

# A Guide to Legal Issues for Pennsylvania Older Adults

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*Published By  
The Pennsylvania Bar Association 2025*



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## **A Guide to Legal Issues for Pennsylvania Older Adults**

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The materials in this guide were current as of the date of publication. Suggestions for updates reflecting changes in the law should be directed, together with substantiation, to Ursula Marks, Director of Committees and Sections, at the Pennsylvania Bar Association. Readers are encouraged to verify that current laws and regulations have not changed since its publication date.

**Published By**

**The Pennsylvania Bar Association**

**May 2025**



**Funded By The Pennsylvania Bar Association**



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Matthew Holliday, Executive Director

## Foreword

In these difficult times, older adults and their families recognize more than ever the importance of proper planning for their futures. With this in mind, this guide has been updated to reflect the changes in the law which have taken place since the previous edition.

The guide is designed to provide information about legal issues faced by Pennsylvania's older residents and their caregivers. The authors and publishers intend to assist older adults make appropriate choices so they can maximize their personal autonomy, minimize costs, navigate the maze of government benefits and protect themselves against predators seeking to deceive, exploit or defraud them.

Older adults throughout Pennsylvania require timely and reliable access to legal information. The Senior Lawyers Committee and Elder Law Section of the Pennsylvania Bar Association have determined that they can best serve the needs of the legal community by serving the needs of the older citizens of the Commonwealth. The concentration on the creation of this guide is complemented by other programs of the bar such as a mentoring project, a pro bono project and the sponsorship of Continuing Legal Education (CLE) programs, all designed to aid the legal community by offering the expertise of older, more experienced attorneys to all Pennsylvania practitioners. This in turn helps to bring the best possible representation to the clients of Pennsylvania lawyers.

No publication can cover every legal issue which relates to a group as diverse as our older adults. The purpose of this publication is to offer basic information, point out various services which are available and how to access them, and outline areas which may require specific legal advice or expertise, based on the individual's unique needs.

This publication is not intended to provide legal advice but rather to provide the user information which they can use to determine the need for legal representation. It is advised that the older adults using this guide seek legal representation to address their unique needs.

Further information is available to the public at the Pennsylvania Bar Association website under the "For the Public" [www.pabar.org](http://www.pabar.org). Subjects include Find a Lawyer, Consumer Resources, Pro Bono Service and Legal Links.

## DEDICATION

**This Guide is dedicated to the pioneering work of our predecessors—Senior Lawyers Committee Co-Chairs Leonard Tintner (dec'd) and the Honorable Mason Avrigian, Sr. Early in the history of the Senior Lawyers Committee, Leonard and Mason decided that the Pennsylvania Bar Association should publish a guide for older laypersons to assist them in determining the need for legal services. The Guide to Legal Issues for Pennsylvania Older Adults was the result. We would also like to recognize attorney Michelle Berk for her work on previous editions of the Guide to keep it current and up to date. It is our privilege to follow these individuals, and we dedicate this edition to them.**

## Acknowledgments

Publication of this guide would not be possible without the financial support and efforts of the Pennsylvania Bar Association and staff.

The Pennsylvania Bar Association is a nonprofit organization which was incorporated in 1895. With its headquarters in the state capital of Harrisburg, the PBA represents more than 20,000 lawyers licensed to practice law in Pennsylvania. The PBA was founded to advance the science of jurisprudence; to promote the administration of justice; to see that no one, on account of poverty, is denied legal rights; to secure proper legislation; to encourage thorough legal education; to uphold the honor and dignity of the Bar; to cultivate cordial relations among the lawyers of Pennsylvania and to perpetuate the history of the legal profession and the memory of its members.

The Senior Lawyers Committee and the Elder Law Section of the Pennsylvania Bar Association are the driving force behind the publication of this guide. They saw a grave need to provide legal information to older adults statewide.

The following individuals are recognized for their efforts in producing this guide:

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To those who have assisted in revising the guide and are not mentioned, we thank you and appreciate all you have done to enable us to produce this valuable consumer guide.

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## Elder Law

Elder law is the term used by the legal profession to focus on the special legal rights and problems of Older Adults. Attorneys who work 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.

## Attorney-Client Relations

A big question in elder law is: who is the client? Attorneys fairly often find that a child brings in a parent to the attorney's office. That child and parent may have differing interests. Also, some older people have physical or mental disabilities which may limit their capacity to make proper decisions. Fortunately, attorneys have ethical rules, known as 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 lawyer is to do and how much these professional services will cost.

Rules 1.6 through 1.12 state what to do to prevent conflicts of interest. In general, one lawyer cannot represent both sides when clients have differing agendas. Therefore, if two people come into a lawyer's office together, the lawyer must make a clear determination about whom to represent. This helps to protect vulnerable seniors when others try to exert undue influence, to coerce or use threats to push them to execute powers of attorney or convey property against their will. Also, Pennsylvania lawyers are required to keep client information confidential.

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

## Continuing Legal Education

Since 1992, Pennsylvania's attorneys have been required to take at least twelve hours each year of continuing legal education including the Rules of Professional Conduct and professionalism in general. This should have a positive impact on the ethical delivery of legal services, but it is still important for older clients to remember their rights as they work with their lawyers.

## Pennsylvania Lawyers Fund for Client Security

Although the percentage of lawyers involved in fraud and theft is extremely low, the news is often given wide play in the media. The fact is that lawyers are often put in positions of trust and temptation which very rarely result in a financial loss to a client. In such cases, the Pennsylvania Lawyers Fund for Client Security can help to recoup some or all of the losses. Claims are submitted on pre-printed forms from the Supreme Court of Pennsylvania, Pennsylvania Lawyers Fund for Client Security, telephone 1-800-962-4618 or <https://palawfund.com/overdraft-reporting-form/>.

## Choosing an Attorney

Every individual has notions about how to work with a professional advisor to resolve personal problems. To choose the best person to act on your behalf in legal 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 and changes in life situations? Once your needs are outlined, you can consult friends, relatives, business colleagues, clergy and others for recommendations about attorneys. A good source of information is the Pennsylvania Lawyer Referral Service, a service that refers callers to lawyers in the counties that do not have a referral service of their own. This service covers 47 of the 67 counties in the Commonwealth of Pennsylvania.

Lawyers participate in this service on a voluntary basis and have indicated the areas of law in which they will accept referrals. Computerization ensures lawyers are rotated automatically by county according to

the type of case. The PBA LRS operates Monday through Friday from 8:00 a.m. to 4:30 p.m., and can be reached by calling 800-932-0311 or complete the Find a Lawyer On-Line Form here: <https://www.pabar.org/site/For-the-Public/Find-a-Lawyer/Get-a-Referral>. If callers need a lawyer in a state other than Pennsylvania, they may contact that state's bar association.

## Pennsylvania Local Lawyer Referral Services

If you are looking for an attorney in a county listed below, please contact that county bar association's lawyer referral service (LRS) directly.

- Allegheny County, Pittsburgh: 412-261-5555
- Beaver County, Beaver: 724-728-4888
- Berks County, Reading: 610-375-4591
- Blair County, Hollidaysburg: 814-693-3090
- Bucks County, Doylestown: 888-991-9922
- Butler County, Butler: 724-841-0130
- Chester County, West Chester: 610-429-1500
- Cumberland County, Carlisle: 717-249-3166, 800-990-9108
- Dauphin County, Harrisburg: 717-232-7536
- Delaware County, Media: 610-566-6625 x. 221
- Erie County, Erie: 814-459-4411
- Lackawanna County, Scranton: 570-969-9600
- Lancaster County, Lancaster: 717-393-0737
- Lehigh County, Allentown: 610-433-7094
- Luzerne County, Wilkes-Barre: 570-822-6029
- Mercer County, Mercer: 724-342-3111
- Monroe County, Stroudsburg: 570-424-7288
- Montgomery County, Norristown: 610-279-9660
- Northampton County, Easton: 610-258-6333
- Philadelphia County, Philadelphia: 215-238-6333
- Washington County, Washington: 724-225-6710
- Westmoreland County, Greensburg: 724-834-8490
- York County, York: 717-854-8755 x. 201

If you think you may qualify for free legal assistance, the Pa. Legal Aid Network, Inc. (PLAN, Inc.), formerly Pa. Legal Services, office near you can be located by accessing the website: <https://palegalaid.net/>. When you reach this site, click on Service/Staff Locator, and then on your county in Pennsylvania. Most legal service offices will do the "intake" to determine if you qualify for legal service assistance. You can also call them at 717-236-9486 or 800-322- 7572.

