Planning for Cost of Care for Clients With Dementia

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Legal Aspects in Representing Clients with Dementia

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Planning for Cost of Care.

Medicare and private insurance do not cover the cost of custodial care. When one spouse is admitted to a nursing home, the average couple's entire life savings can be wiped out. For both spouses, control over their money is gone, and with it goes the security, independence and, thus the dignity, that they worked all their lives to attain. But this does not have to happen. Clients may not want to think about government benefits. Most families are financially unprepared to pay many of the health care costs which a dementia patient incurs. With proper planning, you can help to protect your client's financial security and help to provide peace of mind.

A. Long-Term Care Options.

Americans are living longer than ever before. At the turn of the 20th century, the average life expectancy was about 47 years. In the 21st century, life expectancy has almost doubled. As we live longer, the issue arises of caring for an elderly person who requires assistance.

Services provided in the home can include the following: (a) Personal care worker who provides personal care, meal planning, household management, and medication reminders; (b) Companion who provides a broad range of assistance, from light housework to companionship to medication reminders; and (c) Home health aide or certified nurse assistant who provides personal care, assistance with or administration of medications, and physical therapy.

Respite care provides relief for the caregiver. These services are sometimes available through agencies such as Catholic Charities Respite Care Program, Helping Hands and Lutheran Social Services. Visits can be schedule for a few hours each day or once a week. The caregivers are usually older persons who want to reach out to the frail elderly and bring some sunshine into their lives.

Senior centers are community run programs that cater to the needs of seniors with minimal disabilities. Adult day care centers run programs that cater to people with more disabilities. Some specialize in providing services to people with dementia or Alzheimer's. These centers offer a wide array of activities specially designed to re-enforce the independence of each person at the pace they can go.

Assisted-living facilities combine housing, supportive services and some access to onsite healthcare. They provide access to emergency call assistance, some transportation, and many opportunities to socialize. Assisted living promotes continued independence for far longer than skilled nursing facilities.

A skilled nursing facility may b needed for those who require 24-hour nursing care far above what another type of facility can offer. The facility should be licensed to provide the care the person requires. Their latest state survey should have a positive rating.

B. Paying for Long-Term Care.

The cost in a skilled nursing home varies from $4,000.00 per month to over $12,000.00 per month.

i. Long Term Care Insurance.

If a nursing home resident is fortunate enough to have this type of coverage, it may go a long way toward paying the cost of a nursing home. Unfortunately, most people facing a nursing home stay do not have this coverage.

ii. Private Pay.

This is the method many people are required to use at first. Quite simply, it means paying for the cost of a nursing home out of the person's own funds.

ii. Medicare.

Medicare is the national health insurance program primarily for people age 65 years and older, certain younger disabled people, and people with kidney failure. Medicare provides only short-term assistance with nursing home costs. If a person qualifies, Medicare may pay the full cost of the nursing home stay for the first 20 days and can continue to pay the nursing home stay for the next 80 days, but with a deductible. Once the nursing home resident requires only custodial care, Medicare will not pay.

iv. Medicaid.

Medicaid is a federal and state funded and state administered medical benefit program which can pay for the cost of a nursing home if certain asset and income tests are met. The rules vary from state to state. One primary benefit of Medicaid is that, unlike Medicare (which only pays for skilled nursing), Medicaid will pay for custodial care in a nursing home once an applicant is qualified.

In general, there are three categories of factors to obtain eligibility:

1. Categorical Requirements. Persons who reside in a skilled nursing facility, intermediate care facility or hospital and who are aged (65 years or older), blind or disabled can qualify. Persons under age 65 who do not meet Social Security Administrations blindness/disability standards are not eligibility under this category. An applicant must be a U.S. Citizen or permanent resident alien lawfully admitted to the United States or permanently residing in the United States under color of law.

2. Income Eligibility. The applicant must meet the income requirements.

3. Resource Eligibility. In general, the primary exempt assets are specified in 42 U.S.C.A. 1382b(a) and 20 C.F.R. 5416.105, 1210-1237. There are strict rules on asset transfers.

v. Veterans Benefits.

