Planning for People with Disabilities

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Statistics

- Between 44 and 70 million Americans are living with a disability, the exact number is unknown
- The most prevalent disabilities involve difficulties with cognition or independent living
- Employment rates for persons with disabilities is significantly less than for those without
- Americans with disabilities earn far less than individuals without
- Life expectancy for a person with a disability is significantly less than for a person without

Families

- Disabilities have a significant impact on families
  - Less time in the workforce
  - Higher expenses including health costs and care costs
  - Increased emotional stress on families
  - Higher rates of divorce among parents of children with disabilities

Planning can help

- Special Needs Planning (also called planning for persons with disabilities)
  - Truly holistic and multi-disciplinary practice
  - Very localized
  - Includes legal, financial and social planning and collaboration
  - Can often lead to tension within disciplines

Practical planning

- Begin with the nature of the disability
  - What is it?
  - When did it begin?
  - Will the condition worsen?
  - What is needed on a daily basis to support the individual?

Who?

- Who are the supporting cast members in the individuals story?
  - What is their bandwidth and expertise?
  - If they are missing tools, knowledge or experience, can it be gained?
  - Will this person be around to help long term?
  - Is there anyone else?

What?

- What resources (non-financial) are available to assist with needs?
- What additional resources may be available?
- Who else can help locate these resources?

How?

- How can resources be accessed?
- How will the financial needs be met in the future?
- How will needs be paid for?
- How can the person with the disability contribute and remain as independent as possible?

Enter the attorney

- Connect with local programs and resources.
- Help make sure the team is in place

Attorney considerations

- Decision making authority
  - Disability does not equal incapacity
  - For children turning 18, what is appropriate next step?
  - Legal documents such as durable power of attorney and health care power of attorney?
  - Guardianship/Conservatorship?

Public Benefits

- Does the person need public benefits?
- Have they applied for disability?
- Do they have Medicare or Medicaid?
- Will they need it?

Social Security

- SSI and SSDI and OASS
- Age at application
- Age at Disability
- Status as fully insured
- Deeming – parent/child and spouses

Medicare and Medicaid

- Medicare – eligibility based on age or disability
  - Coverage may not meet needs
  - What options to supplement
- Medicaid
  - Different than long term care discussed
  - ABD/full coverage – acts as health insurance
  - QMB and SLMB benefits
  - Waiver programs - critical

Protecting Benefits

- First Party Special Needs Trusts
- Third Party Special Needs Trusts
- Support trusts for management

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Making Sense of Asset Protection, Medicaid, and Long Term Care

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Objective:

- Provide you with a basic understanding of both long term care and Medicaid in order to understand how and why Medicaid may be a viable and reasonable option for some of your clients to help pay for long term care costs.

- Emphasize that, in some circumstances, paying additional income tax results in a net savings for clients.

Medicaid:

(noun) – pronounced [**med**-i-keyd]

1. Confusing program of which everyone has heard but which no one knows anything about.

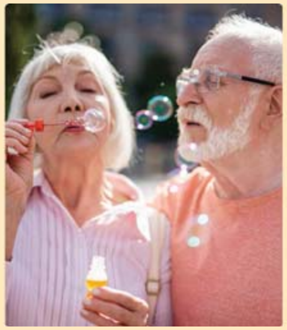
2. Program which everyone knows something about from what their neighbors or parents have told them

3. a U.S. government program, financed by federal, state, and local funds, of hospitalization and medical insurance for persons of all ages within certain income limits.

Authorized by Title XIX of the Social Security Act, Medicaid was signed into law in 1965 alongside Medicare. All states, the District of Columbia, and the U.S. territories have Medicaid programs designed to provide health coverage for low-income people. Although the Federal government establishes certain parameters for all states to follow, each state administers their Medicaid program differently, resulting in variations in Medicaid coverage across the country.

Fundamentally, it is the largest provider of health insurance services in the United States and is the only option for many with severe disabilities, including older adults.