## Older Americans Act

More Americans are living longer and demanding more from local, state and federal lawmakers so 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 of 1965. This law sets up Area Agencies for the Aging (AAAs) all over the United States. In Pennsylvania, AAAs are administered by the Pennsylvania Department of Aging, Forum Place Building at 555 Walnut Street, Harrisburg, PA 17101-1919; telephone 717-783-1550. Click here to access the website: <https://www.aging.pa.gov/Pages/default.aspx>.

## Area Agencies on Aging

The ultimate goal of the 52 Area Agencies on Aging in the Commonwealth of Pennsylvania is to enable seniors to maintain their independence and dignity, to remain in their own homes and communities with appropriate support services and to prevent unnecessary institutionalization.

### Services Provided

Pennsylvania's AAA's offer many services to seniors including:

- Information and counseling;
- Protective services to prevent or stem abuse or exploitation;
- Transportation;
- Legal assistance for those who cannot afford it;
- Home support to help with tasks of daily living;
- Home health care, attendant care, adult daycare;
- Socialization/Recreation and educational activities;
- Home-delivered meals;
- Advocacy or ombudsman support to help negotiate complaints concerning providers
- Caregiver support services;
- Assessment and case management;
- Aid with shelter and housing;
- Employment

Services are focused in the home and supplemented via a network of nearly 700 Senior Centers and agencies. All Pennsylvanians over the age of 60 are eligible for service from their local Area Agency on Aging. Specific guidelines may apply to individual service programs.

As growing older has become more confusing and expensive, the AAA's provide services to help older Pennsylvanians cope with the challenges and changes related to their physical and emotional health, living conditions, family situations and caregiving responsibilities. Prior to receiving such services, an Assessment is provided by an AAA representative. Based upon that evaluation, specific services are recommended. Depending on each person's situation and level of need, services may be of a wide-ranging variety or be as simple as providing information as to the location and programs in the local senior adult activities for recreation and entertainment. Other services may include a referral to the PA Medicare Education and Decision Insight (PA MEDI) Program, which provides telephone assistance to older adults in understanding Medicare and Medicaid eligibility benefits <https://www.aging.pa.gov/aging-services/medicare-counseling/Pages/default.aspx>.

Click here for an interactive map of all Area Agencies on Aging: <https://www.aging.pa.gov/local-resources/Pages/AAA.aspx>

### Services in the Home

Services in the home for frail or ill elderly individuals are provided through two programs: the OPTIONS Program (administered by the AAA) and Community HealthChoices (administered through the Department of Human Services Medical Assistance Program). Services are provided based on the Assessment of the level of need conducted by a AAA representative. Both services can be accessed by contacting your local AAA. The Options program does not have an income limit, but may require a co-payment for services, depending on the individual's income. Options services may include:

- Adult Day services
- Care Management
- In-Home meals
- Personal Care services

- Supplemental services including home health, home modifications, medical equipment and assistive devices, pest control and personal emergency response systems.

Community HealthChoices (formerly known as the PDA or Aging Waiver program) provides intensive in-home services to individuals meeting financial and medical guidelines.

## Senior Adult Activities Centers (SAAC)

AAA-supported senior centers are found in many communities where older people can meet for social activities, recreation, education, arts and meals. There are a wide variety of other Aging Services Network Programs such as the following which may be offered at your local senior center:

- **Congregate Meals:** Nutritious meals are served in a group setting at least once a day or more depending on the facility in a variety of community sites.
- **Employment Assistance:** AAA's provide low-income seniors with part-time employment in public and nonprofit agencies. In addition, many AAA's provide job brokerage services for older workers in private or public agencies as well.
- **In-Home Services:** Several programs are available such as Homemaker Assistance, Personal Care Help, Home-Delivered Meals and Chore Services.
- **Transportation:** Transportation may be provided to persons aged 65 and older in both rural and urban areas to and from senior community centers, medical facilities, human service agencies and even stores.
- **Information/Referral:** Each AAA has trained staff available to answer questions and make referrals to community agencies, as needed.
- **Placement:** AAA's can locate, assess and place adults in appropriate care facilities, in their home, adult daycare or other residential or long-term care settings.
- **Ombudsmen:** AAA's are agents of the State Long-term Care Ombudsmen and provide intervention and resolution of disputes involving consumers of long-term care services.
- **Volunteer Services:** Many AAA's have volunteer opportunities in their agencies to help in senior care centers, escorting individuals to medical appointments, delivering meals, serving as companions and more.
- **Family Caregiver Support Program:** Assists caregivers through a reimbursement program for supplies and services through state and national programs.

## Older Adult Protective Services

AAAs are involved in elder abuse identification and intervention. The Older Adult Protective Services Act protects individuals aged 60 years or older from physical, emotional, financial abuse or exploitation, neglect or abandonment. Confidential reports of suspected abuse can be made 24 hours a day, seven days a week, to your local AAA or the state-wide abuse line 1-800-490-8505.

## Resources

For seniors who have Internet access, the Pennsylvania Department of Aging has an excellent informational website that describes all of their services offered and the ways to obtain them at <https://www.pa.gov/agencies/aging.html>. The website for the Pennsylvania Association of Area Agencies on Aging is [www.p4a.org](http://www.p4a.org) and the telephone number is 717-783-1550. The Pennsylvania Department of Aging's website provides a listing of telephone numbers, addresses and links available by county listing map, city or zip code, or by calling 717-783-1549 or emailing <https://www.aging.pa.gov/Pages/default.aspx>.

**Toll-free numbers for other helpful resources are as follows:**

- PACE & PACENET: 1-800-225-7223
- PA MEDI (Insurance Assistance): 1-800-783-7067
- Protective Services: 1-800-490-8505
- Property Tax/Rent Rebate: 1-888-222-9190

- Alzheimer's Association: 1-717-651-5020
- PA Link to Aging & Disability Resource Center: 1-800-753-8827 or 1-800-286-3636

You can contact your elected representative in the Pennsylvania Legislature by writing to the Pennsylvania House of Representatives at House, Box 202020, Harrisburg, PA 17120-2020. An annual guidebook "Benefits and Rights For Older Pennsylvanians", published by the Department of Aging, is available from your local Area Agency on Aging, from any member of the Pennsylvania Legislature or by calling 717-783-1549.

For listings of your county's nursing homes, adult day care centers, personal care facilities or for PACE and tax rebate forms, contact your Area Agency on Aging using the following link: <https://www.pa.gov/agencies/aging/local-resources/area-agencies-on-aging-.html>.

## Financial Planning

As people grow older, they become increasingly aware that "...in this world, nothing is certain but death and taxes." Elder law underscores other sayings: "Plan Ahead!" and "An ounce of prevention...." Older adults need to plan now, while they are able, to make sure that their estates are passed to intended beneficiaries. Planning can reduce death taxes administrative expenses and the possibility of disputes among family members and others. Even more important: the peace of mind which comes from knowing that financial affairs are in order.

