



# **ESSENTIAL ESTATE PLANNING: YOUR QUESTIONS – ANSWERED**

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**1. WHAT IS ESTATE PLANNING?**

Estate planning is the term used to describe planning for the possibility of future cognitive and/or physical incapacity, a long-term care need, and death. It is a general term, but each individual estate plan is as unique as the person for whom it is being prepared. There are, however, certain essential estate planning tools that should be a part of every person’s estate plan.

The Financial Power of Attorney and Health Care Power of Attorney and/or Living Will are essential to ensuring that financial and medical decisions can continue to be made during your lifetime, if you become incapacitated. An estate can be prepared in a way that allows you to protect your home and life savings from possible future nursing home costs. The Last Will and Testament allows you to memorialize, in writing, your wishes for after death to ensure that your assets pass to your spouse, children, and other loved ones upon death.

**2. WHAT IS A HEALTH CARE POWER OF ATTORNEY?**

A Health Care Power of Attorney is a writing made by an individual that designates another person to make health and personal care decisions for the individual. The Health Care Power of Attorney should include an expression of your wishes concerning end-of-life medical interventions.

**3. WHAT IS A FINANCIAL POWER OF ATTORNEY?**

A Financial Power of Attorney is a very powerful document that allows you to appoint an Agent to manage your financial and legal affairs in the event that you become incapacitated and unable to handle your own financial and legal affairs. The purpose of the Financial Power of Attorney is to ensure that your values are respected and your intentions and financial goals will be met by the person of your choosing at a time when you are unable to manage your own financial and legal affairs. Ideally, you should appoint both primary and successor agents. In addition, you should give careful consideration to the “gifting” authority that the Agent will have under the Financial Power of Attorney. You will need to determine whether the Financial Power of Attorney will be immediately operative or whether the Agent will have no authority to act unless and until you are determined to be incapacitated.

**4. DO I NEED A WILL?**

In Pennsylvania, when someone dies without a Will, the Commonwealth determines who will receive the deceased’s assets and who will manage the estate of the deceased. Many families are surprised when a loved one passes away to discover that Pennsylvania law does not always provide for the distribution of the estate in the same way that they know the deceased would have wanted assets to pass.

**5. WHAT IS LONG TERM CARE?**

Nursing Home

Nursing homes provide the highest level of care to individuals in need of total care or hands-on assistance with their activities of daily living (ADLs). Nursing homes are capable of providing skilled as well as intermediate levels of care to their residents.

## Nursing Home Alternatives

In some instances, even though an individual may be in need of a nursing home level-of-care, he or she may decide to remain home longer with help from family members and programs such as LIFE Geisinger and the PA Department of Aging Waiver program.

### Assisted Living (Personal care homes and Assisted Living facilities)

Individuals who can no longer reside safely at home, but who do not yet require a nursing-home- level of care, may reside in assisted living or personal care homes. These individuals will typically receive prepared meals, reminders to take their medication, housekeeping services, and some assistance with their ADLs.

## **6. HOW DO PEOPLE PAY FOR LONG TERM CARE?**

### Medicare

Medicare provides only a limited benefit for those who require nursing home care. The individual must have been hospitalized for at least a 3-day period within 30 days of entering the nursing home. During the first 20 days following the admission of a qualified individual, Medicare will cover 100% of the cost of care. From day 21 through day 100, Medicare may pay a portion of the nursing home costs, provided that the individual is in need of “skilled care”. Skilled care typically includes physical therapy, occupational therapy, wound care, intravenous treatments, etc. During this time, the resident is responsible for a daily co-payment. Medicare supplemental insurance often covers the cost of the co-payment.

### Private Pay

Once the Medicare benefit has been exhausted, nursing home residents are required to pay privately for their care. In Pennsylvania, the current average cost of nursing home care is \$11,099.04 per month, or \$364.90 per day. As such, a person can expect to pay over \$130,000 each year if a nursing home placement becomes necessary and the person failed to pre-plan.

### Long-Term Care Insurance

Long term care insurance can provide an alternate source of paying for nursing home, assisted living and in-home care. At the present time, relatively few people own long term care insurance policies.

