



The Delaware County ELDER LAW HANDBOOK & RESOURCE GUIDE

For Seniors and Their Families in Delaware County, Pennsylvania



PUBLISHED BY
Delaware County Bar Association – Elder Law Committee
AND
County of Delaware Services for the Aging (COSA)

SEVENTH EDITION

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Acknowledgments – Seventh Edition

An ever-expanding group of people has contributed to the Delaware County Elder Law Handbook and Resource Guide, now in its seventh edition. Since its inception in 2003, the Handbook has been a joint effort of the Delaware County Bar Association (in particular the Elder Law Committee), and the County of Delaware Services for the Aging (COSA). We would like to acknowledge the co-editors of the Sixth Edition, Harris J. Resnick, Esquire and Cynthia A. McNicholas, Esquire and thank them for their many contributions that made this Seventh Edition possible.

Contributions have taken the form of many volunteer hours performing the work of researching, writing, reviewing, updating, editing, publishing, distributing as well as, of course, monetary contributions. Once again, we are very grateful to our donors, whose generosity has allowed us to publish another print version of this Handbook, and provide it to the public free of charge, without relying on paid advertising within the book. The publication costs of the 2020 Edition of the Handbook were underwritten by the following:

**County of Delaware Services
for the Aging (COSA)
George B. Lindsay Foundation
E. Wallace Chadwick Memorial Fund
Delaware County Bar Foundation**

In this increasingly “paperless” world, all of us who are involved with the Handbook are sincerely grateful for the financial support that allows us to continue to print actual hard copies of the book to assure that our intended audience can access the invaluable information contained in this Handbook.

The attorneys and other knowledgeable people who contributed to the material presented in this Handbook are listed on page i, and information concerning each contributor appears in chapter 41. This book truly is a community effort and we greatly appreciate their taking time out of their busy schedules to contribute to this edition.

We would especially like to acknowledge Linda M. Anderson, Esquire, CELA and Dana M. Breslin, Esquire, CELA for their contributions to this edition and all prior editions. In 2004, Dana and Linda recognized that Elder Law had become a distinct and specialized field of law encompassing the needs of senior citizens, that was focused not only on Medicaid planning but also estate planning, special needs planning, and other work with clients with diminished capacity, real estate and consumer issues, guardianships, Medicare issues, and planning with Veterans’ benefits, among other things. It was Dana and Linda who persuaded the Bar Association that a separate Elder Law Committee was warranted. After many years serving as Co-Chairs of the Elder Law Committee, Dana stepped down in December 2014 and Linda stepped down in 2019. Both women remain active and involved as ever with their respective law firms and their other professional activities, including education and advocacy at a state-wide level through their work with the Pennsylvania Association of Elder Law Attorneys (PAELA). We are so fortunate to have the benefit of their wisdom in this edition of the book as well as to have them as esteemed colleagues.

We also acknowledge Denise V. Stewart, MSW, a lifelong resident of Delaware County and long-time advocate for seniors. In 2020, after a 40-year career in the field of aging, Denise retired as the Director of County of Delaware Services for the Aging (COSA), where she served for 25 years, with her last 7 years as the Director. We would like to extend our utmost appreciation for her contributions and support with the publication and updated revisions of this Handbook over the years and for all of her efforts on behalf of Delaware County residents.

A sincere word of thanks also is due to the Executive Director of our Delaware County Bar Association, William L. Baldwin, Esquire. We are truly grateful for Bill’s friendship and support.

Lastly, a special thank you to our publisher, Media Copy, 31 E. State Street, Media, PA (610) 566-8499. We believe their efforts with formatting this volume will allow our readers to easily find the subject matter for which they are searching, using the Table of Contents as well

as the subject notations at the bottom of each page. We have continued with the two-column formatting to print more content on fewer pages, thereby reducing printing costs while maintaining easy readability.

Editors Notes – Seventh Edition

As we go to print on this Seventh Edition in 2020, our world has recently and dramatically changed due to the novel coronavirus. Our seniors are the most vulnerable population affected by this global pandemic, making it even more important to do the work of providing our readers with the timely and relevant information contained in this Elder Law Handbook.

With each new Edition of the Elder Law Handbook and Resource Guide, we strive to improve the content, its presentation, and clarity. We also try to ensure that the most relevant and current information is provided. And, we try to be sure that you can find answers to your questions easily when needed. With this Edition, we feel we've made improvements in all those areas.

We once again extend our thanks to our donors who make the hard copy version of this book possible. To maximize our outreach to the community, and to be able to keep the content current, the content of the book is also posted on the Delaware County Bar Association's website, www.delcobar.org, and on COSA's website, www.delcosa.org. We recommend that our readers check these websites for updated Handbook information, particularly with respect to Medicaid eligibility numbers, and other numbers which will change – some several times – before the next publication of the Handbook.

On a more general level, the reader should be aware that the material in this Handbook was accurate when written but that laws, regulations and policies can change at any time, and therefore, one should check the Bar Association and COSA websites as well as the various government websites, call the appropriate agency, and/or consult with a qualified attorney or other expert when necessary, to verify that the infor-

mation being relied upon is still accurate. We are aware that many readers access the online version of this Handbook, so the Seventh edition includes more links to information than in previous editions to provide easier access to the most current information on a particular topic.

In previous Editions, we had included a telephone directory of various services and a senior citizen transportation directory. While these were useful, we found in practice that the contact information changed too often, so that the information was largely unreliable a year after the Edition went to print. The most current contact information for various services, as well as senior citizen transportation options, is still available from COSA by calling 610-490-1300 or visiting their website at www.delcosa.org. And contact information for various agencies and programs does appear within the various chapters of the book.

Once again, we are publishing the most recent Elder Law numbers in the print version of the Handbook. Updated information will still be posted online as it becomes available. These figures relate to Medicaid eligibility, Supplemental Security Income (SSI) benefits, Medicare deductibles, co-pays, premiums and coverage, and exemptions/exclusions for Federal Estate and Gift Tax purposes. See Chapter 17.

As mentioned in the Acknowledgments, the field of Elder Law has become a distinct and specialized field in recent years, but many of the issues dealt with by “elder law attorneys” are also dealt with by attorneys who do not have “elder law” as their primary focus. And so, this Handbook is also used as a go-to reference for attorneys who need an overview of a particular benefit, program or topic, in order to advise or direct a particular client. In that way, the public is better served as well.



The Delaware County ELDER LAW HANDBOOK & RESOURCE GUIDE

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CHAPTER 1

Elder Law

Elder Law focuses on the legal rights and problems of senior citizens and disabled individuals. Attorneys in this field need to master an ever-changing body of law, legislation, and regulations which deal with financial planning, health care and housing as well as discrimination, abuse and consumer fraud. Such a challenge usually requires training and experience in this special area of the law.

Attorney-Client Relations

A big question in elder law is: “Who is the client?” Attorneys often find that an adult child brings in a parent to the attorney’s office. That child and parent may have differing interests. Some older people have physical or mental disabilities, which may limit their capacity to make proper decisions.

Fortunately, attorneys have Rules of Professional Conduct, which help to clarify these situations. According to Rule 1.5, all fee agreements must be in writing. This avoids disputes about what the attorney is to do and how much these services will cost. If a fee dispute arises with a Delaware County attorney, contact the Delaware County Bar Association at 610-566-6625.

If the attorney in question is not a member of the Delaware County Bar Association, contact the Office of Disciplinary Counsel, District II, 820 Adams Avenue, Suite 170, Trooper, PA 19403; telephone 610-650-8210.

Rules 1.6 through 1.12 of Professional Conduct state what to do to prevent conflicts of interest. In general, a single lawyer cannot represent both sides when clients have differing agendas. Therefore, if two (2) people come into an attorney’s office together, the attorney must make a clear determination about who will be represented. This helps to protect vulnerable seniors when others try to exert undue influence, to coerce or to use threats to push seniors to execute powers of attorney or convey property against their will. Also stated in the rules: Pennsylvania

attorneys are required to keep client information confidential.

Rule 1.14 explains that lawyers assume that their clients are competent and can understand what is happening. If the attorney “reasonably believes” that the client cannot act in his or her own self-interest, the attorney can seek a guardian or take other protective action.

Pennsylvania Lawyers Fund For Client Security

Lawyers are often put in positions of trust and temptation, yet it very rarely results in a financial loss to a client. In such cases, through the Pennsylvania Lawyers Fund for Client Security can help to recoup some or all of the losses.

Claims are submitted on forms from the Supreme Court of Pennsylvania, Pennsylvania Lawyers Fund for Client Security, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 5400, Harrisburg, PA 17120; telephone 717-231-9510.

Choosing an Elder Law Attorney

To choose the best person to act on your behalf in elder law matters, you should first think about your goals. Is it a simple question of updating your Will? Or, is it the more complex process of planning the series of financial steps for retirement or disability planning? Once your needs are outlined, you can consult friends, relatives, business colleagues, clergy and others for recommendations about an attorney. Other sources of referrals to an attorney include:

The National Elder Law Foundation (“NELF”)

Comprised of attorneys who are certified specialists in the area of elder law also known as Certified Elder Law Attorneys or CELAs

Phone: 520- 881-1076

Web: <http://www.nelf.org>

The National Academy of Elder Law Attorneys

(“NAELA”), a professional association of attorneys dedicated to improving the quality of legal services provided to people as they age and people with special needs,

Phone: 520-881-4005

Web: <http://www.naela.com>

The Delaware County Bar Association Lawyer Referral Service

There is no charge for calling the Delaware County Bar Association Lawyer Referral Service. Please remember that the staff of the Lawyer Referral Service are not lawyers and cannot provide legal advice to you.

Phone: 610-566-6625

Web: <https://www.delcobar.org/public/lawyer-referral/>

Legal Aid of Southeastern Pennsylvania

(LASP), a non-profit corporation, that provides legal services to individuals in Bucks, Chester, Montgomery, and Delaware counties.

Helpline at 1-877-429-5994

Web: <https://www.lasp.org>

CHAPTER 2

Older Americans Act

More Americans are living longer and demanding more from local, state, and federal lawmakers so that more programs for elders are offered, enlarged, or refined. One of the most important laws which provides a basic framework for these services is the Older Americans Act (OAA) of 1965. The OAA established Area Agencies on Aging (AAAs) all over the United States. In Pennsylvania, AAAs are administered by the Pennsylvania Department of Aging (PDA).

Pennsylvania Department of Aging

555 Walnut Street, 5th Floor

Forum Place Building

Harrisburg, PA 17101-1919

Phone: 717-783-1550.

Web: www.aging.state.pa.us

Delaware County's local AAA is County of Delaware Services for the Aging or "COSA." COSA's mission is to connect and empower the County's older residents through services that support their health and well-being. These services and programs are available regardless of race, religion, physical handicap, sex, color, residence, national origin, or political beliefs. Consumers may be asked to contribute toward the cost of some of the services provided, or in some cases, to make a donation.

Staff members at COSA will help you make a start in the search for information regarding programs relating to elder needs and the rules regarding many elder services.

County of Delaware Services for the Aging ("COSA")

206 Eddystone Avenue, 2nd Floor

Eddystone, PA 19022-1594

Hours: 8:30 a.m. to 4:30 p.m.

Phone: 610-490-1300,

Toll-free 800-416-4504,

TDD: 610-490-1900.

Web: www.delcosa.org

Email: COSA@co.delaware.pa.us

Please Note: As of the date that this Handbook goes to print, the above address for COSA is correct, but it will be changing in the months following publication. Check COSA's website, above, the correct address.

Information and Referral: COSA provides information and assistance services (by telephone or walk-in) to answer questions from the general public on the needs of the elderly and to assist people in need with appropriate services regarding:

- Public Benefits and Entitlements
- Health and Wellness
- Health Insurance Counseling
- Housing Information
- Legal Assistance
- Victim Services

COSA provides In-Home Services to help support seniors and families in their home including:

- Adult Day Care
- Care Management
- Family Caregiver Support
- Home Delivered Meals
- Home Health
- Home Modification
- Medical Equipment & Supplies
- Mental Health Counseling
- Personal Care
- Respite

Contact COSA at the number listed above, or visit www.delcosa.org/information-and-referral

COSA's Ombudsman Program protects the rights of persons receiving long-term care services in their homes, nursing homes, or personal care boarding homes. The COSA Ombudsman can be reached by telephone at 610-872-1868.

Older Adult Protective Services of COSA investigates reports of suspected abuse, neglect, financial exploitation, or abandonment for county residents over the age of sixty (60).

REPORTS OF SUSPECTED ABUSE CAN BE MADE ANONYMOUSLY AND CONFIDENTIALITY IS ASSURED IN ALL CASES.

SUSPECTED ABUSE CAN BE REPORTED 24 HOURS A DAY BY CALLING COSA AT 610-490-1300.

Community-Based Long-Term Care Services

COSA provides an alternative to people who need nursing facility care by assisting them in receiving community-based long-term care services. More information can be found at <https://www.delcosa.org/in-home-serviceslts>.

Specifically, the OPTIONS and the Community Health Choices Waiver Program provide community services to qualifying seniors who would otherwise require nursing facility care, but can be safely cared for at home.

Community-based services can include adult day care, personal care, home delivered meals, respite care, home health care and home support. Contact COSA to learn what services you may be eligible to receive.

Community HealthChoices Waiver Program

In 2020, Pennsylvania completed its full roll out of the Community HealthChoices program or CHC. CHC is Pennsylvania's mandatory managed care program for individuals who are eligible for both Medicare and Medicaid, also known as "dual eligibles," and individuals with physical disabilities. The CHC Waiver program (formerly known as "Aging Waiver") is for lower income older adults who would like to receive long-term care services in their own home. For 2020, a medically eligible senior may qualify for the CHC

Waiver Program if that senior is age sixty (60) or older and has gross income of less than \$2,350 per month.

The first step to apply for CHC Waiver services is to contact Maximus, the Independent Enrollment Broker for CHC Waiver in one of the following ways:

- Phone: 877-550-4227
- E-Mail: PAIEB@MAXIMUS.com
- Website: www.paieb.com

You may also contact COSA to begin the assessment process or if you need assistance with the enrollment process.

Internet Resources

- **Pennsylvania Department of Aging:** services offered by Pennsylvania for older adults and ways to obtain them including the booklet "Benefits & Rights for Older Pennsylvanians." www.aging.state.pa.us
<https://www.aging.pa.gov/publications/benefits-and-rights/Pages/default.aspx>
- **Pennsylvania Association of Area Agencies on Aging:** a statewide association of Area Agencies on Aging, serving as advocates and resources for older Pennsylvanians. www.p4a.org
- **Pennsylvania Link to Aging and Disability Resources Delaware County:** a collaboration of aging and disability service providers in Delaware County. www.delcosa.org/linkadrc

CHAPTER 3

Income Tax & Financial Planning

All of us, and especially those approaching their retirement years, are well advised to plan now, while mentally able, to make sure our estates are sufficient, for our needs for the remainder of our life expectancies, and are passed to intended beneficiaries after death. Planning can help you achieve those goals, reduce death taxes and administrative expenses, and lessen the

possibilities of disputes among family members and others. Planning also gives you the peace of mind that their financial affairs are in order.

Income Taxes and Planning

Income taxes play an important role in our financial lives. An excellent starting point for information affecting senior citizens is IRS Publication 554, "Tax Guide for Seniors," which is available free of charge by calling the IRS Forms Distribution Center at 1-800-829-3676. You can also check the IRS website: www.irs.gov, or contact your attorney or accountant for information.

Delaware County IRS Office Location:

1400 N. Providence Road

Media, PA 19063

610-891-6002

8:30 a.m. to 4:30 p.m. (closed 1:00 p.m. to 2:00 p.m. for lunch)

Tax Preparation

Some seniors find it difficult to hire a tax professional.

For those of limited means, volunteers may be available to prepare tax returns.

You can call Volunteer Income Tax Assistance (VITA) or Tax Counseling for the Elderly (TCE) at 1-800-906-9887 to find a local volunteer tax assistance program or visit your local public library. Before going to a VITA or TCE site, see Publication 3676-B for services provided and check out the "What to Bring" page to ensure you have all the required documents and information the volunteers will need to help you.

If you are unsure if you need to file a tax return, you should contact a tax preparer. In addition, the IRS offers a web-based tool that can provide information about whether you need to file a tax return. www.irs.gov/help/ita/do-i-need-to-file-a-tax-return

Taxpayers who made \$69,000 or less can also use IRS Free File software to prepare and e-file their own returns for free. Fourteen companies make their brand-name tax software products available. For those who earned more, Free File Fillable Forms, the electronic version of IRS paper forms, can be used. Taxpayers should be comfortable preparing their own returns. Free

File is available only at www.irs.gov/filing/free-file-do-your-federal-taxes-for-free

The IRS is phasing out free walk-in tax preparation services. Publication 910 (the IRS Guide to Free Tax Services) is another source of information for assistance. Veterans can call the Delaware County Bar Association (610-566-6625) to inquire about a free tax preparation program run by Delaware County attorneys for veterans.

Standard Deduction at Age 65

The basic standard deduction varies according to your filing status, and is adjusted annually for inflation. For 2020 Single or Married Filing Separately, the standard deduction is \$12,400. For Married Filing Jointly/Qualifying Widow(er) the standard deduction is \$24,800. If you are age 65 or older, you may increase your standard deduction by \$1,650 if you file Single or Head of Household. If you are Married Filing Jointly and you or your spouse is 65 or older, you may increase your standard deduction by \$1,300.

Review all IRS instructions carefully, to find out when you begin to qualify for the additional standard deduction amount, and especially as you decide whether to use the standard deduction or to itemize deductions.

Income Tax Credit Age 65 or Older

Taxpayers 65 or older who have limited income may receive a tax credit, which is subtracted from your income tax liability. The allowable credit varies according to the taxpayer's filing status. For 2020 this credit is calculated on Schedule R of the tax return. The calculations for determining your tax credit can be complicated and may require the services of a tax professional, whether paid or unpaid.

Medical Expense Deductions

Medical expenses for taxpayers aged 65 or older are deductible to the extent they exceed 7.5% of a taxpayer's adjusted gross income, and you are itemizing deductions and not using the standard deduction. The medical expenses must be "out-of-pocket" expenditures; if you are reimbursed by insurance, you cannot deduct the expense. This 7.5% threshold applies for married seniors even if one is under 65 years of

age. However, if your adjusted gross income is over \$156,900 you must check the IRS forms to see how your deduction will be limited, depending upon your filing status.

The entire cost of a skilled nursing care facility, and qualified long-term care services and insurance therefore, including meals and lodging, is a deductible medical expense if the principal reason for admission to the facility is the availability of medical care. However, in an assisted-care facility only a portion of the cost may be deductible. Your retirement community business office usually will provide you with the percentage to apply to your total cost to determine how much of your annual expense can be taken as a medical expense.

Equipment and home modifications to accommodate the handicapped (and there is no age threshold for this deduction), that do not increase the market value of the home are deductible as a medical expense. Examples include wheelchair ramps and widening entrances to the home.

For 2020, the standard mileage rate for operating expenses for a car when used for medical reasons is \$0.17 per mile. See Transportation in IRS Publication 502, under What Medical Expenses are Includible.

When a person dies owing medical expenses, which are paid by the estate within one year from the day after the decedent's death, a medical expense deduction can be taken on the decedent's final income tax return (Form 1040), or on the federal estate tax return (Form 706). If the estate is under the federal taxable limit (\$11,580,000 in 2020), or if there will be no estate tax due because of the unlimited marital deduction, or the Estate is going to charities, it usually makes sense to deduct these expenses on the personal income tax return. The surviving spouse or estate executor must attach a statement to the tax return saying the expenses have not been and will not be claimed on the estate tax return.

Sale of Residence: Exclusion of Gain from Income

Generally, a capital gain is realized on the sale of a residence when the amount received at

the sale is more than the purchase price, plus the cost of capital improvements made over the years, such as installing new windows. An unmarried taxpayer of any age, however, may exclude up to \$250,000 of capital gains realized on the sale of a principal residence, and married taxpayers can exclude up to \$500,000 of capital gains, and the taxpayer(s) does not have to report the sale at all on the return if the whole amount can be excluded. To qualify for the capital gains exclusion, one must have used the real estate as their principal residence for at least two of the five years prior to sale, among other requirements. Ask your tax return preparer to help you if you are unable to understand these or any other IRS rules.

Sale of Assets: Special Rules for Beneficiary of Inherited Property, and Surviving Joint Owners of Property and Spouses

You or your tax preparer must know the "tax basis" rules when calculating capital gains on the sale of property, such as a house, stocks or mutual funds. The capital gains tax on these and on other property is paid on the difference between the purchase price (the "basis") and the sales price of the asset. Special rules apply, where the sole owner of property, or one owner of jointly held property, dies. For a surviving spouse, or anybody else who inherits property, these rules can result in significant tax savings when she or he sells jointly owned stock or other appreciated property after the death of a spouse, parent, or anybody else. The following illustrations show the potential tax savings involved:

Illustration 1:

- If, during their lifetimes, a husband and wife sold jointly owned stock worth \$10,000, which they bought for \$1,000, they would pay capital gains tax on \$9,000 (the sale price minus the purchase price).

Illustration 2:

- If the husband in Illustration 1 dies and the same jointly-held stock is worth \$10,000 on the date of death, and then the stock is sold, the tax basis "steps-up" from \$1,000 to

\$5,500, (one half of the date-of-death value plus one half the purchase price). When the surviving spouse sells the stock for \$10,000, the taxable gain is \$4,500, instead of \$9,000, and the tax is therefore reduced significantly.

If property is owned by a spouse, parent, or anybody else in her or his name alone, and she or he passes away, the step-up in the basis is on all of the asset's value, which steps-up to the date of death value. For assets that have appreciated, this can reduce the tax bill substantially.

Many married people own some, if not all, of their property jointly. Since the tax basis rules are important and can be hard to understand, taxpayers should discuss these issues and their possible effects with a qualified attorney or other tax professional to avoid paying more tax than necessary.

Estimated Tax Payments

All taxpayers, seniors included, must make estimated tax payments, or have money withheld from (for example) pension payments, or a combination of both. The amount that must be paid, withheld, or both depends on a number of factors. IRS Publication 505 should be reviewed to determine whether estimated taxes must be withheld or paid, and how much must be paid to IRS during the year. There are penalties and interest if the proper amount is not paid. Your tax professional can do this for you, if needed.

CHAPTER 4

Estate Planning

What is Estate Planning?

Your "estate" is another name for your property, and "estate planning" is simply planning ahead to make sure that your property passes according to your wishes. Many people think estate planning is only for very wealthy people. Nothing is further from the truth. Regardless of how little property you own, you should plan to make sure the desired people or institutions receive your property after your death in the most cost-efficient manner.

Your estate planning decisions will be reflected in various documents. Your Will is the most fundamental document, as it selects the personal representative who will carry out your wishes and determines who will receive your "probate" property, which is property owned outright in your sole name that does not have a beneficiary designation. Examples of probate property, which is distributed according to your Will, include your home (if solely in your name or a share held as a tenant in common), any bank accounts or securities solely in your name and without a beneficiary designation, and your car, jewelry and other personal effects.

Other important documents will determine the recipients of your "non-probate" property, which is property that passes outside of your Will based on decisions and transactions made during your life, and/or based on an agreement with the account holder. Examples of non-probate property, which will be discussed in greater detail below, include (i) jointly held property such as homes held as joint tenants with right of survivorship or tenants by the entireties and joint bank accounts; (ii) property that passes by beneficiary designation such as life insurance policies; annuities; IRAs, 401(k) or 403(b) accounts; and (iii) property owned by a revocable living trust. For many people, especially for married couples, virtually all of their property consists of non-probate property (jointly held or beneficiary designation), so an important part of any estate plan involves consideration of how non-probate property will pass at your death, either to a surviving joint owner or to a named beneficiary.

The existence of a well-considered estate plan that coordinates your Will with property ownership and beneficiary designations can help avoid disputes among your heirs and give you the peace of mind of knowing that your final wishes and dispositive intentions will be carried out.

It is best to consult with a local attorney whose practice includes or concentrates on estate planning. You should select an individual with whom you feel comfortable and who will help you design a plan to suit your needs, wishes and budget. The cost of planning usually is far less than the expenses your family could incur in the future without proper planning.

Do I Need a Will?

A Will is an important legal document, and it is the cornerstone of most estate plans. In a Will, you name a personal representative (an “executor”) to administer your estate and direct how your property is to be distributed.

Half of all Pennsylvanians die without a Will. If you die without a Will (“intestate”), your probate assets, including your home, money and other property, will be distributed to your heirs according to Pennsylvania’s “intestacy” laws. The intestacy laws were created to distribute property according to the supposed wishes of an average person, and they cannot take into account your unique situation.

Even if you are satisfied that intestacy laws provide an appropriate distribution, you should have a Will to select a personal representative to administer your estate. The personal representative named in a Will is commonly referred to as the “executor.” The executor collects estate assets, pays estate debts and taxes, and distributes to the beneficiaries you have designated in your Will.

Even if **all** of your assets were to pass outside of probate, your estate needs to have a personal representative who can handle final affairs, prepare tax returns and pay taxes.

Non-Probate Property

Your Will distributes “probate” property that you own outright but does not apply to “non-probate” property which passes “outside” your Will. You need to be aware that jointly-held property, accounts held “in trust for” (“ITF”) another person, accounts with a Transfer on Death (“TOD”) designation, insurance policies, annuities, IRAs and most retirement accounts do not pass according to the provisions of your Will. Rather, these items pass by law to the survivor listed on the account or to your designated beneficiaries. Be sure these beneficiary designations are carefully reviewed when developing and coordinating your estate plan.

Joint Property

There are several ways of owning property with another person: “tenants in common,” “joint

tenants with right of survivorship,” and “tenants by the entireties” (joint tenants with your spouse). People often transfer their property into joint names with family members, or even friends, in an attempt to minimize Pennsylvania inheritance taxes, avoid probate, reduce estate administration costs and “make things easier.” While joint ownership may be appropriate in some situations, it often fails to accomplish the above purposes, and often results in unexpected outcomes, hardship and bad feelings. When you transfer your property so that you own it with another person, you are exposing your property to the creditors of that person. There also may be income tax, federal estate and gift tax, and Pennsylvania inheritance tax issues that must be considered before any transfer is made.

You should not transfer your property into joint names with another person without obtaining legal advice from an attorney who is able to explain the tax and other consequences.

Putting your home in joint names with your children is sometimes appropriate, but the risks and costs often outweigh the benefits. Adding your children to the deed is considered to be a gift, which may prevent you from receiving Medicaid benefits if you must enter a nursing home within a few years after the gift is made. Once the property is in joint names, you lose control over future sale or mortgage of the property, and the property is vulnerable to claims by your children’s creditors and perhaps spouses. Transferring property to your children by lifetime gift instead of at death also can have adverse income tax consequences for the children which can far exceed possible savings in inheritance tax.

Changing title to bank accounts, CDs, and investment accounts into joint names is easy to do, but it also could be a mistake. Banks and other financial institutions may provide forms, but are not capable of advising of the potential dangers. How you end up owning your property may depend upon the forms you are given to sign by a bank employee who does not understand the various types of joint property and the impact such ownership would have on your plan.

You should consult with an attorney and give careful thought before putting your home or any other property in joint names with another individual.

If you want certain property to go to a particular person after your death, you should discuss with your lawyer the best option for your situation.

If your goal is to provide for the management of your affairs in the event you become incapacitated, an attorney can advise you of the merits of a general power of attorney or a revocable living trust, which may be preferable to creating joint accounts.

Trusts

Your attorney might recommend the use of a “trust” for larger estates, estates with young beneficiaries, and in other circumstances.

A trust is a fiduciary arrangement between the person creating the trust (“grantor” or “settlor”) and a third party (“trustee”) to hold assets on behalf of a beneficiary or beneficiaries. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to the beneficiaries. Trust agreements are regulated by state law, including Pennsylvania’s Uniform Trust Act.

Trusts can have several important advantages, including professional management, protection against overspending, protection against creditors and spouses of beneficiaries, and possible tax advantages. A trust may not be appropriate for everyone’s estate plan; however, everyone should ask their attorney to explain the advantages of different kinds of trusts to determine whether a trust should be considered as part of their estate plan.

Trusts can be created during the life of the person creating the trust (“inter vivos” or “living” trusts) or by Will (“testamentary” trusts). Living trusts and Wills that contain testamentary trusts usually cost more money to create than simple Wills because they are more complicated, involving directions regarding the active management of assets and distributions over time, rather than simply distributing property among beneficiaries at one’s death.

There may also be costs associated with funding the trust (the transfer of assets into the trust) and possible continuing costs for attorneys’ fees, accountants’ fees and trustees’ commissions as a trust is administered over time.

Most trusts are separate tax paying entities and must file annual fiduciary income tax returns, requiring the cost of an accountant or attorney prepare and file these tax returns.

When deciding with your attorney whether it makes sense to create a trust, you should consider whether the benefits of the trust are sufficient to justify the added costs of creating and administering the trust.

Supplemental Needs or Special Needs Trusts

A supplemental needs or special needs trust (SNT) can be used by a parent or grandparent who wishes to set aside money for a disabled child but hesitates to do so for fear of disqualifying that child from certain government benefits. A parent or grandparent could place the money in a carefully drafted SNT, designate a trustee to invest and safeguard the funds, and enable the disabled child to benefit from the trust while maintaining eligibility for “needs-based” government benefits such as Medicaid or Supplemental Security Income (SSI) payments. A SNT may be created in one’s Will or during one’s lifetime. To qualify as a SNT, however, the trust must be restricted so that it provides only for the beneficiary’s “special needs” or “supplemental needs” to enhance the beneficiary’s quality of life and to supplement and not replace government or other benefits the beneficiary is receiving. An improperly drafted trust may disqualify the beneficiary from receiving benefits to which he or she may be entitled.

Please consult your attorney to determine whether a SNT is appropriate, and to draft and administer the trust to preserve the beneficiary’s right to receive public benefits.

Testamentary Trusts

A testamentary trust (a trust established under your Will after your death) often is used to provide asset management for family mem-

bers who are not capable of managing assets themselves, such as children, persons suffering from disabilities, or persons who are not good at managing money. Discretionary trusts can be written to protect spendthrift beneficiaries from squandering their inheritance through wasteful spending habits. Trusts also can be used to set aside money for designated purposes, such as for education.

Living Trusts

Rather than creating a trust at your death through your Will, you may want to consider creating a living (“inter vivos”) trust during your life. The creator of a living trust is known as the “grantor” or “settlor” of the trust. A living trust can be either revocable or irrevocable.

Irrevocable Living Trusts

When you create an irrevocable living trust, you are making a current gift and giving up control of any property you transfer to the trust. An irrevocable living trust may make sense if you want to reduce the size of your estate to avoid estate or inheritance taxes. An irrevocable trust may be used to make a large gift during your lifetime to someone who is not capable of managing the money, such as a child or someone suffering from a disability. An irrevocable living trust also can be used to own a life insurance policy so that the death benefits are not included in your estate for federal estate tax purposes. Ordinarily, though, when people think about living trusts, they have in mind revocable “living trusts.”

Revocable Living Trusts

Most often, the term “Living Trust” refers to a funded Revocable Living Trust. The person who creates and funds the trust is called the grantor. The person who manages the trust is called the trustee. The person for whom the trust is designed to benefit is called the beneficiary. In most situations, during his or her lifetime, the person who creates the trust “wears all three hats,” that of grantor, trustee, and beneficiary. The grantor of a funded Revocable Living Trust retains full control over the assets placed in the trust and retains the right to alter or terminate the trust at any time. While the grantor is

serving as the trustee, the trust typically has the grantor’s social security number. At the grantor’s death, the assets are distributed to the beneficiaries according to the terms of the trust. This is why some people refer to a Living Trust as a “Will substitute.” However, since your Living Trust controls only property transferred into the trust during your lifetime, it is important that you have a Will to control the distribution of any property not transferred to the Living Trust.