## Income Tax Planning

An excellent starting point for information affecting older adults is IRS Publication 554, "Tax Information for Older Americans." This brochure is available free of charge by calling the IRS at 1- 800-829-3676. You may also want to check the IRS website: [www.irs.gov/forms-pubs/about-publication-554](http://www.irs.gov/forms-pubs/about-publication-554).

## Tax Preparation

Many times, older adults, especially those with fixed incomes, find it difficult to hire a tax professional. For elderly people with limited means, volunteers are available in many areas to prepare tax returns. Your local public library is usually able to help you locate the nearest volunteer income tax assistance program. The Internal Revenue Service also provides walk-in tax preparation service free of charge. For the IRS service center nearest you, call 1-800-829-1040. Not everyone is required to file an income tax return every year. The requirement depends on your age, filing status and income level. If your income is below a threshold, you are usually not required to file a return, however you should review your situation to determine if not filing is correct.

You should be aware that you are allowed an additional standard deduction when you reach age 65. You will want to go over all instructions very carefully, especially as you choose between using the standard deduction and itemizing deductions. When elderly taxpayers itemize deductions, they lose any benefit from the additional standard deduction. You also want to file a return if you had income tax withheld from a pension or payment and want to file a return and possibly itemize for a refund. You may be repaying the 2008 Homebuyer's Credit and be required to file or itemize.

The general rule is that a person must have attained age 65 before the end of the tax year to file for the standard deduction. However, if your birthday is on January 1st you are permitted to increase the standard deduction for the tax year prior to reaching age 65.

## Medical Expense Deductions

For taxpayers 65 and older, medical expenses are deductible only to the extent they exceed 7.5% of a taxpayer's adjusted gross income. The medical expense deduction is limited to un-reimbursed, i.e. out-of-pocket, expenditures. Such medical expenses are only deductible if the taxpayer is itemizing. You determine the amount to deduct on Schedule "A" of Form 1040. Those electing to take the standard deduction do not benefit from medical expense deductions.

The entire cost of a long-term care nursing home facility, 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 living facility or personal care home, only a portion of the cost may be deductible.

Equipment and home modifications to accommodate the handicapped (no age limit) that do not increase the market value of the home are deductible as a medical expense. Examples of such deductible improvements include building wheelchair ramps and widening entrances to the home.

When a person dies owing medical expenses, and those expenses are paid by the estate within one year, 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 federally taxable limit, or if there will be no estate tax due because of the unlimited marital deduction, it makes sense to deduct these expenses on the personal income tax return.

## **Sale of Residence; Exclusion of Gain from Income**

The tax laws have been simplified for the sale of your home. Generally speaking, capital gains are the increase in value of a home from the date of purchase, less the cost of major improvements made over the years such as a new roof or new windows. An unmarried taxpayer may exclude up to \$250,000 of capital gains realized on the sale of a principal residence; married taxpayers can exclude up to \$500,000 of capital gains. 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. The majority of older adults will not have to pay a capital gains tax on the increase in the value of their home when they sell it.

## **Tax Basis: Special Rules for Surviving Spouse**

You or your tax preparer will need to know the "tax basis" rules whenever calculating capital gains tax on the sale of appreciated property, such as stocks or mutual funds.

The maximum capital gains rate for long-term investments is now 20%. Collectibles are still taxed at the old higher rate of 28%.

In simplified terms, capital gains tax on appreciated stocks and mutual funds is paid on the difference between the purchase price and sales price of the security. Special rules apply however, where one owner of jointly held property dies. For a surviving spouse, these rules, known as the tax basis rules, can result in significant tax savings when they sell jointly owned stock or other appreciated property after the death of a spouse.

The following illustrations show the potentially significant tax savings involved:

### **Illustration 1:**

If during their lifetimes, a married couple sold jointly owned stock worth \$10,000 which they bought for \$1,000, depending on their income, they would pay capital gains tax on \$9,000, the sale price minus the purchase price. The tax due would be about \$1,350 at the 15% rate.

### **Illustration 2:**

If one of the spouses in Illustration 1 dies and the same jointly held stock is worth \$10,000 on the date of death, the tax basis is increased from \$1,000 to \$5,500, one half of the date-of-death value plus half the purchase price. If the surviving spouse later sells the stock for \$10,000, taxable gain is only \$4,500 and the tax due is cut in half to \$675, again depending on the surviving spouse's income.

Obviously, these savings can be significant. Many married people own at least part, and perhaps all, of their property jointly. Since the tax basis rules are important and complicated, elder couples need to discuss these issues and their possible effects with a qualified tax professional to avoid paying more tax than necessary.



## Reverse Mortgages (Home Equity Conversion)

A reverse mortgage is a special type of home loan that lets a homeowner convert the equity in that person's home to cash. The lender loans money to the borrower aged 62 or older using the borrower's home as security. The loans may be dispersed in a lump sum, monthly payments, or through a line of credit. Unlike traditional mortgages, reverse mortgages are repaid upon death, or when the owner can no longer live in the home. Then the lender can foreclose on the home due to a senior moving to a nursing home or elsewhere. There are serious implications if the value of the home has declined, and the amount of the loan exceeds the fair market value of the home. Then if the home can be sold and/or, if it is foreclosed upon, the homeowner may not receive any proceeds from the sale or the foreclosure. These mortgages are advertised as a good way to overcome the "house rich but cash poor" dilemma that confronts many elderly homeowners, but each individual's situation must be considered, especially that of seniors in this unstable market.

There is a federal law that authorizes home equity conversion mortgages for seniors. The purpose of the law is to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing and subsistence needs at a time of reduced or fixed income, and to encourage lender participation. Your first step should be to consult with your attorney and have all pertinent documents reviewed prior to signing anything.

### Basic Requirements

- Borrowers must be age 62 or older; there is no maximum age limit. If there is more than one borrower, they must both be 62 or older.
- The mortgaged property must be used as the principal residence of the borrower and can be one to four units.
- The property must be in good repair; proceeds from the reverse mortgage may be used to make needed repairs.
- The property to be mortgaged must be free and clear of a mortgage or almost mortgage-free. The borrower will be required to pay the balance of the existing mortgage from the proceeds of the reverse mortgage. Credit history is not a factor in either of these federal programs but may be in a purely private reverse mortgage loan or if Pennsylvania institutes its own program again. Liens against the property would be an issue and most likely would have to be paid off with the proceeds of the loan.

### Types of Reverse Mortgages

At present, there is no program offered by the State of Pennsylvania. In the past, the Pennsylvania Housing Finance Agency (PHFA) offered a program for seniors who owned a home in Pennsylvania.

There are two basic types of reverse mortgages or home equity conversion mortgages:

For the federally insured "Home Equity Conversion Mortgage" (HECM), your home must be a single-family property, a two-to-four unit building, or a federally-approved condominium or planned-unit development (PUD). For Fannie Mae's "HomeKeeper" mortgage, it must be a single-family home, PUD or condominium.

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 which program you select and within each program-on your age, home and interest rates. For all but the most expensive homes, the federally insured HECM program generally provides the most cash. 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 put into the borrowed amount so that the only up-front cost to the senior is the appraisal.

Both of these Federal programs require that the homeowner(s) undergo counseling with a HUD- approved non-profit organization before they can obtain a reverse mortgage. For a list of HUD- approved counselors near you, contact the Division of Planning and Research, Department of Aging, 555 Walnut Street, 5th Floor, Harrisburg, PA 17101-1919 or telephone number: 717-783-6207.

## Impact of Reverse Mortgages

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 are not income since they are loans. But if an individual receives reverse mortgage proceeds and holds them beyond the month they are received, they are considered "liquid assets" and may adversely affect eligibility for SSI and Medicaid benefits.