Understanding the Long Term Care Landscape



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What is Long Term Care

- Care for chronic illness
- Need often increases with age
- Becoming more prevalent as Americans live longer but with chronic illnesses

Instrumental Activities of Daily Living

- Known as IADLs
- Cooking, cleaning, transportation, laundry, and managing finances
- Not necessary for functional living
- Not considered a medical need

Activities of Daily Living

- Known as ADLs

- Eating, bathing, dressing, toileting, transferring, and continence

- Are necessary for functional life

- Are considered a medical need

Common Care Settings

- Home Care
- Assisted Living
- Nursing Care

Home Care

- Provided in the home
- Can be skilled or unskilled
- Can assist with either IADLs or ADLs or both
- Potentially cost effective if need for care is minimal
- Most expensive option for full time care
- Realty of sustainability needs to be considered

Assisted Living

- NC calls them Adult Care Homes that serve elderly individuals, but term assisted living residence is in the definition
- By law cannot provide nursing care
- Typically, appropriate for individuals who need assistance with IADLs
- Are regulated in NC and other states but not as carefully or aggressively as nursing homes
- Large for profit industry

Nursing Care

- Nursing Home – also called a skilled nursing facility
- Typically have two components –
  1. rehabilitative or short-term care after an acute illness
  2. long term care – provides medically necessary care for patients who need assistance with ADLS
- Highly regulated – owned by private companies but not a high profit industry

A Word About Memory Care

- Specialized care for individuals with cognitive impairment
- Not a separate license but instead provided within assisted living or nursing care
- By far more options for memory care in assisted living than nursing care

Why Does the Type of Care Matter?

Paying for Care

This is where the fun starts……..

How Much Does Care Cost?

Home Care	Assisted Living	Nursing Care
▪ $32.50/hour for home health aide ($284,700/year) ▪ $25.00/hour for home care ($219,000/year)	▪ $6,022/month	▪ Semi-private room, $9,536/month ▪ Private room $9,809/month

Using Family

- Some families plan to use other family for care
- Sometimes compensated, sometimes not
- Impacts women more than men
- 2006 study found annual cost to employers was $17.1 billion – has exponentially increased
- Consider negative inheritance

Private Payment

- Means using income and other assets to pay for any type of care.
- Will be accepted anywhere
- Can make it easier to gain entry to facility of choice
- Not always ideal but should always be considered
- In some cases, may be the only option

Long Term Care Insurance

- For those who already have it, is a great source of funding
- Most policies are “reimbursement” which means that the individual appears as a private pay patient
- Gives lots of flexibility when looking at care options
- Insurance is a type of asset protection – think about homeowner’s insurance or flood– why have it?

Medicare

- Not really an option for long term need
- Provides an acute benefit – rehabilitative
  - Covers days 1-20 – 100%
  - Days 21-100 – co-insurance is $204/day
  - Nothing after day 100
- Home health benefit is limited

