

Frequently Asked Questions

FAQ #1: ***“What exactly is an elder law attorney and what do they do”?***

Answer: An elder law or elder care attorney is a lawyer who has chosen to concentrate his or her legal practice in areas that deal with the issues of aging and the many social, economic and legal issues which confront and challenge our swiftly growing senior population. An elder law attorney provides service and guidance on legal matters such as estate and long term care planning, social security, Medicare, Medical Assistance for Long Term Care Support and navigating the federal and state public laws and benefits available to the elder population. An elder care attorney helps a military veteran and their spouse with veteran benefits, such as “aid and attendance” payments for home bound or assistant living care.

An elder law attorney provides help and peace of mind to families and loved ones who are transitioning the elder care journey.

FAQ #2: ***“What is the difference between estate planning and long term care planning for nursing home care costs”?***

Answer: Estate planning is generally the term used to describe the process of organizing and planning the orderly transfer of your wealth upon your death. Frequently, estate planning will deal with death and inheritance tax issues. The purpose of estate planning is to make sure that what you have goes to whom you want, in the amount and manner you desire, such as by outright bequests or the placing of assets in a trust for the benefit of the spouse, children or grandchildren. Estate planning addresses the issue “what happens to my assets when I die.”

Long term care planning combines the goals of estate planning along with the concerns of protecting and preserving assets from the very substantial costs of long term care, such as extended home bound or institutionalized nursing home care. Long term care planning addresses the question: “What if I become seriously ill and disabled and will need extensive home bound care or need to live in a nursing home for a long time”?

An elder law attorney is a person who can address and plan for both concerns, death and disability requiring long term nursing home care.

FAQ #3: ***“If I go into a nursing home, will I have to turn over all my property and money to the nursing home”?***

Answer: No, in order to be admitted into a nursing home you do not have to sign over your house and all your assets. When you or a loved one enters a nursing home you or your authorized representative will sign a Nursing Home Admission Agreement (a contract). This contract will set forth the services to be provided and the cost you will pay for these services. If able, you may leave the nursing home at any time. You will be using your money, and perhaps some payments by Medicare, to pay for the nursing home costs.

If and when you run out of money and are still in need of full-time nursing home care, you can apply for the payment of your nursing home bill by the federally sponsored and state administered program commonly referred to as either Medicaid or Medical Assistance for long term care support.

If you would like to take steps to save and protect your assets before paying everything to the nursing home, you should see an elder law attorney for the development of an estate and long term care plan to legally protect your savings and achieve eligibility for Medical Assistance for nursing home care.

FAQ #4: ***“Can I give all my money to my kids just before going into a nursing home and then be eligible for the federal and state Medical Assistance/Medicaid program to pay my nursing home bill”?***

Answer: Well, it depends when and to whom the gifts were made. Eligibility for the government program commonly known as Medicaid or Medical Assistance for long term care support is very strict on the gifting of assets and transfers for less than fair value. Generally, all gifts or such transfers made within five (5) years of entering a nursing home need to be disclosed and reported on the Medicaid Application Form and sworn to under oath. Gifts made within five (5) years could result in the denial of eligibility and benefits for a period of days or months depending upon the aggregate value of the gifts and the application of a formula. However, gifts below a certain amount or to a disabled child, even if made within five (5) years, may not be subject to a penalty period of ineligibility.

Gifts by a person who is concerned about the possibility of having to enter a nursing home within five (5) years should seek expert advice from an elder law attorney to understand the applicable Medicaid gifting rules, what gifting may be permitted, and the “penalty” of ineligibility which would be imposed for non-permitted gifts.

FAQ #5: ***“Can I gift \$10,000 per person to my children and loved ones without incurring any penalty period of ineligibility for Medical Assistance to***

pay my nursing home costs”?