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. You may find more information on reverse mortgages from the American Association of Retired Persons Home Equity Information Center, 601 E Street, NW, Washington, D.C. 20049; telephone number: 1-888-687-2277 or [www.aarp.org](http://www.aarp.org). Another excellent source of information is the National Center for Home Equity Conversion. This organization is a purely private, noncommercial wealth of information on this topic. They can be reached at their website: [www.reverse.org](http://www.reverse.org).

Occasionally, you may find a private lender, such as a bank that offers reverse mortgages and may have more flexibility in setting maximum loan amounts or placing higher age limits on borrowers, etc. However, the overall cost and interest rates may be higher, and all the ramifications must be considered. There is a heightened risk of FORECLOSURE on borrowers who are seniors with reverse mortgages! Seniors also may not derive any equity or proceeds from the sale or foreclosure of their homes. The benefit may not outweigh the risks. Extreme caution is urged!

## Property Tax and Rent Rebates

In Pennsylvania, homeowners 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 a maximum of slightly more than \$45,000 (the maximum amount changes each year) may be entitled to a rebate. Claims applications are due for filing between January 1 and June of the year following the year in which the individual paid the tax or rent. Since 1999, claimants may exclude 50% of their SS/ Railroad Retirement income in determining their eligibility requirements. So, if you make \$40,000 or more, you may still qualify for a rebate.

In addition, owners must have paid taxes prior to filing and renters must make certain their landlords were required to pay property taxes or made payments in lieu of property taxes on the rental property. Claimants who qualify can be reimbursed up to \$1,000 a year for the amount they paid in property taxes or rent; 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 include 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 permit.

## Amount of Rebates

The amount of reimbursement is calculated as a percentage of the claimant's income. A homeowner can be reimbursed from 10% to 100% of the total taxes paid, up to \$1,000 maximum, but supplemental rebates for qualifying homeowners can boast rebates to \$1,500. A renter might be reimbursed 2% to 20% of the total rent paid, up to a \$1,000 maximum. However, there are no guarantees of these payments. If you require further information on this program, you may call the Department of Revenue at 1-888-222-9190 or use their website: <https://www.pa.gov/agencies/revenue.html>. Application forms and assistance

are available at no cost from Department of Revenue district offices, local Area Agencies on Aging, senior centers and state legislators' offices.

If you qualify for the property tax and rent rebate program, you may also be eligible for PACE or PACENET, which are prescription drug programs funded by the Pennsylvania lottery. You can also get help in filling out PACE and tax rebate forms through your local Area Agency on Aging or at most local senior centers.

## Estate Planning

Many people think the term “estate planning” applies only to very wealthy people. Nothing is further from the truth. An “estate” is simply what you own. If you own property, you need to plan ahead in order to make sure the desired people or institutions inherit your property after your death.

If you die without planning your estate, your home, money and other property will be distributed to various relatives, sometimes distant relatives, according to a rigid formula fixed by law known as “intestacy law.” This law applies to every person who dies without a will and does not consider special needs of any individual or family.

Without a will, your property may be inherited by people you do not want to share in your estate. Without a will, individuals in control of your estate may not be the people you prefer, and they may not even cooperate with each other. If you have no will, the Commonwealth of Pennsylvania in effect, makes a will for you, according to the terms of the intestate law, which controls the distribution of the shares of your estate.

The existence of a well-considered estate plan, most importantly a will, can help avoid disputes among your heirs and will give you the peace of mind that comes with knowing that your final wishes will be carried out.

## The Will

A will is an important legal document and the cornerstone of most estate plans. In a will, you direct how your property is to be distributed, and you also name a personal representative to administer your estate.

The personal representative named in a will is commonly referred to as the “executor.” An executor collects the estate assets, pays the estate debts and makes distributions to the beneficiaries you have designated in your will.

Some estate planning attorneys believe it is generally advisable to nominate one executor and an alternate in your will rather than naming two individuals to serve as your co-executors. Co- executors may have difficulty getting paperwork signed in a timely manner and can delay estate administration. On the other hand, some parents want their children to work together and name them to act jointly.

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

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. If your lawyer is holding your will, ask whether it is being held in a fire-proof vault or other protected location, and how access will be assured in the future.

If you are afraid that somebody might tamper with or destroy your will if they were to read it, leave it with your lawyer or place it in a safe deposit box where its contents will be kept private. In Pennsylvania, a safe deposit box is accessible upon death of the owner for the limited purposes of retrieving the decedent's will and cemetery deed (61 Pa. Code § 93.37).

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

## Trusts

Your attorney might recommend a “trust” in larger estates, estates with young beneficiaries and in situations with special circumstances. What is a trust? Many estate planners explain that a trust is like a box where you can place your property. A person places assets in the box, the trust, and designates a manager, known as the “trustee,” to safeguard the contents of the box. The trustee then distributes trust assets to the beneficiaries you select, in such amounts and at such times as you direct. Of course, the assets are not really put in a box. The “box” is usually a brokerage account or a bank account where the funds are invested by your trustee.

For example, a grandparent may wish to set aside money for a disabled grandchild but may be afraid to do so for fear of disqualifying that grandchild from certain government benefits. A grandparent could place the money in a carefully drafted trust, designate a trustee to invest and safeguard the funds and enable the disabled child to benefit from the trust while maintaining eligibility for government benefits such as Medicaid or Supplemental Security Income (SSI) payments. This trust is sometimes called a special needs trust or supplemental needs trust.

There are many other types of trusts. Credit shelter trusts, also called “by-pass trusts,” are commonly used to help protect large estates from federal estate taxes. Trusts can also be used to set aside money for designated purposes, such as for education. Discretionary trusts and “income only” trusts can be written to protect spendthrift beneficiaries from squandering their inheritance through wasteful spending habits.

Trusts usually cost more money to create because they are more complicated and must be customized for each particular situation. In addition to the costs of drafting a trust, there are continuing attorneys’ fees and trustees’ commissions over the years as a trust is administered. Many trusts require the filing of fiduciary income tax returns; accordingly, an accountant’s services are often needed to help prepare and file these tax returns. Obviously, you need to consider the ongoing administrative costs as you decide whether it makes sense to create a trust.

## Revocable Living Trusts

Before having a lawyer prepare a living trust, you must determine whether it will be useful for your situation. Living trusts may be helpful, for example, when you own out-of-state real estate and wish to avoid probate outside Pennsylvania. Living trusts may also save costs where the estate is very large, such as federally taxable estates where estate administration costs or legal fees can be higher than the costs and fees for the average estate, however most people do not have federally taxable estates.

Some people are confused by the complexity of revocable trusts and may experience or feel a loss of control over the assets in the trust. Moreover, many feel the benefits of a costly trust can be obtained through less expensive alternatives, such as through the use of a general durable power of attorney.

Living trusts are clearly not for everybody. Consumers should approach sales pitches for “revocable living trusts” with a high degree of caution. In recent years a number of older consumers have been defrauded by salespeople who push the supposed benefits of living trusts in “free” seminars and mail solicitations. Living trust sales pitches are frequently accompanied by an effort to sell high-commission annuities. These annuities typically have expensive surrender penalties when money is withdrawn within the first few years after the annuity purchase. These surrender penalties are especially punishing to seniors who may need to withdraw funds sooner than expected in order to pay long-term care costs. Not all annuities have high surrender penalties, and some products specifically provide for the penalty-free withdrawal in cases where the annuity owner requires nursing home care. When considering the purchase of an annuity, work with a reputable financial advisor, and consider having your estate planning attorney review the annuity before making the investment since there are serious implications for Medicaid.

Living trusts can be more expensive than you are led to believe. There are costs involved in the re-titling of your assets into the trust and they do not save Pennsylvania inheritance taxes.