A Living Trust may also provide a mechanism to coordinate your estate plan with other non-probate assets, such as life insurance, annuities and retirement plans which can be made payable to the Living Trust by beneficiary designation.

The primary objective of the funded Revocable Living Trust is to have the assets that have been transferred to the Living Trust before the grantor’s death avoid the probate process.

Avoiding probate does not avoid death taxes. A Living Trust does not automatically provide any federal estate tax or Pennsylvania inheritance tax savings. Any death tax saving strategies can be implemented in a Will as well as a Living Trust.

In order to avoid probate, assets must be transferred before your death from your name into the name of your trust. This would involve, among other things, preparing new deeds for real estate transferring the property into the trust and establishing new bank accounts in the name of the trust.

A Revocable Living Trust can be revoked or amended during your lifetime. Because you have control over property owned by the trust during your lifetime, the trust property is still “yours” for practical purposes (including for income, estate, and inheritance taxes); however, following your death, the trust property will be administered and distributed through the trust outside of the probate process.

A Revocable Living Trust is appropriate and may be the best choice if you own real estate in another state, such as a second home in New Jersey or Florida. If you own real estate located in another state at your death, it ordinarily must

go through separate probate administration (“ancillary probate”) in the other state. Property transferred into a Revocable Living Trust will not be subject to ancillary probate in that other state at your death, which can save considerable cost and simplify the administration of your estate.

Many people have been led to believe that probate should be avoided because of the high cost and delay of the probate system, and that a Revocable Living Trust is required to do so. Every state has a different probate system, and the cost and complexity of the process varies from state to state. Be aware that the probate system in Pennsylvania is neither costly nor inefficient for the estate of a person who had a well-drafted Will.

You also might consider a Living Trust for management of your assets in the event you become incapacitated. You can be the trustee of the trust so long as you are capable of managing your assets, and, if you become incapacitated, a successor trustee can step in to continue in your place. This may eliminate the need for a guardianship appointment. However, asset management in the event of incapacity often can be accomplished without a trust and at lower cost and with greater flexibility by using a well-drafted durable general power of attorney.

For Pennsylvania residents who do not own property in another state and are satisfied with the beneficiary designations available for their non-probate assets, a Revocable Living Trust generally has no substantial advantages over a properly drafted Will coupled with a durable general power of attorney.

Before considering a Revocable Living Trust, consult an attorney to determine whether it will be useful for your situation.

Scams involving Living Trusts are increasingly common. Promoters of such scams frequently target seniors through free seminars and mail solicitations. These promoters know that seniors are concerned about making sure their “affairs are in order” and can be susceptible to high pressure sales techniques. Living Trust scam promoters emphasize allegedly high probate fees, delays, and the supposedly damaging psychological impact of the probate process,

and they suggest you can avoid all of these fees and problems by using a Revocable Living Trust.

What they don’t tell you is that the costs, taxes, and time commitment involved in administering a trust are, in most respects, virtually identical to those involved with probating and administering an estate. Living Trust scam promoters sometimes falsely promise that a Revocable Living Trust will allow you to avoid death taxes and eliminate the possibility of a challenge by disgruntled heirs. Living Trust scam promoters also sometimes promise, again falsely, that trust assets are protected against creditors or against being subject to payment for the cost of nursing home care.

If you are contacted by anyone trying to sell you a Revocable Living Trust, here are some of the warning signs that may indicate that it is a scam:

- unsolicited sales visits
- calls and visits by non-lawyers
- suggestion that “attorneys don’t want you to know this information”
- use of pre-printed, “one-size-fits-all” forms
- excessive prices for the trust and related forms
- suggestion that the Living Trust will avoid death taxes
- suggestion that the Living Trust will avoid claims by creditors or nursing homes
- suggestion that the Living Trust is the “only document you’ll ever need” and other high-pressure sales tactics

Before signing any documents to create a Living Trust, you should get an opinion from an attorney of your own choosing. If you wish to get a low cost second opinion from an estate planning attorney before proceeding with a Living Trust, call the Delaware County Bar Association Lawyers Referral Service at 610-566-6625, ext. 221. Tell the service representative that you would like to meet with an estate planning attorney before going forward with the preparation of a Living Trust to make sure that it is right for you. A half-hour consultation costs only \$20. This meeting might save your money and your peace of mind by making you aware of options not mentioned by the salesperson of the Revocable Living Trust.

Transferring Property from an Estate or Trust

When conveying property from an Estate or Trust to beneficiaries, or upon sale, issues often arise that require careful attention. Individuals involved in such matters must be aware of potential pitfalls. It is important to seek an attorney who possesses knowledge of the appropriate alternatives and solutions.

Inheritance, Estate and Gift Taxes

Over the years, tax regulations at all levels have grown more and more complicated. Guideline information is offered below with the advice to consult with a professional if you have questions.

Pennsylvania Inheritance Tax

Pennsylvania's Inheritance Tax is a tax imposed on transfers at death by Pennsylvania residents and non-resident individuals owning real estate located in Pennsylvania. The residence of the beneficiary of an estate is not relevant. Assets titled in the resident decedent's name (or joint with non-spouses) and real estate of non-residents located within the Commonwealth of Pennsylvania are subject to the tax. **Unlike the federal estate tax, there is no exclusion for small estates.** There are, however, deductions for funeral expenses, debts, and certain expenses of estate administration.

The rate of tax is determined by the relationship of the beneficiary to the decedent. Property passing to a charity, to a surviving spouse, or from a child under the age of 21 to a parent is not subject to tax. Transfers to a child (or stepchild) or grandchild (or to a parent or grandparent) are taxed at 4½%. Property passing to a sibling is taxed at 12%. All other transfers are taxed at a rate of 15%.

The tax must be paid within nine months of the date of death to avoid paying interest. If you pay all or part of the tax within three months of death, you will receive a 5% discount on the amount paid.

Federal Estate Tax

The federal government imposes a tax "on the transfer of the taxable estate of every dece-

dent who is a citizen or resident of the United States," but federal estate taxes apply only to very large estates. A tax credit, known as the "unified credit," allows most estates to escape taxation by establishing an "exclusion amount" that passes free of federal estate and gift taxes.

From 1987 through 1997, the "exclusion amount" (total of taxable gifts made during lifetime and balance of estate at death) was \$600,000. After increasing slightly in the next few years, legislation in 2001 raised the exclusion amount to \$1 million and established a schedule of increases over the succeeding years, followed by the "repeal" of the estate tax in 2010, and its reinstatement in 2011.

For 2020, the exclusion amount is set at \$11.58 million. Please be advised that on 12/31/2025, the exclusion amount is scheduled to decrease to the 2017 amount of \$5.49M (adjusted for inflation). Under current law, the maximum estate tax rate is 40%; therefore, the value of all assets over the exclusion amount will be subject to a 40% federal estate tax.

Current law allows married couples to plan to minimize federal estate tax. As stated above, this year everyone is entitled to leave up to \$11,580,000 during lifetime or at death without federal estate or gift tax. Each of us can also leave all of our estate to a surviving spouse with no federal estate or gift tax. However, if we leave everything to a surviving spouse (and the combined net estate exceeds the exclusion amount), we are wasting the exclusion amount available to the first spouse to die. Married couples whose estates exceed the exclusion amount are able to protect each spouse's exemption amount by establishing a Credit Shelter Bypass Trust.

The law also provides for "portability" of the deceased spouse's unused exclusion amount, allowing for planning after the death of the first spouse, if planning was not completed prior to the first spouse's death. But "portability" should only be used as a default planning technique. It is much more tax-efficient to have proactively planned your estate to minimize death taxes.

Filing for “portability” after the death of the first spouse must be done on a timely basis (within 9 months of the death of the first spouse) and should be considered by all surviving spouses. Consultation with a competent estate planning attorney is crucial for taxpayers in this situation.

For the foreseeable future, only individuals (assuming survival past 2025) with assets (including life insurance benefits) in excess of \$5.49 million (indexed for inflation) have substantial reason for concern with federal estate taxes. Individuals or couples with combined assets of more than the exclusion amount should consider complex planning by a professional estate planner to consider how you might reduce exposure to the federal estate tax.

Federal Gift Tax

The federal government also imposes a tax on gifts. The Internal Revenue Service defines a gift as any voluntary transfer of property from a donor to a donee without what is called “full and adequate consideration.” A gift has been made when the donor gives up control over the transferred asset. The value of a gift for federal gift tax purposes is the “fair market value” of the property transferred.

The amount of gift tax is based on the total amount of lifetime gifts. Under current law, which is subject to change, no tax is owed until total lifetime gifts exceed \$11.58 million (adjusted upward for inflation). However, as stated above, that amount is scheduled to decrease at the end of 2025 to the amount in effect in 2017 (\$5.49 million, adjusted for inflation).

The federal gift tax applies only to gifts to any person in any year that exceed the “annual exclusion” amount. For many years, the annual exclusion amount was \$10,000 per donee. In 2002, the exclusion was increased to \$11,000, and it has been adjusted upwards every few years. **For 2020, the annual exclusion amount is \$15,000.** Thus, a person can make annual gifts of up to \$15,000 per donee without having to file a gift tax return. **For gifts in excess of \$15,000 per donee, a gift tax return must be filed, but may not result in any gift tax paid.** Annual gifts in excess of \$15,000 per donee

simply use up a portion of the donor’s lifetime exclusion amount. **No federal gift tax is owed until total lifetime gifts exceed the lifetime exclusion amount.**

For a married couple, each spouse can take advantage of the annual exclusion from gift tax reporting. Together, they can transfer up to \$30,000 to each donee (for example, \$30,000 to each of their children and each of their grandchildren) per year without using up any of the lifetime tax exclusion and without even having to file a gift tax return for that year.

Planning for Gifts

If you plan to make substantial gifts, important decisions need to be made about the timing of the gifts and the selection of which property to give. To make these decisions, you need to know something about federal estate and gift taxes, income taxes, estate law, real estate law and divorce law. You also need to consider the cost of longterm care should you become disabled, because gifts can affect your eligibility for public medical assistance (Medicaid) benefits. Your first step should be to consult an attorney. Your attorney will ask you to gather copies of all federal income tax and gift tax returns, gift checks, recorded and unrecorded deeds, copies of gift letters and trust agreements. After a review of all the documents and a discussion of your goals, you will be ready to select the property to be gifted and the timing of your gifts.

You may want to consider a gift to charity. Many charitable organizations have resources to aid you in making gifts, particularly in setting up a charitable gift annuity that allows you to give cash or securities while providing you with a guaranteed, lifelong income. Under certain conditions, you could enjoy a significant charitable tax deduction without incurring a capital gains tax if you give appreciated securities with a low-cost basis. You should ask your attorney to help you review all of your options.

Planning for Incapacity

When you make your estate plan, you also should consider the possibility that you become incapacitated. Planning for management of

your property and for personal care decisions in the event you become incapacitated is accomplished with a durable power of attorney, a topic addressed later in this Handbook. Your estate planning attorney should talk with you about the desirability of creating a power of attorney as part of your estate plan.

Preparing to Meet with Your Attorney

Perhaps the most difficult part of the estate planning process is overcoming procrastination and scheduling an initial consultation. You should deal with an attorney who provides estate planning services on a regular basis.

When you call to schedule your appointment, be sure to ask whether there is a fee for the initial consultation. At your first conference, be sure to ask about the total cost to have your documents prepared. Some attorneys charge for documents on a flat fee basis, while others bill at an hourly rate. In either case, reputable attorneys always discuss fees up-front at the initial consultation, and they will put the agreement in writing.

Before you visit your attorney, you can make the initial meeting more productive by compiling the following information:

- a list of your intended beneficiaries, with their names, birth dates, and addresses;
- your choice of executor and at least one alternate, with their addresses;
- your choice of agents and successor agents for a power of attorney;
- a list of all assets, the value of each asset, and how each asset is titled; and
- a list of any questions you have about estate planning.

With this information, your attorney will be able to spend more time developing a plan and less time writing down basic information.

It is generally advisable to nominate one executor and one or more alternates rather than two individuals to serve as co-executors. Co-executors frequently have difficulty getting paperwork signed in a timely manner, which can delay estate administration and increase administration costs.

Moreover, disagreements between co-executors can substantially increase the time and costs of administration.

You should be prepared to consider the possibility that the persons to whom you wish to leave your estate may die before you do. You may find it upsetting to plan for the possibility that you could outlive your children or even your grandchildren. Nevertheless, a thoughtful attorney will ask you to imagine these possible scenarios and to decide who should receive your property if one or more of your intended beneficiaries is not alive at your death.

If you suspect trouble in your family or the family of a beneficiary, such as a disability, a problem with alcohol or drugs, a potential divorce, or a dispute between beneficiaries, mention this to your attorney so the issues can be addressed in a way that carries out your wishes and minimizes conflict.

In listing your assets, consider both your probate and non-probate property. Bring copies of recent statements, which contain important information about the assets and their value. For life insurance, annuities, retirement accounts, and other such assets, make sure you know who has been designated as beneficiaries at your death.

Remember that anything you discuss with your attorney is confidential client information. While your children may accompany you to meet with your attorney, the attorney may wish to meet with you alone to preserve confidentiality and to protect against claims that your children influenced the content of the Will and other documents.

After working with you to develop your plan, your attorney will prepare the necessary documents. It is very important that you understand all of the documents you sign. You should ask your attorney to forward drafts for your review in advance of the meeting at which the documents will be signed.

Protecting Your Will

Keep your original Will in a secure place, such as a fire-proof box, a safe deposit box at your bank, or with your attorney. (For your Powers of Attorney and Living Will, it is best to keep the originals where they will be readily accessible, and not in a bank safe deposit box.) If your attorney is holding your Will, ask whether it is being held in a fireproof vault or other protected location.

In Pennsylvania, a safe deposit box is “frozen” or sealed upon the death of the owner except for the limited purposes of retrieving the decedent’s Will and cemetery deed. The safe deposit box is not frozen, however, if the co-owner of the box is the surviving spouse.

You have the right to request your original estate planning documents from your attorney at any time. The documents belong to you, not your attorney.

Updating Your Will and Estate Plan

You have the right to revoke your Will and write a new one at any time you choose, providing you have the mental capacity to do so. To make small changes to your Will, you can amend it by making a “codicil.”

If you already have a Will, take it out and re-read it. Do you understand what it says? Do you agree now with the arrangements you made earlier?

You may need to update your Will if circumstances have changed. Marriage, divorce, death, birth, asset growth, retirement, disability, moving to a different state or a change in estate tax laws are events that may trigger the need to revise your Will. A good rule-of-thumb is to review your Will at least once every five years.

Just as you need to review your Will periodically, you should check the beneficiary designations on your life insurance and retirement accounts to make sure they are up to date. Many people select beneficiaries when purchasing a life insurance policy or opening their retirement accounts but never re-check these decisions. It is particularly important to do so as families change over the years.

CHAPTER 5

When a Loved One Dies: Priority List; Overview of Estate Administration

When someone dies there are many things to be done almost at once. Whether or not there is a Will, a lawyer experienced in estate work can provide valuable help, and a prompt initial consultation is recommended. This priority list will provide guidance on getting started and topics to discuss with your attorney.

I. Immediately:

1. Notify the Organ Bank/Hospital (if appropriate).
2. Notify next of kin. Notify Agent under Power of Attorney (under the authority of Power of Attorney ends at the Principal’s death). Notify any Guardian of the decedent.
3. Locate vital documents: Will, burial instructions, personal directory, bank records, insurance policies, safe deposit keys.
4. Secure deceased’s credit/debit/ATM cards from loss or misuse.
5. Secure the decedent’s home and vehicle.
6. Determine whether any tax, mortgage or rent, or utility payments may be past due.

II. Make the following calls:

1. Executor named in Will (who can make the following calls).
2. Lawyer (even if no Will found).
3. Funeral director (even if cremation specified).
4. Anyone who has been acting as trustee or custodian of money/property.

III. Take to meeting with lawyer:

1. Will, checkbook and bank records, personal directory, income tax returns, deed or lease, stocks and bonds, addresses of heirs and next of kin.

A lawyer can advise and help give notices to banks, landlord, employer, etc.

IV. Take to meeting with Funeral Director:

1. Burial instructions, cemetery deed, birth certificate, service discharge papers.
A Funeral Director can arrange with church, cemetery, obtain death certificates, offer suggestions on funeral luncheon, death notices, obituary, etc.

V. To be done by Personal Representative (Executor/Administrator), with help of lawyer, as soon as possible:

1. Determine if probate of the Estate is necessary. If total value of the decedent's assets is low enough, or if all assets are held jointly or with beneficiary designations or in trust, the probate process may not be necessary, and a simplified statutory procedure might be available. Even so, there may be other reasons to probate and obtain Letters Testamentary or Letters of Administration. Consult with an attorney to determine which option is best. Probate can only take place after the burial or cremation of the decedent and must be in the county of decedent's last residence.
2. If probate is necessary, contact the Register of Wills office in the County where the decedent resided to learn the requirements for probate, which vary from County to County. Appointments can be made with the Office of the Register of Wills of Delaware County to probate an estate at a predetermined date and time. Making an appointment is preferred to appearing at the Register of Wills and waiting for a clerk to be available. In Delaware County, you will need to present the following at the Register of Wills office:
 - Original Will and codicil(s) if any;
 - Original death certificate;
 - Photo ID of the person seeking appointment as Personal Representative (Executor/trix, if there is a Will, or Administrator/trix if there is no Will);
 - Blank check for probate fee;
 - In certain instances, Witness Affidavits, Renunciations, Death Certificates of other named Personal Representatives, or Bond.

For further Information, Check the Delaware County Register of Wills website at <https://www.delcopa.gov/row/wills.html> or call 610-891-4406.

3. If you probate the Estate, a short certificate is the document that you obtain and use to transfer assets. If you've filed a Petition for Settlement of a Small Estate, a certified copy of the Decree of the Orphans' Court may be used. (Be aware that if you have not probated the Estate, but need to file an Inheritance Tax Return, a filing fee will be assessed when the Return is filed.)
4. There are other tasks to be considered, such as:
 - Obtain enough short certificates for all accounts;
 - Obtain an EIN (tax ID number) for the Estate, and choose fiscal year;
 - Send legal notices to heirs and legatees, and advertise Estate;
 - Notify banks, brokerages, IRA administrators, post office, employer, insurance agents, credit card companies, utilities, Social Security Administration and/or Medicare if applicable, other payors of government benefits, payors of pensions and annuities, health care plans, unions, veterans organizations and bureaus, accountants and tax preparers;
 - Write or call Mortgage or Reverse Mortgage Lender to obtain information on options and deadlines;
 - If the decedent's home is to be sold, consider as soon as possible what needs to be done to ready the house for sale;
 - Follow Pennsylvania Department of Revenue procedure for opening and inventory of safety deposit box;
 - Inventory real and personal property and obtain any necessary appraisals of tangible assets;
 - Send proper Notice to Pennsylvania Department of Human Services (f/k/a Department of Public Welfare) re: Medicaid Estate Recovery claim, if decedent was at least 55 years of age;

- Open Estate checking account, for deposit of funds and payment of bills;
- Gather all claims and bills, and pay according to statutory priority;
- Keep detailed records, especially of receipts and expenditures;
- Consult with lawyer about further requirements and deadlines, as applied to the particular Estate and situation.

CHAPTER 6

Power of Attorney (POA)

A Power of Attorney (POA) is an important and powerful document that you can create to enable another person to lawfully act for you. A POA is a very useful planning tool, and the authority it gives is extremely powerful: you must give this power ONLY to someone whom you trust completely! Identifying WHO would be best to act for you can be a challenge – a good reason to have an attorney assist you. The person creating the document is called the “Principal” and the person carrying out the wishes of the principal is called the “Agent.” The Principal must be mentally competent when he signs the document, but the document may remain legally valid even if later the Principal becomes incapacitated. This continuing authority is known as durability. This is why the term “Durable Power of Attorney” is often used. By law in Pennsylvania, all POAs are durable unless the document specifies otherwise. A POA, and the authority it gives to an agent to act, terminates upon the death of the Principal.

Pennsylvania law concerning POAs for finances and property were significantly revised in 2014 and again in 2016 – please consult with an experienced lawyer. Most of the changes are effective for POAs signed on or after January 1, 2015 (POAs signed before 1/1/2015 are still OK). As under the old law, all new POA documents must carry a large NOTICE provision that WARNS the Principal of the significant breadth and scope of the powers being given to the agent. Additionally, in order for the POA to be legally binding, the Agent must sign an ACKNOWLEDGMENT. In the Acknowledgment the agent

promises to act in accordance with the reasonable expectations of the principal to the extent actually known by the agent, otherwise in the principal’s best interest, and to act in good faith and only within the scope of authority granted to the agent by the principal. For example, your Agent may be granted power to sell part of or all of your property, handle your investments, or have other far reaching powers. For that reason, the SELECTION OF YOUR AGENT IS CRITICAL.

A POA becomes particularly valuable should the Principal later become incapacitated - whether this incapacity is short lived or of longer duration. Importantly, the Agent may be empowered to make estate planning decisions, in order to minimize estate taxes and/or to take Medicaid planning steps. These actions may involve giving money or assets to the Principal’s heirs now, rather than at the Principal’s death. In a POA, this act is called “gifting.” Not surprisingly, gifting is sometimes abused by an Agent. As a consequence, if gifting is to be permitted at all, the POA document should contain specific language. Again, please contact your elder law or estate planning attorney.

In essence, a POA can grant the Agent the power to do almost anything financially that the Principal could do. Therefore, it is important to consider how much power you want to give your Agent. It might be appropriate to grant an Agent limited, closely defined authority or very far reaching powers. Your attorney can review these and other details with you as you work together on the creation of an appropriate document for your particular circumstances and needs. For example, you may wish to specifically authorize your Agent to use your funds to consult with an attorney or other professional for appropriate and timely legal, accounting or investment advice - all to better serve you as your authorized Agent.

A POA may be effective immediately or only when a specific, future event has occurred. Such a future or “triggering” event might be when your doctor certifies that you are disabled either physically and/or mentally. This type of triggering mechanism is often called a “springing” clause. However, the delay and expense to

certify a future or “triggering” circumstance can work against your more general desire to enable your agent to act for you. Therefore, you should carefully evaluate the pros and cons of this feature with your lawyer.

To avoid or minimize family squabbles, you should consider advising your family of your plans for incapacity (power of attorney) as well as your plans for your estate. Additionally, it is much more efficient to have one agent rather than a group of agents. You should also name back-ups for your first named Agent if at all possible. Obviously, some children might be disappointed to not be the one chosen to act. If you communicate with your children - particularly your chosen Agent - during the planning process, you may be able to diminish or “head off” family disputes. Plus, many people want to name Co-Agents or a group of children together as their Co-Agents. While permitted by Pennsylvania, some financial institutions (who must depend on the instructions given to them by your Agent) have hesitated to act when Co-Agents are named.

By law, your signature (execution) of your power of attorney must be witnessed by two adults (not your family) and a Notary Public. The Agent named in your power of attorney CANNOT sign as a witness. In most cases, copies of your power of attorney can be as valid as the original. Additionally, a notarized power of attorney may be recorded (for a fee) in our County Recorder of Deeds Office or with the Clerk of the Orphans’ Court. Once recorded, certified copies may be purchased and may be more readily accepted by financial institutions.

Be very careful of POA forms you get from the internet, and do not just copy someone else’s. Your POA is not a “one size fits all” legal tool. You want your power of attorney document to help your Agent to be able to help you when you need it, but not to be able to do more than you want done.

CHAPTER 7

Durable Health Care Power of Attorney

An event, illness or similar circumstance might make it impossible for a patient to interact with her doctor. Perhaps, she has been in an accident or has been given medicine to control her pain. She may have undergone surgery and still be feeling the effects of her anesthesia. Under such circumstances, her ability to listen to her doctor’s explanation of treatment choices and her ability to think and evaluate alternatives may be significantly impaired. Similarly, if a person is suffering from Alzheimer’s or other dementia, she may not be able to effectively interact with her health care providers and/or may be unable to give informed consent to a proposed form of treatment.

Many people prudently choose to anticipate this and name an agent to act for them regarding some or ALL health care decisions.

You may have heard the expression “Advance Directive” or “Living Will” used to describe a document detailing your wishes under such circumstances. While advance directives have value, most legal scholars agree that a more efficient legal document, that formally records your choice of agent to make decisions for you when you cannot, is a Durable Health Care Power of Attorney (DHCPOA).

Similar to the POA that enables your agent to attend to your financial and property decisions, the DHCPOA can enable your agent to make your health care decisions for you if you are too ill to make them for yourself. Your agent for health care decisions may be the same person who is your agent for your financial and property decisions or it may be someone else. This is so because the abilities and characteristics needed for each task are different; an agent for your health care decisions should be able to represent your desires without regard to the agent’s own personal feelings or beliefs.

Additionally, because we are now living longer than ever before, more people recognize that it is a much greater possibility that they will have some period of incapacity - whether temporary (for an operation) or longer (with a progressive or cognitive illness like Alzheimer's disease).

Importantly, a Living Will is only useful at the very end of your life. However, a DHCPOA can cover the much larger period of time between intellectual incapacity and end-of-life. An agent empowered by a well-crafted DHCPOA can help ensure that our individual preferences, desires, and wishes regarding our health care are honored and enforced.

For many years, Pennsylvania has provided a sample Living Will form, which is not mandatory but can be a good starting point. There is also a sample form that combined a Living Will and DHCPOA into one document. Please contact an attorney who regularly practices in this area of law to properly initiate this type of planning.

For persons with mental health issues, Pennsylvania also has a mental health care power of attorney.

Also, for persons who have remarried, or have "blended" families, a DHCPOA is a particularly important legal document to ensure your health care wishes are documented and protected.

CHAPTER 8

Living Wills

If you or a family member has been a patient in a hospital, you may be familiar with the current Living Will form. When you are admitted as a patient, you are asked if you have a Living Will or Advance Directive because this is required by Federal patient rights law. The law does not require the Hospital to explain the purpose of an Advance Directive, Living Will or DHCPOA.

The Pennsylvania Statutory Living Will form is composed of limited yes or no questions related to your care at the end of your life. A Pennsylvania Statutory Living Will becomes active only if and when your attending physician certifies

that you are near death (an end-stage medical condition). In Pennsylvania, anyone of "sound mind" who has turned 18 and graduated from High School or has married may execute a Living Will. The PA Statutory Living Will only requires your signature and the signatures of two witnesses aged 18 or older. Each state has a similar law with unique requirements. Therefore, you may wish to improve the acceptance of your document in other states by adding the formality of having your and your witnesses' signatures notarized.

It is perhaps most critical to discuss with your physician the kinds of treatments you might wish to withhold and under what circumstances. Certainly, you would want to understand what effect certain treatments would have on your body. A copy of your DHCPOA or Living Will should be given to your primary care physician who will safeguard it in your medical records. Your doctor will appreciate this communication because your written instructions can protect the physician from liability. However, because your choices might not be compatible with the physician's moral or religious beliefs you may find that your doctor is not comfortable with your expressed preferences. It is much better to discover this belief difference before a crisis happens. You can then find a doctor whose quality of life values are more compatible with your own.

Additionally, you might wish to name a surrogate (agent) to carry out your wishes should you be unable to communicate (see DHCPOA discussion above). Also, you may specifically prohibit certain persons from acting as a surrogate. For example, you might not want an ex-spouse or estranged child from interacting with your doctor regarding your care.

By law, hospitals and nursing homes must provide patients with limited information concerning Living Wills. However, information concerning DHCPOA and Health Care Declarations is optional. Hospitals and nursing homes may not charge different fees dependent upon whether or not a patient has a DHCPOA or Living Will. Again, a Pennsylvania Statutory Living Will becomes operable (or empowers your agent)

ONLY when the attending physician is provided with a copy AND the attending physician determines that the patient is incompetent AND in a terminal condition OR in a state of permanent unconsciousness (end-stage condition). The attending doctor must certify this diagnosis in writing and this diagnosis must be confirmed by another physician. ONLY WHEN ALL of these steps are followed is the Pennsylvania Statutory Living Will able to give your agent authority to make end-of-life decisions for you.

Absence of a Living Will

If a patient has not executed an Advance Directive (Living Will or similar document), there is no presumption of the patient's intentions to consent to or to refuse life sustaining treatment. However, the Pennsylvania Supreme Court has held, and recent Pennsylvania legislation has affirmed by statute, that when there is no advance directive, a spouse or other close relative, with the consent of two physicians, and without Court involvement, may remove life sustaining treatment from an adult relative who is in a persistent vegetative state. If the patient has been declared incapacitated by a Court, additional Court actions will be required to discontinue life sustaining treatment (In Re: DLH).

CHAPTER 9

Privacy of Health Information: Health Insurance Portability and Accountability Act (HIPAA)

While medical and related records are maintained as confidential under various federal and state laws, a federal law called the Health Insurance Portability and Accountability Act of 1996 (HIPAA) further increases the privacy of your identifiable health information which is held by health care providers, health plans, and others covered by the law, including "business associates" providing services to those directly covered by the law, and their contractors.

With very few exceptions, those covered by HIPAA must have Notices of Privacy Practices, which they must make available to you. These Notices will tell you what uses and disclosures of your health information can be done without your authorization, and that uses and disclosures of your health information can only be done with your authorization, which you can revoke.

These Notices will also list rights you have regarding your health information, such as requesting (1) restrictions on use or disclosure of information or on how information is sent to you, (2) to inspect, copy, and amend records, including electronic copies of records, and (3) an accounting of disclosures. The Notices will tell you how to take advantage of these rights and some of the limits on these rights. The Notices will also include your right to be informed when there is a likely risk to the privacy of your health information and that you will be given a copy of a Notice of Privacy Practices at any time upon request. In addition, the Notices will tell you how to make complaints when you feel your privacy rights have been violated and whom to contact for further information about the privacy of your health information.

The Notices of Privacy Practices are available at places where health care services are provided and will be posted on any website of the health care provider or plan which provides information about their customer services or benefits. These Notices will include up-to-date revisions. In some circumstances, you may receive a revised Notice, but you can also ask for a copy of a Notice at any time to make sure you have the correct information.

If you want others, such as trusted friends or family members, to be able to receive your health information, like talking with your doctors or picking up your prescriptions, you should inquire about anything you must do to make sure this will happen. This is best done before a need arises.

CHAPTER 10

Out-of-Hospital Do Not Resuscitate Orders (DNR)

First Responders (Paramedics, Emergency Medical Technicians, Fire, Police or pool Life Guards) are rightfully held in high esteem by all of us.

We rely on First Responders to preserve the life of an injured person until they can receive care in a Hospital. If the person's heart has stopped beating or they have stopped breathing on their own, First Responders will use cardiopulmonary resuscitation (CPR or "chest compressions") to save a life at all costs. However, if their patient is old or frail, such an aggressive procedure may not be the medically best treatment.

Pennsylvania has a law to both protect patient's rights and ensure the professional integrity of our First Responders by enacting a MOBILE DNR law. Under that law, when medical conditions warrant a DO NOT RESUSCITATE order, a Physician may, upon consultation with her patient (or the Patient's Agent) prescribe or write a DNR order. For example, a physician may determine that a DNR might be best for a terminally ill cancer patient who has been admitted into Hospice care or a very frail and elderly person who lacks the physical vitality to respond to and recover from CPR.

In a medical facility this Order is a critical part of the patient's chart. With a Mobile DNR, should the patient be well enough to go out into the general public, the patient can wear a special "Mobile DNR" bracelet that can quickly and effectively alert First Responders to the doctor's DNR Order. The official advisory DNR bracelet enables the First Responder to properly respect the patient's and her doctor's wishes.