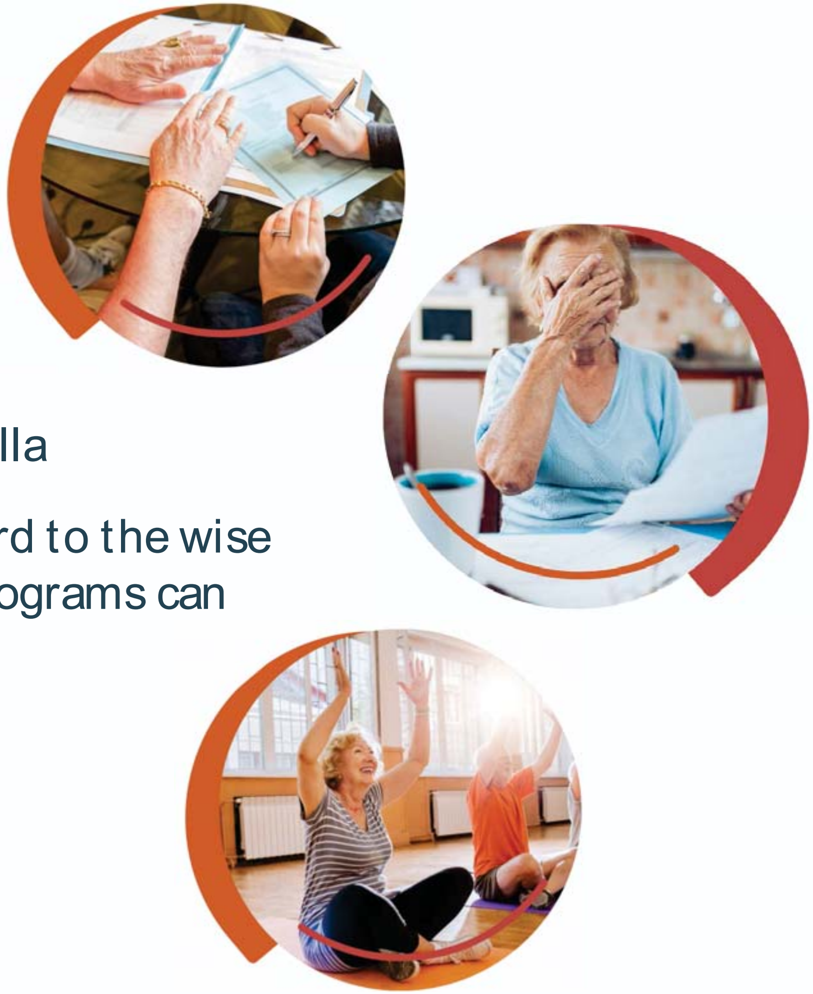
Medicaid

It depends ….

Medicaid

Medicaid

- Federal and State program
- Actually, a number of programs under one umbrella
- Each program has different eligibility criteria (word to the wise – be careful when discussing with others – the programs can get confusing)



Medicaid as it Relates to Long Term Care

LTC

Long Term Care

- Covers cost of care in a nursing facility
- Eligibility based on both non-financial and financial eligibility criteria
- Must be in a licensed facility (but almost all facilities are licensed)

Income

What income is guaranteed to be paid monthly

- Social Security
- Pensions
- Annuities
- Alimony

Income Limits

- LTC – No limit – just less than private pay rate of facility

Assets

- Divided into two categories – countable and non-countable
- Combination of state and federal defines countable and non-countable
- What is non-countable differs by program and based on whether the applicant is single or married
- Asset limit applies only to countable assets – there is no limit to non-countable

Gifts/ Uncompensated Transfers

- Covers cost of care in a nursing facility
- Eligibility based on both non-financial and financial eligibility criteria
- Must be in a licensed facility (but almost all facilities are licensed)

Spousal Protections

Community Spouse Resource Allowance (“CSRA”)

- Calculated amount – ranges $30,828 to $154,140
- Amount changes annually
- Only applies to countable assets
- Only reviewed at time of eligibility

Minimum Monthly Maintenance Needs Allowance (“MMMNA”)

- Some remaining in the community is given an allowance if income falls below this amount
- Currently $2,555 but could be as much as $3,853.50 with certain additional allowances

Estate Recovery

Amount that can be recovered from a deceased Medicaid recipient

Asset Protection – Putting it all Together

So……What does it all mean?

Planning takes a variety of shapes and forms depending on when planning occurs, marital status, types of assets, care needs, family circumstances, etc.

Countable to Non-Countable

- One option for planning involves converting countable assets to a non-countable form
- Can be done at any time but typically done at either at the time someone needs care or 5 years in advance
- Examples ….

Countable to Non-Countable

- May involve liquidating assets resulting in ordinary income or capital gain
- Often have offsetting medical deductions
- If the result is savings of $10,000 or more a month, cost is worthwhile

Gifting

Some strategies involve gifting

- Some of those are done 5 years in advance
- Some done at the time the individual needs care
- Always consider gifts that don't count

Examples ….

Gifting

Note that the concept of gifting involves completed gifts yet almost none of these clients have taxable estates so gift tax is irrelvant

Avoiding Estate Recovery

- Not always possible but some thing to consider
- Estate recovery still results in savings

Questions…..