### Medical Assistance

Medical Assistance, also known as Medicaid, is a combined federal and state program designed to cover the costs of health care services for the needy. Unlike Medicare, Medical Assistance is not an entitlement. Eligibility for Medical Assistance is based on very strict financial guidelines. For eligible individuals, Medical Assistance may cover the cost of nursing home care and certain home and community-based services under the Waiver programs. Medical Assistance does not currently pay for care in assisted living facilities or personal care homes.

In Pennsylvania, the Medical Assistance program is administered on a state-wide level by the Department of Human Services (DHS), and locally by the Department’s County Assistance Offices.

## 7. **WHAT ARE THE MEDICAL ASSISTANCE FINANCIAL ELIGIBILITY REQUIREMENTS?**

Exempt Resources - The ownership of exempt resources will not prevent an applicant from qualifying for Medical Assistance benefits.

- Primary Residence - Real property used as the primary residence is exempt so long as the applicant expresses intent to return there to live, regardless of whether it is realistic to do so. If the applicant is widowed or single, the residence will not be considered exempt if the applicant has greater than \$603,000 of equity in the property. This limitation does not apply to married applicants. Although the residence is exempt during lifetime, it may be subject to Medical Assistance Estate Recovery upon the owner's death.
- Burial Plots - The burial plots of the applicant and his or her immediate family are exempt
- Irrevocable Burial Accounts - An irrevocable burial reserve, in a reasonable amount, is exempt.
- One motor vehicle
- Household goods and personal effects
- Term Life Insurance
- Property Essential to Self-Support - Real or personal property used in a trade or business, which is essential to self-support is exempt, regardless of its value.
- IRA or qualified retirement plan of Community Spouse - The pension fund, IRA, 401K, 403B, and other deferred compensation plans owned by the applicant's spouse (community spouse) are exempt.
- Medicaid Approved Annuities - Certain irrevocable immediate annuities owned by the applicant or the community spouse may be considered exempt, provided that they meet criteria established by the Deficit Reduction Act (DRA) as set forth in the Department of Human Service's annuity Operations Memorandum.

Non-Exempt Resources - Non-exempt resources must be reduced to the appropriate level before an applicant will qualify for Medical Assistance benefits. If the applicant's fixed monthly income is less than \$2,382, he or she is entitled to retain \$8,000 in Non-Exempt resources. If the applicant's monthly income exceeds \$2,382 he or she may retain only \$2,400 in Non-Exempt resources.

Non-Exempt resources include, but are not limited to:

- Cash on hand
- Bank and credit union accounts, including vacation and Christmas clubs, checking and savings accounts, savings certificates of deposit (CDs), money market funds, and patient accounts established and handled by a nursing care facility.
- Stocks, bonds, mutual funds.

- Trust accounts to the extent that they are legally available to the client.
- Individual Retirement Accounts (IRAs), 401Ks, 403Bs, Keogh funds owned by the applicant.
- Most types of annuities.
- Lump sum payments such as, but not limited to, tax or rent rebates, insurance benefits, and inheritances.
- Additional motor vehicles, boats, ATVs, Snowmobiles, etc.
- Additional real estate.
- Any property owned by a Revocable Living Trust (RLT)

**8. WILL I HAVE TO SELL MY HOME TO PAY FOR CARE?**

No. The home is initially exempt when determining eligibility for Medicaid benefits. However, the home may be subject to Medicaid Estate Recovery upon the death of the Medicaid recipient.

**9. WHAT WILL HAPPEN TO MY SPOUSE IF I REQUIRE A NURSING HOME PLACEMENT?**

Community Spouse Resource Allowance - The protected share of non-exempt resources the Community Spouse is permitted to retain is known as the Community Spouse Resource Allowance (CSRA). In order to calculate the CSRA, a married applicant must disclose all non-exempt resources, whether owned jointly by the couple or individually as of the date of nursing home admission. The community spouse's CSRA is generally equal to one half (1/2) of all non-exempt resources owned by the couple on the date of nursing facility admission.

- \$130,380.00 is the maximum CSRA, regardless of total resources.
- \$26,076.00 is the minimum CSRA.