While this Mobile DNR has been law in PA since 2007, some persons are still not familiar with it. You can find out more about the Mobile DNR at the PA Department of Health Website (<https://www.health.pa.gov/topics/EMS/Pages/Resources.aspx>).

CHAPTER 11

Palliative Care and Hospice

Palliative Care focuses on relief from physical suffering. It is designed for persons being treated for a disease or living with a chronic disease, who may or may not be terminally ill.

Palliative care addresses the person's physical, mental, social, and spiritual well-being. It is appropriate for persons in all disease stages. It can be utilized from diagnosis through cure. Life-prolonging medications can be used. It is usually offered where a person initially sought treatment and coverage would be through the person's health insurance.

Hospice utilizes palliative care but is limited to persons who are terminally ill. There is a multi-disciplinary approach, including family caregivers and physicians, nurses, aides, social workers, clergy, counselors, pharmacists, physical or other therapists, and trained volunteers as appropriate to the situation. Coverage includes maintenance medications and those which provide comfort and improve the quality of life, and necessary medical supplies and equipment.

The main focus of hospice is on making the person comfortable and preparing the person and their family for the end of life; the focus is not on a cure. Hospice is appropriate when it is determined that treatment for the terminal illness will not be pursued and life-prolonging medication will no longer be used. It can be offered in a variety of settings, such as in a person's home, in a nursing home or other care facility, or occasionally in a hospital.

Hospice is covered by Medicare and Medicaid and most private insurers. Appropriateness must be determined and certified as required by the health plan. You can stop hospice care at any time and restart when recertified. There are different levels of hospice care depending on what is needed. If you develop an acute illness unrelated to your terminal illness you can receive treatment for that illness, but that would

not be covered under the hospice benefit. Once covered under hospice, before pursuing any changes in care you should consult with your hospice provider.

CHAPTER 12

Guardianships

Sometimes dementia or other progressive (or existing) mental, emotional, or physical illness renders a person incapable of making reasoned decisions regarding their personal and financial well-being. Individuals can suffer harm from lack of personal care due to poor decision making or become victims to scammers or others with bad intentions.

When this happens, Pennsylvania law allows anyone interested in the welfare of that person to petition the Orphans' Court to appoint a guardian of the person (for making health care decisions, living arrangements, and other personal decisions) and/or a guardian of the estate (for financial matters). The person filing the petition must propose a guardian. Pennsylvania provides a list of individuals entitled to serve as guardian in order of eligibility. The individual most eligible to serve is any other guardian already appointed, then the spouse of the individual, then the child, and so on until we reach the catch all of "other qualified proposed guardian." The proposed guardian needs to satisfactorily complete a Pennsylvania Criminal Background Check to be appointed and may also be required to post a bond in order to serve. Whoever serves should also understand the duties of a guardian, be able to fulfill these duties, and agree to act as guardian. Guardianship agencies exist for this purpose. There is no public guardianship agency in Delaware County at this time but there are private guardian agencies.

Because a ruling of "incapacity" and appointment of a guardian curtails many important legal rights, high standards must be met. A guardian can be appointed only if the court finds by clear and convincing evidence that the "alleged incapacitated person" is impaired to such an extent that he is partially or totally unable to meet

essential requirements for his physical health and safety or to manage his financial resources, and, due to a lack of adequate support, needs a guardian. "Incapacity" for guardianship is an impairment of decision-making ability; a person may be physically limited but not be incapacitated because they are able to make decisions regarding their care. Just because a person has periods of confusion, this does not necessarily mean that they will be found to be incapacitated under the law.

Notice of the filing of a guardianship petition must be given to the alleged incapacitated person and to his next of kin.

A guardian may be appointed for a short time on an emergency basis, where decisions about the welfare of the alleged incapacitated person must be made quickly to prevent harm. When needed for long-term incapacity, a guardian may be appointed on a permanent basis.

Hearing Before the Court

After the petition is filed, a hearing is scheduled before the Orphans' Court of the county in which the alleged incapacitated person resides and the person is required to attend unless excused by a health care professional who concludes that it would be harmful for him or her to attend the hearing. "Harmful" in this context does not mean confusing or upsetting but, rather, means actual harm to the person's mental or physical condition.

The alleged incapacitated person may hire an attorney or request that the court appoint an attorney for the person. The attorney's fees will be paid by the Commonwealth if the person cannot afford to pay the fees. The court may also appoint an attorney in appropriate cases, with fees paid by the Commonwealth if the alleged incapacitated person is unable to pay. This may occur when there is family conflict or other questions are raised. An attorney for the alleged incapacitated person is not required unless ordered by the court.

When testimony by a person qualified to perform an evaluation of capacity, such as a psychiatrist, establishes by clear and convincing evidence that the person is incapacitated, and it is shown that the person needs a guardian

due to a lack of an adequate support system, a guardian will be appointed.

The alleged incapacitated person may request an independent evaluation of his capacity, with evaluation fees paid by the Commonwealth, if he cannot afford to pay them. The court may also order an independent evaluation, with fees paid by the Commonwealth, if the alleged incapacitated person is unable to pay.

If incapacity and the need for a guardian are established, the court will issue a decree appointing a guardian of the person and/or estate with full (plenary) or limited powers and duties, as described in the decree.

Powers and Duties

Generally, it is the duty of the guardian to assert the rights and best interests of, and to respect the expressed wishes and preferences of, the incapacitated person to the greatest possible extent. The guardian should encourage the incapacitated person to participate in all decisions which affect him to the maximum extent of his abilities. Ensuring the best interests of the incapacitated person may mean that the guardian ignores the wishes of that person if they are in conflict with the person's best interests. For example, an incapacitated person may want to continue to live in his home, but if the guardian determines that assisted living or skilled nursing care is necessary, the guardian is authorized to admit the person to a facility over the person's objections.

The powers and duties of the court appointed guardian may be limited, but often include the power and duty to make every kind of decision for the incapacitated person. However, a guardian cannot, without court approval, consent to admission to an inpatient psychiatric facility or a state center for the mentally retarded or consent to relinquishment of parental rights. Court approval is also needed to consent to abortion, sterilization, psychosurgery, electroconvulsive shock therapy (ECT), or removal of a healthy body organ, to prohibit marriage, to consent to divorce, or to consent to experimental procedures. When court approval is needed, the guardian must tell the court of any known objection of the incapacitated person, whether expressed before or after the guardian was appointed.

Typical decisions made by a guardian of the person include arranging for medical care and consenting to surgery or other treatments, determining where an incapacitated person is to live, and contracting for admission to nursing facilities. A guardian of the estate handles financial matters and has many of the same responsibilities as a person appointed to manage an estate for a deceased person, with specific requirements and limitations. Every guardian must file annual reports with the Orphans' Court, either on paper or online, detailing the past year's actions. Online reports are filed through the Guardianship Tracking System at <https://ujportal.pacourts.us/Guardianship.aspx>.

If, after appointment of a guardian, a person regains their decision making capacity, or sufficient supports become available to provide for the person's care, a petition can be submitted to the court to review the continuing need for a guardianship and to modify the guardianship decree if appropriate. A review hearing can also be requested by any interested person if a guardian is not fulfilling required duties.

A guardian's authority ceases upon the death of the incapacitated person. A guardian's final duty is to file a Final Report with the Orphans' Court. Matters such as final arrangements, payment of bills, distribution of assets, etc., are handled by the person appointed to act under estate law such as an executor named in a Will or an administrator of the estate under Pennsylvania law covering persons who die without a Will (intestacy law).

Making a power of attorney covering personal and financial decision-making may make guardianship proceedings unnecessary, and is less expensive and stressful than the court process. In fact, a petition for guardianship must indicate whether or not the alleged incapacitated person has ever executed a financial, health care or mental health power of attorney. Anyone can also name in advance a preferred guardian of the person or estate for consideration by the court in case a guardianship proceeding becomes necessary.

CHAPTER 13

Social Security

This chapter contains contact information for the Social Security Administration (the SSA) and a brief description of some of the programs and benefits available as well as general eligibility requirements. Some eligibility requirements are complicated and cannot be fully addressed in this Handbook. You are encouraged to contact the SSA or consult with a qualified attorney with respect to your eligibility for particular benefits.

Generally, Social Security will only call you if you have asked for a call or if you have ongoing business with Social Security. If someone calls you and claims to be from Social Security, do not give them your Social Security number, your birth date or any other personal information, and do not send the caller any money using retail gift cards, wire transfers, pre-paid debit cards, internet currency, or mailing cash. Social Security will never threaten you for information or promise to give you a benefit in return for personal information or money. If you get a questionable call, hang up. Similarly, do not give your Social Security number or any personal information out in response to an unsolicited email.

Contacting Social Security

By Toll-Free Telephone:

800-772-1213 (includes automated services 24 hours per day as well as agents 8 am – 5:30 pm M–F)

TTY for the Hearing Impaired:

800-325-0778

In Person – Delaware County Offices

(Office Hours 9 am – 4pm M-F):

807 Crosby Street

Chester, PA 19013

Telephone: 866-398-1456

8645 West Chester Pike

Upper Darby, PA 19082

Telephone: 866-964-0780

Online: www.ssa.gov

Online services include:

- obtaining a copy of your earnings record and an estimate of the benefits (including retirement benefits, disability benefits and survivors benefits) you and your family will receive when eligible
- filing an application for retirement and/or Social Security disability benefits
- changing your address on file with Social Security
- setting up direct deposit for your Social Security benefits
- replacing a Social Security or Medicare card
- downloading copies of booklets and fact-sheets about benefits
- create My Social Security Account online

Retirement Benefits: Full Retirement Age

Use the following chart to determine when you will be eligible to collect full Social Security retirement benefits:

| If Your Year of Birth is: | Your Full Retirement Age is: |
|---------------------------|------------------------------|
| 1937 or earlier | 65 |
| 1938 | 65 and 2 months |
| 1939 | 65 and 4 months |
| 1940 | 65 and 6 months |
| 1941 | 65 and 8 months |
| 1942 | 65 and 10 months |
| 1943–1954 | 66 |
| 1955 | 66 and 2 months |
| 1956 | 66 and 4 months |
| 1957 | 66 and 6 months |
| 1958 | 66 and 8 months |
| 1959 | 66 and 10 months |
| 1960 or later | 67 |

If you choose to begin collecting retirement benefits before your Full Retirement Age, the amount of your monthly benefit will be permanently reduced. If you were born after 1937, the amount of the reduction is greater than if you were born in or before 1937, and increases the later you were born after 1937. If you were born in 1960 or later, here is a chart of the amount of the reduction based on how old you are when you start taking benefits:

- 62 years old is about 30 percent;
- 63 years old is about 25 percent;

- 64 years old is about 20 percent;
- 65 years old is about 13.3 percent; and
- 66 is about 6.7 percent.

If you elect to defer receiving your retirement benefits beyond your full retirement age, your monthly benefit will increase by how many months you wait up to age 70.

Alert: If you decide to delay your benefits beyond age 65, you should still apply for Medicare benefits within three months of your 65th birthday to avoid increased costs for Part B (medical) and Part D (prescription drugs).

The disadvantage of taking your retirement benefits before your full retirement age is that your monthly benefits are permanently reduced. The advantage is that you collect benefits for a longer period of time. The disadvantage of delaying your retirement benefits to age 70 is you may receive them for a shorter time. The advantage is you get a significant increase in your benefits. Because each person's situation is different, you should contact Social Security or a qualified attorney or advisor before making any decisions.

Alert: If you have to stop working due to a disability before your full retirement age, you can take retirement benefits, then "earn back" the permanent reduction if you apply for and are approved for Social Security disability benefits. You should consult with an attorney who is experienced in handling Social Security disability benefits if you are considering this option.

Effect of Earnings on Retirement Benefits

Retirees that collect Social Security retirement benefits before their Full Retirement Age (see chart above), and have earnings from work or self-employment will have \$1.00 in retirement benefits deducted for each \$2.00 of earnings above the exempt amount. The exempt amount is \$18,240 in 2020.

In the year you reach your full retirement age, \$1.00 in retirement benefits will be deducted for each \$3.00 you earn above the exempt amount (\$48,600 in 2020). After you reach your full retirement age, you can collect your Social Security benefits with no reduction based on earnings.

Retirement Benefits for Spouse

Social Security retirement benefits are received in one of two ways: based on your own record of contributions to the Social Security system or as a spouse or former spouse of such a contributor.

The spouse of a wage earner who collects Social Security benefits can, when he or she reaches retirement age, choose to collect benefits based upon his or her own earnings record or upon the earnings record of his or her spouse. The spouse would receive either 100% of benefits based on his or her own earnings record, or 50% of the amount of the wage-earning spouse's benefits (which will not reduce the wage-earning spouse's benefit). For example, if you have a couple in which the wife will receive \$3,200 per month at full retirement age and the husband, based on his earnings record, will receive \$1,000 per month at full retirement age, the husband can choose to receive \$1,600 based on his wife's record.

At the time of death of a wage-earning spouse, the widow(er) can make an election between his or her own benefits or 100% of the deceased wage-earning spouse's benefits.

Retirement Benefits for a Divorced Spouse

Divorce does not prevent the divorced spouse from collecting benefits on the contributing spouse's record ("derivative benefits") if the marriage was at least ten years long and the divorced spouse is at least 62 years old and has not remarried. The divorced spouse can receive retirement benefits based on the contributing spouse's earnings record as long as the contributing spouse is eligible for retirement benefits, e.g., is at least 62 years of age and fully insured, even if he/she is not actually collecting benefits. However, if the contributing spouse is not collecting benefits, the divorced spouse must wait two years from the date of the divorce to begin collecting benefits.

The contributing spouse's benefits are not affected by the divorced spouse's election to collect benefits in this manner.

If the divorced spouse remarries, he/she will not be eligible for derivative benefits from the contributing spouse. However, if such remarriage terminates, the divorced spouse becomes eligible for derivative benefits once again from the former contributing spouse. If a divorced spouse has been married more than once and each time for at least ten years, derivative benefits can come from whichever former spouse's contributions provide the higher benefits.

Retirement Benefits for Divorced Widow(er)s

To receive retirement benefits based on the earnings record of a deceased ex-spouse, the deceased wage-earner must have been fully insured at the time of death, and the dependent surviving ex-spouse must:

- be at least 60 years of age, or 50 if disabled, and have been married to the deceased wage-earner for at least ten years;
- be of any age if caring for a child under the age of 16 who is the natural or adopted child of the deceased wage-earner;
- not be eligible for an equal or higher benefit on his/her own earnings record; and
- not be currently married, unless the remarriage occurred after age 60, or 50 for disabled widow(er)s.

The surviving divorced widow(er) receives 100% of the benefits instead of the 50% received if the former spouse is alive.

Death Benefits for Surviving Child

If someone dies leaving an unmarried child under the age of 18 (or 19 if attending elementary or secondary school full time), that child can be eligible to receive Social Security survivors benefits. Survivors benefits may also be available to stepchildren, grandchildren or adopted children.

SSI Benefits for the Aged

Social Security administers a program known as Supplemental Security Income (SSI) for older adults who have little or no income or assets. SSI is available to someone who is 65 or older (or who, as described below, is disabled) and who, if unmarried, has no more than \$2,000

in resources (\$3,000 for a married couple). SSI may be used to supplement other income, e.g., from Social Security Disability, retirement benefits or a pension if the income and asset guidelines are met.

In general terms, "resources" refers to all assets – although there are certain exclusions, including a home and one car. SSI pays up to \$783 per month in federal benefits for an individual or \$1,175 for an individual with an eligible spouse, with the benefit amount being reduced by income on a dollar for dollar basis (although there are various exclusions).

To apply for SSI, you must go to the local office or call Social Security.

Disability Benefits – SSD and SSI

Social Security administers two programs for the disabled - Social Security Disability (SSD) and SSI for individuals younger than 65.

Each program requires the same medical proof of disability, e.g., a medically determinable physical or mental impairment which has lasted or is expected to last for at least 12 months and that makes it impossible for the applicant to keep a job. The applicant cannot be capable of engaging in "substantial gainful activity". SSD is not normally payable for a temporary condition (i.e., less than 12 months) or for a partial disability; however, you can make up to \$1,260 per month in 2020 and still be considered unable to engage in "substantial gainful activity."

In contrast, SSI applicants who are under 65, in addition to being disabled, must meet the same strict income and asset guidelines as for SSI for the elderly. Because certain income and assets are disregarded, a disabled person with limited income and assets should contact the SSA, consult a qualified attorney, or call Legal Aid to determine eligibility for SSI.

Although SSD has no income or assets test, the applicant must have paid Federal Insurance Contributions Act (FICA) taxes for a certain number of "covered quarters" (quarters of employment). Generally speaking, the applicant must have worked on the books 5 out of the past 10 years; someone who works under the table and

who does not report that income on a federal tax return has not paid FICA taxes during that period.

An application for SSD can be filed on-line, in person at a Social Security office, or over the phone.

SSD pays benefits to the wage-earner and qualifying family members. It also provides a special program to help adults who are unmarried, have never engaged in substantial gainful activity and who become disabled before they attain age 22. If such a disabled adult's parents are deceased (having been fully insured for retirement benefits at the time of death), or are eligible to collect retirement benefits, the disabled adult child can receive 50% of his or her parents' benefits.

The process of applying for and receiving SSD or SSI disability benefits is complicated. The assistance of a qualified attorney with experience in this area of law is highly recommended.

Sources for Finding Attorneys:

- NOSSCR (National Organization of Social Security Claimants' Representatives): 800-431-2804
- Legal Aid of Southeastern Pennsylvania (LASP), Delaware County Division: 610-874-8421
- Delaware County Bar Association Lawyer Referral Service: 610-566-6625.

Applying for Benefits; Denials; SSA Records

Never delay in applying for benefits for which you may be eligible. Any delay on your part could result in you receiving fewer benefits than you are entitled to. When in doubt, contact Social Security to begin the application process as soon as you may be eligible. Remember that you can apply for some Social Security benefits online.

Social Security will give you a deadline to finish certain tasks (e.g., file a written application after you call them; file a written appeal if you are dissatisfied with their decision, etc.) and you must comply with their timelines or you will lose your right to potential benefits. Typically, their deadlines are within 60 days; however, some deadlines might be shorter so you must check this carefully.

If Social Security denies your claim for benefits, you are entitled to a written explanation of the reasons for the denial and in most cases, you will have the right to appeal the decision.

If you are receiving benefits or applying for benefits from Social Security, it is important that you inform the SSA of any changes or corrections to your records. For example, if you move, change bank accounts, or disagree with the earnings records that is posted to your Social Security account, you should take immediate steps to inform the SSA of any changes or additions. Likewise, if you marry or divorce or if someone receiving benefits dies, you should notify the SSA immediately. It is important to check your records every couple of years, at least until you are receiving benefits, to verify that your earnings records on file with the SSA is accurate.

CHAPTER 14

Medicare

Medicare is a program administered by the federal government to assist older Americans, and disabled Americans. The traditional Medicare program has three parts. Part A consists of coverage for most of the costs involved in a hospital stay; Part B is medical insurance which pays a portion of the cost for doctor and outpatient medical care. In Pennsylvania, Part B is administered by Highmark Medicare Services in Camp Hill. Part D is a prescription drug plan. The Medicare website, www.medicare.gov is a helpful resource to understand Medicare benefits.

An individual is entitled to Medicare because the individual or the individual's spouse paid for it through Social Security taxes. The program is provided to assist senior citizens whose medical bills are typically higher than the rest of the population. Medicare eligibility begins at age sixty-five (65). It is advised that you apply three (3) months before your sixty-fifth (65th) birthday even if you are waiting to apply for Social Security benefits until full retirement age.

Part A – Hospital Insurance

Part A has two types of eligibility. Most people age sixty-five (65) or older are covered, for free, based on their work records or on their spouses' work records. People over age sixty-five (65) but who are not eligible for free Part A coverage based on their work record can enroll and pay a monthly premium. This premium amount changes from year to year. For 2020, the maximum Part A premium is \$458.

Part B – Medical Insurance

Anyone who is age sixty-five (65) or older and a citizen of the United States or a resident of the United States who has been here lawfully for five (5) consecutive years is eligible to enroll in Medicare Part B medical insurance. This is true whether or not the individual is eligible for Part A hospital insurance. Everyone enrolled must pay a monthly premium. The amount of premium depends on your income. The standard Part B premium for 2020 is \$144.60 per month and depending on your income can be as much as \$491.60 per month. Eligibility and enrollment are handled by the Social Security Administration Chester Office, 807 Crosby Street, Chester, PA 19013 at 800-772-1213 or the Upper Darby Office, 8645 West Chester Pike, Upper Darby, PA 19082 at 610-694-8907. The website is www.SocialSecurity.gov.

The Pennsylvania Department of Aging (PDA) has programs that will pay the Part B monthly premium (and in some cases the Medicare deductibles and copayments) for eligible residents. To determine if you are eligible, contact the Delaware County APPRISE program at 484-494-3769. The APPRISE program is the State Health Insurance Program (SHIP aka APPRISE). Senior Community Services (SCS) holds the contract in Delaware County to provide this service on behalf of COSA and PDA.

Cost of Treatment

Part A of Medicare covers most of the costs incurred directly from a hospital as inpatient care. Some of the costs of inpatient treatment in a skilled nursing facility may also be covered. Medicare Part A covers hospice care (including

drugs; medical, nursing and social services; certain durable medical equipment; and some other services such as spiritual and grief counseling) for people with a terminal illness. However, doctors' bills are not covered under Part A as they fall under Part B. To be eligible for Part A hospital insurance coverage, the care and treatment must be medically reasonable and necessary. This means that if the treatment could safely be given in an outpatient setting at the doctor's office or even at the patient's home, Part A will not provide coverage. It also rules out elective or cosmetic surgery. During each benefit period, the individual must pay the hospital insurance deductible before Medicare will pay anything toward the incurred bill. In 2020, the deductible is \$1,408. To be covered by Medicare Part A, a stay in a skilled nursing facility must be preceded by a stay of at least three (3) days in a hospital and the patient's doctor must verify that the individual requires daily skilled nursing care. Medicare will cover up to one hundred (100) days of skilled care in a skilled nursing facility during any one benefit period and the first twenty (20) of these days is covered 100%. For the balance of the days, the patient is responsible for the daily co-payment, which in 2020 is \$176 per day. Once a person has been in a skilled nursing facility for one hundred (100) days in a benefit period, there will be no further coverage from Medicare Part A and the patient will be totally responsible thereafter.

Part B medical insurance requires that the services provided by the doctors, clinics and laboratories are medically necessary. Traditional Medicare now provides many more preventive medical procedures. For Medicare Part B, there is an annual deductible of \$198 per year (2020). Medicare Part B then pays eighty percent (80%) of the Medicare approved amount and the individual is responsible for twenty percent (20%) which is usually covered by his or her supplemental health insurance.

Pennsylvania has enacted the Medicare Overcharge Measure ("MOM") law, which forbids any doctor from billing patients for the balance of the bill above the approved Medicare amount.

You can call the Pennsylvania Department of Aging at 717-783-8975 if you believe that your doctor is attempting to bill you for any amount above the amount Medicare approves. The doctor can bill the patient for the twenty percent (20%) of the approved fee not paid by Medicare. This is why it is important to have supplemental insurance, aka Medigap, if you have traditional Medicare.

Appeals in Denials of Benefits

If you are denied Medicare benefits you have the right to an appeal, which is somewhat complicated. The Pennsylvania Department of Aging has a program called “APPRISE” which offers free Medicare counseling to older Pennsylvanians. The APPRISE program is run by trained volunteer counselors who provide free one-on-one assistance or telephone assistance with eligibility and benefits questions for all people over the age of sixty (60), their families or their caregivers. You can call them toll free at 800-783-7067 or contact the Delaware County APPRISE program by calling 484-494-3769. The APPRISE program is the State Health Insurance Program (SHIP – aka APPRISE). Senior Community Services (SCS) holds the contract in Delaware County to provide this service on behalf of COSA and PDA.

All Medicare participating hospitals must provide Medicare patients with a notice of discharge and appeal rights within two (2) days of admission. If a beneficiary receives notice of discharge, he or she may make a request for review with Livanta, the contracted quality improvement organization, at 866-815-5440 or visit www.bfccqioarea1.com. Filing a timely request for review should stay the discharge, pending review. You can also call the Medicare Hotline at 800-Medicare (800-633-4227) or TTY/TDD at 877-486-2048 or the website at www.medicare.gov.

Questions concerning Medicare Part B should be addressed to Highmark Medicare Services, Part B Claims, P.O. Box 890418 Camp Hill, PA 17089-0418; telephone 877-235-8079, or contact the Delaware County APPRISE program by calling 484-494-3769.

Note: Many Medicare appeals – whether traditional or managed care – are successfully won by the consumer. It is worth your time to question and seek review. If you are in an HMO and services are reduced or denied, you have a right for an expedited appeal [a seventy-two (72) hour review]. Call HMO Member Benefits Department and state, “I am calling to request an expedited seventy-two (72) hour decision because I believe my health could be seriously harmed if my services are cut or reduced.”

Program Changes

Medicare has been undergoing substantial change. To keep current, refer to the Medicare handbook, Medicare and You, which is periodically mailed to every person covered under the Pennsylvania program and is available at www.medicare.gov/Pubs/pdf/10050-Medicare-and-You.pdf, call 800-633-4227, or go to the website at www.medicare.gov to get help with your Medicare questions. You may also request a Medicare handbook on audiotape, in large type or in Braille.

Supplemental Health Insurance for Traditional Medicare

Even after Medicare pays its portion of an individual’s medical bills, the remaining balance can be staggering. Therefore, it is recommended that people purchase some type of private insurance to pay all or part of that balance. Because these Medicare Supplemental insurance policies are designed to fill the “gaps” in Medicare payments, they are commonly referred to as “Medigap” plans. There are nine (9) standardized policies: Plan A, Plan B, Plan D, Plan G, Plan H, Plan I, Plan L, Plan M, and Plan N. As of 2010, Plans E, H, I and J are no longer sold, and as of January 1, 2020, Plans C and F are no longer sold. But, if you already have one of these plans, you can keep it.

Plan A offers the most basic coverage and all insurance companies selling Medigap policies are required to make Plan A available. All the Medigap Plans are regulated by the federal government, so that they offer the same benefits, BUT they are not all at the same price for the

same plan. It pays to shop for the best price. For information on your Medigap plan options or contact the Delaware County APPRISE program by calling 484-494-3769.

Caution: Be very careful to coordinate your Medigap Insurance or any employer insurance with the drug plan you choose. For more on Medicare Prescription Drug plans see Chapter 16.

With traditional Medicare, you receive a Medicare Card (the red, white and blue card with Medicare Parts A&B). If you purchase a Medigap policy as secondary insurance, Medicare is billed first for covered medical services, pays its share and then the secondary insurance receives the bill and pays its share. With traditional Medicare, seniors do not have a “provider network”; there are no co-pays; patients do not need a referral and are covered anywhere in the country. This is not the case with Medicare Advantage Plans.

Medicare Advantage Plans

Many Medicare participants have chosen to enroll in a form of Medicare coverage other than traditional Medicare. This alternative insurance coverage is referred to as Medicare Advantage, or Medicare Part C. Many of the benefits of Medicare Advantage are now available to Medicare enrollees under traditional Medicare (e.g. preventative health care and medical tests). The following represent the types of Medicare Advantage plans available:

- HMOs are managed care plans that require you to go to doctors and hospitals in the plan’s network, except in an emergency.
- PPOs are managed care plans that allow you to see specialists without a referral. You pay more if you go to a doctor or hospital outside the plan’s network, except in a medical emergency.
- PFFs plans are private fee-for-service plans that allow you to go to any doctor or hospital that accepts their terms. Not all providers agree to them; they can reject or accept a plan on a visit-to-visit basis. In an emergency, the plans must cover treatment by any doctor or hospital.

With Medicare Advantage plans there can be significant co-pays and deductibles that the participant must pay for hospital and skilled nursing facility stays. If you are enrolled in a Medicare Advantage program but are interested in considering a switch to traditional Medicare, you should contact the Senior Community Services Delaware County APPRISE program by calling 484-494-3769.

CHAPTER 15

Medicare Prescription Drug Benefit/PACE & PACENET/Other Sources of Help for Prescription Medications

The Medicare Prescription Drug Benefit – Medicare Part D

Medicare Part D is a federally subsidized drug program offering limited insurance coverage for prescription drugs to those persons who are Medicare recipients. This includes disabled persons who also receive Medicare benefits. The drug benefit is available only through private insurance companies who contract with Medicare to provide drug plans.

Keep in mind the following points:

- The program is voluntary although there is a financial penalty for those who do not sign up during their initial enrollment period.
- To obtain the coverage, you will pay a monthly premium of approximately \$32.74 or more depending on the coverage you choose. However, it will be waived in instances of those with limited income and limited resources.

Note: The health care reform law establishes a new income-related Part D premium, effective in 2011.

- Be careful when you decide to enroll because you normally can only switch plans one time per year.

The Medicare D standard plans allow for a maximum deduction of \$435 in 2020. Most Medicare prescription drug plans offer a coverage gap after you and your Plan have paid a set amount for medications in that year. You will pay a percentage of the cost of medications while in this gap and that percentage is set annually by Medicare.

In 2020 the initial coverage limit before you reach the coverage gap is \$4,020. Once in this gap you will pay 25% for both generic and brand name prescription drugs. Once you reach an out-of-pocket threshold, you are eligible for catastrophic coverage. The out-of-pocket threshold for 2020 is \$6,350, which includes all the money you paid for prescriptions throughout the year, including the coverage gap. Medicare will cover at least 95% of the cost of your medications for the remainder of the year once catastrophic coverage begins.

Although you will pay no more than 25% of the brand name drug cost in the coverage gap, almost the full price of the drug will count as out-of-pocket cost to get you out of the coverage gap. What you pay and what the Plan and manufacturer pays (75% of the drug cost) will count toward your out-of-pocket spending.

Medicare pays 75% of the price for generic drugs during the coverage gap and you will pay 25%. The generic drugs count differently in getting you out of the coverage gap. Only the amount you pay will count toward your out-of-pocket cost.

Items that count toward the coverage gap:

- Yearly deductible, co-insurance and co-payments;
- The discount you get on Plan named drugs in the coverage gap; and
- What you pay in the coverage gap.

Items that do not count toward the coverage gap:

- The drug plan premium;
- Pharmacy dispensing fee; and
- What you pay for drugs not covered in the Plan Summary.

Drug plans may also charge you a portion of the cost of your medications. These charges

are known as co-insurance or co-payments. Costs may vary based on whether your drugs are brand name or generic, and are also set depending on the medication tier.

Co-insurance is a percentage of the total cost of the prescription drug. These percentages may be higher for drugs in higher tiers or for brand name vs. generic medications. These amounts are set by the provider and should be considered when determining your Medicare D costs for 2020. They are not regulated by Medicare.

If you are in a Medicare Advantage plan; i.e., HMO, PPO, or PFFS, some will offer hospital, medical and prescription drug coverage under a single policy but not all plans offer prescription drug coverage. Consumers who wish to enroll in a Medicare Advantage plan must take the plan's prescription drug coverage. If you enroll in a stand-alone prescription drug plan you could lose your medical insurance.

Note: Effective 2019, for the first three months of the calendar year, there will be a continuous open enrollment and disenrollment period for those in a Medicare Advantage Plan.

During this three-month period a Medicare Advantage eligible beneficiary can make a one-time change to switch to:

- Another Medicare Advantage C Prescription Drug Plan;
- A Medicare Advantage Only Plan; and
- Original Medicare, with or without a Prescription Drug Plan.