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GIFT ANNUITIES AND CHARITABLE REMAINDER TRUSTS, A VIEW FROM THE CHARITABLE ORGANIZATION

Stephan J. Lipskis

WILLIAMS MULLEN

finding yes®

Bio and Reasons to be Excited About CGAs and Charitable Trusts

> Tax, Trust and Estates Attorney licensed since 2012.
> Immediate past-president of the Hampton Roads Gift Planning Council.
> Served as planned giving director for the Children's Hospital of The King's Daughters (CHKD).

> Boths CGAs and Charitable Trusts are clearly regulated, respected, and permanent features of the tax and giving landscape.
> Rates for CGAs have risen in recent years.
> As these "old" vehicles are reviewed, new and exciting ways of using them are found.

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Agenda

Charitable Gift Annuities

What is a Charitable Gift Annuity?

> A "part gift" annuity. (gift of @ least 10% of the annuity).

> Rate less than commercial annuities

> Payments indexed to life of 1 or 2 annuitants.

> Initial payment can be deferred for higher rate.

> Initial charitable deduction.

> Recognition of tax on annuity payments based on characteristics of property contributed.

> **CHARITY GUARANTEES PAYMENTS.**

> Ex. $1M gift by 74/yo with 100K basis on October 1, 2024. 2nd to die annuity with spouse (71/yo). 5.8% payment rate based on ACGA maximum rate. (*See* www.acga-web.org)

> Features include:

- Initial Charitable Deduction (based on gift portion of annuity.
- Recognition of gain on sale portion over life of annuity; and
- Tax treatment of annuity payments yields higher "effective" annuity rate than stated rate, but individual tax attributes of donor necessary to calculate.

Tax Features of CGA

> Initial Charitable Deduction

Deduction for “gift portion” of the annuity. Deduct value of the annuity from the total amount (Use §7520 rate and IRS Publication 1457)

$1,000,000 gift

$58,000 annual payout

$382,079.72 Charitable Deduction

> Recognition of Gain on Payments.

- Tax-free return of basis over life expectancy.
- Deferred recognition of gain proportionally on payments over life expectancy (LTCG or STCG).
- After life expectancy,all payments treated as ordinary income.
- NOTE: QCD Gift annuity all treated as ordinary income.

> Treatment of Payments

- $58,000 annual payment (paid in quarterly installments)
- $24,598.90 ordinary income.
- $3,340.11 tax free return of basis
- 30,060.99 capital gain income.

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Traps for the unwary

1. Use of wrong age(s). (use nearest birthday).
2. Failure to consider deferral if income need not imminent.
3. Not considering charity's economic strength.
4. Type of property contributed matters.
5. Relationship stability with charity.
6. Management stability of the charity.
7. Carryover Rules for Charitable Deduction.

Donor/Client Profile and Situational Considerations

> Age 65+
> Charitable Intent (charitable intent vs. return motivation)
> Desire to retain income stream for benefit of self or others during their lifetime
> Has clear charitable beneficiary in mind
> Charity is strong financially
> Ability to use charitable deduction

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Special Considerations

- No self-dealing considerations post-gift due to charity as intermediary as opposed to a trust.
- More sophisticated annuity options are becoming available (e.g. window for deferral election).
- QCD of $50,000 newly available option. (5% and begin w/in 1 year)
- Gift to Charity rather than gift to a Trust
- Charity may LOSE rather than Charity may not win.

Charity's Concerns

- How robust is the annuity program?
- How strong is the relationship with the donor?
- How committed is the Charity to the CGA program?
- What risk does the current CGA portfolio allow?
- What CGA gift requirements/restrictions does the charity have?
- is the gifted property specifically needed by the charity?
- Is this gift going to lose?

Comparison of CGA to Charitable Trust

Features of Charitable Trust

> Asset Options

Management of Difficult to Dispose of Assets (Real Property; Business Interest; Collectibles; Etc.). That Charity may not accept.

Income variable based on needs (for Unitrust or Annuity Trust).

> Management/Income Options

Trusteed management, not subject to structures within the charity. Flexible in accordance with Donor's wishes.

CRT (unitrust or annuity trust)

CLT (unitrust or annuity trust

> Specifically Approved

Structure and rules for trust terms is clear within IRS statutory rules and regulations.

NOTE: limits on ability to adjust investment discretion of trustee.

