.

Now, let's look at some of the financial aspects of their marriage. In 1988, Congress passed the Medicare Catastrophic Coverage Act, which created a process of allocating income and resources between an "institutionalized spouse" (Tom) and the "community spouse" (Louise).

In order to determine Tom's financial eligibility for Medical Assistance, we first have to determine their resources. Those are divided into two buckets — those that are "exempt" (non-countable) and those that are "non-exempt" (countable) for eligibility determination.

Their house, their car and their pre-paid funerals, if any, are examples of resources considered non-countable.

Everything else they own — either individually or together — is considered non-exempt. (An exception is Louise's IRA, which is exempt in Pennsylvania but not in every state.)

From those non-exempt, or countable, resources, Louise is entitled to keep one-half, subject to a minimum of $25,284 and a maximum of $126,420, effective Jan. 1, 2019. This is called Louise's "community spouse resource allowance."

Here are two examples to help illustrate what that means:

1. They have total countable resources of $45,000. Louise can keep the minimum of $25,284 as her half would be only $22,500.

2. They have total countable resources of $300,000. Louise can keep only an amount up to the maximum of $126,420. (Otherwise, her amount would be $150,000, which exceeds the permissible limit.)

In both examples, the amounts greater than what Louise can keep are to be used for Tom's nursing facility care or to purchase certain additional "exempt assets," such as a new, replacement car or prepaid burials.

In light of this, the couple wants to give away some resources in order to become eligible for Medical Assistance. Well, good luck.

The daily average cost of nursing home care of $342.58 is also known as the "penalty divisor" amount. It is used to divide into the amount of resources one may have given away in the five years preceding an application for Medical Assistance.

This could create a period of ineligibility for Medical Assistance. For example, two years ago, they gave $69,000 to their favorite son. This gift created a period of 200 days of ineligibility for Tom.

Louise will need income to live on so she does not become impoverished as a result of Tom being in a nursing facility.

She is entitled to a "monthly minimum maintenance needs allowance" of $2,058 with a "monthly maximum maintenance needs allowance" of $3,160.50. These figures are federally adjusted, based upon inflation. Here are two examples:

1. Louise has a monthly Social Security amount of $800 and no other income. Thus, between a combination of Tom's Social Security, pension and the possible purchase from their excess countable resources of a Medicaid qualified annuity for Louise (another column for another day), her income can be increased to the $2,058 monthly minimum.

2. If Louise has monthly pension and Social Security income of $3,300, she is over the monthly maximum amount to which she would otherwise be entitled, but she can keep all of her income, including that of her IRA.

This rather broad overview is meant to give the reader some degree of understanding of an exceedingly complex and scary subject in order to do some proactive advance planning. We hope it has helped and that it encourages you to meet with a knowledgeable adviser to maximize your planning options.

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