Answer: Generally, no. The \$10,000 per person per year gift is permitted under the federal gift tax laws, not the laws which govern eligibility for Medical Assistance for long term care. In fact, the annual gift tax exclusion for 2010 is not \$10,000, but \$13,000. There would only be certain circumstances where the making of the annual \$13,000 gift tax exclusion amount would not result in a period of ineligibility for Medical Assistance for nursing home costs, such as if the gift was made more than five (5) years before the maker of the gift entered a nursing home and applied for Medical Assistance to pay the nursing home bill, or if the gift were made to a disabled child. There are other circumstances which might also be permitted by the Medical Assistance laws and therefore you should see an elder law attorney to determine if your gifts could cause Medicaid problems in the future.

FAQ #6: ***“Can I sell my home to my kids for one dollar and not jeopardize my ability to have the federal and state medical assistance program pay for my nursing home care”?***

Answer: Generally, no. A sale of your home to your children for “one dollar” is not really a sale (in all but the rarest of cases) but is actually a gift. Generally, gifts made within five (5) years of the date of admission to a nursing home and application for Medical Assistance to pay the nursing home bill will result in a certain period of Medicaid ineligibility, the length of the period of ineligibility depending upon the application of a formula and the amount or value of the gift made.

If you are thinking of transferring your home to your children you should consult with an elder law attorney before signing over the title to your home. There are both Medicaid eligibility issues and tax and financial issues which need to be considered, and understood, before gifting away your home.

FAQ #7: ***“If I or a loved one is already in a nursing home and spending our money to pay for the costs, is it too late to undertake steps to perhaps save some of our remaining monies or, at least, “stretch” the length of our nursing home care with our remaining monies”?***

Answer: Even if you are already in a nursing home, it is not too late to perhaps save a substantial amount of your remaining assets, or at least “stretch” the length of care you can get for your money. There are certain lawful planning strategies which could potentially be utilized to save the rest of

your money. It is not too late. You should consider consulting with an elder law attorney to learn and understand the money saving options which may be available to you.

FAQ #8: ***“If my spouse needs to go into a nursing home, will I, as the community spouse still living at home, be able to keep any of our savings, or must I spend it all on my spouse’s nursing home care”?***

Answer: The spouse not in the nursing home, commonly referred to as the “community spouse” will not need to spend all of your savings and assets on your spouse’s nursing home costs. The community spouse is permitted by law to keep the home, furnishings, one (1) car and certain other assets, along with money in an amount ranging between \$21,912 and \$109,560, depending upon the application of a formula. The balance of your assets and monies may need to be used for the payment of your spouse’s nursing home bill, although there may be lawful ways to protect and preserve a good amount of these other assets. The federal and state laws do not require the impoverishment of the community spouse. In fact, the community spouse’s lawful protected share of assets and money can probably be increased with lawful planning.

If you are concerned about the amount of assets the community spouse will be able to keep, you should consult with an elder law attorney in order to learn and understand your rights, and in all probability increase the amount that you can keep.

FAQ #9: ***“Will I lose my house if I need to go into a nursing home or is there something that I can do to prevent this from happening”?***

Answer: Your home, if it is owned by you or your spouse, generally does not need to be sold to pay for your nursing home bill. If you do not have sufficient monies to pay for you or your spouse’s nursing home bill, you can still keep your house and, if otherwise financially eligible, apply for the federal and state government program, known as Medicaid or Medical Assistance for Long Term Care Support, to pay your nursing home bill. Neither the government nor the nursing home can force you to sell your home to pay for nursing home costs. However, there does remain the possibility that your home could be subject to a claim for repayment of nursing home costs paid by the Medicaid program after the death of the Medicaid recipient.

In order to learn how your home could become subject to a Medicaid reimbursement claim and how to potentially protect this from occurring, you should consult with an elder law attorney. With proper planning it is

possible to fully protect and preserve your home from potential nursing home reimbursement claims.