If an individual is enrolled in a Medicare Advantage Only plan, that person may also switch to one of the above choices.

Warning: Whatever plan you choose, you must be certain that that plan will cover your required drugs. If the plan does not cover your required drugs, then you will pay 100% of the cost for those drugs and expense will not count towards your out-of-pocket costs. In some cases, you may ask your doctor if different medication covered by the plan would be appropriate for your condition. Drugs purchased from Canada or other countries will not count toward the out-of-pocket limits.

Enrollment

Anyone with Medicare is eligible to enroll in a Part D plan. To enroll in a Part D Plan, the individual must have Part A OR Part B. To enroll in a Medicare Advantage Prescription Drug Plan, the consumer must have Part A and Part B. Sign up or changes in plans are made between OCTOBER 15TH AND DECEMBER 7TH each year.

How do you find out about the plans offered in your area?

First, you may go to the Medicare website at www.medicare.gov or call Medicare at (800) 633-4227. Second, you may call the APPRISE program at Senior Community Services at (484) 494-3769.

Hints:

- If you are in a Medicare HMO or PPO which offers prescription coverage, then you must accept that plan's prescription drug coverage.
- If you are in Medicaid, you could be automatically enrolled in a Medicare Part D Plan. If you do not like the plan for any reason, you are eligible to change once per calendar quarter during the first nine months of the year.

Creditable Coverage

Creditable coverage is prescription drug coverage that is as good as, or better than, standard Part D coverage. Examples of creditable coverage include Veteran's benefits, Federal employee group health insurance, certain retiree drug plans, PACE/PACENET, and TriCare (coverage for military and their families). All insurers are required to notify their Medicare-eligible members of their plan's creditable coverage status. This notice must be received prior to the October 15 Annual enrollment period.

Late Enrollment Penalties

If you choose not to enroll in Medicare Part D during your initial enrollment period, there can be a penalty. The Medicare Part D premium will increase at least one percent (1%) per month of the average national premium until the month that you do enroll. You do not pay the penalty if you are currently enrolled in a drug program

through a private insurer such as through a retirement plan that has creditable or equivalent coverage nor do you pay a penalty if you are under Medicaid or PACE/PACENET.

Extra Help for People with Limited Incomes

The Social Security Administration offers extra financial help in paying premiums and co-pays for people with limited incomes and assets. You may qualify for this Extra Help if your income is below \$1,595/month (or \$2,155/month if you are married and living with your spouse—and more if you have dependent children or grandchildren living with you), and if your assets are below \$14,610 (or \$29,160 if you are married). Your assets include things like bank accounts, stocks, and bonds. They do not include the house you live in, your car and other personal possessions such as your furniture or jewelry and life insurance.

You may already be receiving some form of government assistance that makes you automatically eligible for the Extra Help—for example, a Medicare Savings Program that pays your Medicare Part B premium, or Supplemental Security Income (SSI). If so, you will automatically get Extra Help and need not apply.

If you are not included in one of these government programs but think you may qualify for the Extra Help based on your limited income and assets, you will need to apply for it with the Social Security Administration. You can apply on your own or, if you prefer, someone else can help you.

- **By Mail**—Get an application from the Social Security Administration. (Must be original LIS application- SSA-1020) Fill it out and mail it to the Social Security Administration. If you are married, both you and your spouse must apply separately. An application can also be mailed to you by calling APPRISE at (484) 494-3769.

Send the application to:

Social Security Administration
Wilkes-Barre Data Operation Center
P.O. Box 1020
Wilkes-Barre, PA 18767-9910

- **By Phone**—Call the Social Security Administration at 1-800-772-1213 (TTY: 1-800-325-0778).
- **By Internet**—you may apply online through the Social Security Administration's www.ssa.gov/prescriptionhelp. No signature is required.
- **In Person**—you may apply by going to the local Social Security office.

Sources of Information

- The Medicare and You 2020 Booklet
- AARP, www.aarp.org.
- Centers for Medicare & Medicaid Services, www.cms.gov/newsroom/fact-sheets/medicare-part-d-fact-sheet/.
- Senior Community Services Delaware County APPRISE Program at (484) 494-3769, or APPRISE at 1-800-783-7067.
- Medicare: www.medicare.gov, Help Line 1-800-Medicare or 1-800-633-4227
- PA Department of Aging, www.aging.pa.gov.
- PA Long Term Care Hotline at 1-866-286-3636, www.longtermcare.state.pa.us.
- Social Security Administration, www.ssa.gov.

PACE and PACENET (Pharmaceutical Assistance Contract for the Elderly)

Pennsylvania has a limited pharmaceutical assistance program for the elderly (age 65 and over), funded by the PA lottery. Under the PACE program, citizens are eligible if their annual income, not including their Part B premium, is at or below \$14,500 for a single person or \$17,700 for a married couple. There is a \$9 co pay for name brand and \$6 for generic brand for each prescription.

You must have lived in Pennsylvania for at least ninety days prior to the date of your application and you must not be eligible for pharmaceutical benefits under Medicaid. Medicaid provides full prescription drug coverage.

The PACE and PACENET programs are based on income only and not on assets. PACENET's income limits are slightly higher than PACE. A

single person's total income can be at or below \$27,500, not including the cost of the Part B premium.

A couple's combined total income can be at or below \$35,500, not including the cost of the Part B premium. PACE/ PACENET eligibility is subject to annual renewal on review of income. Eligibility could be terminated if you move out of state or are found guilty of fraud or abuse by the Department of Aging or if you are covered by another plan that pays the full costs of your prescriptions.

PACE PLUS is the term used when PACE and PACENET cardholders are also enrolled in Medicare Part D. PACENET cardholders will pay the equivalent of the Medicare Part D plan premium (\$35.63 in 2020) to either the pharmacy or directly to the non-partner Part D plan, plus any additional premium amount above the benchmark, if applicable. Once the monthly premium has been paid, they will pay no more than the PACENET co-payments of \$8 for each generic prescription and \$15 for each brand name.

If the premium is not met each month, it will accumulate. In addition, the individual will pay \$8 for generic and \$15 for brand names.

Note: Income for both PACE and PACENET is based on the prior year; therefore, if you apply in 2020, eligibility is based on your 2019 income. Your income does not include the cost of your Medicare Part B premium, which is \$144.60 for most covered individuals in 2020. Applications are available from your local area Agency for the Aging, APPRISE, senior citizen center, or your local legislator's office. Or you can apply online through the website at <https://pacecares.magellanhealth.com>. Your completed application must be accompanied by proof of age and residency.

You may apply thirty days prior to your 65th birthday. If done too soon before your 65th birthday, you will be rejected and need to re-apply. PACE/ PACENET is only used in Pennsylvania.

If you have other questions about PACE or PACENET or want to enroll over the phone, you can call toll-free 800-225-7223. In Delaware County you can contact the APPRISE Program at (484) 494-3769.

Veterans Benefits

Are you a veteran? If so, the Department of Veterans Affairs (VA) covers prescription drugs (after a small co-payment) for veterans who meet certain guidelines. A VA doctor must prescribe the drugs. Further information is available from the VA at (877) 222-8387 or online at www.va.gov.

Veterans are the only exception to having an additional Part D plan and can enroll in PACENET without having to pay a premium. They may have an additional plan to facilitate access to prescriptions without having to visit the VA hospital.

Note: For additional information see Chapter 22 on Veteran's Benefits.

Pharmaceutical Company Programs

Several pharmaceutical companies offer discounts to many of their customers. These programs have income limits. Typical income limits are \$20,000 (single) and \$25,000 (married). They may require that applicants have limited prescription coverage or none.

Many manufacturers participate in the PA Patient Assistance Program to assist people with lower incomes. This program is particularly helpful to persons between 55 and 64 years of age or disabled who do not receive any prescription coverage. It also offers assistance to people currently in the coverage gap. For more information, call the PA Patient Assistance Program at (800) 955-0989 or the Senior Community Services Delaware County APPRISE Program at (484) 494-3769.

Consumers can also research company assistance programs through the Partnership for Prescription Assistance Web site at www.pparx.org or call (888) 477-2669.

Another resource is Needy Meds, www.needy-meds.com, which offers additional information on help paying for prescription drugs.

Some pharmacies have discount plans or in store programs for discounts. Medications purchased from drug discount programs do not count towards the out-of-pocket costs for the consumer.

Overall, there are many drug discount programs available. These do not replace Medicare Part D and should be used in addition to/or in the coverage gap only.

Ways to Hold Down Drug Costs

Here are some additional tips:

- Buy a 90-day supply. The “per pill” cost may be much less if a 90-day supply is purchased rather than a 30-day supply. In addition, if the insurance requires a copayment there may be fewer co-payments if a 90-day supply is purchased. Most have a mail order option and the consumer pays only two instead of three co-pays for mail order service.
- Ask the doctor to prescribe generic drugs as often as possible.
- Review medications with the doctor at each visit. There may be medications that are no longer needed.
- Request free samples from the doctor.

Ask for as many free samples as possible. Pharmaceutical companies give doctors some drug samples each year.

CHAPTER 16

Medicaid

Medicaid is a joint federal/state program operated by the Pennsylvania Department of Human Services (DHS), formerly known as the Department of Public Welfare, through its local County Assistance offices. Medicaid helps to pay for long term care if someone is in a nursing home or the individual needs medical help at home. Currently, Medicaid in Pennsylvania does not pay for assisted living. Eligibility is based on medical need as well as financial need.

In Delaware County, all applications for Medicaid and long-term care benefits are handled through the Delaware County Assistance Office at 701 Crosby Street, Chester, Pennsylvania 19013.

Eligibility for Nursing Home Benefits

Medicaid benefits are available under the following eligibility standards:

General Eligibility

The Applicant must be 65 years or older or disabled. The Applicant must be a citizen of the United States (or equivalent) to apply in Pennsylvania. The Applicant must be a resident of Pennsylvania.

Note of Caution: Medicaid eligibility is based on a combination of federal and state law. The following information should be used as only a general guide for Pennsylvania residents. You should be sure to consult with an attorney who is an experienced practitioner in the area of elder law to be sure the current rules are correctly applied to your situation.

Medical Eligibility

An Applicant for Medicaid benefits must actually need long term care in a skilled nursing facility (or, if at home, require a similar level of care). A medical assessment, done on Form MA-51 - Medical Evaluation, should be completed by the treating physician. Your provider may have this form, or you may download it from the DHS website at: <https://www.dhs.pa.gov/providers/Providers/Documents/NHT%20Providers/MA%2051.pdf>.

Financial Eligibility Assets

As a general rule someone is eligible for Medicaid in a nursing home if the assets (generally cash, stocks, bonds and real estate) of the nursing home resident are below \$2,400; however, there are a number of exemptions or excluded assets. For someone whose income is under \$2,350 per month in 2020, there is a disregard of \$6,000 of assets so the nursing home applicant may have up to \$8,000 in assets.

Asset Exemptions (whether a single applicant or married applicant)

Assets which are not counted for purposes of the above calculation and which may be protected include, but are not limited to: the family residence (however, special rules apply as to possible estate recovery and for 2020 there is a limitation on home equity of no more than \$595,000), one motor vehicle, property used

in a trade or business, term insurance, life insurance with a face value of a maximum of \$1,500, an irrevocable burial reserve, household goods and personal effects, and a community spouse's (spouse at home) qualified retirement account or IRA.

Income

If the applicant's income is insufficient to meet nursing home expenses, then the applicant is income eligible. The income of the individual receiving benefits (both earned and unearned income, such as Social Security or pension) must be contributed toward the care of the individual except he/she is allowed to keep \$45 per month for personal needs. Under certain circumstances for married couples, a community spouse will also be allocated income from the institutionalized spouse's income, with this amount being deducted from the institutionalized spouse's contribution to his/her nursing home costs.

Example: Applicant's income is \$3,000 per month and the nursing home cost is \$11,000 per month. The applicant's income will not make the applicant ineligible because the income (\$3,000) is insufficient to meet his/her medical needs. Note, however, that this income will be applied toward nursing home care costs when qualified for Medicaid.

Special Rules for Married Couples' Assets

For married couples, the community spouse can keep \$25,278 in 2020 as a minimum or one-half of the combined countable assets of both spouses up to a maximum amount, which in 2020 is \$128,640. This figure is known as the Community Spousal Resource Allowance (CSRA) or the "spousal share."

Available assets consist of assets owned individually by the applicant or his/her spouse, assets titled jointly between spouses, and assets titled jointly with a spouse and any third party (assuming the third party did not contribute the funds).

However, as stated above, the community spouse's IRA or pension type savings is com-

pletely exempt. In order to determine the CSRA, the value of assets is calculated based on completion of a Resource Assessment Form which lists the amounts as of the date of the admission of the applicant to the nursing home.

Income

For husband and wife, the income of the spouse who remains at home is not counted. In 2020, if the community spouse's income is below the range of \$2,114 to \$3,216, then it may be possible for the community spouse to keep some of the institutionalized spouse's income. Also, if the community spouse has extraordinary needs, such as pharmacy bills or assisted living costs then it is possible to receive more than the limit. There is also a possibility of increasing the amount of income allocated to the community spouse based on shelter costs.

Ineligibility (whether single or married)

As part of the Deficit Reduction Act of 2005 ("DRA"), many Medicaid eligibility rules were changed. Several of the most important and confusing changes to these rules relate to the treatment of gifts (a "gift" includes any transfer for less than fair market value).

Under the prior gifting rules for those gifts made before February 8, 2006, (the date of the enactment of the DRA), a gift made the applicant temporarily ineligible for Medicaid benefits even if all of the other eligibility criteria had been satisfied. Under the prior rules, a person who made a gift transfer would be ineligible from the first day of the month in which the gift was made, and the penalty having begun in that month, would continue for the number of months that the gifted funds could have been used to fund his/her care. The actual length of time that a person was ineligible varied on the size of the gift, but the starting point for the penalty period began during the month that a gift was made. Also under these prior rules, an individual would have to supply financial information for a "look-back" period of thirty-six (36) months prior to the Medicaid application date, but that actual period of ineligibility could be shorter or longer depending on the size of the gift. Please note,

even under the prior rules, certain transfers into and out of certain trusts were subject to a sixty (60) month look-back period.

Under the DRA the rules for gifts made on or after February 8, 2006 were significantly changed so that an individual who applies for Medicaid must provide financial information for the 60 months prior to the date of his/her Medicaid application. This application must establish that the applicant is medically and otherwise financially eligible for Medicaid. Then, as part of the application process, the County Assistance Office will review the financial records of the applicant to see what, if any, gift transfers were made within the applicable look-back period.

Under the new rules, the value of all of the gifts occurring within the 60 month lookback period, are added together, and then there will be a calculation to see how many days these gifts could have funded the person's care. What is critical here is the penalty period will not begin to run until a person is "otherwise eligible" as required under the DRA. In order for these new requirements to be met, and in order to begin a penalty commencement date, the person must submit a Medicaid application to establish medical and financial eligibility and have this application denied solely due to the existence of pending transfer penalties.

Only after an individual has depleted his/her assets, become medically eligible and submitted an application which is denied solely due to transfers, will the transfer penalties begin to run. The length of the penalties continues to be measured by the size of the total amount gifted, but is now determined by the number of days (and no longer the number of months) of ineligibility. Transfer penalty rules may create hardship cases (where a denial will deprive an individual of medical care and endanger his/her health or life). The Department of Human Services (DHS) will consider whether to impose a penalty for a transfer where it would cause an undue hardship. Requesting relief requires a timely filed appeal. The advice of an experienced elder law attorney is often required to resolve many of the difficult issues which arise from the extended look-back period of 60

months, and the delayed commencement of the transfer penalty. Elder law attorneys can help you understand these complex rules

Estate Recovery

Upon the death of a person over fifty-five (55) years of age who has received Medicaid benefits during the five (5) years preceding death, the state must seek recovery of the amounts paid from the deceased's estate. At this time, Pennsylvania limits recovery to an individual's probate estate. This includes any assets titled in the individual's name alone at the time of death that are or could have been transferred by a Will.

There are also provisions for a person or family to request waiver of the recovery due to hardship or to request postponement of the recovery. For additional information, contact the Estate Recovery Program Hotline at 800-528-3708, an experienced elder law attorney, or Legal Aid of Southeastern Pennsylvania – Delaware County Division at 610-422-7053.

2022 Important Elder Law Numbers

MEDICAID (MEDICAL ASSISTANCE):

| | |
|--|------------------------------|
| Minimum Community Spouse Resource Allowance (CSRA) | \$27,480 (1/2022) |
| Maximum CSRA | \$137,400 (1/2022) |
| Minimum MMNA | \$2,289/month (7/2022) |
| Maximum MMNA | \$3,435/month (7/2022) |
| Income cap for Waiver (MA for Home Services) | \$2,523/month/gross (1/2022) |
| Penalty Divisor (Daily) | \$482.50/day (1/2022) |
| Monthly Personal Needs Allowance | \$45/month |
| Excess Home Equity Limit | \$636,000 (1/2022) |
| Excess Shelter Standard | \$687.00 (7/2022) |

SSI BENEFIT

| | <u>Federal</u> | <u>State Supplement</u> | |
|------------|----------------|-------------------------|------------|
| Individual | \$841 | +22.10 | \$ 863.10 |
| Couple | \$1,261 | +33.30 | \$1,294.30 |

MEDICARE:

Part A:

| | |
|-------------------------------|----------------------|
| Hospital Deductible | \$1,556 |
| Hospital Co-Pay (days 61-90) | \$389/day |
| Hospital Co-Pay (days 91-150) | \$778/day |
| Hospital Co-Pay (days 151+) | All Costs on Patient |
| SNF Co-Pay (days 21-100) | \$194.50/day |

Part B:

| | |
|--|------------------|
| Part B Premium for most enrollees | \$170.10/month** |
| **(Higher if income greater than \$91,000/individual-\$182,000/couple) | |
| Part B: Deductible | \$233/year |

Part D

Beneficiaries who do not qualify for any level of subsidy will pay the following for a 2022 standard Part D Plan in addition to the plan's premium:

* An annual deductible of \$480

* During the initial coverage period, a 25% co-pay for each prescription until the consumer's total drug costs reach \$4,430

* During the coverage gap (also referred to as the "doughnut hole"), a percentage of the costs of drugs 25% of the cost of brand name drugs and 25% for generic drugs plus a small dispensing fee) until the consumer's total out-of-pocket expenses reach \$7,050.

* During the catastrophic coverage period, a co-pay of \$3.95 for generics and \$9.85 for name brand drugs, or a 5% co-pay, whichever is greater

* Not all of the costs consumers pay during the doughnut hole count toward out-of-pocket expenses.

The Delaware County Elder Law Handbook & Resource Guide – Update to 7th Edition

VA: AID & ATTENDANCE:

- \$2,050/month for a Single Veteran \$24,609/yr.
- \$2,431/month for a Veteran and Spouse \$29,175/yr.
- \$1,317/month for a Surviving Spouse \$15,815/yr.
- \$3,253/month for a Vet married to a Vet (both A & A) \$39,036/yr.

Note: effective 10/18/2018, the VA established new eligibility rules including a 3-year lookback period and potential transfer penalties. In addition, effective 12/1/2021, the “net worth bright-line limit” is \$138,489.

PACE/PACENET ELIGIBILITY NUMBERS:

- PACE single: income up to \$14,500/year
- PACE married: income up to \$17,700/year
- PACENET single: income up to \$27,500/year
- PACENET married: income up to \$35,500/year

FEDERAL ESTATE TAX/GIFT TAX – The lifetime Gift and Estate Tax Exemption for persons dying on or after 1/1/2018 and before 1/1/2026 will be \$10 million (as adjusted annually for inflation). Effective 1/1/2022, the lifetime Gift and Estate Tax exemption is \$12.06 million per individual AND \$24.12 for a married couple.

Annual Gift Tax Exclusion Amount – Effective 1/1/2022 \$16,000 per donor, per recipient.

CHAPTER 18

Low Cost Legal Services for Seniors

Senior citizens who need low cost legal services have several options, including:

COSA (County of Delaware Services for the Aging)

COSA can assist with referrals to low-cost legal clinics or agencies.

Phone: 610-490-1300 or 1-800-416-4504

Fax: 610-490-1500

Web: www.delcosa.org

SeniorLAW Center

SeniorLAW Center provides a wide range of services in our mission to protect the legal rights and interests of the elderly.

Phone: 610-910-0215 (Delaware County Office) or 1-877-727-7529 (statewide number)

Fax: 215-988-1243

Web: <https://seniorlawcenter.org/>

Legal Aid of Southeast Pennsylvania (LASP)

LASP provides free legal services to seniors in the following areas:

- Bankruptcy, consumer law and debt relief
- Child custody and dependency
- Criminal record expungement and record-sealing
- Domestic violence and Protection from Abuse
- Elder law
- Employment law
- Family law
- Grandparent custody rights
- Housing, including mortgage foreclosure, landlord/tenant, public and subsidized housing
- Public Benefits, including SSI, SSDI, unemployment compensation, TANF (cash assistance), SNAP (food stamps), medical assistance (Medicare) and more
- Social Security overpayments, underpayments, and disability eligibility
- Utilities

Advice and Referral Helpline: 877-429-5994 – Monday through Friday 9am to 1pm
General number: 610-422-7053
Web: www.lasp.org

PA Health Law Project

PHLP is a 501(c)(3) non-profit organization providing free legal services to people having trouble getting or keeping health coverage.

Phone: 1-800-274-3258

Email: staff@PHLP.org

Web: www.phlp.org/en/

Delaware County Bar Association

The Delaware County Bar Association operates a program called the Lawyer Referral Service to connect people with lawyers who can assist them with certain legal matters. There is no charge to use this service. Lawyers who are members of the Delaware County Bar Association join “panels” based on the areas of law which they practice. Presently, those panels include:

- Civil Panel (includes cases such as family law, personal injury, contract law, employment law, estate planning, etc.)
- Criminal Panel

Phone: 610-566-6625

Web: www.delcobar.org/public/lawyer-referral/

CHAPTER 19

Public Benefits for Non-Citizens

Most non-citizens, except qualified noncitizens, are not immediately eligible for public benefits (e.g. Cash Assistance, Food Stamps, Medical Assistance). Qualified non-citizens include asylees, refugees, Cuban/Haitian entrants, veterans, victims of trafficking and certain battered spouses and their children. Even those persons with a “green card” (lawful permanent residents) are not eligible for means tested public benefits until they have lived in this country for at least five years.

Lawful permanent residents may be eligible for up to seven years of Supplemental Security

Income (SSI) benefits from the Social Security Administration if they can establish they are disabled. Lawful permanent residents who have resided in the United States for less than five years, “undocumented immigrants,” or other immigrants who have not been granted legal residency are eligible for Medical Assistance only if they are pregnant or suffering from a dire medical condition which eventually may be life-threatening. However, citizen children of undocumented parents (or children of parents not yet eligible for public benefits because they have not resided in this country for five years) have the same rights to public benefits as all other citizens and non-citizen parents may (and should) apply for these benefits on behalf of their children.

Undocumented parents are not required to disclose any information about their immigration status when applying for benefits for their citizen children.

CHAPTER 20

Food Stamps (SNAP)

Supplemental Nutrition Assistance Program (SNAP) is a Pennsylvania program that provides the benefit previously known as “food stamps.” SNAP benefits are used to buy food and help low-income households obtain more nutritious diets by increasing their food purchasing power. Food stamp coupons or paper stamps are no longer issued. Instead, the SNAP recipient receives a plastic card, the Pennsylvania EBT ACCESS Card.

This card allows withdrawals for food purchases at grocery stores and supermarkets. The store simply uses the EBT ACCESS card to “electronically” subtract purchases from the SNAP account. Eligibility for SNAP is calculated based on a household’s income (how much you and the people who live and eat with you earn or receive from the government) less certain expenses (including rent or mortgage, taxes, insurance, and utilities). The benefit amount varies based upon the applicant’s income and resources. Resources do not include the value

of your home, personal items in the home (furniture or jewelry), and one car.

For information, you should contact the Delaware County Assistance Office at either of these locations:

701 Crosby Street
Chester, PA 19013
610-447-5500

845 Main Street
Darby, PA 19023
610-461-3800

CHAPTER 21

Immigration: Becoming a U.S. Citizen as a Senior

Becoming a citizen can be challenging and stressful. This process is even more daunting for senior citizens because it is harder to remember U.S. history and government the older you get. It is also difficult to learn how to read, write, speak and understand a new language as an older adult. Many seniors will not even consider trying to become a U.S. Citizen, because of the fear of the unknown and of failure. How many questions will I be asked? I can’t remember 100 questions and answers. My English is not that strong. My health is not good and I don’t think I can take these tests. These are all valid concerns, but there are many waivers of the civics and English tests available to seniors depending on their age and years of residency as a permanent resident in the United States. Further, all naturalization applicants have the opportunity to study the exact questions and answers prior to taking the civics test.

“65/20” Exception

Key Points:

- **English Exam: Exempt**
- **Civics Exam: Memorize only 20 questions in your own language!**

Under the Immigration and Nationality Act’s “Civics Test ‘65/20” (Exception for Elder Applicants), a green card holder who is 65 years of age and older and residing in the United States as a legal permanent resident for 20 years is exempt from taking the English test. The applicant also qualifies to take the civics exam in the

language of his or her choice using an interpreter. The applicant is only required to study 20 of the standard 100 questions for the civics exam. During the administration of the civics exam, the applicant will only be asked 10 of the 20 questions. A passing score requires 6 correct answers.

“50/20” Exception

Key Points:

- **English Exam: Exempt**
- **Civics Exam: In your own language!**

You can still be exempt from the English exam if you are at least 50 years of age and have resided in the United States for at least 20 years as a legal permanent resident. This is known as the “50/20” exception, where the applicant is also permitted to take the civics test in his or her language of choice with an interpreter. However, the applicant must study all 100 standard questions. The civics test is 10 questions, requiring 6 correct answers to pass.

“55/15” Exception

Key Point:

- **English Exam: Exempt**

If the applicant has resided in the United States as a legal permanent resident for less than 20 years but at least 15 years and is 55 years of age or older, the applicant is only exempt from the English test. The interview will be conducted in his or her language of choice with an interpreter. There are no waivers of the civics test in this category.

Medical Disability Exception

There are also medical disability exceptions to the English and civics tests. An applicant may qualify for an exception from the English requirement, civics requirement, or both requirements. The English and civics requirements do not apply to naturalization applicants who are unable to comply due to a “medically determinable” physical or developmental disability or mental impairment that has lasted, or is expected to last, at least 12 months. A qualified medical professional must complete Form N-648 on behalf of the applicant.

Lastly, and most importantly, to take advantage of the exceptions to the English and civics tests for seniors under the U.S. immigration law (I.N.A. Section 312), the applicant, or their attorney, should indicate in the N-400 (Notarization Form) that the applicant qualifies for one of the above-referenced waivers. Failure to do so does not immediately disqualify the applicant from utilizing the waivers; however, it is unlikely they will be able to request that such accommodations be made on the day of the exams.

CHAPTER 22

Veterans’ Benefits & Contact Directory

Veterans of the United States armed forces may be eligible for a broad range of programs and services offered by the federal Department of Veterans Affairs (VA). There are as many sets of criteria to qualify for VA benefits as there are different VA benefits programs. Contact the nearest Regional Office at 1-800-827-1000 or visit www.va.gov for additional information. Counselors can answer questions about benefits, eligibility and application procedures. You may also be referred to other VA offices and facilities, such as medical centers and national cemeteries.

General Eligibility

Eligibility for most VA benefits is based upon discharge from active military service under other than dishonorable conditions. Dishonorable and bad conduct discharges issued by general court martial may bar VA benefits. Active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the Public Health Service, Environmental Science Services Administration or National Oceanic and Atmospheric Administration, or its predecessor, the Coast and Geodetic Survey. Members of the Reserve or National Guard, if called to active duty, may be eligible for the same VA benefits as any other veteran. Certain VA benefits also require service during wartime.

According to federal law, VA recognizes the following periods of war:

- Mexican Border Period: May 9, 1916 – April 5, 1917, for veterans who served in Mexico, on its borders or in adjacent waters.
- World War I: April 6, 1917 – November 11, 1918; for veterans who served in Russia, April 6, 1917 – April 1, 1920; extended through July 1, 1921, for veterans who had at least one day of service between April 6, 1917 – Nov. 11, 1918.
- World War II: December 7, 1941 – December 31, 1946.
- Korean War: June 27, 1950 – January 31, 1955.
- Vietnam War: August 5, 1964 (February 28, 1961, for veterans who served “in country” before August 5, 1964), through May 7, 1975.
- Gulf War: August 2, 1990, through a date to be set by law or Presidential Proclamation.

Veterans’ Health Care Benefits

VA operates the nation’s largest integrated health care system with more than 1,200 sites of care, including hospitals, community clinics, nursing homes, domiciliaries, readjustment counseling centers, and various other facilities. For additional information on VA health care, call 1-877-222-8387 or visit www.va.gov/health/.

Enrollment

For most veterans, entry into the VA health care system begins by applying for enrollment. Claimants are required to complete VA Form 10-10EZ (Application for Health Benefits) which may be obtained from any VA health care facility or regional benefits office, via the Internet at <https://www.va.gov/vaforms/medical/pdf/10-10EZ-fillable.pdf> or by calling 1-877-222-8387. Once enrolled, veterans can receive health care at VA health care facilities anywhere in the country.

Financial Assessment

Most veterans not receiving VA disability compensation or pension payments must provide information on their gross annual household income and net worth to determine whether

they are below the annually adjusted financial thresholds. The financial assessment includes all household income and net worth, including Social Security, retirement pay, unemployment insurance, interest and dividends, workers’ compensation, black lung benefits and any other income. Also considered are assets such as the market value of property that is not the primary residence, stocks, bonds, notes, individual retirement accounts, bank deposits, savings accounts and cash.

VA also compares veterans’ financial assessment with geographically based income thresholds. If the veteran’s gross annual household income is above VA’s national means test threshold and below VA’s geographic means test threshold, or is below both the VA national threshold and the VA geographically based threshold, but their gross annual household income plus net worth exceeds VA’s ceiling (currently \$50,500) the veteran is eligible for an 80-percent reduction in inpatient co-pay rates.

VA Medical Programs: Obtaining Prosthetic and Sensory Aids

Veterans receiving VA care for any condition may receive VA prosthetic appliances, equipment and services, such as home respiratory therapy, artificial limbs, orthopedic braces and therapeutic shoes, wheelchairs, powered mobility, crutches, canes, walkers, and other durable medical equipment and supplies. VA will provide hearing aids and eyeglasses to veterans who receive increased pension based on the need for regular aid and attendance or being permanently housebound, receive compensation for a service-connected disability or are former POWs. Otherwise, hearing aids and eyeglasses are provided only in special circumstances, and not for normally occurring hearing or vision loss. For additional information, contact the prosthetic representative at the nearest VA health care facility.

Home Improvements and Structural Alterations for Disability Access

VA provides up to \$6,800 for service-connected veterans and up to \$2,000 for non service-connected veterans to make home

improvements necessary for the continuation of treatment or for disability

access to the home and essential lavatory and sanitary facilities. For application information, contact the prosthetic representative at the nearest VA health care facility.

Services for Blind Veterans

Blind veterans may be eligible for services at a VA medical center or for admission to a VA blind rehabilitation center. In addition, blind veterans enrolled in the VA health care system may receive: (1) A total health and benefits review; (2) Adjustment to blindness training; (3) Home improvements and structural alterations; (4) Specially adapted housing and adaptations; (5) Automobile grant; (6) Low-vision aids and training in their use; (7) Electronic and mechanical aids for the blind, including adaptive computers and computer-assisted devices such as reading machines and electronic travel aids; (8) Guide dogs, including cost of training the veteran to use the dog; and (9) Talking books, tapes and Braille literature. For more information, visit <https://www.va.gov/health-care/about-va-health-benefits/vision-care/blind-low-vision-rehab-services/>.