Veterans or surviving spouses of veterans may be entitled to a pension which provides a monthly income to offset the cost of necessary health care. This is called pension for the veteran and death pension for the surviving spouse. The three types of pension available are called "Basic Pension," "Housebound" benefits, and "Aid and Attendance." A person must meet certain criteria to be eligible for the different benefit options.

All of the following criteria must be met before a veteran or surviving spouse of a veteran can receive pension benefits:

(a) The veteran must have served at least ninety (90) days of consecutive active duty service, one (1) day of which must have been during a war-time period. The service requirement was increased to two (2) years for Gulf War. (See 38 USCS § 1521(j)).

In general, wartime is:

World War II: December 7, 1941 to December 31, 1946 (extended to July 26, 1947, when continuous with active duty on or before December 31, 1946)

Korean War: June 27, 1950 to January 31, 1955

Vietnam War: August 5, 1964 – May 7, 1975 (or February 28, 1961 to May 7, 1975 for those who Served in the Republic of Vietnam during that period)

Gulf War: August 2, 1990 through date to be set by law by Presidential Proclamation

(b) the veteran must have received a discharge other than dishonorable;

(c) the claimant must have limited income and assets available. (See 38 USCS §§ 1521 and 1522);

(d) the claimant must have a permanent and total disability at the time of application. (See 38 USCS § 1521(a));

(e) the disability was caused without willful misconduct of the claimant. (See 38 USCS § 1502(a)); and

(f) the veteran or surviving spouse signs and provides the application to the Veterans Administration.

If the veteran is younger than age 65, the veteran must be permanently and totally disabled. If the veteran is age 65 and older, there is no disability rating requirement. For surviving spouses applying for death pension, there is no disability rating requirement. The VA will provide additional income over the basic pension if the applicant meets the requirements for "housebound" or "aid and attendance."

Housebound benefits may be available to a veteran or surviving spouse of a veteran who is determined to be disabled and is essentially confined to the home. (See 38 USCS § 1502(c)). The two (2) ways to prove entitlement include: (1) a single permanent disability rated as 100% disabling under the VA schedule and confined to the dwelling. (See 38 USCS § 1521(e)), or (2) a 100% disability with another 60% disability, regardless of whether the person is confined to the dwelling. (See 38 USCS § 1502(c)).

Aid and Attendance benefits may be available to a veteran or surviving spouse of a veteran who meets one of the following conditions: claimant is blind; claimant is living in a nursing home; or claimant has a physical or mental incapacity that requires assistance on a regular basis to protect claimant from daily environmental hazards. (See 38 USCS § 1502(b)).

A veteran who obtained an injury or disease while on active duty, and the injury was the result of his service or was exacerbated by service, may be entitled to a monthly income called "compensation." Other VA benefits may be available to the veteran or dependent. Contact the Veterans Administration for more information.

5. Exploitation.

Financial exploitation of our elderly is a common occurrence, and it is one of the fastest growing forms of elder abuse. A person with dementia is often a target for financial exploitation. Most states now have laws that make elder financial abuse a crime. Elder exploitation is tough to combat, as it often goes unreported. Victims are often too confused, fearful, or embarrassed to report it.

Professionals can help protect people they serve by becoming familiar with the signs and learning what to do next. Many professionals are mandatory reporters and must make a report to the relevant agency, typically Adult Protective Serivces. The laws in most states encourage or require bank officials to report suspected elder financial abuse.

The Securities Exchange Commission recently approved FINRA Rule 2165 to address the growing problem of financial exploitation of seniors and people with impairments, such as dementia. FINRA applies to members of the Financial Industry Regulatory Authority. FINRA Rule 2165 places new responsibilities on FINRA members when there is a reasonable belief of financial exploitation. It permits members to place temporary holds on disbursements of funds and requires members to make reasonable efforts to obtain the name and contact information for a trusted person for a customer's account.

Rule 2165 defines "financial exploitation" broadly and includes the unauthorized taking, withholding or using a specified adult's funds or securities. The rules further define financial exploitation as using powers of attorney, guardianship or other authority to convert or obtain control over a specified adult's money, assets or property through deception, intimidation or undue influence.

Attorneys can take proactive steps to minimize exploitation if they are retained to handle estate planning. Some examples might be to include in the estate planning documents to require some type of oversight by a trustworthy person or entity such as a professional fiduciary. Some estate planners use a trust protector or trust committee.