For example, if the non-exempt resources of the couple total \$100,000, then the community spouse will be permitted to retain \$50,000 and the remaining \$50,000 will be attributable to the spouse in the nursing home. However, if the couple's non-exempt resources total \$500,000, then the community spouse will only be permitted to retain \$130,380.00 and the remaining \$369,620 will be subject to a "spend down" by the spouse in the nursing home

**10. CAN'T I JUST GIVE ALL MY ASSETS AWAY AND QUALIFY FOR MEDICAL ASSISTANCE BENEFITS?**

Unfortunately, it is not that simple. Giving away assets triggers a 5 year look-back period and may result in ineligibility for public benefits

5 Year Look-Back period

At the time a Medical Assistance application is filed, the applicant must disclose all uncompensated transfers of assets made by the applicant and/or the applicant's spouse during the previous 5 years.

### Resulting Ineligibility Period

The uncompensated transfer of assets by an applicant and/or the applicant's spouse made during the 5 year look-back period will result in an ineligibility period for Medical Assistance benefits.

- Calculation of Ineligibility Period – The ineligibility period is calculated by dividing the total dollar value of the uncompensated transfer by the average nursing home daily private pay rate of \$364.90. This calculation will determine how many *days* of Medical Assistance ineligibility will result from the transfer. The ineligibility period may also be calculated by dividing the total value of the uncompensated transfer by the average monthly cost of nursing home care in the Commonwealth, which is currently \$11,099.04. This calculation will provide the number of *months* the applicant is ineligible for Medical Assistance due to asset transfers.
- Ineligibility Start Date - the ineligibility period for Medical Assistance will not begin until: 1) The date on which the applicant is medically eligible for long term care services and 2) the applicant otherwise financially qualifies for Medical Assistance benefits.

### **11. WHAT IF I ADD MY CHILD'S NAME TO MY BANK ACCOUNT?**

This will not protect the account from being exposed to nursing home costs. The Medical Assistance program will consider the account to belong to the applicant unless the child can prove that he or she contributed to the account.

### **12. CAN I SELL MY HOUSE TO MY CHILD FOR \$1.00?**

This is not a true sale. If you transfer your home to anyone for less than the home's true value, you have made a gift for Medicaid eligibility purposes. If the transfer occurred during the 5 year Medicaid look back period, the Medicaid applicant will be made ineligible for benefits.

### **13. WHAT IF I DON'T HAVE ANY MONEY TO PAY FOR THE NURSING HOME AND I DON'T QUALIFY FOR MEDICAL ASSISTANCE BENEFITS?**

#### Act 43 - Family Responsibility Act

Pennsylvania law places responsibility to care for and maintain or financially assist an indigent person on the individual's Spouse, Children, and Parents.

### **14. WHAT HAPPENS TO OUR HOUSE AFTER WE BOTH PASS AWAY?**

#### Medical Assistance Estate Recovery Program

Federal Law requires all states to seek repayment for nursing facility and home and community-based Medicaid benefits provided to individuals who are over the age 55.

Assets subject to Estate Recovery - All property which forms part of the deceased Medical Assistance recipient's probate estate is subject to the estate recovery claim. The probate estate of an individual is comprised of all real and personal property of the decedent which is subject to administration by a decedent's personal representative, whether or not the estate is actually administered.

Depending upon how it is titled, the home is often part of the probate estate and therefore subject to Medicaid Estate Recovery. Simple steps can be taken during lifetime to reduce the risk that the home will be subject to Estate Recovery

Assets not subject to Estate Recovery

- Property held by the decedent and another at the time of death as joint tenants with rights of survivorship, or as tenants by the entireties.
- Life Estate interests.
- Assets placed in trust prior to the death of the decedent, including irrevocable burial reserves, if the assets are not payable to the decedent's estate.
- Assets held in certain types of trusts.

**15. I'VE HEARD ABOUT TRUSTS – CAN A TRUST HELP PROTECT MY ASSETS?**

It depends on the type of trust being used. Only a very carefully drafted trust that contains very specific provisions can be used to successfully protect assets from exposure to long-term care costs.

Revocable - Revocable Living Trusts (RLTs) offer NO protection from the costs of nursing home care.

Irrevocable - Carefully prepared Irrevocable Trusts can be used to shield assets from the cost of nursing home care.

**16. MY LOVED ONE IS ALREADY IN A NURSING HOME, ISN'T IT TOO LATE?**

It is truly never too late. With the help of a *Certified Elder Law Attorney\**, a single or widowed individual should be able to protect 50-60% of his or her estate from the cost of nursing home care, even after admission to a skilled nursing facility. A married applicant can protect considerably more assets, in many instances ALL marital assets can be protected for the benefit of the healthy spouse.



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