post-gazette.com
Pittsburgh Post-Gazette

June 27, 2022
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Elder Law Guys: Married and Concerned about Nursing Home Care?

Our last two columns spoke pretty directly to the need for planning for long term care needs well in advance. Now, we'll move to an overview of some issues relative to a married couple, one of whom may need nursing facility care.

It's now been three years since we addressed the topic of the Pennsylvania Medical Assistance program (the joint federal-state program known as Medicaid) for long term care payment and to provide an overview of important terms and concepts associated with nursing facility care paid for by the program.

We are limiting this discussion to that of nursing facility care, not personal nor assisted living care, although there are some legislative rumblings about including assisted living care as part of the Medical Assistance program as a less expensive care option.

When we last addressed this topic, the average Pennsylvania cost of skilled nursing care was $126,420 a year ($342.58/day). Well, with inflation, COVID and, perhaps some degree of greed, that cost has now increased 39% to $176,112 a year ($482.50/day).

Leading Age PA, a Pennsylvania nonprofit trade association of long term care providers, recently stated that Pennsylvania's nursing homes were underfunded by nearly $1.2 billion in Medicaid monies from 2019 to 2020 alone.

With almost 2.5 million Pennsylvanians now over age 65, this issue is only going to become more pronounced in terms of adequate funding, let alone quality of care issues.

The Medical Assistance program will pay for nursing facility care for one who meets both the medical and financial criteria, which can be complex, frustrating and inordinately time consuming in demonstrating eligibility.

Harry and Sally

Let's now address the couple in question: Harry and Sally (the Pittsburgh couple, not the Seattle couple). They have been married over 40 years, have two children who live outside of Pennsylvania and have no close relatives. They live in a modest two-story home.

Harry has developed some significant mobility and health issues recently. Sally herself is not in the best of health and the care assistance she needs to provide to Harry is becoming overwhelming.

Harry also has fortunately met one of the major Medicaid criteria: medical eligibility. He is what is called "nursing home facility clinically eligible" (NFCE), which means that a physician can certify that due to diagnosed illness, injury or disability, he requires the level of care and services typically provided by an institution (not assisted living nor personal care).

And remember that Sally is his only caregiver right now. As they have limited financial resources and no long term care insurance, they are going to have to rely ultimately on Medicaid for his care.

Harry would be considered the institutionalized spouse and Sally, the community spouse. We will also give some examples of what are called the community spouse resource allowance (minimum and maximum), monthly maintenance needs allowance (minimum and maximum), penalty divisor, resource limit and exempt and non-exempt resources — all of which are highly relevant to understanding financial eligibility.

We start by looking at their combined resources to determine Harry's eligibility. These resources are then divided into two pots; one of which is for exempt (non-countable) resources and one of which is for countable resources for determining financial eligibility.

For example, their house, their car and their pre-paid funerals, if any, are three examples of resources considered non-countable. Everything else they own, either individually or together (except, for Sally's IRA which is exempt in Pennsylvania), are in the pot of countable resources.

From those countable resources, Sally is entitled, as a community spouse, to keep one-half of that amount — with a minimum of $27,480 up to a maximum of $137,400 — effective Jan. 1, 2022. This is called Sally's community spouse resource allowance. Here are two examples:

1. They have total countable resources of $50,000. Sally can keep the minimum amount of $27,480 as her ½ amount would be only $25,000.
2. They have total countable resources of $350,000. Sally can keep only an amount up to the maximum of $137,400 (otherwise her ½ amount would be $175,000 which exceeds the permissible limit).

In both examples, the amounts greater than what Sally can keep are to be used for Harry's nursing facility care and or to purchase certain additional non-countable resources such as prepaid funerals or a newer automobile.

The average daily Pennsylvania nursing home cost of $482.50/day is also known as the penalty divisor in the event they want to gift some of their excess resources to whomever. This figure is divided into the amount of resources they may have given away in the five years preceding an application for Medical Assistance to determine the number of days of Medicaid ineligibility.

Sally still needs money to live at home so she does not become impoverished.

She is entitled to a monthly minimum maintenance needs allowance of $2,178 with a monthly maximum of $3,435. These figures are federally adjusted, based upon inflation. Here are two examples:

1. Sally has monthly Social Security of $1,000 and no other income. Thus, with a combination of Harry's Social Security and pension and the possible purchase of a Medicaid Qualified Annuity from their excess countable resources, her income can be increased to the $2,178/mo. minimum (note that this will become $2,189 on July 1st.)

2. Sally has monthly pension and Social Security income of $3,500. Even though she is over the monthly maximum amount to which she would otherwise be entitled, she can keep all of her income, including her IRA.

This is a 30,000-foot overview of a complex and daunting issue. Our hope is that, if faced with a potential nursing home admission, now or in the foreseeable future, this serves as some information to better prepare you to meet that challenge and to encourage you to seek professional advice for assistance.

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