Charitable Remainder Unitrust Vs. Annuity Trust

> Annuity Trust

Specific dollar amount payable each year. Funded at one time.

- Rate must:
  - Provide a greater than 5% probability of charity being left with a gift at end of term. “Exhaustion Rule” *See Rev*. Rul. 70-452; Rev. Proc 2016-42; IRC §§2037 and 2042.
  - Greater than 5% but less than 50%
  - Maximum rate anticipates at least a 10% residuum to the charity. Contrast to ACGA rate anticipating 50% residuum

> Unitrust

Payment based on revaluation of assets each year (percentage of FMV). Additional Contributions allowed.

- Rate Must:
  - Payout at least 5% but less than 50%
  - Exhaustion Rule does not apply.

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Donor Considerations for Charitable Trusts

- CRAT
  - Predictable Return
  - Simple
  - Change charitable beneficiaries or multiple charitable beneficiaries.
  - Asset exhaustion if donor lives longer than expected
- CRUT
  - Payments may grow.
  - Flexibility for illiquid assets.
  - Easier tests with young beneficiary.
- BASIS
  - Basis recovered on CRT only after accumulated income has been distributed
  - Contrast to CGA where basis is returned proportionally over life expectancy tax-free.
- RATES
  - CRATs and CRUTS donor chooses the rate within limitations
  - CGAs Charity determines rate but generally hews to the ACGA rate unless property is illiquid.

Administration/Asset Considerations

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Charity Evaluation of Planned Gifts

> Type of Asset

- Not Willing to Accept? (per current gift acceptance policy)
  - Is there a reason to deviate from that policy?
- Willing to Accept?
  - Steps to Acceptance.
  - Use upon acceptance for special asset.

> Relationships

-Relationship with donor.

-Relationship with prospective Trustee for charitable trust.

- Relationship with donor's family, successor trustees/executor for gift lasting beyond life of Donor.

> Management Concern

- Health of planned giving program.
- Tools and talent necessary for the specific gift.
- Institutional ability to administer planned gift.
- Organizational direction and policy toward planned gifts.
- Does the type of gift match the program's needs?

Asset Considerations

> Closely-held business interests.

- Charity can hold S Corp interest where charitable trust can't. *See IRC §1361(e)(1)(b)(iii)*
- Timing on gift vs. future sale.
- Length of time charity would hold interest.

> Real Property

-End use of property (in-kind vs. immediate sale).

-Needs for sale of property. (Committee/institutional management vs. Trustee management).

- Need for income and setting rate (for annuity).

> Tangible Items

- Use considerations
- Ability to manage the gift.
- Highest return on FMV?

Other Considerations

> Admin Costs

- Could vary significantly for trust options but are higher than CGA
- Charity considers administrative burden for CGAs in setting rate and taking on gift.

> Recipient Concerns

-Trusts can be structured flexibly for beneficiaries with special needs or other concerns.

- CGAs options for payment are limited by administrative capability of the charity and limited flexibility of annuity rules.

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Donor Differences

> Privacy Concerns
  – Charitable Trust is decidedly more private.
> Tax Treatment
  – 1099-R vs. K-1
> Flexibility Post-Gift
  – Charitable Trust may have some discretion built in.
  – Annuity does not have discretion but relationship with Charity may be stronger.

Q&A

SENIOR CARE OPTIONS:

Expecting The Unexpected

LEARNING OBJECTIVES:

- Identify 5 key areas of long-term advance care planning and benefits associated
- Become more informed about what care options are available to seniors
- Learn proactive care planning tips to be more prepared in the event of a sudden medical event

EVERYBODY WANTS TO LIVE FOREVER, BUT NOBODY WANTS TO GROW OLD.

~ Jonathan Swift

COMMON REASONS WHY WE TEND TO DELAY OR AVOID TALKING ABOUT LONG TERM CARE PLANNING...

"I'm pretty sure our insurance will take care of most of it."

"My family will help take care of things when the time comes."

"We have plenty of time to discuss this later."

"The government has programs that we can depend on."

"I'd rather talk about something else."

"I will never go into a nursing home."

