

# Top Five Things a Caregiver Child Should Know

By Jennifer Rose, CELA  
March 2020

Caring for an aging parent can be highly rewarding, but undeniably difficult. For any caregiving role to be sustainable, it is imperative that adequate support be provided to the caregiver. In many instances, caregiver children open up their homes or find new homes to provide support to their parent, while simultaneously sacrificing personal and financial opportunities. These five tips can help to mitigate some of the financial strain that caregiver children and their families face when caring for a parent.

## **1. Payments Made in Conjunction with a Valid Caregiver Contract are not “Gifts” or “Transfers” for Medicaid or VA Pension Benefit Purposes.**

The Medical Assistance Long-term Care program is the Pennsylvania Medicaid program that covers the costs associated with skilled nursing care for qualifying seniors, whether such care is received in a facility or in the community (i.e., in the home). Upon submission of an application for Medical Assistance Long Term Care benefits, the State Medicaid agency reviews the applicant’s financial records for the five years preceding the application. Gifts made during this “look-back” period cause a delay for the approval of benefits. In 2020, for every \$352.86 gifted, benefits are delayed for one day. Given the costs associated with nursing homes, gifts of any amount that delay benefits can be catastrophic if the applicant is actively incurring charges at a nursing home while an application for benefits is pending. Fortunately, for parents who pay their children for caregiving services prior to nursing home admission (or application for community-based services) under the control of a valid Caregiver Contract, such payments are not considered “gifts” and do not delay Medical Assistance Long Term Care benefits.

The Veterans Administration has also implemented a three-year look-back period for VA Pension Benefits for wartime veterans and their surviving spouses. Payments made to a caregiver child under a valid caregiver contract are likewise exempt from the VA transfer penalty, which delays benefits for one month for every \$2,266 gifted (in 2020).

## **2. Wartime Veterans’ and Their Surviving Spouses Can Receive Reimbursement of Fees Paid to Caregiver Children Under the VA Pension Program**

The VA Pension Program reimburses veterans and their surviving spouses for unreimbursed medical expenses if the claimant is otherwise eligible for the benefit. Medical expenses are considered unreimbursed if they are paid directly by the claimant without reimbursement from a third-party payor such as an insurance company. Monthly out-of-pocket payments for Medicare

Part B premiums, supplemental insurance premiums, in home caregivers and assisted living / personal care costs are considered to be unreimbursed medical expenses. Caregiver children are permitted to be paid caregivers under this program if the arrangement is adequately documented.

### **3. Caregiver Children Can be Paid by the Department of Human Services as Caregivers through Pennsylvania's Community Health Choices Program**

Community Health Choices is Pennsylvania's Medicaid managed care program for adults over age 21 who require skilled care and choose to receive such care in the community (rather than in a skilled nursing facility). Under this program, a care provider may be the adult child of the recipient as long as he or she is not also serving as financial power of attorney or guardian of the parent. A child serving in either role who would like to be a paid caregiver must step down from their fiduciary position in lieu of a successor fiduciary. The caregiver child could then become an employee of a healthcare organization that accepts Medicaid payment and become a paid caregiver.

### **4. Caregiver Children who reside with a Parent can be Gifted the Family Home with no Adverse Medicaid Consequences**

Caregiver children who reside with a parent and provide care for at least two years prior to nursing home admission and, by doing so, enable the parent to remain in their home rather than receive skilled care in a nursing facility are permitted to receive the home via a gift with no negative Medicaid consequences so long as the transaction is properly documented with the appropriate medical opinion and proof of residency. Knowledge of this gifting exemption could save the family home from a future estate recovery claim by the Pennsylvania Department of Human Services Estate Recovery Program upon the death of a parent who receives Medicaid Long-Term Care Services.

### **5. A Parent Can Purchase a Partial Interest in Your Home or You Can Purchase a Home Together to Expedite Qualification for Various Public Benefit Programs**

For children who move parents into their existing home, or for children considering consolidating living quarters, there are many options for protecting assets and expediting benefits through joint purchases by parents. Jointly owned homes with survivorship rights avoid claims against the home under the Pennsylvania Estate Recovery Program and the valid purchase of an interest in a home that will be the parent's primary residence is both an exempt purchase and an exempt resource under the Medicaid rules. Moreover, the purchase of the interest in a home does not bar payments for ongoing caregiver services payable to a child providing care as discussed in number three above.

Support is available for adult child caregivers, but the requirements for various programs are complicated. Working through the details with an experienced Elder Law attorney can help to create a sustainable arrangement tailored to your family's precise situation.