If you wish to obtain a low-cost second opinion from an elder law or estate planning attorney before proceeding with a living trust, call your county bar association’s Lawyer Referral Service or the

Pennsylvania Bar Association's Lawyer Referral Service. 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 consultation with an estate-planning attorney will save your money and your peace of mind by making you aware of options not mentioned by the salesperson.

## **Non-Probate Property**

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 accounts but never re-check these decisions. It is particularly important to do so as families change over the years.

You also need to be aware that jointly held property, accounts held in trust for (ITF), or payable on death (POD), and annuities do not pass according to the provisions of your will. Rather, these items pass by law to designated beneficiaries or to the survivor listed on the account. Be sure these beneficiary designations are carefully reviewed when developing your estate plan.

## **Inheritance, Estate and Gift Taxes**

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

### **Pennsylvania Inheritance Tax**

This death tax must be paid by the estate within nine months of death to avoid a penalty. To the extent that the inheritance tax is paid within three months after the date of death, a discount of 5% is given.

The inheritance tax rates are effective for dates of death on or after July 1, 2000, and are as follows:

- The tax rate for transfers to a grandfather, grandmother, father, mother, child, lineal descendant or their spouse is 4 1/2%.
- The tax rate for transfers to a spouse is zero %.
- The tax rate for transfers from a child aged 21 or younger to a natural parent, an adoptive parent or a stepparent is also at the zero % tax rate.
- The tax rate for transfers from a decedent to a sibling is 12 %. The Inheritance Tax Act defines a sibling as "an individual who has at least one parent in common with the decedent, whether by birth or adoption." This includes a sibling by birth, a stepsibling by birth as well as a sibling by blood or adoption.
- The tax rate for transfers to all other collateral beneficiaries (nephews, nieces, aunts, uncles, cousins, other relatives, friends, etc.) is 15 %.
- Gifts to charities or government entities continue to be deductible from the estate.

### **Federal Estate and Gift Taxes**

2025 – federal tax threshold is 13.99 million and 27.98 million for married couples.

Unless Congress acts, on Jan. 2026 – the thresholds are set to sunset which will cut these numbers basically in half.

Federal taxation is not a concern for estates with assets under the amount covered by the exemption; however, you should check with your lawyer for other specific concerns. Most decedents' estates are below the current federal estate tax limit, and usually, only Pennsylvania Inheritance Tax needs to be paid.

Taxation of gifts follow the federal changes for estate taxes. Taxpayers have a lifetime gift tax exemption, which in 2025 is \$13.99 million. This represents the amount an individual can gift over the course of their lifetime without having to pay a gift tax. In 2025, annual gifts of \$19,000 or less per person per donee are not subtracted from the lifetime gift tax exemption amount. Thus, a married couple, combined, may transfer up to \$38,000 to each donee (i.e. \$38,000 to each of their children) per year, without any

reduction of their lifetime gift tax exemption amount. Just like with the federal estate tax threshold, the lifetime gift tax exemption is scheduled to sunset in 2026. See your estate planning attorney or tax professional for guidance on the taxation of gifts.

## Planning For Gifts

As you plan to make gifts in your elder years, you need to know about federal estate and gift taxes, income taxes, real estate law, estate law, wills and divorce law. 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, with your attorney's assistance as you make your decisions.

You may want to consider a gift to charity. Many not-for-profit institutions have resources to aid you in making gifts, particularly in setting up a charitable gift annuity, which 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. Again, you need to see your attorney to help you to review all your options.

The Internal Revenue Service defines a gift as "any transfer to an individual, either directly or indirectly, where full consideration (measured in money or money's worth) is not received in return." A gift will be computed when the donor gives up control over the transferred asset. Your gift to anyone during a calendar year will be a "taxable gift" if it exceeds the annual exemption amount. Your payment of educational or medical expenses for another individual is not generally subject to federal gift tax.

The value of a gift for federal gift tax purposes is the "fair market value" of the property transferred. Fair market value is generally defined as the "price which would probably be agreed upon by a seller willing to sell and a buyer willing to buy where both have knowledge of the facts." Gift tax returns, which list the gifts made in that year which exceed the annual exemption amount, must be filed annually when you file your personal income tax return.

Under the Deficit Reduction Act of 2005, gifts made after February 8, 2006, can make you ineligible for Medicaid long-term care benefits many years after the gift is made. In Pennsylvania, Medicaid caseworkers look back for gifts greater than \$500 per month going back five years. It is therefore very risky for seniors to make gifts of any size if they might need nursing home care within that window of time. Only those with sufficient resources to pay privately for nursing home care for five years can ignore the Medicaid transfer penalties. In 2025, nursing home care costs an average amount of \$12,160 *per month* in Pennsylvania, so seniors should proceed cautiously before making any gifts.

## Meeting With Your Lawyer

Perhaps the most difficult part of the estate planning process is overcoming procrastination and scheduling that initial consultation. For the best results, you need to 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 lawyers charge for documents on a flat fee basis, while others bill at an hourly rate. In either case, reputable lawyers always discuss fees up-front at the initial consultation and they will put the agreement in writing.

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

- a list of what you own;
- a list of your intended beneficiaries with their names, ages and addresses;
- your choice of executor and at least one alternate;
- a list of all the questions you have about estate planning.

Your lawyer will thus be able to spend more time developing a plan with you and less time writing down basic information. If you suspect trouble in the family, mention this to your attorney so the issues can be addressed in a way that minimizes conflict. Remember that anything you discuss with your attorney is confidential client information.

After working with you to develop your plan, your lawyer will then prepare the necessary documents. It is very important that you understand all papers you sign. Then, once signed, make sure everything is kept in a secure, fire-proof location.

## **Power of Attorney**

A durable power of attorney (POA) is a written document authorizing a named person called an “agent” to handle certain specified types of transactions for the person making the power of attorney, called the “principal.”

General powers of attorney are very broad and allow many types of transactions. Limited powers of attorney convey the power of attorney to an agent to handle a specified task, for example, to attend and sign documents at a real estate settlement.

The power of attorney is “durable in that it remains valid even after the principal no longer has legal capacity to convey property or handle similar transactions, perhaps due to an injury or an illness such as Alzheimer’s disease. However, legal capacity must exist when the power of attorney is first executed. All powers of attorney executed since 1993 in Pennsylvania are durable unless otherwise stated.

Pennsylvania law requires a special statutory notice in capital letters at the beginning of the power of attorney, signed by the principal, acknowledging an understanding of the powers and duties being conveyed to the agent under the power of attorney and stating that the power of attorney has been read and understood. The law also requires an Acknowledgment signed by the agent that they have read the power of attorney and shall act in accordance with the principal’s reasonable expectations to the extent actually known to the agent, act in the principal’s best interest, act in good faith and act only within the scope of authority granted by the principal in the power of attorney. Powers of Attorney should be reviewed with an attorney due to changes in the law and to provide that your agent is properly authorized to act for you as you direct.

Your agent may make gifts of your assets only if authorized in the POA. Exercise caution when allowing another person to make gifts of your money or property. Many actions must be specified and included in the Power of Attorney or they cannot be exercised by the agent. Only an attorney should write a Power of Attorney for you since there are also specific requirements for signing and notarization.

## **Revoking and Termination of a Power of Attorney**

As long as the principal has legal capacity, they can sign an affidavit to revoke the power of attorney, and/or write a new POA to name a new agent or designate a co-agent to check on the actions of the first agent or for any reason. The power of attorney must be notarized and witnessed. Some powers of attorney must be recorded at the Recorder of Deeds Office, for example, when real estate is being transferred. Often, if a power of attorney does not have a recent date on it, institutions will require the financial principal to sign a “certification” that the power of attorney has not been revoked and is still in full force. A power of attorney does not lapse with the passage of time and does not become invalid just because it is old. However, the Power of Attorney terminates upon death and the agent no longer has any authority to act once the principal is deceased.