Domiciliary Care Provides Rehabilitative and Long-Term Care

Domiciliary care provides rehabilitative and long-term, health-maintenance care for veterans who require minimal medical care but do not need the skilled nursing services provided in nursing homes. VA may provide domiciliary care to veterans whose annual gross household income does not exceed the maximum annual rate of VA pension or to veterans the Secretary of Veterans Affairs determines have no adequate means of support. The co-payments for extended care services apply to domiciliary care. Call your nearest benefits or health care facility to obtain the latest information.

Outpatient Pharmacy Services

VA provides free outpatient pharmacy services to the following veterans: Veterans with a service-connected disability of 50 percent or more; Veterans receiving medication for

service-connected conditions; Veterans whose annual income does not exceed the maximum annual rate of the VA pension; Certain veterans receiving medication for treatment of cancer of the head or neck; Veterans receiving medication for a VA approved research project; and Former POWs.

Veterans who do not qualify under one of the above categories will be charged a co-pay of either \$8 or \$9 for each 30-day or less supply of medication. Co-pays apply to prescription and over-the-counter medications, such as aspirin, cough syrup or vitamins, dispensed by a VA pharmacy. However, veterans may prefer to purchase over-the-counter drugs, such as aspirin or vitamins, at a local pharmacy rather than making the co-pay. Co-pays are not charged for medications injected during the course of treatment or for medical supplies, such as syringes or alcohol wipes.

Nursing Home Care

The Veterans Health Administration (VHA) provides nursing home services to veterans through three national programs: VA owned and operated nursing homes, state veterans' homes owned and operated by the states, and the community nursing home program. Each program has admission and eligibility criteria specific to the program.

The general admission criteria for nursing home placement requires that a resident must be medically stable (i.e. not acutely ill), have sufficient functional deficits to require inpatient nursing home care, and is assessed by an appropriate medical provider to be in need of institutional nursing home care. Furthermore, the veteran must meet the required VA eligibility criteria for nursing home care or the contract nursing home program and the eligibility criteria for the specific state veterans' home. For VA nursing home care, a veteran may be subject to a co-payment determined by information supplied by completing a VA Form 10-10EZ (Application for Health Benefits). VA social workers are available to assist veterans in interpreting their eligibility and co-pay requirements if indicated.

- VA Nursing Homes: VA owned and operated nursing homes typically admit residents requiring short-term skilled care or those who have a 70 percent or greater service-connected disability.
- State Veterans' Home Program: The state veterans' home program is a cooperative venture between the states and VA whereby the states petition VA for matching construction grants and once granted, the state, the veteran, and VA pay a portion of the per diem. The per diem is set in legislation. State veterans homes accept all veterans in need of long-term or short-term nursing home care. Specialized services offered are dependent upon the capability of the home to render them.
- Community Nursing Home Program: VA maintains contracts with community nursing homes through every VA medical center. The purpose of this program is to meet the nursing home needs of veterans who require long-term nursing home care in their own community, close to their families.

Long-Term Care Services

In addition to nursing home care, VA offers a variety of other long-term care services either directly or by contract with community-based agencies. Such services include adult day health care, inpatient or outpatient respite care, inpatient or outpatient geriatric evaluation and management, hospice and palliative care, and home-based primary care. Veterans receiving these services may be subject to a co-pay.

Emergency Medical Care in Non-VA Facilities

VA may reimburse or pay for medical care provided to enrolled veterans by non-VA facilities only in cases of medical emergencies where VA or other federal facilities were not feasibly available. Other conditions also apply. To determine eligibility or initiate a claim, contact the VA medical facility nearest to where the emergency service was provided.

Disability Compensation (Veterans with Service-Connected Disability)

Disability compensation is a monetary benefit paid to veterans who are disabled by an injury or disease that was incurred or aggravated

during active military service. These disabilities are considered to be service-connected. Disability compensation varies with the degree of disability and the number of veteran's dependents, and is paid monthly. Veterans with certain severe disabilities may be eligible for additional special monthly compensation. The benefits are not subject to federal or state income tax. Claimants are required to complete VA Form 21-526, (Veterans Application for Compensation and/or Pension) located at www.va.gov/vaforms/form_detail.asp?FormNo=21-526EZ. Additional information, including benefit rate tables, can be found on-line at www.va.gov/disability/compensation-rates/veteran-rates/ or by calling 1-800-827-1000.

VA Pension

Veterans with low incomes who are permanently and totally disabled, or are age 65 and older, may be eligible for monetary support if they have 90 days or more of active military service, at least one day of which was during a period of war. The veteran's discharge must have been under conditions other than dishonorable and the disability must be for reasons other than the veteran's own willful misconduct. Payments are made to bring the veteran's total income, including other retirement or Social Security income, to a level set by Congress. Unreimbursed medical expenses may reduce countable income for VA purposes. Congress establishes the maximum annual improved disability pension rates.

As of October 18, 2018, the pension rules changed to change the eligibility threshold for benefits and to include a lookback period for uncompensated transfers. A claimant must now have a net worth that includes all assets plus annual gross income (minus unreimbursed, recurring medical expenses). Certain assets such as a home on less than 2 acres, personal vehicles and personal effects are not counted. The maximum amount is set every December 1st and increases with inflation. The 2020 amount is \$129,094.

There is now a 36-month look-back period that penalizes a veteran (or a surviving spouse) for giving away assets, including transferring assets to fund a trust or purchasing an annuity. The

“penalty period” that results from giving away assets is determined by dividing the amount of the gift by the published penalty divisor. For 2020 the divisor is \$2,266, and this amount changes annually. The maximum penalty period is 5 years.

When a veteran without a spouse or a child is furnished nursing home or domiciliary care by VA, the pension is reduced to an amount not to exceed \$90 per month after three calendar months of care. The reduction may be delayed if nursing-home care is being continued to provide the veteran with rehabilitation services.

Claimants are required to complete VA Form 21-526 (Veterans Application for Compensation and/or Pension). Additional information, including benefit rate tables, can be found at www.va.gov/pension/veterans-pension-rates/ or by calling 1-800-827-1000.

Burial and Memorial Benefits

This section contains information on several VA burial and memorial benefits. Readers with questions should contact the nearest national cemetery, call 1-800-827-1000, or visit the website at www.cem.va.gov/. Pennsylvania has three national cemeteries, Indiantown Gap in Annville, PA (717-865-5254), NC of the Alleghenies in Bridgeville, PA (724-746-4363), and Philadelphia NC in Philadelphia, PA (215) 504-5610).

Eligibility

Veterans discharged from active duty under conditions other than dishonorable and service members who die while on active duty, as well as spouses and dependent children of veterans and active duty service members, may be eligible for VA burial and memorial benefits. The veteran does not have to predecease a spouse or dependent child for them to be eligible. Reservists and National Guard members, as well as their spouses and dependent children, are eligible if they were entitled to retired pay at the time of death, or would have been if they were over age 60.

VA national cemetery directors verify eligibility for burial in their cemeteries. A copy of the veteran’s discharge document that specifies the period(s) of active duty and character of discharge, along with the deceased’s death certificate and proof of relationship to the veteran (for eligible family members) are all that are usually needed to determine eligibility.

Burial in VA National Cemeteries

Burial in a VA national cemetery is available for eligible veterans, their spouses and dependents at no cost to the family and includes the gravesite, grave-liner, opening and closing of the grave, a headstone or marker, and perpetual care as part of a national shrine. For veterans, benefits also include a burial flag (with case for active duty) and military funeral honors. Family members and other loved ones of deceased veterans may request Presidential Memorial Certificates.

Burial options are limited to those available at a specific cemetery but may include in-ground casket, or interment of cremated remains in a columbarium, in ground or in a scatter garden. Contact the nearest national cemetery to determine if it is open for new burials and which options are available.

Inscribed Headstones and Markers for Veterans’ Graves

Veterans, active duty service members, retired reservists, and National Guard service members are eligible for an inscribed headstone or marker to mark their grave at any cemetery - national, state veterans, or private. The headstone or marker will be delivered at no cost, anywhere in the world. Spouses and dependent children are eligible for a government headstone or marker only if they are buried in a national or state veterans cemetery.

Headstones and markers previously provided by the government may be replaced at the government’s expense if badly deteriorated, illegible, vandalized or stolen. To check the status of an

application for a headstone or marker for a national or state veterans cemetery, call the cemetery. To check the status of one being placed in a private cemetery, call 1-800-697-6947.

Inscription: Headstones and markers must be inscribed with the name of the deceased, branch of service, and year of birth and death. They also may be inscribed with other markings, including an authorized emblem of belief and, space permitting, additional text including military rank; war service such as “World War II;” complete dates of birth and death; military awards; military organizations; civilian or veteran affiliations; and words of endearment.

Private Cemeteries: To apply for a headstone or marker for a private cemetery, mail a completed VA Form 40-1330 (Application for Standard Government Headstone or Marker for Installation in a Private Cemetery or a State Veterans’ Cemetery), and a copy of the veteran’s military discharge document and death certificate to Memorial Programs Service (41A1), Department of Veterans Affairs, 5109 Russell Rd., Quantico, VA 22134-3903. Or fax documents to 1-800-455-7143.

“In Memory Of” Markers: VA provides memorial headstones and markers, bearing the inscription “In Memory Of” as the first line, to memorialize those whose remains were not recovered or identified, were buried at sea, donated to science or cremated and scattered. Eligibility is the same for regular headstones and markers. There is no fee when the “In Memory Of” marker is placed in a national cemetery. Any fees associated with placement in another cemetery will not be reimbursed by VA.

Burial Flags Furnished by VA: VA will furnish a U.S. burial flag for memorialization of Veterans who served during wartime or after Jan. 31, 1955; Veterans who were entitled to retired pay for service in the reserves, or would have been entitled if over age 60; and members or former members of the Selected Reserve who served their initial obligation, or were discharged for a disability incurred or aggravated in line of duty, or died while a member of the Selected Reserve.

Burial Allowance

VA will pay a \$300 burial and funeral allowance for veterans who, at time of death, were entitled to receive pension or compensation or would have been entitled if they were not receiving military retirement pay. Eligibility also may be established when death occurs in a VA facility, a VA-contracted nursing home or a state veterans nursing home. In non-service-connected death cases, claims must be filed within two years after burial or cremation.

Plot Allowance

VA will pay a \$762 plot allowance when a veteran is buried in a cemetery not under U.S. government jurisdiction if: the veteran was discharged from active duty because of disability incurred or aggravated in the line of duty; the veteran was receiving compensation or pension or would have been if they weren’t receiving military retired pay; or they died in a VA facility. The \$762 plot allowance may be paid to the state for the cost of a plot or interment in a state-owned cemetery reserved solely for veteran burials if the veteran is buried without charge. Burial expenses paid by the deceased’s employer or a state agency will not be reimbursed.

Military Funeral Honors at Veterans’ Funerals

Upon request, the Department of Defense (DoD) will provide military funeral honors consisting of folding and presentation of the United States flag and the playing of “Taps.” A funeral honors detail consists of two or more uniformed members of the armed forces, with at least one member from the deceased’s branch of service. Family members should inform their funeral directors if they want military funeral honors. The DoD maintains a toll-free number 1-877-645-4667 for use by funeral directors only to request honors. VA can help arrange honors for burials at VA national cemeteries. Veterans’ service organizations or volunteer groups may help provide honors. For more information, visit https://www.cem.va.gov/military_funeral_honors.asp.

Benefits for Dependents and Survivors

Survivor's Pension

VA provides pensions to low-income surviving spouses and unmarried children of deceased veterans with wartime service. Claimants are required to complete VA Form 21-534 (Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child). Additional information, including benefit rate tables, can be found at <https://www.va.gov/pension/veterans-pension-rates/> or by calling 1-800-827-1000.

To be eligible, spouses must not have remarried and children must be under age 18, or under age 23 if attending a VA approved school or have become permanently incapable of self-support because of disability before age 18.

The veteran must have been discharged under conditions other than dishonorable and must have had 90 days or more of active military service, at least one day of which was during a period of war, or a service-connected disability justifying discharge.

Children who become incapable of self-support because of a disability before age 18 may be eligible for the death pension as long as the condition exists, unless the child marries or the child's income exceeds the applicable limit.

A surviving spouse may be entitled to a higher income limit if living in a nursing home, in need of the aid and attendance of another person or is permanently housebound.

The Survivor's Pension provides a monthly payment to bring an eligible person's income to a level established by law. The payment depends on whether your annual income and net worth meet certain limits set by Congress (\$129,064 for 2020). Your net worth equals the value of everything you own (except your house, your car, and most home furnishings), minus any debt you owe and unreimbursed medical expenses.

Dependency and Indemnity Compensation

Dependency and Indemnity Compensation is a monetary benefit paid to eligible survivors of

a military service member who died while on active duty; a veteran whose death resulted from a service-related injury or disease; or a veteran whose death resulted from a non service-related injury or disease, and who was receiving, or was entitled to receive VA Disability Compensation.

Claimants are required to complete VA Form 21-534 (Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving

Spouse or Child). Questions and additional information, including benefit rate tables can be found at <https://www.va.gov/disability/survivor-dic-rates/> or by calling 1-800-827-1000.

Appeals of VA Claims Decisions

Veterans and other claimants for VA benefits have the right to appeal decisions made by a VA regional office or medical center. Typical issues appealed are disability compensation, pension, education benefits, recovery of overpayments, and reimbursement for unauthorized medical services.

A claimant has one year from the date of the notification of a VA decision to file an appeal. The first step in the appeal process is for a claimant to file a written notice of disagreement with the VA regional office or medical center that made the decision.

Following receipt of the written notice, VA will furnish the claimant a "Statement of the Case" describing what facts, laws and regulations were used in deciding the case. To complete the request for appeal, the claimant must file a "Substantive Appeal" within 60 days of the mailing of the Statement of the Case, or within one year from the date VA mailed its decision, whichever period ends later.

Military Medals and Records

Replacing Military Medals

Medals awarded while in active service are issued by the individual military services if requested by veterans or their next of kin. Requests for replacement medals, decorations, and awards should be directed to the branch of the military in which the veteran served. However, for Air Force (including Army Air Corps) and

Army veterans, the National Personnel Records Center (NPRC) verifies awards and forwards requests and verification to appropriate services.

Requests for replacement medals should be submitted on Standard Form 180 (Request Pertaining To Military Records) which may be obtained at VA offices or the Internet at <https://vetrecs.archives.gov/VeteranRequest/home.html>. Forms, addresses, and other information on requesting medals can be found on the Military Personnel Records section of NPRC's website at www.archives.gov/st-louis/military-personnel/index.html. For questions, call Military Personnel Records at 314-801-0800 or e-mail questions to: MPR.center@nara.gov.

When requesting medals, type or clearly print the veteran's full name, include the veteran's branch of service, service number or Social Security number and provide the veteran's exact or approximate dates of military service. The request must contain the signature of the veteran or next of kin if the veteran is deceased. If available, include a copy of the discharge or separation document, WDAGO Form 53-55 or DD Form 214.

Replacing Military Records

If discharge or separation documents are lost, veterans or the next of kin of deceased veterans may obtain duplicate copies by completing forms found on the Internet at <https://www.archives.gov/research> and mailing or faxing them to the NPRC. Alternatively, write the National Personnel Records Center, Military Personnel Records, 9700 Page Blvd., St. Louis, MO 63132-5100. Specify that a duplicate separation document is needed. The veteran's full name should be printed or typed so that it can be read clearly, but the request must also contain the signature of the veteran or the signature of the next of kin, if the veteran is deceased. Include the veteran's branch of service, service number or Social Security number and exact or approximate dates and years of service. Use Standard Form 180 (Request Pertaining To Military Records).

It is not necessary to request a duplicate copy of a veteran's discharge or separation papers solely for the purpose of filing a claim for VA

benefits. If complete information about the veteran's service is furnished on the application, VA will obtain verification of service.

Veteran's Contact Directory

Veterans' Benefits Contact Directory

Phone Numbers & Addresses

- Headstones & Markers..... 1-800-697-6947
- Health Care 1-877-222-8387
- Life Insurance 1-800-669-8477
- Telecommunication
- Device for the Deaf (TDD) 1-800-829-4833
- VA Benefits – Generaly..... 1-800-827-1000

Veterans – Pennsylvania:

- Office of the Deputy Adjutant General for Veterans Affairs (Bldg. S-0-47, FTIG, Annville, PA 17003, 1-800-547-2838)

Veterans – Delaware County:

- Department of Veterans Affairs (Government Center, Room 115, 201 W. Front Street, Media, PA 19063, 610-891-4646)

Veterans – Regional Office:

- Regional Office and Insurance Center (P.O. Box 8079, 5000 Wissahickon Avenue, Philadelphia, PA19101, 1-800-827-1000)

Veterans – Medical Centers:

- Philadelphia, 19104 (University & Woodland Aves., 215-823-5800 or 1-800-949-1001)
- Wilkes-Barre, 18711 (1111 East End Blvd., 570-824-3521 or 1-877-928-2621)

Veterans – Clinics:

- Allentown, 18103 (3110 Hamilton Blvd., 610-776-4304 or 1-866-249-6472)
- Wyomissing, 19610 (2762 Century Blvd., 484-220-2572)
- Spring City, 19475 (11 Independence Dr., 610-948-1082)
- Newtown Square, 19073 (4883 West Chester Pike, (610) 383-0239)

- Willow Grove/Horsham, 19044 (433 Caredean, 215-823-6050).

Veterans – Centers:

- Philadelphia, 19107 (801 Arch St., Suite 102, 215-627-0238)
- Philadelphia, 19106 (213-217 N 4th St, Philadelphia, PA 215-923-2600)
- Philadelphia, 19120 (101 E. Olney Ave., 215-924-4670).

Veterans Web Sites:

- Burial and Memorial Benefit
www.cem.va.gov
- Department of Defense
www.defenselink.mil
- Health Care Eligibility
www.va.gov/healthbenefits
- Life Insurance
www.insurance.va.gov
- Records
www.archives.gov/st-louis/military-personnel
- VA Benefit Payment Rates.
www.va.gov/pension/veterans-pension-rates/
- Facilities
www.va.gov/directory/guide/home.asp
- VA Forms
www.va.gov/vaforms
- VA Home Page
www.va.gov

CHAPTER 23

Long Term Care Facilities

Long-term care facilities can be thought of as housing with integrated supportive services. The level of service varies with the type of facility. This section outlines important aspects of the most common types: nursing home care, assisted living facilities, personal care homes and Continuing Care Retirement Communities.

Nursing Homes

A nursing home is a facility where residents receive round-the-clock nursing care designed to help an individual with the activities and needs of daily living and health care. These residents do not need the kind of acute health care provided in a hospital. A person may enter the nursing home for short term after a hospitalization for rehabilitation or acute skilled nursing care. The person may need to stay in the nursing home for an extended period of time receiving nursing care, but not necessarily skilled nursing care.

Medicare provides limited coverage for nursing home care. See the chapter on Medicare for further information. Under the best of circumstances, a person may receive Medicare coverage at least in part for up to 100 days following a qualifying stay in the hospital of at least three days duration (“observation status” does not apply), a doctor certifies the need for skilled care on a daily basis or for therapy. Medicare does not cover intermediate nursing home care, custodial care or long-term nursing home care.

Medicaid is a public benefit program that covers intermediate or skilled care provided in a nursing home after Medicare benefits are exhausted providing the person meets the financial need test for Medicaid. See the chapter on Medicaid in this handbook for information pertaining to eligibility rights.

The Veterans Administration may provide some assistance in the payment for care through its pension program for veterans and his/her dependents; or through a veterans’ facility. See the chapter on veterans’ benefits.

Nursing Home Residents’ Rights

Upon admission to a nursing home, a resident or his/her representative will be required to sign an admission contract. A prospective resident or the representative for the resident might feel pressure under emergency circumstances to sign a nursing home admission contract without a careful review of its terms. Do not be pressured. Read the contract and have it reviewed by an attorney before signing. Federal and state laws have been enacted to protect individuals entering nursing homes and an experienced

advisor can make sure that you get the benefit of these protections. For example:

- Although a nursing home is not required to accept Medicaid, a nursing home cannot require a resident to waive his/her right to apply for Medicaid. Furthermore, if a nursing home accepts Medicaid, it cannot discriminate against a resident who is receiving Medicaid. Nursing homes must establish and maintain identical policies and practices regarding transfer, discharge and covered services for all residents regardless of source of payment.
- A nursing home cannot require a third party to guarantee payment as a condition of admission or continued stay. A nursing home is allowed to require that an individual having legal access to a resident's income and assets, such as an agent under a power of attorney, sign a contract promising to pay for a resident's care from the resident's funds.
- A nursing home cannot require a resident to agree to pay privately for a specified period of time before the nursing home will "allow" the resident to convert to Medicaid. However, a resident and his representative needs to cooperate in the Medicaid Application process.

Once admitted to a nursing home, a resident enjoys certain rights mandated by both federal and Pennsylvania law.

For example:

- A nursing home must conduct a comprehensive assessment of every resident's functional capacity within 14 days of admission. This assessment must be used to develop, review and periodically revise, as necessary, an individualized plan of care for each resident. The resident, the resident's family and, if desired, the resident's legal representative, must be given full opportunity to participate in the development of the plan of care.
- A resident has the right to choose a personal attending physician and to be kept fully informed about care and treatment.
- A resident has the right to remain free of physical and chemical restraints which are not required to treat the resident's medical condition.

- A resident has the right to privacy with regard to communications in writing and by telephone and with regard to visits of family and meetings of resident groups. A resident must be provided with reasonable access to the use of a telephone where calls can be made without being overheard.
- A resident has the right to access to clinical records upon request by the resident or the resident's legal representative.
- A resident has the right to voice grievances with respect to treatment or care without fear of reprisal.
- A resident can only be transferred or discharged from a nursing home under limited circumstances which are spelled out in the law, upon 30 days advance written notice.

A nursing home must inform every resident of the resident's legal rights, orally and in writing, at the time of admission. Pennsylvania maintains an Ombudsman program to investigate and resolve complaints made by or on behalf of residents of nursing homes and other long-term care facilities. COSA provides these Ombudsman services. Call 610-872-1868.

Assisted Living Facilities & Personal Care Boarding Homes

Be very careful. Until 2011, Pennsylvania did not license assisted living residences. Prior to January, 2011, every assisted living residence in Delaware County was licensed only as a personal care boarding home. Pennsylvania finally passed regulations for the licensing of assisted living residences, effective January 1, 2011. Facilities can now apply for the assisted living license. Unfortunately, very few facilities in Pennsylvania have applied. Most of what used to be called assisted living residences are now called "senior residences" or words to that effect. This is because the regulations do not allow any place to call itself assisted living residence unless actually licensed as such. When you look at a facility, ask immediately whether the facility is licensed as a personal care boarding home or an assisted living residence. Why is this so important?

A personal care boarding home has a lesser degree of staffing requirements. It is a living arrangement whereby someone who needs assistance with activities of daily living can receive that assistance. A personal care boarding home is not allowed pursuant to Pennsylvania regulations to have someone living there who is considered to need a nursing home.

On the other hand, the assisted living residences are able to deliver health services to their residents in addition to assistance with activities of daily living. They can enable someone to “age in place” even if that person normally would need nursing home care but services can be arranged to be delivered to the person in the assisted living setting.

The distinction between assisted living and personal care facilities will be important if Pennsylvania Medicaid Program ever covers assisted living, or if someone has a long-term care insurance policy which would only cover assisted living in a licensed facility for assisted living services.

Contract Questions

Upon entrance to a personal care boarding home or an assisted living facility, a prospective resident should carefully review the admission contract. Significant issues to consider in evaluating an admission contract include:

- What personal care services are to be provided? Who delivers these services? Is the service provider licensed or certified?
- What are the monthly or other charges for such services? Are housekeeping services included? How can fees be increased and what happens if fees are increased and a resident cannot afford the higher fee?
- In the case of a married couple, what happens upon the death of a spouse? Is a change of living unit required? How would fees be affected?
- What recreational or cultural activities are available and are they included with the monthly fee?
- Is transportation provided to such things as doctor appointments, shopping and community activities? Is a separate fee charged?

- Are nursing services available at the site? What happens if a resident’s health declines? Is the facility responsible for coordinating medical care?
- How does the facility determine the point at which a resident cannot be served by the facility? What recourse does a resident have to challenge the facility’s decision? Is there a grievance process?
- How does the facility determine the point at which a resident cannot be served by the facility? What recourse does a resident have to challenge the facility’s decision? Is there a grievance process?

Assisted Living Facilities/Personal Care Homes: Residents’ Rights

Under Pennsylvania law, residents of personal care homes and assisted living facilities have many rights, including:

- to be treated with dignity and respect;
- privacy, including the right to have access in reasonable privacy to a telephone and the right to have uncensored access to the mail;
- to receive visitors;
- to leave and return to the home;
- to participate in religious activities;
- to exercise the rights of a citizen and to voice grievances;
- to be provided with 30 days advance written notice of the facility’s intent to terminate a resident’s stay and the reason for termination;
- to be free of chemical and physical restraints;
- and freedom from discrimination.

In addition, a resident of a licensed assisted living residence also has the following protections:

- a medical evaluation must be completed sixty (60) days before entry or within fifteen (15) days if the admission was under certain emergency circumstances;
- each resident must have an initial assessment thirty days prior to admission or within fifteen (15) days of admission under an emergency admission. The initial assessment will spell out the needs for assistance with activities of daily living or need for supplemental health services and special needs;

- a core package of services in an assisted living facility and an enhanced core package for those with greater needs. (This will enable a consumer to compare one assisted living facility against another);
- process for informed consent, i.e. if resident needs additional help or the provider determines a resident is at risk, there is a process to work out how the individual resident may remain in the facility;
- and if the facility has a special care unit such as a dementia unit, there are state requirements to meet this designation; this ensures that the consumer will get the services which are being promised.

Continuing Care Retirement Communities (CCRC)

Continuing Care Retirement Communities in most circumstances provide independent apartments, personal care or assisted living and nursing home care. New residents usually move into independent living units. As they age and become physically disabled and need assistance with the activities and needs of daily living, residents move to a personal care or assisted living facility located on the grounds of the Continuing Care Retirement Community. Some CCRC provide home care services to the independent living units so that the resident does not have to move. If physical decline continues and more intensive care is needed, nursing home care is also available within the premises of the Continuing Care Retirement Community.

Upon entrance into a CCRC, a resident enters into a contract whereby the Continuing Care Retirement Community agrees to provide housing, a certain level of activities and health care support as needed in return for the resident's payment of an entrance fee and monthly occupancy fees. In most cases, residents do not own their living unit. The services offered can vary; most provide house cleaning, laundry facilities and at least some meals. The monthly fee for residents who move into the assisted living or nursing home facilities may be higher than if they had remained in an independent living unit.

Some Continuing Care Retirement Communities provide in their contract for a refund of all or part of the initial payment when the resident leaves or dies. In these instances, there are usually higher charges if assisted living or nursing care becomes necessary. (These costs may be covered by long-term care insurance.)

A careful review of the contract, preferably by an attorney, is advised to make sure the resident understands what they are buying. Some Continuing Care Retirement Communities offer unlimited health services in exchange for the entrance fee, while others provide that residents pay an additional fee for health care services as they are needed. Still others offer a combination of the two. The fee-for-services arrangement is becoming increasingly more common.

Warning: Before signing a contract for a CCRC and moving in, look at the financial viability of the community, its corporation and its parent corporation. In Pennsylvania, the oversight of Continuing Care Retirement Communities falls under the Pennsylvania Insurance Department. Under its regulations, the CCRC is required to provide any prospective buyer full disclosure of its financial affairs, ability to access any audits. Also inquire as to the occupancy rate, as this may affect future fees and/or services.

In addition to checking with the Pennsylvania Insurance Department and your local Area Agency on Aging (which is COSA in Delaware County, telephone number 610-490-1300), you might wish to determine whether a particular CCRC is accredited by the "Commission on Accreditation of Rehabilitation Facilities" which is an independent non profit accreditor of various health and human services providers including CCRC. You can use the website at www.carf.org to search for an accredited provider in your desired area.

Other important issues to be reviewed in a Continuing Care Retirement Community contract are:

- Who determines when a resident must change living arrangements due to a decline in health?
- What are a resident's rights and responsibilities with regard to furnishing and altering his/her living unit?

- Under what circumstances would the entrance fee be refundable?
- Under what circumstances can the monthly service fee be increased?
- If the entrance fee is refundable, in whole or in part, will the fee be held in escrow or only paid after the unit is reoccupied by another resident.
- What services are not covered by the monthly service fee?

Pennsylvania law mandates that all Continuing Care Retirement Community contracts:

- provide for continuing care;
- specify all services to be provided and provide that a resident cannot be liable to a health care provider for services that the continuing care retirement community promises to furnish;
- describe any exclusions or limitations on coverage for pre-existing conditions;
- provide for termination by either party upon 30 days written notice and the terms for refund upon termination;
- contain notice of rescission rights before moving in.

The advantages of living in a Continuing Care Retirement Community are:

- An individual whose health declines can move into personal care of assisted living unit or, if necessary, to a nursing home within the same residential community.
- Payment of the entrance fee may lock in a fixed price for continuing care at an amount that is usually less than the market rate for nursing home care. For this reason, some people consider a Continuing Care Retirement Community as a form of long term care insurance. However, if there will be a substantial increase in the monthly service fee upon moving into the assisted living or the nursing home portion of the Continuing Care Retirement Community, there could still be a need for long term care insurance.
- A couple that moves into a Continuing Care Retirement Community helps to ensure that, if one spouse must enter the nursing home, the other spouse will be living on-site and can

easily visit. (However, if the personal care section or nursing home section is full, the CCRC may place them in another facility until a bed becomes available.)

Because a Continuing Care Retirement Community comprises personal care/assisted living and nursing home care, different activities within the Continuing Care Retirement Community can be governed by different laws and regulations. Residents would be protected by the laws that apply to personal care homes or assisted living facilities while they are receiving these services and they would be protected by the laws that apply to nursing homes when residing in the nursing home component of the Continuing Care Retirement Community.

A caveat is that Continuing Care Retirement Communities usually require a health review for admission. This is because they offer higher levels of care when needed at below market cost. Therefore, if you plan to move to one of these communities you should act while you are free of major impairments.

Long Term Care Facilities Licenses: Problems, Sanctions and Revocations

Although long term care placement is a difficult decision, there are people and agencies to help in the event of an issue or problem with the long term care facility. One contact person is the Ombudsman who responds to care issues in all licensed facilities in your county. The telephone number for Delaware County's Ombudsman is 610-872-1868. Family members and friends can call the Ombudsman on behalf of a resident of a nursing home or assisted living facility.

To investigate licensed personal care homes and assisted living residences, you may contact the Pennsylvania Department of Human Services.

You may also call the Pennsylvania Department of Health's Complaint Hotline, if you have a concern regarding a nursing home, hospital, or home health agency. The Hotline number is 800-254-5164.

Any employee or administrator of a licensed facility who has reasonable cause to believe that a resident of the facility is a victim of abuse is required under Pennsylvania law to report the abuse immediately. The law does not require that the reporter be a direct eye witness; having more than a suspicion obligates them to make an oral report at once, followed up by a written report to law enforcement officials. This reporting requirement protects a care-dependent person and applies to all caretakers. Civil and criminal fines and imprisonment for up to one year can be imposed upon the person or facility that commits the violation or abuse.

Pennsylvania law protects long term care facility residents by requiring criminal history background checks by the Pennsylvania State Police of all employees of public or private nursing homes, assisted living residences, personal care facilities, adult daycare and home health-care providers. Employees with certain felony and misdemeanor convictions are precluded from working in these facilities.