WHAT TO EXPECT WHEN YOU'RE EXPECTING

- "Filled with must have information, practical advice, realistic insight, easy to use tips, and lots of reassurance. You will also find the very latest on prenatal screenings, which medications are safe, and the most current birthing options. Have pregnancy symptoms? You will- and you'll find solutions for them all. Expecting to become a Dad? This book has you covered, too!"

WHERE IS THE MANUAL FOR WHAT TO EXPECT WHEN WE GET OLDER??

- WHAT IF THERE WAS A BOOK TITLED…
- “What To Expect When You Turn Age 65, That You Are Not Expecting… That You Should Totally Expect.”

- Description – “Filled with must have information, practical advice, realistic insight, easy to use tips, and lots of reassurance. You will also find the very latest on medical pre-screenings, which medications are NOT safe, and a review of long-term care options. Have a chronic medical condition? You will- and you’ll find solutions for them all. Expecting to become a full-time caregiver? This book has you covered too!”

Interesting Statistics

- According to the Department of Health and Human services, individuals turning 65 have a 70% chance of needing some type of long-term care services and support in their remaining years.
- About 65% of people will need some care at home for an average of two years.
- In facilities, 35% will require an average of one year in a nursing home and 13% will use less than one year in assisted living.
- 20% of people will need long-term care for longer than five years.
- National hourly cost for a Home Care Aide in 2023 ~ $33/hour*
- Annual National Median cost for a Nursing Home Private Room in 2023 ~ $116,800; Assisted Living ~ $64,200*

* Genworth Cost of Care Survey, 2023

REASONS FOR SUPPORTIVE CARE

- Age related physical limitations ~ assist with bathing, dressing, toileting, mobility, feeding
- Cognitive Impairment ~ age related or dementia type
- Chronic illness ~ cancer, heart disease, diabetes, arthritis
- Long term rehabilitation from an accident ~ such as a fall, stroke, other medical event
- Acute illness ~ such as pneumonia, flu, UTI, sepsis, broken bone

HOW CAN WE PREPARE FOR THE UNEXPECTED AS WE AGE?

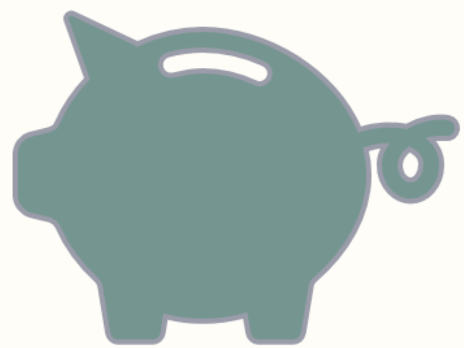
LONG-TERM CARE PLANNING

- Financial Planning
- Legal Matters – Elder Law and Estate Planning
- Life Care Planning – Aging in Place and Senior Living Arrangements
- Emergency Care Preparedness
- Hospital Discharge Planning

FINANCIAL PLANNING

Determine How To Pay For Future Care:

- Explore and Evaluate financial options for care, such as: out of pocket, long term care insurance, Medicare/Medicaid, Veteran's Benefits, and contributions from family members
- Consult with knowledgeable professionals, such as: financial advisors and long-term care insurance agents for guidance with financial planning and LTC insurance plans



LEGAL MATTERS – ELDER LAW AND ESTATE PLANNING

Take necessary steps to plan for incapacity to avoid devastating consequences:

- Power of Attorney – Financial
- Power of Attorney- Health - including mental health
- Living Will/Advance Directive
- Guardianship/Conservatorship
- Will
- Executor
- Trust
- Living Trust

Consult with an Elder Law attorney for guidance with such legal documents to simplify the complex process of legal planning and to ensure that your wishes are followed after your death.

LIFE CARE PLANNING – AGING IN PLACE AND SENIOR LIVING ARRANGEMENTS

Research home and senior living care options PRIOR to the need for care

- Determine where and how you/loved one would like to receive care – specific needs can determine senior care options
- Assess costs of care and identify the financial resources to cover costs
- Discuss with family members
- Develop a plan and update the plan as medical situations change

Consult with a knowledgeable professional, such as a Geriatric Care Manager or Senior Care Consultant to assist with exploring senior care options in your area.