## **Special Powers of Attorney**

Health care powers of attorney are special forms of power of attorney that delegate to an agent the power to act on your behalf regarding medical and health issues typically in the event you are unable to do so yourself. The agent under a health care power of attorney may authorize the principal’s admission to

a medical, nursing, residential or similar facility, enter into agreements for care, and authorize medical and surgical procedures. A financial power of attorney is also a special form of power of attorney that delegates to your agent the power to act on your behalf relating to financial affairs only.

## **Failure to Act**

Any person who fails to act according to the directions of an agent appointed by the principal, without reasonable cause, can be subject to civil as well as criminal liability. There are also sanctions in the law for failure of a third party to accept a valid POA.

## **Fraud**

A power of attorney can be an invaluable tool in aiding an elderly individual who needs assistance, but it can also be a means to facilitate fraud. Steps you can take to minimize that potential are:

- Choose the right person to act as your agent under a power of attorney. Make sure that the individual is someone you can trust who will make decisions on your behalf in accordance with your wishes.
- Be careful what powers you give to an agent under a power of attorney. Make sure you read every word and understand what powers are included in any power of attorney before you sign the document. Powers of attorney can be broad or narrow, allowing a full grant of authority to act for an individual or providing only a limited power of attorney for a particular event or situation, i.e. power of attorney for the sale of real estate.
- Consider appointing more than one person to act as your agent. While this may be more cumbersome and less efficient, it may provide a process of checks and balances in that your agents must agree on decisions and actions.
- Prevent premature use of the power by your agent, you can withhold the document until it is needed or require that the document be held by a non-agent with full instructions for release to the agent.
- You may require your agent to account periodically to a disinterested third person.
- Your power of attorney should only be written by your lawyer, pursuant to your specific instructions.

## **Health Care Provisions in a Power of Attorney**

A power of attorney usually deals with financial and personal issues but can include medical treatment. The law allows an agent, appointed by you in your power of attorney, to authorize your admission to a medical, nursing, residential or similar facility, and to enter into agreements for your care if you so state. The agent may, with respect to your admission to a facility, execute consent or admission forms required by the facility and enter into agreements for your care by a facility or elsewhere. The law also allows you to authorize your agent to arrange for and give consent for medical, therapeutic, and surgical procedures, including the administration of medications.

## **Health Care Powers of Attorney and Living Wills**

Pennsylvania enacted legislation governing the requirements for individuals (known as principals), who are of sound mind to write a Health Care Power of Attorney and Living Will for use in the future if they are incapacitated. The legislature recognized the importance of having both documents. However, one cannot be forced to have a Living Will as a precondition to placement in a care facility or for hospitalization. The law provides for the following:

- Permits a principal to allow a health care agent to make all the health care decisions for the principal, including those concerning life-sustaining treatment.
- Permits a principal to appoint multiple and successor health care agents.
- Provides that a principal may countermand a health care decision made by an agent.



- Explains how a health care power of attorney may be amended and revoked.
- Uses the term “Living Will” that becomes operative when the individual is “incompetent and to have an end-stage medical condition or to be permanently unconscious” to ensure that an individual’s wishes are followed and that the individual receives medical care if the individual would benefit from the treatment and it would not merely prolong the process of dying.
- Authorizes health care representatives to make health care decisions when there is no health care agent and provides who may act as a health care representative if there is no health care agent.
- Creates a presumption that the principal would NOT want nutrition and hydration withheld or withdrawn and provides how that presumption is overcome, in the absence of a written direction to the contrary.

Individuals who are concerned about controlling their health care decisions can do so directly through written instructions written in advance through a health care agent that they designate for routine care if they are incapacitated or are unable to make health care decisions (Health Care Power of Attorney). Instructions can also be written in advance in Living Wills for directions when an individual is in an end stage medical condition or permanently unconscious. If these documents are not written in advance, the law establishes presumptions for a patient’s end care stage. If needed, the law can permit the designation of a health care representative, usually a family member, if a health care agent has not previously been named by an individual in a Health Care Power of Attorney or Living Will. Previously drafted documents remain valid.

You should create two separate Powers of Attorney; one for financial decisions and one for health care instructions and appoint an agent and an alternate if your primary agent cannot serve. The agent for financial decisions and health care decisions can be the same person, but you may not want it to be.

## **HIPAA (Health Insurance Portability and Accountability Act)**

Privacy requirements were enacted under HIPAA or the Health Insurance Portability and Accountability Act. The purpose is to protect an individual’s personal health information, and this is the first federal law to do so. HIPAA also enables individuals to access, inspect, copy and correct their health care information and gives them rights to an accounting of certain disclosures of this information.

The regulations apply to health care providers, health plans, health care clearinghouses and the business associations that deal with those entities. Protected health information may not be disclosed to business associates unless a signed patient authorization that meets specific requirements is obtained. An individual’s personal representative and their Agent under a Power of Attorney may obtain medical records and health information if they are specifically authorized to do so in the individual’s Power of Attorney.

## **Out of Hospital Do Not Resuscitate (DNR) Orders**

Out of hospital Do No Resuscitate orders are also recognized. These are known as DNR orders and can be in the form of a written order, bracelet, or necklace, the contents of which are described in the statute. They are primarily intended to direct Emergency Medical Service providers to comply with the patient’s wishes when a patient is experiencing cardiac or respiratory arrest and has both a Health Care Directive and an out of hospital DNR order issued under the DNR Act. An EMS provider can withhold CPR upon observing an out of hospital order, bracelet or necklace displayed with the patient. The EMS provider can follow the patient’s wishes pursuant to the DNR order.

## **Physician Order for Life-sustaining Treatment “POLST” Form**

Pennsylvania has approved a POLST form. The use of a POLST form is intended to help ensure that patients receive appropriate care at the end of life. This is achieved by creating an actionable medical order that directs care that is consistent with patient’s goals and preferences for end-of-life care and treatment. It is provided in a form that can transfer with the patient as they move between medical providers such as if they are admitted to a hospital from a nursing home. The POLST gives patients

choices from a full range of care options, from aggressive to limited to comfort care. Health care professionals can discuss options with seriously ill patients or their Agent under their Health Care Power of Attorney, and document those preferences on a standardized medical form and ensure that it travels with the individual. It differs from a Living Will or Health Care Power of Attorney in that it is an actionable medical order dealing with the current medical situation and can even be created if these documents do not already exist, although it is always preferable to have them prepared in advance. A POLST form will not stop EMS personnel from performing CPR. Only a DNR can do that. Also, in Pennsylvania there is currently no statutory requirement that first responders recognize a POLST form.

## Guardianships

Guardianship resources such as a video training series, and Guardian Handbook, are available through the Pennsylvania Supreme Court's Advisory Council on Elder Justice in the Courts <https://www.pacourts.us/judicial-administration/court-programs/office-of-elder-justice-in-the-courts/guardianship-in-pennsylvania>.

Sometimes people are unable to make decisions about their health or finances and can no longer manage for themselves. Dementia or other progressive mental, emotional or physical illnesses can rob people of the ability to keep themselves safe. In the worst cases, individuals can become victims of others who see opportunities to take cash and possessions while “helping” or doing favors. The impaired person may even be pressed to make important decisions about medical care or living arrangements.

To provide a decision-maker for people in these situations, Pennsylvania law allows the Orphans' Court to appoint a guardian of the person (for living arrangements) and/or a guardian of the estate (for financial matters). Anyone interested in the person's welfare can file the petition seeking a guardian; however, a guardian must be identified and be willing to serve. The court will not produce one and depending on the county, there may be no public guardian service.

To qualify for a guardian, a person must be found impaired in such a way that they are partially or totally unable to manage financial resources or meet essential requirements for physical health and safety. Because a ruling of “incapacity” and appointment of a guardian involves the curtailing of many important legal rights, stringent standards must be met. Notice must be given to the alleged incapacitated person and there is a right to request counsel.