The final sanction under Pennsylvania state law is that a facility can have its license revoked or its licensing withheld in the first place for any one of the following reasons: gross incompetence, negligence, misconduct in operating the facility or mistreating or abusing an individual cared for in the facility. This sanction applies to both physical and mental abuse of a patient. This law serves as a deterrent to such abuse since the facility cannot do business without a license. Court cases in Pennsylvania have upheld the decision to revoke the license of homes for abuse of patients.

The Effect of COVID-19 on Long Term Care Facilities

The COVID-19 Pandemic was especially harmful to residents and staff of long term care facilities. We will see changes in the future regarding better ways to address the health and safety of residents, staff and families. Until then, resources that can be utilized to evaluate the quality of a particular long term care facility are as follows:

1. The Pennsylvania Department of Health website: www.Health.state.pa.us to review surveys and onsite inspections
2. Medicare website: www.medicare.gov/nursinghomecompare
3. Pennsylvania Link to Aging & Disability Resource Center: 1-866-286-3636
4. Pennsylvania Department of Human Services Adult Residential Licensing: 1-717-783-3670
5. Pennsylvania Department of Health Hotline: 1-800-254-5164
6. County of Delaware Services for Aging: 610-490-1300 or COESA@county.delaware.pa.us
7. Delaware County Ombudsman: 610-872-1868
8. Legal Aid of Southeast Pennsylvania, Media Office: 610.422.7053; Chester office: 610-874-8421
9. Senior Law Center Help Line: 1-877-727-7529
10. CARIE - Center for Advocacy for Rights & Interests of Elderly - www.CARIE.org; 215-545-5728; 1-800-356-3606
11. Pennsylvania Health Law Project Help Line: 1-800-274-3258
12. Delaware County Bar Association Referral and Pro Bono Program: 610-566-6625 (note: the Pro Bono program works in conjunction with the Legal Aid of Southeast Pennsylvania)
13. AARP - PA State office: 1-866-389-5654

CHAPTER 24

Long Term Care Insurance

Basic Long Term Care Insurance Decisions

Comprehensive long term care insurance (LTCI) pays for home health care, adult day care, as well as assisted living facility and skilled nursing facility care. A well-structured policy can help to

preserve your independence and your assets by assuring that you are in control of your care.

Securing that coverage involves a process that must be comparative and basic decisions that should be grounded in common sense and pragmatism. This article is about that process and those decisions.

Start with the basics...*your* concerns, *your* health history, and *your* budget. Don't let an agent fit you into a policy. Benefits and costs should be tailored to *your* needs.

Insurability

Before you consider benefits, you should address the issue of *insurability*. Underwriting judgments, premiums, and benefits can vary significantly between companies. Pre-qualifying how insurers will treat your health history will allow your planning thereafter to focus on competitive policy benefits and costs. The anonymous inquiry is made by your advisor and should be to the underwriters of at least three long term care experienced and financially well-rated companies.

Benefit Triggers

Benefits are triggered in most policies available today by you requiring someone nearby to assist you, if needed, with two of six activities of daily living (eating, bathing, dressing, toileting, continence, or transferring), or by you being diagnosed with severe cognitive impairment, and by a health care professional's certification that your condition is likely to last 90 days or longer.

Those are the basic, standardized triggers for a claim established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA compliant contracts are referred to as *qualified* long term care policies.

A Pool of Money

Basic benefits are paid from a *pool of money* for a *limited period of time* or for your lifetime. When you apply for coverage, you determine how large your pool will be and how long the pool will last. Most LTCI companies offer limited benefit periods of 2 to 10 years.

If you, for example, select a 5 year benefit

period, and a daily benefit of \$150, your pool of money will be $\$150 \times 365 \times 5$ or \$273,750. If, on claim, you access your pool at the rate of \$150 a day *continuously* for 5 years, the pool will be emptied and your policy benefits will cease at the end of 5 years. If your care requires less than \$150 a day, your pool will last longer than 5 years.

Should a policy that is otherwise appropriate for you offer the option to select a *monthly* benefit, take it. The cost of your care on a daily basis may vary. Being able to access your benefit dollars on a monthly basis reduces the possibility that you may be out-of-pocket on a day when the cost of your care exceeds, in our example, \$150.

Benefit Amount

When you apply for your policy, you select the *benefit amount* that fits your likely need. As we noted above, that is the rate at which you can draw from your pool of money. Be careful here. If another person is dependent on your income, be sure that the benefit amount you select will be reasonably sufficient to pay for the cost of your care *at least* in an assisted living facility so that your income remains available to the other person. We suggest that you consider applying for a benefit of at least \$5,000 a month as a basic safety net for insured long term care financial planning.

Your analysis of your needs and resources may show that you have income that your partner will *not* need to maintain their lifestyle if you are ill and receiving benefits. That income could be used to *reduce* the net benefit for which you should apply, and thus reduce the cost of your policy.

Shared Care

If you are willing to consider a limited benefit period *and* are applying with a partner, you should include *shared care* in your comparison of policies and in your final policy choice.

Shared care is, in its most basic form, a provision in a limited benefit period policy whereby one insured can, should he or she exhaust their own policy's benefits, access, with the permission of their spouse/partner, the benefits of

the other's policy. The individuals must apply for issuance of coverage at the same time and have identical policy benefits. Shared care may also be provided through a single policy insuring two individuals, each having access to a single pool of money.

Shared care can be a very economical and tactically useful policy structure in view of the dramatic revision by the Deficit Reduction Act of 2005 of the rule triggering a period of ineligibility created through the disposition of assets for less than fair market value.

A Deductible

Benefits are payable after a deductible (an "elimination period"). You are responsible for your expenses during that period. It is typically 30, 60 or 90 days, depending on the choice you make when you apply for your policy.

The shorter the elimination period, the greater will be the policy premium. You should, however, "do the math" when selecting your deductible period. Consider the time value of the premium saved with a 90 day deductible compared to the cost of a 30 day deductible over, say, 20 years against the out-of-pocket cost you may incur paying for care during the 31st to the 90th day.

Remember to also inflate that cost by a 20 year factor with an annual health care inflation rate of 7% or more. You may well conclude that the premium savings isn't worth the out-of-pocket expense risk.

Be sure to find out whether your deductible is satisfied by *calendar* or *service days*, and whether you can add a provision waiving the elimination period for certain types of care, or whether the policy has a built in waiver.

Premiums

A word on cost. Premiums are not guaranteed. An insurer can, with the permission of the state insurance department, raise rates on a class of in-force policies. An insurer cannot, however, single out an individual insured for a rate increase. With no historical basis for the suggestion, we do suggest that you consider the possibility that the premiums for your policy may increase in the future by at least 50%.

Inflation

Once you have the basics covered in terms of your needs and budget, you should consider including an *automatic annual inflation provision* at an additional cost. This is an important choice because you may not need the coverage for many years to come.

The inflation benefits offered by LTC insurers today don't guarantee that your benefits will keep up with the growth in health care costs. But, without at least some inflation protection, you are guaranteed that your policy benefit will be inadequate.

There is, however, an alternative approach to selecting your policy's benefit amount. You could decide to eliminate an automatic annual inflation provision and use the premium you would have otherwise spent on that rider to increase your actual monthly benefit. Depending on the cost of the inflation rider, you may double the actual monthly benefit amount that you will have the day the policy is issued. If your inflation rider is at 3% compound, it will take 24 years for your initial benefit to double. At 5% compound, it will take about 14 years to double. The upside to this approach is that you would have today the benefit to which the inflation rider would eventually grow your benefit. The downside is that your benefit would be fixed, although at least one company provides a guaranteed option every few years to increase your benefit without evidence of insurability but at the rate it would then be charging for the incremental amount.

Please note that there are planning techniques which may utilize LTCI for a limited period of time (e.g., five years) in which case there may be no need for an inflation provision.

There are a number of other optional benefits offered by most insurers at additional costs. Some may have value in terms of your concerns. We, however, urge you to be certain that you can afford the cost of the basic benefits you need before considering supplemental provisions.

Tax Benefits

A word on the *tax benefits* of HIPAA qualified policies. Benefits are free of federal income tax up to a per diem limit (\$380 a day in 2020). Benefits in excess of the per diem limitation will also be free of such tax so long as you actually incurred qualified expenses at least equal to the benefit received. IRC Secs. 7702B(a)(2), 104(a)(3), and 105(b).

You may also receive an individual federal income tax deduction for some or all of your premium. The deduction depends on whether the eligible portion of your premiums paid in the current tax year, together with your other unreimbursed medical and dental expenses, exceeds 7.5% (for 2020) of your adjusted gross income. The HIPAA eligible premiums are age graded, adjusted yearly for inflation, and can be found at IRC Sec. 213(d)(IO)(A).

None of us wants to consider the personal and possible financial impact on ourselves and on our families should we need long term care. The reality, however, is that, should such a need develop, our choices are to pay out-of-pocket or to seek Medical Assistance (Medicaid).

Long term care insurance is a planning tool which should be considered as an alternative to those options if you are insurable. Coverage that works for you, your needs and your financial circumstances, should be an integral part of your estate plan.

The Pennsylvania Partnership Program

A Long-Term Care policy can be called a Partnership policy if it complies with the provisions of Pennsylvania's Partnership Program and is approved by the PA Insurance Department as meeting the requirements of that Program.

The "partnership" is between Medicaid, the state's Department of Human Services (DHS), the insurance company, and the insured.

Practically speaking, the most significant requirement in a Partnership policy concerns inflation protection.

- If you are age 60 or younger at the time your policy is issued, the policy must include provision for *compound* annual inflation protection

at a rate equal to the Consumer Price Index (CPI) or at a fixed rate of not less than 3%.

- If your "issue age" is between 61 and 75, the policy must include *either* compound or simple annual inflation protection at a rate equal to the CPI or at a fixed rate of not less than 3%.
- If your "issue age" is 76 or older, inflation protection is *not* required.

While there is no extra cost for a Partnership policy, the requirement of inflation protection will add to the cost of your policy.

But your Partnership policy provides a potentially very significant bonus called *asset disregard*.

Asset Disregard provides that, should you need to receive care through Medicaid, assets which you normally would have to spend down *before* financially qualifying for Medicaid can be protected from Medicaid's reach in an amount *equal* to the benefit dollars paid for you by your Partnership policy.

The bottom line is that, if you elect to include an inflation rider that complies with the Partnership policy requirement for your issue age, then you should consider selecting a PA Partnership qualified long-term care policy. You'll have the asset disregard benefit at no additional cost. Do be sure that the policy is offered by a well-rated and market experienced insurer that will provide favorable health underwriting for you and a benefit structure appropriate for your needs and likely future resources.

CHAPTER 25

Housing and Energy Assistance and Resources

LIHEAP

The Low Income Home Energy Assistance Program (LIHEAP) provides cash grants to eligible low income households to pay their home heating bills. The cash grant is a once per season (November through April) payment made to a

utility company or fuel provider as a credit to the household's bill. The grants may range from \$200 to \$1,000 depending upon household size and heating type. Households in danger of being immediately without heat (including breakdown of heating equipment, no or low amount of heating fuel, imminent shut-off) may be eligible for a crisis grant.

Eligible households may be either renters or owners, do not need to be on public assistance and do not need to have unpaid heating bills at the time of application. For the 2019-2020 heating season the income limits were \$18,735 for a one-person household and \$25,365 for a two-person household.

Applications may be made in person at the County Assistance Office, downloading an application and mailing to the County Assistance Office, or online through the COMPASS website.

Contact: Delaware County Assistance Office
701 Crosby Street, Suite A
Chester PA 19013

LIHEAP Number: 610-447-3099

Department of Human Services:
www.dhs.pa.gov

COMPASS: www.compass.state.pa.us

LIHEAP hotline: 1-866-857-7095, or disabled consumers may use the PA Relay Services by dialing 711

LIURP

The Pennsylvania Low Income Usage Reduction Program (LIURP) is a statewide program designed to help low-income households with high energy usage lower their utility usage. It is sponsored by utilities and is mandated by the PA Public Utility Commission. The program provides free weatherization and energy education services, and takes applications year-round. In this area, the program is administered by PECO.

Income eligibility limits for the 2020 heating season are \$25,520 for a one-person household and \$34,480 for a two-person household. To learn more about LIURP or to apply, contact 1-800-675-0222.

Delaware County Weatherization Program

The program provides low-income homeowners and renters with a one-time grant of weatherization services including home energy audits and usage evaluations; air flow testing; heater service, repair or replacement; weather stripping and caulking; window and door repair or replacement; and energy conservation education. The income eligibility limits for this program are \$24,280 for a one-person household and \$32,920 for a two-person household. Recipients of TANF or Supplemental Security Income are automatically eligible.

For more information or to apply, contact:

Community Action Agency of Delaware County
1414 Meetinghouse Road
Boothwyn, PA 19061
610-521-8770
www.caadc.org

Delaware County Homeownership First Program

The Homeownership First Program provides up to \$5,000 in down payment and closing costs to qualifying first time homebuyers purchasing a property in Delaware County (excluding Chester City, Haverford Township and Upper Darby Township). The assistance takes the form of a 0% interest loan that is only repayable upon sale or transfer of the property. Borrowers are required to pay a minimum of \$1,000 toward the purchase of the home and must complete both group and individual homeownership counseling.

Contact:

Chester Community Improvement Project
412 Avenue of the States
Chester, PA 19063
610-876-8663

Media Fellowship House
302 S. Jackson Street
Media, PA 19013
610-565-0434

PECO Programs

PECO CAP (Customer Assistance Program)

The PECO CAP program gives low-income customers a discount on electric or gas usage. There are several discounted rates depending upon the customer's depending upon the customer's income level. To be eligible, a household must have income at or below \$1,595 for a one-person household and \$2,155 for a two-person household, and having difficulty paying for utility service. Households must also participate in the LIHEAP and LIURP programs. Customers using the CAP program may not enroll with a competitive supplier.

For more information or to apply, visit PECO's website at www.peco.com/My Account/Customer Support or call 1-800-774-7040.

PECO CARES (Customer Assistance and Referral Evaluation Services)

PECO CARES is a referral and information service that assists special needs and low-income customers experiencing temporary hardship (e.g. family or medical emergency, unemployment) that prevents payment of the utility bill. To apply for assistance contact PECO at 1-800-774-7040.

MEAF (Matching Energy Assistance Fund)

The Matching Energy Assistance Fund provides grants to low-income households (LIHEAP-eligible) to pay a utility bill to stop a shut-off or to reconnect service. This fund may be available during months when LIHEP is not. To apply for assistance contact PECO at 1-800-774-7040.

Pennsylvania Housing Finance Agency (PHFA) Programs:

HEMAP

The Homeowners' Emergency Mortgage Assistance Program (HEMAP) is a state-funded loan program designed to assist homeowners suffering financial hardship and are temporarily unable to make their mortgage payments and are in danger of foreclosure due to circumstances beyond their control. In order to be eligible, the mortgage cannot be more than 24 months or \$60,000 in arrears, and the homeowner must have a reasonable prospect of resuming full payments within 24 months.

Homeowners may apply for HEMAP assistance by having an in-person meeting with an approved credit counseling agency where counselors can assist with the completion of the HEMAP application. For more information, contact the PHFA HEMAP Program Information Line at 800-342-2397 (TTY 711) or visit www.phfa.org, and click "Loan Programs" and "HEMAP tabs.

Counseling and applications for HEMAP assistance can be obtained at these agencies:

Media Fellowship House
302 S. Jackson Street
Media, PA 19063
610-565-0434

CLARIFI
8600 West Chester Pike, Ste 207
Upper Darby, PA 19086
215-563-5665

Access Home Modification

This program provides non-interest bearing loans of \$1,000 to \$10,000 with no monthly payment to persons with permanent disabilities or families with household members who have permanent disabilities who are purchasing a home with a loan through one of PHFA's homeownership loan programs. The loan becomes payable when the property is sold or transferred, or when the owner ceases to occupy of the property.

Eligible modification items may include:

- Kitchen and bathroom modifications
- Installation of grab bars and handrails
- Lifting devices
- Sidewalk and ramp addition or repair
- Widening of doorways and hallways.

To apply, contact a PHFA participating lender. For more information or for a list of participating lenders, visit the PHFA website at www.phfa.org and click the "Loan Programs" and "Home Improvements" tabs, or call the PHFA Homeownership Program Information Line at 1-800-822-1174.

Homestyle Renovation Program

This program allows eligible homebuyers or homeowners seeking to refinance to repair, remodel, renovate or make energy improvements. Borrowers may fund up to 75% of the appraised

value of the property once the requested repairs are made. The improvement must be permanently affixed to the premises and may include:

- Roof repair/replacement
- Improvements to heating/air conditioning
- Upgrades to kitchen and bath
- Repair/improvement to plumbing and/or electrical system

To apply, contact a PHFA participating lender. For more information or for a list of participating lenders, visit the PHFA website at www.phfa.org and click the “Loan Programs” and “Home Improvements” tabs, or call the PHFA Homeownership Program Information Line at 1-800-822-1174.

Homeowners Energy Efficiency Loan Program (HEELP)

This program offers loans ranging between \$1,000 to \$10,000 for energy efficiency repairs at a fixed 1% interest rate for a 10 year term with no prepayment penalty. The allowable uses are:

- Air sealing, insulation and ductwork;
- Installation of energy efficient windows and doors
- Repair/replacement of energy efficient heating/cooling systems; and
- Roof replacement

The income limits for this program are \$39,200 for a one-person household and \$44,800 for a two-person household. Work must be performed by a PHFA approved contractor. If your contractor is not approved, he/she may apply for approval.

For more information or to download a borrower application, visit the PHFA website at www.phfa.org and click the “Loan Programs” and “Home Improvements” tabs or call PHFA at 1-855-827-3466.

Homebuyer Counseling and Education

PHFA offers education and counseling through its approved counseling agencies to provide guidance and advice to families in making housing choices including:

- mortgage readiness, budgeting for mortgage payments and money management skills;

- avoiding predatory lending (lending practices that impose unfair or abusive loan terms on borrowers);
- fair housing

For more information, visit the PHFA website at www.phfa.org and click the “Counseling” tab or call PHFA at 1-855-827-3466.

Fair Housing

The Housing Equality Center of Pennsylvania (formerly Fair Housing Council of Suburban Philadelphia) offers programs and services to allow housing consumers to have fair access to housing and to understand their rights under fair housing laws, including counseling and investigations to aid discrimination victims, and education and training for housing providers and professionals to promote compliance with fair housing laws and prevent discrimination.

For information or counseling about fair housing, or to report discrimination, visit www.equal-housing.org or call 866-540-FAIR.

CHAPTER 26

Reverse Mortgages

In September, 2013 new Regulations were passed regarding Reverse Mortgages. Reverse Mortgages are government insured non-recourse loans where no payments are made on the loan until such time as the owner dies, no longer occupies the home for 12 months, sells or transfers the property, fails to maintain the property or fails to pay real estate taxes or homeowners’ insurance.

When the real estate market suffered a decline, many reverse mortgages were left “under water.” Further, a significant number of defaults occurred due to the inability of the homeowner to pay property taxes or homeowners insurance or maintain the property. To limit future losses new regulations were put into place that:

- Lower the maximum limits of borrowing by as much as 15% from pre-September, 2013 reverse mortgages;

- May require property repairs following a pre-loan appraisal either prior to the settlement on the loan or from the loan proceeds;
- Require a financial assessment of the Borrower(s) to insure they have the “capacity and willingness” to meet the obligations of the loan. This includes a credit history check and/or review of the Borrowers’ debt to verify satisfactory payment on credit cards, mortgages and property taxes. The assessment will also analyze household cash flows and debt levels;
- May require a set aside of a portion of the available proceeds to guarantee payment of property taxes and hazard insurance;
- May require substantially higher M.I.P. payments (Mortgage Insurance Premium) where greater than 60% of the maximum available loan is initially distributed equal to 2.5% of the maximum available loan amount. However, where upfront distributions are less than 60% of the maximum available loan the M.I.P. may be as low as 50%.

It is believed that seniors with lower incomes, higher household debts or marginal credit histories will be less likely to qualify for a reverse mortgage.

The basic requirements of a reverse mortgage are as follows:

- All Borrowers must be at least 62 years of age or older with no maximum age limit.
- The mortgaged property must be used as the principal residence of the Borrower.
- The property to be mortgaged must be free and clear of **all** existing mortgages. The Borrower will be required to pay the balance of any existing mortgage or liens from the proceeds of the reverse mortgage.

Reverse mortgage programs generally do not lend on cooperative apartments or mobile homes, although some “manufactured” homes may qualify if they are built on a permanent foundation, classed and taxed as real estate and meet other requirements.

The amount of cash you can get from your home depends on a variety of factors including the value of the home, your age and interest rates. Those funds may be distributed as a lump

sum, as a line of credit or in a monthly amount. For the monthly option, it may be for a specific number of years, or as long as you live in your home. All of the reverse mortgages have costs and almost all of them can be included in the borrowed amount so that the only up-front costs to the senior is the appraisal.

Those costs may include an origination fee of 2% of the initial \$200,000 of the loan and 1% of the balance with a maximum fee of \$6,000. Fees also include a yearly M.I.P. (along with the initial M.I.P.), an appraisal fee, credit report fee, flood certification fee, document preparation fees, recording fees, courier fees, title insurance fee, termite inspection fee, a survey fee in some cases, and a monthly servicing fee along with any closing costs charged by the title company.

The Borrower must undergo counseling with a HUD-approved non profit organization.

A reverse mortgage has no impact on an individual’s receipt of Social Security or Medicare benefits, but it may have an impact on an individual’s ability to receive Supplemental Security Income (SSI) and Medicaid benefits. Reverse mortgage payments to an individual may be treated as income by the Department of Human Services. Additionally, if an individual receives reverse mortgage proceeds and does not expend them in the month they are received, they are considered “liquid assets” and may adversely affect eligibility for SSI and Medicaid benefits.

The funds received are not subject to income taxes.

Another important feature of these loans is that you can never owe more than the value of the home. In banking terminology, they are known as “non-recourse” loans.

It is recommended that an individual who is considering obtaining a reverse mortgage first consult with an Elder Law Attorney to see if there are alternatives available. While reverse mortgages may be of benefit in some cases, they may also be a temporary resolution to a long term problem.

Further information can be obtained from the National Reverse Mortgage Lenders Association (NRMLA) at www.reversemortgage.org and AARP at www.aarp.org/money/revmort/.

Reverse Mortgages

CHAPTER 27

Property Tax & Rent Rebates

In Pennsylvania, home owners or renters age 65 or older, widow/ers age 50 or older, or individuals permanently disabled during all or part of the claim year and 18 years or older during the claim year and unable to work because of a medically-determined or mental disability, with a total household income of \$35,000 or less for homeowners and \$15,000 or less for renters, may file a claim with the Pennsylvania Department of Revenue for a real property tax or rent rebate and inflation divided. Claimants may exclude 50% of their Social Security/Railroad Retirement income in determining their eligibility requirements. Claim applications are due for filing between January 1 and June 30 of the year following the year in which the individual paid the tax or rent. (This June 30th deadline is often extended but not guaranteed).

In addition, owners must have paid the taxes prior to filing and renters must make certain their landlords were required to pay property taxes or make payments in lieu of property taxes on the rental property. Rebate checks are mailed beginning July 1st of each year. Proof of income is required, such as copies of the state or federal income tax returns for the claim year in which you are filing. If you are claiming a rental rebate, you must submit a "Rent Certificate" which includes proof of the rent you paid, such as an affidavit signed by the landlord or the landlord's agent. If the landlord's signature cannot be obtained, the claimant must complete and submit a notarized rental Occupancy Affidavit with the Rent Certificate.

Rent receipts (not canceled checks) are also accepted.

For renters with income \$8,000 or less, the maximum rebate is \$650. For renters with income between \$8,001 and \$15,000, the maximum rebate is \$500.

For owners with income \$8,000 or less, the maximum rebate is \$650; for income between \$8,001 and \$15,000, the maximum rebate is \$500; for income between \$15,001 and \$18,000, the maximum rebate is \$300 and for income between \$18,001 and \$35,000, the maximum rebate is \$250.

If you require further information on this program, you may call the Pennsylvania Department of Revenue at 1-888-222-9190 to talk with a representative or their website: www.revenue.state.pa.us. Additional help is available by contacting the Revenue District Office at (610) 270-1780.

CHAPTER 23

Landlord-Tenant

Landlords and tenants both have rights and responsibilities. When everyone understands their rights and follows the rules, problems between landlord and tenant can be kept to a minimum. In Pennsylvania, the relationship between landlord and tenant is governed by the lease and principals of contract law, the Landlord and Tenant Act, 68 P.S. §§ 250.101-250.602 and its amendments. Both landlords and tenants should consult with an attorney regarding any questions that may arise regarding the issues presented in this chapter.

Leases

A lease is a contract between a tenant and the landlord. It need not be in writing. An unwritten or oral lease is valid in Pennsylvania. If you are in an oral lease situation, you want to be sure there is an understanding as to terms other than rent, such as who is responsible for maintenance and repairs.

Most written form leases contain provisions that are mostly favorable to the landlord. The tenant usually waives or gives up some rights when he signs a lease. Rights that may be waived include notice of lease termination due to nonpayment of rent or other lease violations.

Lease terms can be negotiated, but this should be done **before** signing. Contract law provides that where there is a writing, oral side agreements are usually unenforceable, so everything the landlord promises must be in the lease. Do not take the Landlord's verbal promise (for example, whether your cat is ok). Make the landlord write or type it in the lease. Any changes to the pre-printed lease form must be initialed by both parties. If you disagree with the terms of the lease or do not think you can abide by the agreement, then **do not sign it**. The lease will be used in Court to settle disputes between the landlord and tenant. Once you have signed the lease, you have committed yourself to its terms, even those that may be unfair to you.

READ AND UNDERSTAND THE LEASE BEFORE SIGNING. ALWAYS GET A COPY.

At the end of the term, many leases provide for automatic renewal until either the landlord or the tenant gives notice that they wish to end the agreement. Unless waived, a written lease may provide the number of days' notice that must be given the other party to end the agreement. If there is no provision in the lease, then in a year to year lease, 30 days' notice by either party is required to end the lease. In a month to month lease, 15 days' notice is required to end the lease. If there is a failure to pay rent, the landlord need give only 10 days' notice. The landlord does not have to renew the lease and does not have to give a reason for not doing so. A landlord may end the lease by simply giving the proper notice. However, a landlord may not evict or refuse to renew a lease for reasons of race, color, national origin, gender, familial status (family with children), disability, creed, ancestry or age. If you think you have been the victim of such discrimination, you can consult an attorney and/or contact:

Pennsylvania Human
Relations Commission
215-560-2496
215-560-3599 (TDD)
www.phrc.pa.gov

Housing Equality Center of Pennsylvania
866-540-FAIR
[www. Equalhousing.org](http://www.Equalhousing.org)

Renters' Insurance

Tenants need to know that the landlord's insurance coverage on the building will not cover them in the event of loss or damage due to fire, storm, theft, etc. Tenants must have their own policies to protect their personal property, protect themselves from liability for damage to property or injury to guests for which they are responsible, and additional living expenses (e.g. hotel costs) if the rented residence is rendered uninhabitable by a covered loss event.

Most renter's policies will have a deductible of \$250 or \$500. That means that the insurance company will pay for the amount of the loss over and above the deductible amount. The cost of the policy or premium will depend upon where you live, the amount of your deductible, your company, and whether you have added extra coverages. If you have a car, getting your renter's policy from the same company where you have your car policy may make you eligible for a multi-line discount.

Repairs

The landlord is generally responsible for all major repairs and those necessary because of normal wear and tear. If a tenant causes damage, the tenant will be responsible for repairing it.

The Warranty of Habitability requires a landlord to provide safe, sanitary and decent housing to a tenant. Generally, the landlord must make available:

- Drinkable water
- Adequate heat in cold weather
- Working sewer system/plumbing/hot and cold water
- Working and safe electrical system
- Functioning lock for doors and windows
- Safe and sanitary conditions of the structure and outside area
- Smoke detectors and fire escapes

The landlord must keep the property and its systems in repair and must correct problems that make the premises unsafe, unsanitary and therefore unfit to live in, **provided that the tenant did not cause the damage**.

The tenant must notify the landlord about maintenance problems. In emergency situations, verbal notice is fine, but for follow-up and on-going situations, written notice is preferable to document issues in the event you wind up going to court. A landlord has a reasonable time to correct the defect after receipt of notice of the problem. What is reasonable is determined on a case-by-case basis, the most important factor being the nature of the problem. A Court will expect that an emergency situation be attended to more quickly than other qualifying defects. For most non-emergency problems, a period of 30 to 60 days after the landlord's receipt of notice may be considered reasonable. Again, there are no precise guidelines.

If the landlord refuses to repair after appropriate written request/notice of intent to exercise remedies, a tenant who is current in rent may exercise tenant remedies including:

- Repair and Deduct – where habitability issue can be remedied for an amount that is less than the remaining rent due on the lease, the tenant may have the repair done and deduct it from the rent. The tenant should provide the landlord with a copy of the repair invoice along with any remaining rent due for the following month(s).
- Contacting the local building inspector to document the issue- Tenants should keep in mind that if the property is deemed uninhabitable, they may be Instructed to leave. The landlord may be cited.
- Withhold/escrow of rent – withholding rent and putting it into an escrow account may be an option where the repair costs more than the monthly rent, the problem is so serious that all or part of the home is uninhabitable, and it has been documented by the building inspector. The tenant must establish an escrow account at a local bank. The tenant must also send a letter to the landlord stating that since the landlord failed to make the repairs indicated in the tenant's previous letter within a reasonable period of time, future rent payments will be placed into the escrow account. Each month, a copy of the deposit slip should be sent to the landlord.

Be aware that none of the tenant remedies are perfect or easy to win with in Court. If the landlord sues for eviction and the tenant files a defense based on retaliatory eviction, the Court will decide whether the actions were justified. It will also consider whether expenditures for self-help repairs or reduced rent payments were reasonable. Keep in mind that at the end of the lease term, the landlord can still decide not to renew the lease. However, if conditions do not improve, it may not be worth the tenant staying anyway.

Eviction

A landlord can evict a tenant for any one of the following reasons:

- The lease term is over and not being renewed;
- The tenant is behind in paying rent; or
- The tenant has violated a provision of the lease (damage to the building, too much noise, criminal activity on the premises, etc.).

Self-help eviction measures are unlawful in Pennsylvania. A landlord must follow the eviction process through the Magisterial District Courts. Failure to do so may result in dismissal of the eviction action or liability to the tenant for damages. Illegal self-help actions include shutting off heat, water or utility services, lockouts, seizing the tenant's personal property and/or threatening the tenant. If you are a tenant experiencing any of these actions, seek legal help immediately. A landlord must have a valid court order entered after a hearing or tenant's failure to appear to legally expel a tenant from the rented premises.

The landlord must send a termination notice. The exact time of the notice period required is usually specified in the lease (nonpayment of rent is 10 days and breach of lease terms is usually a 15-day notice). The notice may be mailed, handed to the tenant, or posted on the door of the unit. It does not matter if the tenant is sick, elderly or lost a job. If the rent is not paid according to the lease or if the lease is broken in some other way, the landlord still has the right to seek eviction. Failure to give notice will prevent the landlord from obtaining possession until the notice is appropriately given.