FAQ #10: *“What are personal care or assisted living, facility and how do they differ from a nursing home”?*

Answer: During the course of the elder care journey, the older individual frequently transitions from independent living in his or her own home, to another facility to provide the care and assistance needed to maintain the activities of daily living and a good quality of life. There are approximately 34 such facilities in Northampton County and 28 facilities in Lehigh County. The resident enters into a contract to pay for the services he or she requires and the resident’s own money, or perhaps some Medicare or other public benefits, such as “aid and attendance” pension benefits for a wartime veteran or spouse, are used to pay the cost of the assisted living care.

Nursing home care, on the other hand, is around the clock full time institutionalized care. The services provided are either skilled nursing care or custodial care. Northampton County has approximately 13 nursing homes and Lehigh County has approximately 18 nursing homes.

For help in the selection and payment methods for either an assisted living (personal care) or nursing home facility you should consult with an elder law attorney.

FAQ #11: *“Can the nursing home put a lien on my children’s homes and assets if I do not pay the nursing home bill”?*

Answer: In all but the rarest of cases, no one can put a lien on someone else’s home or property without first bringing a lawsuit against the alleged debtor and then securing a judgement. Individuals or entities, including nursing homes, can not simply put a lien on someone’s home or property. However, in certain circumstances, a nursing home can make a claim against the children of the resident for amounts the resident owes to the nursing home. Frequently, such claims are based on an alleged breach of the nursing home admission contract (if it was signed by a child) or under a Pennsylvania law which provides that in certain situations children have the legal obligation to financially support an indigent parent. Therefore, it is very important that children pay close attention to the financial condition of a parent who is in a nursing home and make sure that an application is made for Pennsylvania Medical Assistance for Long Term Care support to pay for the nursing home costs in advance of a parent running out of money.

For help with issues about payment of nursing home bills and the application for Pennsylvania Medical Assistance for Long Term Care Support the nursing home resident and family should consult with an elder law attorney.

FAQ #12: ***“How can I go about finding a good nursing home for my loved one”?***

Answer: Word of mouth is often a good approach. Ask others who have a loved one in a nursing home what their choices had been and why they selected a particular nursing home. You can also check the telephone directory yellow pages under the heading “Nursing Homes & Nursing Care Communities.” You can view a list of local nursing homes online at www.aging.state.pa.us/aging. You are also able to view nursing home ratings and comparisons by going online and visiting www.medicare.gov/nhcompare.

An easy way to secure information about selecting a nursing home is to secure a copy of my booklet titled **“Nursing Home, Personal Care (Assisted Living) and Adult Day Service Centers Guide for Lehigh Valley, Pennsylvania.”** This booklet provides invaluable information about how to find the right nursing home or assisted living or adult day service center facilities, how to get good care there, how to pay for it without going broke and discusses Medicaid planning and division of assets. You can also view a copy of my booklet on this website or you can contact my office at 610-258-6111 and I will be happy to send you a printed copy of the booklet. This booklet lists all the nursing homes in the Lehigh Valley, as well as assisted living and adult day service center facilities.

FAQ #13: ***“Do I need an elder law attorney to help me with the process of filing the application for Pennsylvania Medical Assistance to pay my mother’s nursing home bill, or can I do it myself”?***

Answer: The answer to this question depends upon your knowledge and familiarity with the federal and Pennsylvania laws and regulations which apply and govern eligibility and the procedure for securing Medical Assistance. This question is much like: “Do I need a tax lawyer, CPA, or accountant to do my income tax returns”? The answer depends on how knowledgeable you are about the income tax laws. If you do your income taxes yourself you may overlook important and substantial deductions or credits. The same may be true for attempting to assist a loved one in qualifying for and securing payment of the nursing home bill by Medical Assistance.

Most elder law attorneys offer either an initial free consultation, or charge a very reasonable initial consultation fee, to help you answer the questions confronting a family when the difficult decision is made to place a loved one in a nursing home. Elder law attorneys concentrate their practice in helping families with issues of aging, both social and financial.