SENIOR CARE OPTIONS

Home Health Care

Skilled care by nurses/therapists using a team-based approach

Covered by Medicare/Medicaid/private insurance

Home Care

Private caregivers who assist with bathing, dressing, toileting, mobility, and other household tasks

Paid out of pocket, may be covered by long-term care insurance, Veteran's Benefits, or Medicaid

Independent Living

Maintenance-free senior apartment-style community living with convenient access to dining, entertainment, and hospitality services; limited medical care services

Paid out of pocket

Assisted Living

Senior apartment-style community living while receiving non-skilled medical oversight and nursing care assistance, housekeeping, laundry, maintenance, transportation, and full dining services. Memory care options available

Paid out of pocket or may be covered by long-term care insurance, Veteran's Benefits, or Medicaid

Skilled Nursing and Rehabilitation

In-patient skilled care by nurses and therapists using a interdisciplinary team-based approach, often following a major surgery, injury or accident. Stays are often short term in nature.

Covered by Medicare/Managed Care/Medicaid/Private insurance

Long-Term Care (Nursing Home)

Residential skilled nursing care services providing assistance with nearly all activities of daily living: bathing, dressing, grooming, mobility and eating. Stays are long-term in nature. Memory Care options available.

Paid out of pocket, may be covered by long-term care insurance, Veteran's Benefits, or Medicaid.

Respite Care

Provides short-term relief for primary caregivers. Stays are often for 1-2 weeks for planned or unplanned circumstances. Care may be provided at home, in a healthcare facility, or at an adult day center.

Paid out of pocket; may be covered by long-term care insurance; Medicare only covers respite care under the hospice benefit.

Hospice Care

In-home or in-patient care that focuses on comfort and quality of life of a terminally ill patient by reducing pain and attending to emotional and spiritual needs at the end of life.

Covered by Medicare/Managed Care/Medicaid/Private Insurance (covers in-patient respite care

EMERGENCY CARE PREPAREDNESS

In an emergency, minutes count, and having important information accessible could make the difference between life and death:

- Emergency contact telephone numbers- post on wall/refrigerator or give to family, trusted friends, neighbors
- Provide copies of insurance cards and legal documents to a family member/responsible party/emergency contact
- Medical information: name of PCP and medical specialists, allergies, medication list, blood type
- Create a regular check-in system with friends/family
- Consider a medical-alert system such as Lifeline, Life Alert, or enroll in Project Lifesaver for those with cognitive impairment. May also include a bracelet identifying medical conditions such as diabetes, seizures, allergies, etc.

HOSPITAL DISCHARGE PLANNING

Hospitals often release patients sooner than you think, so you will want to know what IMMEDIATE post acute care options are available:

- Home Health Care – skilled nursing and therapy services
- Home Care – private caregivers
- Skilled Nursing and Rehabilitation – short and long-term care
- Hospice Care – end of life care

Seek the assistance from the hospital discharge planner about care options early on in your hospital stay. You may also want to seek the guidance of a Geriatric Care manager or Senior Care Consultant to assist with transitional care coordination and future senior living care such as assisted living.

LONG-TERM ADVANCE CARE PLANNING

BENEFITS

- Asset protection and an ability to save in advance, providing more care options
- Ability to preserve quality of life longer
- Greater independence for those who need care – aging in place at home for as long as possible
- Decrease risk for crisis management
- Decrease caregiver burnout
- Focus on things that matter

DOWNFALLS

- Financial Risk
- Lack of care options, limited availability with senior living care options
- Quick decision-making leads to increased medical risks
- Crisis management mode
- Decrease in quality of life
- Increase stress and caregiver burnout

Long-Term Advance Care Planning

is for everyone, regardless of age or state of health. Though you cannot predict the future, you can prepare for the unexpected by letting your family know what kind of care you would like to receive.

Plan for love and care, your family deserves to know what to expect.

"We help **educate** and **navigate** families through the health care spectrum and **advocate** for seniors through life's transitions."

Golden lifestyle Partners

SENIOR CARE CONSULTANTS

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