If the tenant does not move, the landlord may sue by filing a complaint in the Magisterial District Court (small claims). The complaint can be handed to the tenant, posted on the door and mailed. The complaint will list a hearing date. The tenant should always attend the hearing, even if the tenant thinks that the matter has been resolved, unless the tenant receives actual notice from the court that the hearing has been canceled. If you cannot go to the hearing on the date scheduled, call the District Justice's office and ask for a continuance. The reason must be a good one (hospitalization, death in the family). If you do not go to the hearing and did not request a **continuance**, the landlord will win by default. Tenants may also present a counter complaint for claims against a landlord (money paid for repairs, or if a rent abatement due to uninhabitability is sought).

Tenants should seek legal advice and may contact the **Delaware County Bar Association Lawyer Referral Service**, www.delcobar.org, 610-566-6625; or **Legal Aid of Southeastern Pennsylvania**, www.lasp.org, 1-877-429-5994. Forms may be obtained online through www.pacourts.us (click Forms in upper right corner of screen and then under Category, click For the Public) or www.delcopa.gov (click Courts, then Magisterial District Judges, then on the right click State Forms). The landlord can access its forms under the landlord heading. The tenant may use the Civil Complaint form for a counterclaim and reference the Landlord Tenant Complaint. Make sure that the hearings are scheduled on the same date and heard together. Also, bring all documents needed to prove or defend your case (bills, receipts, written agreements, letters or notices and/or pictures).

If a judgment is entered for rent alone (no other lease violation) the tenant can stop eviction by paying the amount of the judgment, including court costs, to bring the rent account current. A landlord who wins a judgment for possession of the premises can enforce it by having the Constable serve an Order for Possession after the 10th day following the date of the entry of judgment if the tenant does not appeal to the Court of Common Pleas. This is a notice telling the tenant that unless the

tenant does not leave the property by the date set forth on the notice (10 days to move after service of the Order), the Constable or Sheriff can forcibly put the tenant out of the rental unit. After the expiration of the 10 day period, the landlord may return to the Magisterial Court and request the forcible eviction.

Appeals

Either party may appeal the decision to the Court of Common Pleas. For issues regarding just the money judgment (the tenant is not trying to stay in the unit), the deadline is 30 days from the date of the decision. If the tenant appeals, he/she must serve the landlord with a copy of the appeal papers containing a notice and rule to file a complaint with the court within 20 days. If the landlord appeals, he/she must file and serve a complaint upon the tenant. The tenant must answer the complaint and the case proceeds as any other suit in Common Pleas.

If the tenant is appealing the order granting possession (trying to stay in the premises), there is a **10-day appeal deadline**. The tenant must serve the notice of appeal to both the landlord and the Magisterial District Court. The tenant must also pay a bond for a "supersedeas" (stay of eviction). If the tenant's income is above 100% of federal poverty guidelines, he/she must pay to the court the lesser of 3 times the monthly rent or the amount of unpaid rent determined by the Magisterial District Judge. If the tenant is a low-income tenant, he/she must file an affidavit and pay either the current rent for the month of the appeal, or if unable to, must pay 1/3 of the rent at the time of filing and the remaining 2/3 within 20 days. For all tenants, while the appeal is pending, they must pay the current rent payments to the court escrow (in Delaware County, the Office of Judicial Support) every 30 days and **in cash**. If the tenant fails to make these payments every 30 days, the landlord can have the supersedeas terminated and go back to the Magisterial District Court to resume the process to evict the tenant.

It is recommended that both parties seek legal assistance for appeals as the process is more complex than filing with the Magisterial District Court.

Property Left Behind by the Tenant

Vacating tenants often leave items behind. Those being evicted may not have the ability to take everything all at once, and even in a planned move-out, things may be missed by the movers.

Under the law (Pa. Act 129 of 2012, 68 P.S. §250.505a), landlords are required under the law to send a notice to tenants who have left and not been evicted, or those evicted where the order of possession did not contain notice of the requirements of Act 129. The notice needs to inform the tenant that personal property remains, that the tenant has 10 days from the postmark of the notice to contact the landlord as to the tenant's intent to claim the property, and must give the address and phone number for the tenant to contact. If in doubt, the best practice to protect yourself is to send a notice anyway.

Tenants should always give the landlord a forwarding address for the receipt of notice. Otherwise, the landlord need only send the notice to the last known address (the one you just left), and even if your mail is forwarded, you may not receive it in time. Tenants being evicted should just contact the landlord within 10 days after leaving a property to let the landlord know that they intend to claim their things. Don't rely on getting a notice from the landlord. Tenants who call should also send a follow-up letter and **keep a copy**.

If the tenant fails to contact the landlord within 10 days, the landlord can dispose of the property. If the tenant informs the landlord of the intent to reclaim the property, the landlord must hold the property for 30 days.

Please note that after 10 days from the date of the eviction or the date of the notice, the landlord may charge the tenant for the cost of storing items.

Security Deposits

A security deposit is any money the landlord has collected as a condition of the tenant's moving in, to provide security against damage to the premises or nonpayment of rent. The general rules are as follows:

- During the first year of the tenancy, the security deposit cannot be more than two month's rent.
- During the second year of the tenancy or during any renewal of the original lease, the security deposit cannot be more than one month's rent.
- During the third year of the tenancy, or any year thereafter, or during any renewal of the lease after the expiration of two years of tenancy, the landlord who has more than \$100 in security deposit must either deposit the money in an interest-bearing account or put up a bond which guarantees that the tenant will get back his deposit plus interest.

When moving in, a tenant should inspect the premises and make a list of existing damages and repairs for the landlord. The tenant should keep a copy until the end of the tenancy to document damages pre-existing at the beginning of the lease that were not repaired so as not to be charged for them.

When moving out, a tenant should leave a rental reasonably clean and empty of all personal items and trash. Try to do a walk-through inspection of the unit with the landlord, although be aware that it is not required. Tenants should not leave furniture or other items behind. The landlord has the right to charge for cleanup and disposal of trash and abandoned personal property. Make sure all keys to the unit are returned.

Tenants need to send or give written notification to the landlord of where the security deposit should be sent. Always keep a copy. Failure to give the landlord a forwarding address relieves him/her of responsibility to refund the deposit.

The landlord may make deductions from the security deposit for damages that **are not** normal wear and tear (stained/ripped carpets, holes in walls, broken/missing tiles, heavily scratched hardwood, broken windows, ripped screens, etc.) or when the tenant has skipped out leaving a rent balance. The landlord has 30 days after the tenant leaves to either refund the security deposit or provide a written list of any damages for which he claims the tenant is responsible

and payment of the difference between the deposit money **plus** interest and the money used to pay for damages.

If the landlord fails to do these things, he/she has given up the right to withhold any of the security deposit or interest. He/she also has given up the right to sue the tenant for any damages to the unit. Moreover, the tenant can sue the landlord for double the amount of the security deposit.

CHAPTER 29

Family Law

Protection from Abuse

In addition to criminal charges, Pennsylvania Law provides a civil remedy to protect against physical abuse at the hands of spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners, and persons who share biological parenthood.

An act of “abuse” is perpetrated by; (1) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest, either with or without a deadly weapon; (2) Placing another in reasonable fear of imminent serious bodily injury; (3) the infliction of false imprisonment; (4) physically or sexually abusing minor children; and (5) knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without property authority, under circumstances which place the person in reasonable fear of bodily injury.

A weapon is anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for any lawful uses which it may have.

The Protection from Abuse Act allows Judges to enter orders granting the following relief (1) directing the defendant to refrain from abusing the plaintiff or minor children; (2) granting possession to the plaintiff of the residence or household to the exclusion of the defendant; (3) awarding temporary custody or temporary visitation rights with regard to minor children; (4) directing the payment of financial support; (5) prohibiting the defendant from having any contact with the plaintiff or minor children including, but not limited to, restraining the defendant from entering a place of employment or business, or the school of the plaintiff or minor children, and from harassing the plaintiff or the plaintiff’s relatives or minor children; (6) prohibiting the defendant from acquiring or possessing any firearm for the duration of the Order and ordering the defendant to temporarily relinquish to the Sheriff or other appropriate law enforcement agency any firearms under the defendant’s possession or control; (7) directing defendant to pay the plaintiff for reasonable losses suffered as a result of abuse including medical, dental, relocation and moving expenses, counseling, loss of earnings or support, costs of repair or replacement of real or personal property damages, and other out of pocket losses for injuries sustained; and (8) directing the defendant to refrain from stalking or harassing the plaintiff and other designated persons.

Orders entered under the Protection from Abuse Act can remain in force for as long as 36 months and can be extended if an act of abuse occurs while the Order is in effect.

Anyone who believes that he or she needs this kind of protection for themselves or other protected persons, should call a family law attorney, the Lawyers’ Reference Service of the Delaware County Bar Association (610-566-6625), the Domestic Abuse Project (610-565-6272), the local police, or one of the other numbers listed in the chapter concerning Elder Abuse and Neglect, which appears elsewhere in this Handbook.

Physical Abuse Protection From Abuse Orders (PFAs)

Depending on the time when an act of abuse occurs, there are 3 ways to obtain an order under the Protection from Abuse Act:

- An Emergency Order can be issued by the Magisterial District Judge in the district in which the event occurred if the event occurs after 3:00 PM on a business day or on a weekend or other time when Court of Common Pleas is closed. It will typically remain in effect until the next business day at the Court of Common Pleas at which time an order must be requested from the Court of Common Pleas.
- A Temporary Order can be issued by the Court of Common Pleas in appropriate cases and will continue in effect until a hearing for a Permanent PFA Order is held.
- A Permanent Order can be issued after a hearing before the Court of Common Pleas. The hearing is scheduled when a Temporary Order is issued and is typically held within approximately one week.

In any emergency, call 911. The police will assist you, provide information on how to get an emergency PFA Order, and will file a report. They will also serve and Order on the party against whom it has been entered.

To obtain information on filing for a PFA Order and, with few exceptions, free legal representation throughout the process, you can contact the Domestic Abuse Project of Delaware County, 14 West Second Street, Media, PA 19063, 610-565-6272, 610-565-4590 (bi-lingual) before 10:30 AM Monday through Friday for a same day Court appearance. After 10:30 AM, assistance will be provided for a next day Court appearance. If you wish to file on your own, you may go to the Office of Judicial Support in the Media Courthouse or seek private legal counsel of your own or through the Delaware County Bar Association Lawyer Reference Service at 610-566-6625.

There are many organizations in Delaware County working to prevent elder abuse, but they

can't help if they don't know about the abuse. Whenever you hear or see abusive behavior you should call 911. If you ignore abuse or think it will get better without intervention, you may be risking your life or the life of someone you know. Abuse frequently gets worse if permitted to continue.

Also, where the parties are involved in a Divorce action, a Judge can award exclusive possession of the marital residence to a spouse who has been abused, or when other circumstances make the entry of such an order equitable.

A Judge can also enter an order preventing one spouse from encumbering or disposing of marital assets until a final order is entered in the Divorce action equitably dividing the marital property.

Marriage

Since January 1, 2005, when common law marriage was abolished in Pennsylvania (see below), the only way for a couple to marry in Pennsylvania is to apply for a marriage license at least three days before the ceremony (with very few exceptions). There is no restriction based upon advanced age. There are restrictions on the issuance of a marriage license to people who are related to each other or to persons who are under the influence of alcohol or drugs. Also, a marriage license will not be issued to a person who is of unsound mind or who is under guardianship as a person of unsound mind unless a Judge decides that it is in the best interest of the applicant and the general public to issue the license.

Pennsylvania used to be one of a small number of states permitting the creation of a "common law marriage." In order to enter into a common law marriage, the parties needed to exchange vows in the present tense with the specific purpose of creating the legal relationship of husband and wife. This was sometimes done in order to obtain medical or other benefits for a companion when there had been no ceremonial marriage. The Pennsylvania Legislature has now enacted a law that provides that no "common law marriage" entered into on or after January 1, 2005 will be recognized as valid. A common law marriage entered into before January 1, 2005 may be found to be valid, if all the require-

ments for a common law marriage can be proven. A person who claims benefits based upon the existence of a common law marriage should consult a family law attorney for guidance.

Same sex marriage became legal in Pennsylvania on May 20, 2014, when a U.S. Federal District Judge ruled that the Commonwealth's 1996 statutory ban on recognizing same sex marriage was unconstitutional. Additionally, a same sex marriage performed in another state will now be recognized in Pennsylvania.

Marriage - Rights and Responsibilities

Marriage is a statutorily-created legal relationship. From the legal relationship flow certain rights and responsibilities. For example, a spouse has the right to a share of his or her spouse's estate and may have a right to support. Marriage presents a couple with the opportunity for certain tax advantages and options with regard to Social Security and retirement benefits. (These concepts are treated in more detail elsewhere in this Handbook.) On the other hand, one spouse owes a duty to provide medical necessities for his or her spouse and may be required to contribute to hospital or nursing home costs incurred by his or her spouse. (See the chapters on Medicaid and nursing home costs.)

A spouse's rights may change in the event of separation.

Upon divorce, a spouse has the right to have a court equitably divide the couple's marital property and he or she may qualify for an award of ongoing support or alimony. (See the discussion hereinafter related to Planning for Subsequent Marriages.)

Spouses are not automatically agents for one another. Therefore, each spouse should have a durable financial power of attorney and a durable medical power of attorney, granting power to his or her spouse to handle financial matters and to make medical decisions in the event of incapacity. The power of attorney should also allow the agent to obtain medical information under HIPAA. One or more alternate agents should be named as well.

Planning for Subsequent Marriages

Divorced or widowed persons thinking about entering into a marriage should be aware of the consequences of a second marriage. For example, a party who remarries may forfeit the right to collect Social Security benefits on the account of the prior spouse. (See the chapter on Social Security elsewhere in this Handbook.)

Your subsequent spouse also has rights in the event of divorce, or in the event of your death.

Divorce

Although provision is still made in the law for a Court to enter a divorce based upon the fault of one spouse, virtually all divorces proceed under one of two provisions allowing the entry of a divorce decree on a no-fault basis.

If the parties are in agreement that the marriage is irretrievably broken, the parties may file Affidavits of Consent so attesting and establish the grounds for divorce without need of a hearing. If one spouse is not prepared to acknowledge that the marriage is irretrievably broken, a Court will presume, almost irrebuttably, that the marriage is irretrievably broken after the parties have lived separate and apart for a period of one year. Parties may be determined to have lived separate and apart even though under the same roof when one spouse clearly manifests an intention to live separate and apart. Evidence of such an intention would include separate finances, separate living arrangements, and a statement to the other of such intent. Under such circumstances, the moving party files a different Affidavit of Consent attesting to the date of separation which, if unanswered, establishes the grounds for divorce.

Upon establishment of the grounds for divorce, under either provision, the moving party can file to have a Master appointed in order to resolve all financial and property issues.

Effects of Divorce

In the event of a divorce, your spouse may be entitled to a substantial share of the property that you acquired during the marriage ("marital property"), as well as to the appreciation in value of separately-titled property you may have brought to the marriage. Marital property is divided in a process called Equitable Distribution

in which the court considers a series of factors including the length of the marriage, the source of the assets, and the needs and future economic prospects of the parties.

A percentage which the court considers to be equitable under the circumstances is awarded to each spouse.

Your spouse may also be entitled to support or alimony during and even after divorce. Generally speaking, “marital property” means all property acquired by either party beginning on the date of the marriage and prior to the date of the final separation, no matter how titled, as well as the appreciation in a spouse’s separate or excluded property. Some property is specifically not considered to be “marital property.” For example, property acquired by gift or inheritance is not deemed to be marital property unless it is gifted to the marriage by being placed in joint names or is commingled with marital property in some manner. The law provides for other exclusions, as well. Even in the case of excluded property, however, any appreciation in such property is considered to be marital property. If this is an issue for you, you should consult with a qualified attorney.

If one or both parties intend to retain separate ownership of property in order to leave their assets to their respective children, if they wish to prevent the new spouse from acquiring rights to property deemed to be marital property, if they wish to provide in advance for the terms of any divorce, or if they wish to prevent the other from claiming support or alimony, they should enter into a “Prenuptial Agreement” or “Antenuptial Agreement” prior to the marriage, and should prepare their Wills and other estate planning documents accordingly. Such agreements should be prepared and signed as much in advance of the date of the marriage as is possible, and should be entered into with the advice of counsel. Married couples can also enter into a Marital Agreement during the marriage, but, at that time, marital rights will already have attached.

Similarly, if either or both parties wish to keep certain property to themselves, without adding it to the “marital property,” they should avoid putting it in joint names or otherwise commingling it with marital property.

Effect of Death of Spouse

Marriage also vests substantial rights in the new spouse in the event of the death of a party. These rights may be contrary to the wishes of the party. If a party who has re married dies without a Will, the surviving spouse is entitled to an intestate share of the party’s estate. If a party who has remarried dies with a Will, even if the Will makes no, or minimal, provision for the surviving spouse, the surviving spouse can claim an “elective share” of the party’s estate.

The size of the surviving spouse’s intestate or elective share depends upon the size of the estate and the identity and degree of kinship of the decedent’s next of kin.

For these reasons, people who intend to marry, or remarry, should be aware of, and should plan for, the legal consequences of the marriage. Planning is especially important for people with children from prior marriages or relationships, and assets or income to be left to those children. Planning is also especially important for people who have an interest in a family business or closely-held corporation, for people who come to a marriage with substantial assets, and for people who anticipate future receipt of substantial assets or income, such as through an inheritance.

To avoid unintended consequences, a party contemplating marriage, or remarriage, should consult a qualified attorney in order to be aware of and to plan for the consequences of the marriage. An experienced attorney can advise you about the possible use of Prenuptial Agreements, Trusts, and other means which will preserve your rights and the rights of your intended beneficiaries to your assets and income.

Grandparents’ and Great-Grandparents’ Custody Rights

In most family situations, grandparents including great-grandparents, have undisturbed relationships with their minor grandchildren.

However, when there is a dispute between parent and grandparent, the parent is presumed to have the right to custody of a child, and to make all decisions in the child’s best interests. If the

parent and grandparent cannot arrive at an informal agreement, a grandparent can petition the Court in the County in which the child resides for legal custody, (the right to see the child but not take him/her away from the parent's control) or partial custody (the right to take the child away from the parent's control for a specific period of time). In such cases, the grandparent bears a heavy burden of persuasion.

A grandparent can bring an action for any form of physical custody or legal custody when he or she stands in loco parentis to the child. A person stands in loco parentis to a child when he or she has assumed and discharged parental duties on behalf of a child for a significant period of time but is not a natural parent.

A grandparent to a child who is not in loco parentis to the child can be awarded any form of custody when **all** of the following have occurred: (1) when his or her relationship with the child began either with the consent of a parent of the child or under a Court Order; (2) when a grandparent assumes or is willing to assume responsibility for the child; and (3) where one of the following conditions is met: (1) the child has been determined to be a dependent child; (2) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse, or incapacity; or (3) the child has for a period of at least 12 consecutive months resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

Pennsylvania law also specifically gives grandparents the right to petition for partial physical custody and supervised physical custody rights, but not legal custody, in these situations:

1. Where the parent of a child is deceased; and
2. Where the relationship with the child began either with the consent of a parent of the child or under a Court Order **and** where the parents of the child: (a) have commenced a proceeding for custody and; (b) do not agree as to whether the grandparents or great-grandparents should have custody

under this section or; (3) where the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case an action must be filed within 6 months after removal of the child from the home. when the parents are divorced or divorcing, or have been separated for a period of six months. (These provisions do not apply where the child has been adopted by a third party.)

Where an Order of Custody has been entered, Pennsylvania law provides a formal procedure which must be observed before a person having custody or visitation rights may be deprived of such rights by reason of the relocation of the primary custodian to another location. Again, a prompt filing must be made in order to preserve such rights.

In each case, the grandparent must prove that the visitation or custody rights sought are in the best interests of the child and would not interfere with the parent-child relationship.

Remember that issues of custody and visitation of children are always governed by the "best interests of the child" standard, and not by the interests or desires of the parents or grandparents. In these cases, a court will examine the amount and type of contact the grandparent had with the child before filing the petition. For example, a grandparent petitioning for partial custody who has been in constant contact with a child, and has been involved in actual parenting activities, is more likely to succeed than is a grandparent who has had only occasional or social contacts with a child. Also, it is more helpful to show that a grandparent helped the child with homework or took him or her to the doctor or dentist, than it is to show that he or she took the child to the movies or the zoo.

Another key factor is the grandparent's attitude toward the parent(s). Courts will be reluctant to award custody or visitation rights to a grandparent who has denigrated a parent or tried to interfere with the child's relationship with his or her parent.

As the amount of time requested by the grandparent increases from visitation to partial custody, the reasons offered in support of the grandparents' petition must become correspondingly more convincing.

In the case of a grandparent versus a third party such as Children and Youth Services, however, grandparents have a better chance of being awarded custody rights. A grandparent has standing to petition for primary physical and legal custody of a grandchild if it is in the best interests of the child NOT to be in the custody of either parent (e.g., because of parental abuse, neglect, drug or alcohol abuse, mental illness, etc.) AND it is in the best interest of the child to be in the custody of the grandparent. To establish standing to bring such a petition, the petitioner must be a grandparent: (1) who has genuine care and concern for the child; (2) whose relationship with the child began with the consent of a parent of the child or by order of court; and (3) who for 12 months has assumed the roles and responsibilities of the child's parent, providing for the physical, emotional and societal needs of the child. Each such case depends on its own facts and circumstances.

In any contested custody/visitation case, it is wise for the grandparent(s) to be represented by experienced counsel to guide them through the Family Court process.

Finally, an unrelated individual may be awarded any form of physical or legal custody if he or she establishes by clear and convincing evidence all of the following: (1) the individual has assumed or is willing to resume responsibility for the child; (2) the individual has a sustained, substantial and sincere interest in the welfare of the child. (in determining whether the individual meets the requirements of this subparagraph, the Court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child's life); **and** (3) neither parent has any form of care and control of the child.

CHAPTER 30

Grandparents' and Great-grandparents' Custodial Rights

Many grandparents and great-grandparents in today's society have assumed the unexpected role and responsibility of caring for and, in many cases, raising their grandchildren or great-grandchildren. The reasons and situations that give rise to this are as numerous as the families themselves. Every situation is unique. These situations often result in grandparents seeking custodial or visitation rights as to their grandchildren. Many circumstances can give rise to a grandparent seeking custody or guardianship of a grandchild such as the death of a parent, divorce, physical or emotional abuse, substance abuse/addiction or mental health issues of a parent, neglect or a combination of these factors. In recent years there has been an overwhelming increase of cases filed in the courts where grandparents seeking custody of minor grandchildren to become primary caregivers due to the overwhelming increase of substance abuse and, in particular, related to the opioid epidemic.

Grandparents are thrust into the legal system to intervene and protect the health, welfare and best interests of their grandchildren, usually in situations where the parents can no longer provide for the health and safety of their child or children. This may or may not be with the consent of the parent or parents.

There are two types of custody a grandparent can seek from the court. Physical custody where the grandchild would actually reside with the grandparents and legal custody which will give the grandparents decision making ability for their grandchildren. Grandparents may seek one or both forms of custody.

There are also situations in which a grandparent may petition the court for guardianship of their grandchildren in lieu of custody. Petitions for guardianship are filed in the Orphans Court Division of the Court of Common Pleas. Petitions for custody are filed in the Family Court

Division of the Court of Common Pleas. Parents may either consent to the grandparents' guardianship petition or they may contest the matter. The decision of whether to petition the court for custody or guardianship of a grandchild should be made after consultation with an attorney with experience in both Family and Orphans Court practice.

In 2016, the custody law changed in Pennsylvania. The previous laws allowed grandparents to seek custody of grandchildren in situations where the parents were separated for 6 months or more was found to be unconstitutional by our Pennsylvania Supreme Court. Separation of six months or more of the parents of a child no longer provides an opportunity or standing for a grandparent to seek custody of a child.

The revisions to the Custody Act which became effective in 2018 set forth the current guidelines within which grandparents and great-grandparents can seek custody of their grandchildren. There are two controlling statutes in relation to child custody rights of grandparents, and great-grandparents, 23 Pa.C.S. Sections 5324 and 5325.

Section 5324 provides that a Grandparent has standing to seek any form of legal or physical custody if they meet a certain criteria:

- a. The grandparent's relationship with the child must have begun either with parental consent or under order of the Court; and
- b. The grandparent must assume or be willing to assume responsibility for the child; and
- c. One of three conditions are met:
 1. The child has been determined to be a dependent child; or
 2. The child is at a substantial risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or
 3. The child has for a period of 12 consecutive months, resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed by the parents, in which case the action must be filed within six months after the removal of the child from the home.

Under Section 5325 of the Custody Act,

a grandparent or great-grandparent may file an action for partial physical custody or supervised physical custody in the following situations:

- a. Where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;
- b. Where the relationship with the child began either with the consent of a parent of the child or under Court Order and where the parents of the child:
 1. have both commenced a proceeding for custody; and
 2. do not agree as to whether the grandparents or great grandparents should have custody; or
- c. When the child has, for a period of at least 12 consecutive months, resided with the Grandparent or Great-grandparent, excluding brief temporary absences of the child from the home, and is removed by the parents, in which case the action must be filed within six months after the removal of the child from the home.

The opioid epidemic has resulted in grandparents and great-grandparents utilizing these laws in greater numbers in order to provide health, benefit, welfare and safety of their grandchildren on an either temporary or permanent basis. The courts will work with the families to provide for the best interests of the children.

If a parent has sought treatment and rehabilitation and can prove to the Court that it is in the best interests of the child for the parent to take responsibility for their child the Courts' order will be amended accordingly. However, often times Grandparents will return to the Court if the child's health, welfare and safety is at risk due to the relapse of a parent.

The determination whether it is appropriate to file a petition under the Custody Act is always dependent on the specific family circumstances and the best interests of the child. If you need assistance in this area, consultation with your legal counsel and other professionals can help you take action for interest of your grandchildren.

CHAPTER 31

Elder Abuse & Neglect

Everyone has the right to be safe. It's the law. Elder abuse or neglect can occur at any time, in any community, at any economic level, among all races and nationalities. Many people who hear "elder abuse and neglect" think about older people living in nursing homes, but most elder abuse and neglect takes place at home. When elder abuse happens, family, other household members and/or paid caregivers usually are the abusers. Often the abuse is subtle, and the distinction between normal stress and abuse is not always easy to discern. Elders who are ill, frail, disabled, mentally impaired, or depressed are at greater risk of abuse, but even those who do not have these obvious risk factors can find themselves in abusive situations and relationships.

IN AN EMERGENCY, CALL 911.

If you are abused you should not confront your abuser. Wait until the abuser is gone or has calmed down so you can secretly and safely call one of these numbers for help:

- County of Delaware Services for the Aging, Protective Services
206 Eddystone Avenue, 2nd Floor
Eddystone, PA 19022,
610-490-1300 or 800-416-4504.
- Delaware County Elder Abuse Hotline
610-490-1300, 24 hours a day.
- Domestic Abuse Project of Delaware County
14 West Second Street
Media, PA 19063
610-565-6272, 610-565-4590 (bi-lingual).
- Senior Victim Services, 610-627-2292,
provides assistance with court appearances and recovery of losses for elderly crime victims.
- Delaware County District Attorney's Office,
Senior Exploitation Unit
201 West Front Street
Media, PA 19063
610-891-5249.

- Pennsylvania Department of Aging
717-783-3126
- Pennsylvania Elder Abuse Hotline
800-490-8505

Be sure to call. You may be able to prevent the next abusive situation by getting help from people who have worked with these problems and will work with you to develop your own personal safety plan. This could mean the difference between life and death.

Physical Abuse

Physical abuse can range from slapping or shoving to severe beatings and restraining with ropes or chains. When a caregiver or other person uses enough force to cause unnecessary pain or injury, even if the reason is to help the older person, the behavior can be regarded as abusive. Physical abuse can include hitting, beating, pushing, kicking, pinching, burning, or biting. It can also include such acts against the older person as over- or under-medicating, depriving the elder of food, or exposing the person to severe weather, deliberately or inadvertently.

Look for:

- Bruises or grip marks around the arms or neck
- Rope marks or welts on the wrists and/or ankles
- Repeated unexplained injuries
- Dismissive attitude or statements about injuries
- Refusal to go to same emergency department for repeated injuries
- A history of doctor or emergency room "shopping"
- Repeated time lags between the time of any "injury or fall" and medical treatment
- Cuts, lacerations, puncture wounds
- Any injury incompatible with history
- Burns.

Emotional/Psychological Abuse

Emotional or psychological abuse can range from name-calling or giving the "silent treatment" to intimidating and threatening the individual. When a family member, a caregiver, or other person behaves in a way that causes

fear, mental anguish, and emotional pain or distress, the behavior can be regarded as abusive. Emotional and psychological abuse can include insults and threats. It can also include treating the older person like a child and isolating the person from family, friends, and regular activities either by force or threats or through manipulation. Look for:

- Unwillingness to communicate or respond to questions
- Unreasonable fearful or suspicion
- Lack of interest in social contacts
- Chronic physical or psychiatric health problems
- Evasiveness or hesitation to talk openly
- Implausible stories
- Confusion or disorientation
- Denial
- Agitation.

Sexual Abuse

Sexual abuse can range from sexual exhibition to rape. Sexual abuse can include inappropriate touching, photographing the person in suggestive poses, forcing the person to look at pornography, forcing sexual contact with a third party, or any unwanted sexualized behavior. It also includes rape, sodomy, or coerced nudity. Look for:

- Unexplained vaginal or anal bleeding
- Torn or bloody underwear
- Bruised breasts
- Venereal diseases or vaginal infections

Financial Abuse or Exploitation

Financial exploitation can range from misuse of an elder's funds to embezzlement. Financial exploitation includes fraud, taking money under false pretenses, forgery, forced property transfers, purchasing expensive items with the older person's money without the older person's knowledge or permission, or denying the older person access to his or her own funds or home. It includes the improper use of legal guardianship arrangements, powers of attorney, or conservatorships. It also includes a variety of scams perpetrated by sales people for health-related services, by mortgage

companies or financial managers, or even by so-called friends. Look for:

- Unusual banking activity (e.g., large withdrawals during a brief period of time, switching of accounts from one bank to another, ATM activity by a homebound elder)
- Bank statements, credit card statements, etc. no longer coming to the older adult
- Documents being drawn up for the elder to sign but the elder cannot explain or understand the purpose of the papers
- The elder's living situation not commensurate with the size of the elder's estate (e.g., lack of new clothing or amenities, unpaid bills)
- A caregiver who expresses concern only about the financial status of the older person and does not ask questions or express concern regarding the physical and/or mental health status of the elder
- Personal belongings, such as jewelry, art, furs, are missing
- Signatures on checks or other documents do not match the signature of the older person
- Recent acquaintances, housekeepers, "care" providers, etc., declaring great affection for the older person while isolating him or her from long-term friends or family
- Recent acquaintances, housekeeper, caregiver, etc. making promises of lifelong care in exchange for deeding all property and/or assigning all assets over to the acquaintance, caregiver, etc.

Neglect

Caregiver neglect can range from caregiving strategies that withhold appropriate attention from the individual to intentionally failing to meet the physical, social, or emotional needs of the older person. Neglect can include failure to provide food, water, clothing, medications, and assistance with the activities of daily living or help with personal hygiene. If the caregiver has responsibility for paying bills for the older person, neglect also can include failure to pay the bills or to manage the elder person's money responsibly. Look for:

- Sunken eyes or loss of weight
- Extreme thirst
- Bed sores
- Soiled clothing or bed.
- If you feel you are being abused or neglected, your personal safety is most important. If your abuser is threatening you with greater abuse if you tell anyone, and if the abuser refuses to leave you alone in a room with others who could help, you are probably afraid to let anyone know what is happening to you. A good strategy is to let your physician know about the abuse. The physician has a legal obligation to report the abuser and to help you find safety. If you are able to make phone calls, call a trusted friend who can help you find safety and also find help for the person who is abusing you. There is no shame or embarrassment in asking for help.