## Hearing before the Court

The incapacitated person is required to attend a hearing before the Orphans' Court unless excused, for example, by a doctor. When testimony by qualified persons such as a psychiatrist or other health care provider establishes clear and convincing evidence that the person is incapacitated, a guardian will be appointed. Just because an individual has periods of confusion does not mean that they will be found incapacitated under the law. Now, a jury trial may be requested for a guardianship hearing.

If incapacity is established, the court will appoint a guardian of the estate and/or person with full or limited powers. It is the duty of the guardian to assert the rights and best interests and to respect the expressed wishes and preferences of the incapacitated person to the greatest possible extent. The guardian must also encourage the incapacitated person to participate in all decisions which affect them to the maximum extent of their abilities. However, the guardian does not have to follow the wishes of that person if they are in conflict with their best interests. For example, many times an incapacitated person wants to continue to live in their home; if the guardian determines that assisted living or skilled nursing care is necessary, the guardian is fully authorized to admit the person to a facility, even over that person's objections. A guardian may also admit an incapacitated person to a psychiatric facility for treatment but may not involuntarily commit a person for treatment.

The appointed guardian has all powers set forth in the court order, usually including making every kind of decision with the exception of admitting to inpatient psychiatric facilities or consenting to relinquishment of parental rights. Court approval is needed for consent to abortion, sterilization, psychosurgery, shock therapy, removal of a healthy organ, or to prohibit marriage, consent to divorce or to consent to experimental procedures.

Typical decisions made by guardians of the person include arranging 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 for the estate has the same duties as a personal representative, executor or administrator with specific requirements and limitations. Every guardian must file a detailed annual report with the Orphans' Court.

Preparing a comprehensive power of attorney may make guardianship proceedings unnecessary and is less expensive and stressful than the court process. Any person could, of course, name in advance a preferred guardian of the estate or the person for consideration by the court in the event a court proceeding becomes necessary.

A guardian's authority expires upon the death of the incapacitated person. Unless there is someone entitled to act under estate law (a family member, someone entitled to the estate under a will, etc.), there is no one who can make final arrangements, pay bills, distribute assets, sell a house or take other actions which may be necessary. Many times, there is no such person willing or qualified to serve as administrator. This leaves a big gap in the ability to take necessary or desirable actions.

In 2024 a law was passed making some significant changes to the guardianship process in Pennsylvania.

One such change is that under the new law, the guardianship petition "must allege specific facts demonstrating that less restrictive alternatives were considered or tried and why the alternatives are unavailable or insufficient." Less restrictive alternatives would consist of, but not be limited to advance directives, living wills, health care powers of attorney, health care representatives per Pennsylvania law, financial powers of attorney, trusts, including special needs trusts, representative payees for individuals receiving social security benefits, Pennsylvania Achieving a Better Life Experience (ABLE) accounts and mental health advance directives.

In addition, the law now requires that courts appoint counsel for all alleged incapacitated persons who have not otherwise retained their own counsel. Counsel will be appointed regardless of the alleged incapacitated person's ability to pay. The appointed counsel must maintain, as far as reasonably possible, a normal client-attorney relationship and advocate for the client's expressed wishes. The Court may appoint a Guardian Ad Litem separately in adult guardianship cases who would conduct due diligence and report to the Court as an independent neutral observer.

There is now a requirement that a review hearing be scheduled within one year of the original Decree appointing the guardian if the evidence presented during guardianship hearing indicates that the circumstances of the person's incapacity may change. The alleged incapacitated person is required to appear at the review hearing and be represented by counsel.

Finally, the law requires that an individual seeking guardianship of three or more incapacitated persons must be certified and provide proof of the certification to the court prior to a third guardianship appointment. Under certain circumstances this requirement can be waived.

Rules implementing the new law are required to be approved by the Pennsylvania Supreme Court. These rules were approved on December 18, 2024.

## Social Security

The Social Security Administration operates a variety of programs and benefits, including retirement and survivor benefits, Social Security disability insurance benefits, Medicare health insurance, and Supplemental Security Income benefits. Your county or region may have one or more local Social Security offices. These offices have several helpful and informative publications available free to anyone who requests them.

Anyone who has access to the Internet can check the Social Security Administration's official website which offers comprehensive information about all of its programs and benefits. The website is [www.ssa.gov](http://www.ssa.gov) and it offers more than 10,000 pages of information. You can do a variety of tasks at this website: request a copy of your earnings record and an estimate of the benefits you and your family will receive when eligible; find out how to file a claim for retirement or disability benefits; find out how to replace a lost Social Security card or change the name on your Social Security records; locate the nearest Social

Security office and get a statement verifying the amount of Social Security benefits you receive. You can also download copies of booklets and fact sheets about Social Security disability, retirement and survivor benefits and SSI benefits.

## **Applying for Benefits from the Social Security Office**

Do not delay in applying for benefits for which you may be eligible. Any delay on your part could result in fewer benefits if you are ultimately found eligible for certain benefit programs operated by Social Security. When in doubt, contact Social Security to begin the application process as soon as you may be eligible. To get an estimate of your benefits, Social Security encourages you to set up an on-line account at its website. Through the website, you have access to an immediate statement. Or you can submit a completed form SSA- 7004(07-2023) to the Social Security Administration at the address listed on the form. It takes about six weeks to receive the information.

## **Contacting Social Security**

Many tasks can be accomplished through Social Security's website. You can apply for benefits, obtain or replace a Social Security or Medicare card, update your personal information, check your application status and make appointments. The website provides a link for you to email them and also provides an office locator.

If you prefer or need to call, you can do that too. The Social Security Administration maintains a toll-free number which you can call to obtain information, set up an appointment, or transact other business. Be careful. There have been some reports that some Social Security staff members who answer this toll-free number do not always provide accurate or complete information. When in doubt, call your local Social Security office to make an appointment to meet with their staff in person so they can review your file with you. Take a friend or relative with you.

## **Website:**

[www.ssa.gov](http://www.ssa.gov)

- Toll-Free Social Security Number: 1-800-772-1213
- Toll-Free Social Security TTY number (for people who are deaf or have difficulty hearing) 1-800-325-0778.

## **Deadlines**

Keep in mind that Social Security will give you a deadline to finish certain tasks (i.e., file a written application after you call them, file a written appeal if you are dissatisfied with their decision, etc.). You must comply with their timelines, or you may lose your right to potential benefits. Typically, their deadlines are within 60 days. However, they may be shorter for special circumstances so you must check this carefully.

## **Written Explanation for Denial of Benefits**

If Social Security denies your claim for any benefits, you are entitled to a written explanation giving the reasons for denying certain benefits. If you do not receive a written explanation, ask Social Security to provide you with this documentation.

## **Correcting Records with Social Security**

If you are receiving benefits or applying for benefits from Social Security, it is important that you contact the Social Security Administration to inform them of any changes or corrections in your records. For example, if you move, change bank accounts, or disagree with the earnings records which they have posted to your Social Security account, you should take immediate steps to inform Social Security of any changes or additions.

It has been estimated that a small percentage of Social Security participants have incorrect Social Security retirement accounts. This means that Social Security may not know about all of your earnings in your lifetime, and therefore your retirement benefits may be lower than they should be. It is important to check your records every couple of years, at least until you are receiving benefits, to verify your earnings records on file with Social Security.

## Legal Assistance

If you have a problem with a Social Security claim and desire legal advice, a good contact is the National Organization of Social Security Claimants' Representatives: (NOSSCR) 1-800-431-2804 or [noSSCR.org](http://noSSCR.org) or its automated referral service at 845-682-1881. They maintain a national listing of attorneys who concentrate their law practice in Social Security matters. You may also wish to contact your local Legal Aid office in your community, or if they have one, your local county bar association can direct you to their Lawyer Referral Service which can make a referral in almost any area of the law. If your county does not have a local Lawyer Referral Service, you may contact the Pennsylvania Bar Association Lawyer Referral Service at 1-800-932- 0311.