If you feel you have been abusive or are in danger of abusing an older person in your care, there is help available. The solution may be to find ways of giving yourself a break and relieving the tension of having total responsibility for an older person who is completely dependent on you. There are many local respite or adult day care programs to help you. The most important thing for you is to be honest with yourself and with those who want to help you. Someone's life may depend on it.

Protection From Abuse Orders (PFAs)

There is assistance available to get an order to keep the abuser away from the victim. A Protection From Abuse Order (PFA) is a restraining order issued by a Magisterial District Judge or a Court of Common Pleas Judge. Under the Protection From Abuse Act, abuse is defined as physical abuse, a threat which places you in immediate fear of physical injury, or a pattern of conduct which places you in immediate fear of physical injury. In order to petition for a PFA, you must be, or must have been, in a relationship with, or a family member of, the person against whom you want to file. A PFA can prohibit abusive conduct and remove the abuser from your residence.

There are 3 kinds of PFAs:

- An Emergency Order is usually issued by a Magisterial District Judge after 3:00 PM on a business day or when Court of Common Pleas is closed. It is typically in effect until the next business day at the Court of Common Pleas.
- A Temporary Order is issued by Court of Common Pleas and is in effect until a hearing for a Permanent PFA is held.
- A Permanent Order is issued for a number of months based on a hearing before Court of Common Pleas. The hearing date is scheduled when you receive the temporary PFA.

In any emergency, call 911. The police will assist you and provide information on how to get an emergency PFA and will file a report. To obtain information on filing for a PFA and, with few exceptions, free legal representation throughout the process, you can contact the Domestic Abuse Project of Delaware County, 14 West Second Street Media, PA 19063, 610-565-6272, 610-565-4590 (bi-lingual) before 10:30 AM Monday through Friday for a same day Court appearance. After 10:30 AM, assistance will be provided for a next day Court appearance. If you wish to file on your own you may go to the Office of Judicial Support in the Media Courthouse or seek private legal counsel of your own or through the Delaware County Bar Association Lawyer Reference Service at 610-566-6625.

There are many organizations in Delaware County working to prevent elder abuse, but they can't help if they don't know about the abuse. Whenever you hear or see abusive behavior you should call 911. If you ignore the abuse or think it will get better without intervention, you may be risking your life or the life of someone you know. Abuse always gets worse without help.

CHAPTER 32

Senior Victim Services

Senior Victim Services, Office of the Delaware County District Attorney serves victims of crime in Delaware County age 55 years and older. This department provides advocacy, assistance

and safety within the criminal justice system and with social service agencies and community organizations, in order to restore older person's lives and prevent further victimization. The services provided are free and confidential to older adults 55 years of age and older.

The vision of Senior Victim Services is to be a visible entity advocating for the rights and services for older victims of crime in Delaware County, providing comprehensive and coordinated services, both on the individual and systemic levels, maximizing community resources through collaborative relationships to support and promote opportunities for justice, rebuilding lives, and ensuring that older victims of crime are treated with dignity and respect.

Services Include:

- Keeping you informed on the progress of your case
- Accompanying you to any court appearance or medical treatment related to a crime
- Offering free telephone counseling services
- Furnish home visits
- Helping you file a private criminal complaint
- Giving information and referrals as needed for such services as emergency food, housing or legal services
- Intervention with creditors on your behalf
- Assisting with Pennsylvania Crime Victims' Compensation claims
- Coordination of transportation services
- Providing alternative opportunities for justice
- Free presentations to senior groups on crime prevention and the needs of older victims of crime.

Senior Victim Services, Inc.

20 South Olive Street, Suite 303

Media, PA 19063

(610) 627-2292 (telephone)

(610) 627-2249 (fax)

<http://www.delcoda.com/information/19-victim-services/agency-assistance/66-senior-victim-services>

CHAPTER 33

Delaware County Criminal Investigation Division (CID)

Senior Exploitation Unit

The Delaware County Office of the District Attorney includes the Senior Exploitation Unit. This Unit was created in 2003 to investigate physical, sexual and financial crimes committed against anyone who is sixty years of age or older. Examples of senior crimes include Identity Theft, Fiduciary Theft, Credit Card Theft or Misuse, Gypsy Scams and physical or financial abuse, including misuse of power of attorney. This Unit was developed to combat the problem of rising crime against senior citizens in Delaware County. Pennsylvania has the second highest number of senior citizen residents in the country. Delaware County has the largest number of senior citizen residents when compared proportionally to other counties within the Commonwealth.

The mission of the Senior Exploitation Unit is twofold: (1) to investigate crimes against seniors; and (2) to educate the general population of Delaware County concerning the many crimes and illegal schemes perpetrated against the seniors of the county.

The education segment of the mission raises awareness about the need to identify these crimes and the need to report the crimes to the proper authorities. In support of this mission, the Senior Exploitation Unit presents programs throughout Delaware County. The Unit presents programs such topics including: Crimes Against the Elderly, Don't Allow Yourself To Be a Victim, Senior Personal Safety and other pertinent subjects explaining the increasing number of crimes committed against seniors and how seniors can protect themselves.

Statistics show that many seniors throughout the country do not report the fraudulent and illegal schemes committed against them because

they are afraid the actors may return to victimize them again or that a family member may find out and may believe the victims are not able to properly handle their own affairs. It is very important to convince the senior victims of the need to report these crimes and to cooperate in the prosecution of individuals who prey on seniors. The Unit explains to seniors that if they become victims, the District Attorney's Office will assist them and will work to preserve their dignity and rights.

The Senior Exploitation Unit works closely with other elder driven agencies, including the County of Delaware Services for the Aging (COSA), Senior Victim Services, The Senior Law Center and many other organizations both within and outside of Delaware County. The assistance of these agencies has allowed the Senior Exploitation Unit to increase the understanding and cooperation of the senior community of Delaware County. The Unit has made and will continue to make a positive impact in cutting the rate of crime and scams committed against our seniors.

Erica Parham, Assistant District Attorney, is chief of the unit. Detectives from the Criminal Investigation Division work closely with the Assistant District Attorney to accomplish the Unit's purpose of investigating and prosecuting those who cheat, abuse, or deceive older adults in Delaware County.

Reporting these crimes is important. If you believe that you or a senior you know has been a victim of any of the above-mentioned crimes, please contact your local Police Department or the Senior Exploitation Unit and discuss your circumstances with us. You can reach the Unit at 610-891-5249 or you can send an email to seniorcrimes@co.delaware.pa.us.

For more information about the Senior Exploitation Unit or to request a presentation at your church, school or club please contact the Senior Exploitation Unit at 610-891-5249. Additional information, including the District Attorney's Tips for Crime Prevention Video, is available at www.delcoda.com/investigations/senior-exploitation-unit.

CHAPTER 34

Treatment Court Programs

Through the criminal court system, Delaware County has created several court programs to help defendants overcome special circumstances such as addiction and mental illness that are affecting their quality of life and potentially led them to engage in criminal activity. These programs are diversionary programs aimed to treat the offender and may prevent them from going on to commit additional crimes. These treatment courts are supervised court programs aimed at improving the lives of participants and protecting the community welfare by providing treatment options, guidance and support.

Drug Treatment Court

To better address the needs of eligible non-violent defendants suffering from drug addiction, Delaware County created this program, which contains three different tracks, each with unique eligibility requirements. One point of eligibility specifically focuses on the offender's willingness to undergo strict court supervision and mandatory drug treatment. The program allows the offender to address their substance abuse addiction while under the strict supervision of the Office of Adult Probation and Parole and the Treatment Court Judge. This program, can often help the defendant establish an individualized treatment plan, housing, vocational training and avoidance of incarceration. Applications for Drug Treatment Court are available on the Office of the District Attorney's website, www.delcoda.com.

Mental Health Court

The Mental Health Court Program is limited to those Delaware County residents, 18 or older, who suffer from a serious mental illness (SMI) diagnosis that potentially contributed to their criminal act. SMI diagnosis can include schizophrenia, major mood disorder, psychoses NOS, and borderline personality disorder. Participation in Mental Health Court is voluntary. This

program allows the individual to be introduced to many services available for them through the county to aid in their treatment. The Court prefers to address non-violent offenses but will consider each defendant's application on a case-by-case basis. Applications for Mental Health Court are available on the Office of the District Attorney's website, www.delcoda.com.

Veterans Treatment Court

Veterans Treatment Court is limited to those defendants who have served in a branch of the military. The Court seeks to address the increasing numbers of Veterans entering the criminal justice system after serving our country and suffering from the wounds of combat, including Post-Traumatic Stress Disorder (PTSD). The Court's mission is to provide substance abuse and mental health treatment to these defendants. Participation in the program is voluntary. The Court prefers to address non-violent offenses but will consider each defendant's application on a case-by-case basis. Applications for Veterans Court are available on the Office of the District Attorney's website, <https://www.delcoda.com/veterans-court>.

Veterans Court welcomes mentors from the community to act as a role model and advocate/coach for the participants of Veterans Court as the defendant moves through the program. If you are a Veteran of any military branch, Active Duty, Reserve, or National Guard, and would like to volunteer as a Veterans Court Mentor, please download the Veterans Court Mentor Application Form located at <https://www.delcoda.com/component/zoo/item/mentor-application-2>. Requirements for Mentors include passing a criminal background check, successfully completing a Veterans Court Mentor online training course, having been discharged from the Military with an Honorable or General, Under Honorable Conditions characterization of service.

Young Offender Program

This presentence program is for low-risk first time young adult offenders currently charged with felony marijuana drug cases. The program affords non-violent offenders the opportunity to

avoid a felony conviction upon successful completion of the program. It is an eighteen month long intensive supervision program under the guidance of Adult Probation & Parole and the Treatment Court Judge. This program is limited to offenders who are between the ages of 18-25 years of age. The amount of marijuana must have a total weight of less than one (1) pound or involve less than ten (10) marijuana plants. Successful completion of the program results in the dismissal of the felony drug charge and offenders are instead sentenced on a misdemeanor drug offense to thirty (30) days probation. Applications for Young Offender Program are available on the Office of the District Attorney's Office website, www.delcoda.com.

For More Information on Treatment Court Programs

For more details relative to the above Treatment Court Programs, including eligibility criteria, please visit the Delaware County District Attorney's Office website, www.delcoda.com. Once on that website you can click on the "Information" tab and select "Treatment Courts" from the drop down menu. Below "Treatment Courts" there are specific headings for Mental Health Court, Veteran's Court as well as the Young Offender Program.

CHAPTER 35 **(FORMER CONSUMER PROTECTION)**

Financial Exploitation: What Every Older Adult Needs to Know

Susan, a 75-year-old widow with two adult children, has lived in the same Delaware County home for over 40 years. Health and mobility challenges have left her isolated from friends and family.

One day, she receives a phone call informing her that the state of New York owes her money. Friendly and professional, the caller spends time talking to Susan who grows increasing-

ly excited at the prospect of this unexpected windfall and all she could do with the money. Her home needs long overdue repairs. She has significant credit card debt. She imagines her grandchildren's faces when she surprises them with expensive gifts.

When Susan asks what she needs to do to collect the money, the caller tells Susan that once she pays the related fees and taxes, New York will send her a check for the full amount owed her. Susan carefully follows the caller's instructions to wire money to an unknown account.

Over the next few weeks, the caller regularly "checks-in" on Susan. The two develop an easy and enjoyable rapport. They discuss their families, their hobbies, their life experiences. When Susan has a medical appointment, the caller makes certain to phone and find out how "everything went." Every now and then, the caller instructs Susan to wire a little more money.

Eventually, Susan wires the last few dollars in her savings account. After that, the calls stop. Susan never hears from the state of New York. When she calls her friend to inquire about the status of her money, she gets the familiar prerecorded message: "We're sorry, the number you have dialed has been disconnected, and is no longer in service."

Unfortunately, Susan's story remains far from unique. The shocking prevalence of financial exploitation of older adults affects Americans of every socio-economic class. While likely under-reported, estimates of elder financial abuse and fraud costs to older Americans range from \$2.9 billion to \$36.5 billion annually (Public Policy, NAT'L COUNCIL ON AGING, (May 20, 2020), www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/). The victims of these crimes need protection more than ever.

SeniorLAW Center encourages older adults to remain pro-active and vigilant. We work with older adults to increase awareness of and develop strategies against fraud. We stress one rule above all others: **never share personal information with anyone unless you verify their**

identity and the legitimacy of their purpose.

Common Types of Financial Exploitation and How to Avoid Them

1. Abuse of a Power of Attorney

A power of attorney is a legal document by which one person grants another the power to handle his or her affairs. The person granting the powers is called the "principal," and the person who is given the powers is called the "agent" (identified in older powers of attorney as the "attorney-in-fact"). The agent may abuse the powers he or she has pursuant to this document.

The primary reasons that the agent misuses his or her powers are lack of monitoring by the principal and lack of thought in choosing an agent. In choosing an agent, you must be certain that the agent is honest, capable, and willing to take on these responsibilities.

- **Sit Down with a Lawyer.** Have a lawyer assist you in carefully tailoring the power of attorney document to fit your individual needs. You should only grant powers necessary to achieve your goals. Beware of granting broad powers. You may be granting the agent the power to make gifts of your property or assets. This power opens the door for the potential of abuse and misuse.
- **Read the Document Carefully Before Signing It.** Discuss any questions with your attorney. Talk with the agent about the powers you are granting him or her. Be certain that they are willing to take on this important responsibility.
- **Monitor the Actions Taken by the Agent on Your Behalf.** Demand that the agent informs you of all his or her decisions. Granting powers to another does not mean that you release any of your rights to control your own affairs.
- **Review Your Financial Statements.** Review your account information and demand disclosure. You should appoint a co-agent if you are not in a position to monitor your financial statements. They will have oversight of each other to ensure that no exploitation is occurring.

- **Revoke If You Suspect Abuse.** If you suspect that your agent is abusing his or her powers, you may revoke his or her powers in writing, as long as you are competent to do so.

2. Joint Bank Account Problems

A joint account with another person means that both of the joint owners have access to the money in the account. There are two types of joint accounts:

- **“Either party able to sign” account:**

Anyone named on the account can perform a transaction on their own, without the knowledge or approval of the other person. This type of joint account is open to misuse. Older adults open these accounts for convenience purposes because they may be too frail to travel to the bank. Financial exploitation occurs because the joint owner has access to everything in the account even if s/he did not contribute anything to the account.

You should always review your bank statements in order to monitor the actions of the other owner. Take note that the bank will not be liable if the owner withdraws your money and deprives you of the funds.

- **“Both parties required to sign” account:**

This type of account requires both account holders to sign for/authorize a transaction for it to be performed. The joint owner should be someone you trust.

3. DEED TRANSFERS

As a rule, do NOT sign over the deed to your property to another, including relatives UNLESS you have consulted an attorney. Once you sign over the deed to someone, you are no longer the owner of the property. The new owner can do whatever they want regarding the property, including evicting you from your home, mortgaging the property, or selling the home and keeping all the proceeds.

Be Cautious! If someone is persuading you to transfer your deed, tell him or her that you appreciate his or her concern. However, you will consult with an attorney concerning the benefits and detriments of executing a deed transfer.

Consider writing a will to convey your property instead. Your interests will be protected until your death.

4. Credit Cards

If you suspect credit card fraud, call and write the credit card company’s fraud department; identify unauthorized charges and/or inform the department that you never applied for the account. The credit card company will investigate and determine whether you are liable for the charges.

To avoid credit card fraud, you should:

- Always know the location of your credit card and keep it safe.
- Check your statements frequently.
- Do not share your card or identifying information with others.
- Do not open an account in the name of someone else.

Do NOT let anyone else use your card!

5. Telemarketing Fraud

When you send money to people you do not know personally or give personal or financial information to unknown callers, you increase your chances of becoming a victim of telemarketing fraud. Once cheated, you are unlikely to get your money back. Here are some common statements you may hear by these fraudsters:

- “You must act now or the offer won’t be good.”
- “You’ve won a free gift, vacation, or prize.” However, you must pay for “postage and handling” or other charges.
- “You must send money, give a credit card or bank account number, or have a check picked up by courier.” You may hear this before you have had a chance to consider the offer carefully.
- “You don’t need to check out the company with anyone.” The caller says you do not need to speak to anyone including your family, lawyer, accountant, local Better Business Bureau, or consumer protection agency.
- “You don’t need any written information about the company or any references.”
- “You can’t afford to miss this high-profit, no-risk offer.”

Before you send any money or provide your personal or financial information, remember:

- If it sounds too good to be true it probably is.
- Do NOT buy from an unfamiliar company. Always check out unfamiliar companies with the Better Business Bureau, Pennsylvania Attorney General’s Office, or other watchdog groups. Unfortunately, these organizations cannot identify all bad businesses.
- Verify information. Obtain a salesperson’s name, business identity, telephone number, street address, mailing address, and business license number before you transact business. Some con artists give out false names, telephone numbers, addresses, and business license numbers.
- Never pay for a “free prize.” If a caller tells you the payment is for taxes, it is likely fraud.
- Take your time. Always take time making a decision. Legitimate companies will not pressure you.
- Think before you act. Before you send money, ask yourself a simple question. “What guarantee do I really have that this solicitor will use my money in the manner we agreed upon?”
- Talk with trusted friends and family. Be sure to talk over big investments offered by telephone salespeople with a trusted friend, family member, or financial advisor. It is never rude to wait and think about an offer.

6. Other Common Scams

Sweepstakes and Lotter Scams

Calls, mailings, or messages stating that you won the lottery or sweepstakes, and asking you to pay for shipping or handling charges, registration fees, taxes, and storage fees.

Romance Scams

Scammers use fake profiles on dating sites or apps to build a trusting relationship only to then make up a story to ask for money. They may claim to be from a charity or mission and need help delivering items to another part of the world.

Gift Card Scams

Callers claiming to be with a government agency who state that you will be under arrest unless you purchase and send them gift cards.

7. COVID-19 SCAMS

Six things you can do to avoid a coronavirus scam

(Coronavirus (COVID-19) Pandemic: The FTC in Action, THE FEDERAL TRADE COMMISSION (May 20, 2020) <https://www.ftc.gov/coronavirus>):

1. Ignore offers for vaccinations and home test kits. Scammers are selling products to treat or prevent COVID-19 without proof that they work.
2. Hang up on robocalls. Scammers use illegal sales calls to get your money and your personal information.
3. Watch out for phishing emails and text messages. Don’t click on links in emails or texts you didn’t expect.
4. Research before you donate. Don’t let anyone rush you into making a donation. Get tips on donating wisely at [ftc.gov/charity](https://www.ftc.gov/charity).
5. If you see a scam, report it to Federal Trade Commission at [ftc.gov/complaint](https://www.ftc.gov/complaint).
6. Stay in the know. Go to [ftc.gov/coronavirus](https://www.ftc.gov/coronavirus) for the latest information on scams. Sign up to get FTC’s alerts at [ftc.gov/subscribe](https://www.ftc.gov/subscribe).

In conclusion, please remember:

- Take an active role in your affairs
- Monitor your financial statements
- Ask Questions
- Remain Aware
- Practice Self-Advocacy

You can prevent financial exploitation!

Delaware County residents, 60 or older, can discuss concerns about financial exploitation with an attorney by calling: 610-910-0215 (www.seniorlawcenter.org)

CHAPTER 36

Small Claims Courts

Magisterial District Courts so-called “Small Claims Courts constitute the primary level or the administration of justice in Pennsylvania. They have jurisdiction over small claims of \$12,000 or under involving torts (cases where an individual or entity is harmed due to the negligent or purposeful conduct of another) and contracts.

There are thirty-three Magisterial District Courts throughout Delaware County, and you must file

in the proper court. A case must be filed either: (1) where the transaction took place; (2) where the cause of action arose; or (3) where the defendant can be served.

You can access a list of all of the Magisterial District Courts and Judges at <https://www.delcopa.gov/courts/districtjudges/index.html>.

To file a case, you need only fill out a simple one page form that you can obtain from the Magisterial District Court or online through <http://www.pacourts.us/assets/files/setting-897/file-771.pdf?cb=0bb1db>. You will need to write the following information on the form: your name and address, the names and addresses of all of the defendants, and a short statement to explain the basis of your claim, including where the cause of action took place. You or your attorney must sign it, and provide your phone number.

Many people choose to represent themselves and the rules permit them to do so. However, depending on the amount of money and the complexity of the case, it may be advisable to hire an attorney, or at least consult with an attorney before filing your Complaint. Then, you may call the district court to fill out the amount of the filing fees and service costs. The court will process the complaint when it is filed properly, with the proper filing fees and service costs. In order to obtain jurisdiction over the defendant, the Court will “serve” a copy of the Complaint on the defendant(s). Service can be accomplished by certified mail, return receipt, or by constable service and must be done at least ten days prior to the hearing. District Judges have the power to allow amendment to a civil complaint. However, such amendment must be made at the hearing in the presence of the adverse party or his representative.

When the defendant receives the complaint, he or she will also receive a hearing date and be advised to notify the court if they intend to defend the case by appearing at the hearing. No written answer to a civil complaint need be filed in a District Court. A defendant only needs to inform the court that he or she intends to defend against the claim and appear at the hearing scheduled. If the defendant fails to notify the court and fails to appear at the hearing,

or notifies the court that he or she intends to defend and fails to appear, a default judgment is entered in favor of the plaintiff.

A defendant may file a counterclaim in a District Court without additional cost no later than five (5) days before the date set for a hearing. Such a counterclaim must be within the jurisdictional limits of the District Court and must be served on a plaintiff.

If all parties appear, they should bring any relevant witnesses, documents, pictures or

any other information that they feel supports their case. Please note that most rules

of evidence apply and that Magisterial District Judges cannot admit most statements or affidavits as they are hearsay and inadmissible. Estimates, bills, receipts and statements of account are admissible. Coming to Court prepared with copies of the necessary documents for the Judge and the other parties will make the hearing go faster. Depositions and interrogatories may not be used either for discovery or at the hearing in a District Court action. After the hearing, the Judge must make a decision within five days. All parties have the right to appeal the decision within thirty days to the Court of Common Pleas.

CHAPTER 37

Mediation Services

Mediation is a process that provides a setting to resolve conflict cooperatively through face-to-face dialogue, with the assistance of an impartial third party. Participants in mediation come up with solutions to their problem, instead of having a court determine the outcome. If the conflict isn't resolved in mediation, normally the disputants can then file a complaint in Court.

In particular, seniors, their families, and caregivers may need support to deal with conflicts that sometimes arise in situations like the following:

- Decisions such as selling the family home and moving into a retirement community or moving in with a family member;
- Adjustments to changes from independence to interdependence;

- Tension created by the interaction of two or three generations living together;
- Disagreements between health care providers, such as nurses or home health aides, and seniors and their families concerning the care being given;
- Conflicts regarding finances;
- Disputes between tenants and landlords.

Some of the benefits that are derived from implementing mediation as a method of solving problems are:

- Learning new ways to handle conflict and resolve problems;
- Maintaining a better sense of personal dignity and independence;
- Avoiding escalation to painful and costly litigation;
- Increasing opportunities for seniors and their families to communicate more effectively and to work together to resolve their problems;
- Improving the quality of life and the relationships within their circle of support.

The Center for Resolutions, located at 26 East Fourth Street, Media, Pennsylvania 19063 (telephone number: 610-566-7710; www.center4resolutions.org) offers mediation services and other conflict resolution programs for a very small fee. Through mediation, families and their aging relatives can develop improved communication and other skills to manage the difficult transition to an assisted care facility, and decide how family members will share caregiving responsibilities and handle finances. Included in the training is mediation in elder person cases.

This training will benefit attorneys, social workers, health care professionals, families, and other individuals and agencies who work with the aging population, by providing them with enhanced communication and negotiation skills that meet the specific needs of their clients, including criteria to determine an individual's capacity to make sound decisions.

The Ombudsman Program of Delaware County investigates and resolves complaints received from or on behalf of older individuals who

reside in nursing homes, personal care homes or domiciliary care homes, or receive long-term care services in their own homes. An Ombudsman advocates for and protects the rights of an elder person receiving long-term care services and seeks to bring about needed changes to improve the quality of care received. The program is administered by COSA. Anyone with a concern about long term care given to a Delaware County resident may contact COSA at 610-490-1300 and ask for the Ombudsman, or call the Ombudsman directly at 610-872-1868.

CHAPTER 38

Driver's Licenses; Driving Safely

Much has been written in recent years about senior driving safety. For an older person considering whether to limit or stop driving, the main concern may be perceived loss of independence. For family members and friends, the main concern is that their loved one may be hurt (or worse) in an accident, or hurt someone else.

According to AAA's website, seniors have the second highest (after teens) crash death rate per mile driven. The problem is not that senior drivers crash more (since they tend to drive less, particularly at night and in bad weather), but that they injure more easily than younger drivers. Most seniors begin to limit their driving long before they give up their driver's licenses. Planning for this process can reduce the emotional and financial impact of making the decision not to drive when it becomes unsafe to do so.

This article contains suggestions for seniors and their loved ones to make the process easier.

Legally speaking, a driver's license is considered a privilege, and a person's license may be recalled or suspended for a variety of reasons. The privilege of driving may be revoked upon a determination of incompetence. The privilege may also be revoked if a physician finds that a person has a condition that prevents him or

her from safely operating a motor vehicle. There are a number of common physical changes that may occur with age and may affect vision or hearing or reaction time, all of which may affect a person's ability to operate a motor vehicle safely, particularly on the highway or at night. Some medical conditions and some medications also affect the ability to drive.

Seniors should also be aware that there have been changes in the traffic rules in recent years.

According to the Pennsylvania Department of Transportation (PennDOT), a number of drivers over age 45 are chosen at random each month for review at the time of license renewal and are required to undergo vision and physical exams by their doctors. If the need is indicated by those tests, the driver may be required to take a driver's examination. Also, PennDOT receives confidential reports from doctors and family members concerned about a medically incapacitated person's ability to drive; in those instances, PennDOT will initiate an evaluation process, and may add restrictions to the person's license, or recall it, or may ask the person to provide more specific medical information or to complete a driver's examination.

If a person's license has been recalled or suspended, an appeal can be filed in the Delaware County Court of Common Pleas. The appeal will not postpone the recall of a driver's license and the person still must turn over his or her license to PennDOT. A hearing will be held in court about sixty (60) days from when the appeal was filed. The attorney for PennDOT will argue that the license should remain revoked based upon the medical evidence of the person's doctor or psychologist. (Note that the "confidential" report of a physician or family member may be admitted as evidence in these legal proceedings). A person can challenge this argument by presenting reports of other doctors or by passing a road test given by a driving rehabilitation center. They make a determination whether the person can or cannot drive.

If the person is successful in his or her appeal, a letter is sent to PennDOT and the license is returned and reinstated. If unsuccessful, the person can appeal to a higher court, but

remember that filing another appeal will not reinstate the license until the next court decision. The good news is that there are many resources, on both the local and national levels, to help people deal with this process before a serious issue arises. First, there is a wealth of information available, on the internet and by telephone, from many organizations, including American Association of Retired Persons (AARP) (1-888-OUR-AARP, i.e., 1-888-687-2277; www.aarp.org): American Automobile Association (AAA) (877-844-2366, www.midatlantic.aaa.com); National Safety Council (800-621-7619; www.nsc.org search for Mature Drivers); and PennDOT (800-932-4600; www.dot.state.pa.us), to name just a few. Many of these sites offer advice on talking with loved ones about driving concerns, online quizzes, descriptions of conditions that impair driving ability, lists of warning signs that a person should limit or stop driving, etc. Informational brochures and guides are available from these organizations as well as from the National Highway Traffic Safety Administration (www.nhtsa.gov), the Pennsylvania Department of Aging (www.aging.state.pa.us), and the American Optometric Association (www.aoa.org).

In addition, there are several safe driving programs and courses available which may qualify the driver for a **discount on his or her auto insurance premium**, including AARP's well-known, and very low-cost program. AARP's website (www.aarp.org) also has an online seminar to help families determine how to assess a senior person's driving skills, as well as vision safety tips, car safety tips, and advice concerning the effect of medications on driving ability.

Since 1983, Bryn Mawr Rehab Hospital (414 Paoli Pike, Malvern, PA 19355) has offered a Driver Rehabilitation Program, which provides an objective and thorough evaluation of an individual's driving ability. Its director is an Occupational Therapist and Certified Driver Rehab Specialist. The program is medically-based, and a physician's prescription (on a one-page Referral Form) is required. The cost of the self-pay program typically is not covered by insurance. Additional training (e.g., for the PennDOT test) and adaptive vehicle equipment recommenda-

tions are also available. Family members may also initiate a referral. To make a referral, schedule an evaluation, or simply ask for advice, call 484-596-3943 or 484-596-5400.

Anonymous reports to PennDOT about a person's ability to drive can be made by calling the Medical Unit at 717-787-9662.

MIT's Age Lab and The Hartford Insurance Company developed an "Agreement with My Family about Driving," which states a person's desires about continuing to drive safely, and involves family members in the decision about when it is no longer safe for the older person to drive. Both MIT's and Hartford's websites have extensive information about having these conversations.

Rest assured that there is a great deal of support available to older drivers who wish to continue to drive safely, and for their concerned family members and friends. You only need to ask.

CHAPTER 39

Photo ID Cards

Driver's licenses are often requested for identification. If you do not have a driver's license (or even if you do), you can obtain a Photo Identification Card, similar in appearance to a driver's license, at the Pennsylvania Department of Transportation Driver License Centers. If you have never held a Pennsylvania Driver's License, you must apply in person for your initial Photo ID Card, and pay a fee of \$31.50. Any Pennsylvania driver who voluntarily surrenders his or her license because of health reasons which may affect his or her ability to safely operate a motor vehicle, can obtain a Non-Driver Photo ID Card for NO FEE. (Your driver's license can be reissued if you successfully complete the appropriate examination at a later date). You must bring proof of identification such as a birth certificate or your old driver's license, along with your Social Security card, and two proofs of your residency, to the Driver License Center near you to apply for your Identification Card. In an effort to reduce the incidence of

identity theft, PennDOT will issue a temporary card which is valid for 15 days, and will mail you your permanent Card after checking to ensure that your photograph does not match another photograph appearing in its database under a different driver name.

CHAPTER 40

Handicapped Parking

If you are disabled and need a special parking placard or special parking place you must first complete Form MV-145A. Your physician must also sign the form. To get this form, contact the Pennsylvania Department of Transportation, Bureau of Motor Vehicles, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104 or call 800-932-4600. To be allocated use of a special handicapped parking spot near your home, you then need to contact your local municipality and follow their regulations. If it is approved and a designated handicapped parking spot is marked out near your home, please note that anyone with a handicapped license plate or placard may park there.

CHAPTER 41

Contributors

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Scott has maintained an office for the practice of law in Media since 1977. In addition to his undergraduate and law degrees, he earned a Master's in Taxation in 1995. He concentrates his practice in family law and estate planning matters, and, in the course of his practice, handles divorce, support and child custody matters, and prepares Pre-Nuptial Agreements, Wills, Health Care Directives and Powers of Attorney. He also counsels clients in planning for second marriages and business succession. He has been active in the Family Law Section of the Delaware County Bar Association and served as its Chairperson for 2006. He has held every office of the Delaware County Estate Planning Council and was the Council's President for 2017-2018. He contributed to the chapter on Family Law.

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A significant portion of Linda's practice involves providing clients and their families with advice

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Linda is a 1980 graduate of Sarah Lawrence College (B.A.), and a 1985 graduate of the University of San Francisco School of Law (J.D.). Linda also holds an LL.M. in taxation from Villanova University Charles Widger School of Law.

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ELDER LAW HANDBOOK
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For Seniors and Their Families in Delaware County, Pennsylvania

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