## Social Security Benefits

The following is a brief description of some of the benefits available through the Social Security Administration. Remember that Social Security is a system of social entitlement; it is neither welfare-based nor based on means. The system provides benefits not only during retirement but also for survivors and dependents in case of death or disability. **Keep in mind that this is not a description of all of the eligibility requirements for each of these programs and benefits.** Some of the eligibility requirements are complicated and cannot be fully addressed in this guide. When in doubt, contact the Social Security Administration and set up an in-person appointment to ask about your eligibility for benefits.

## Retirement Benefits

Eligibility for full retirement benefits is based on your year of birth. If you were born on January 1 of any year, you should refer to the retirement age for the previous year. The chart below sets for the normal retirement age for full social security benefits:

Full Retirement Age	
Year of birth	Age
1937 and prior	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
1943-54	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 and later	67

If you work and are full retirement age or older, you may keep all of your benefits, no matter how much you earn. If you are younger than full retirement age, there is a limit to how much you can earn and still receive full Social Security benefits. If you are younger than full retirement age during all of 2025, \$1 will be deducted from your benefits for each \$2 you earned above \$23,400. This annual limit changes every year, so check the social security website for updates after 2025.

If you reach full retirement age during 2025, \$1 will be deducted from your benefits for each \$3 you earn above \$62,160 until the month you reach full retirement age.

No matter what your "full" retirement age is, you may start receiving benefits as early as age 62. However, if you start your retirement benefits early, you will receive a reduced monthly benefit. There are

disadvantages and advantages to taking your retirement benefits before your full retirement age. The disadvantage is that your benefits are permanently reduced. The advantage is that you collect benefits for a longer period of time. You can also delay claiming your benefits until age 70 and your benefit amount will be higher because you receive credits for each month that you delay filing. After age 70, there is no additional benefit increase. Each person's situation is different, so you should contact Social Security before you make any decisions.

If you are married, your spouse may also be entitled to benefits based on your work history if you have retired and claimed your social security retirement benefits. This is helpful to spouses with no work history of their own or who have low earnings. Your spouse must be at least 62 years old or have in their care a child who is under the age of 16, and must have been married to you for at least one year.

## Benefits for a Divorced Spouse

One receives Social Security benefits in one of two ways: based on your own contributions to the Social Security system or as a spouse of such a contributor/worker. This second category of benefits are called derivative benefits. The recipient will receive benefits in the manner that provides the higher benefits.

After divorce, you can receive benefits based on the contributions of an ex-spouse if you were married for at least ten years. Derivative benefits for divorced spouses do not affect the benefits of the contributing ex-spouse. If a divorced spouse seeks benefits based on an eligible ex-spouse's earning record, and the ex-spouse is not yet collecting benefits, the divorced spouse can collect benefits only if you have been divorced for two or more years. In addition, the ex-spouse from whom benefits are derived must be **eligible** for benefits; that is, at least 62 years of age and fully insured. They do not need to be actually receiving benefits. The qualifications of the recipient divorced spouse are: being at least 62 years of age and remaining unmarried.

If you are a divorced spouse who remarries, you will not be eligible for derivative benefits from a contributing ex-spouse. However, if such remarriage terminates, then you will become eligible for derivative benefits once again from the former contributing spouse. If a dependent 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 provides the higher benefits.

The marriage may be a legal marriage, a common law marriage or a deemed marriage, which is a marriage deemed valid by the administration if the relationship cannot be established under state law when in good faith, a person went through a marriage ceremony that would have resulted in a valid marriage except for a legal impediment.

## Survivor Benefits

When you die, certain members of your family may be eligible for benefits on your Social Security earnings record if you have earned enough credits while you were working. Family members who can collect benefits include:

- a surviving spouse who is 60 or older;
- a surviving spouse who is 50 or older and disabled;
- a surviving spouse at any age if they are caring for a child under 16 or a disabled child who is receiving Social Security benefits;
- children if they are unmarried and
  - under age 18;
  - under age 19 but in an elementary or secondary school as a full time student;
  - age 18 or older and severely disabled (the disability must have started before age 22);
- your parents, if they are older than 62 and were dependent on you for at least half of their support;
- an ex-spouse.

## Survivor Benefits to Divorced Spouses

If you are divorced, even if you have remarried, you may be eligible for survivor benefits on your ex-spouse's earnings record if that deceased ex-spouse was fully insured at death. In order to qualify, you must:

- be at least 60 years of age, or 50 years of age if disabled, and have been married to the deceased ex-spouse for at least ten years;
- be any age if caring for a child who is eligible for benefits on the ex-spouse's earnings record;
- not be eligible for an equal or higher benefit on your 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 spouse receives 100% of the benefits instead of the 50% received if the former spouse is alive.

Usually, you cannot receive survivor's benefits if you remarry before aged 60. If you are already a surviving divorced spouse planning to remarry close to age 60, wait until age 60 to avoid the remarriage penalty. In the event you are considering getting divorced, consider the impact on you of social security benefits. If you are a dependent spouse getting a divorce, at any age, and your marriage is close to ten years, defer the divorce until there are ten years from the date of the marriage to the date of the divorce decree. Before having alimony cease at age 62, consider the reduction of benefits and inability to qualify for Medicare. If you are a divorcing dependent spouse who is planning to receive benefits based on the earnings record of an ex-spouse who is not receiving benefits, make sure that benefits are not sought until two years after the date of divorce.

## Social Security Disability Insurance Benefits (SSD) Title II

If you have worked long enough and earned enough Social Security "credits" to qualify for disability on your own work record, and if you are medically determined to be unable to do "substantial gainful" work for at least one year, you may qualify for Social Security disability insurance benefits on your own account. This is a complicated program, and you should visit your local Social Security office in order to apply. This is not intended for a temporary condition; there is no such thing as a "partial" disability benefit program from Social Security.

## Supplemental Security Income Benefits (SSI)

The SSI program is based on income and assets. To qualify, you must be "poor" (low income and few assets) and be either medically disabled, blind, or 65 or older. However, this is not a benefit program to "supplement" your income which you may already receive in the form of retirement benefits, SSD, or a pension. In other words, in addition to the other eligibility requirements, you must meet strict poverty guidelines in order to receive this benefit. For example, for a single person in Pennsylvania in 2025, if you are medically disabled, but receive more than \$987 per month from another benefit such as SSD, retirement, or a pension, you will not be eligible for SSI benefits greater than \$1.00 because Social Security will consider that you make too much money to qualify for SSI. If more than \$1,971 is received as earned income, an individual will not be eligible for SSI benefits. These limits change annually, so you should check with Social Security for the current limits.

In addition to the income tests, you cannot have more than \$2,000 in assets as an individual or \$3,000 in assets for a married couple living together.

If you are eligible for even \$1 in SSI, then you will automatically qualify for Medicaid/Medical Assistance.

## Income Tax on Social Security Benefits

Your Social security benefits may be taxable. The test is whether the individual's adjusted gross income combined with 50% of his/her Social Security benefits plus any tax-exempt interest exceeds a base amount. For individuals, that base amount is between \$25,000- \$34,000; for married couples, the amount



is between \$32,000 - \$44,000. For individuals and married couples whose income falls into these ranges, you may have to pay taxes on up to 50% of your Social Security benefits. For individuals and married couples whose income is above these ranges, you may have to pay taxes on up to 85% of your Social Security benefits. Because these issues are so complex, you may wish to consult a tax attorney for guidance.

Most pensions are not counted in the retirement test. However, when one spouse works and the other is drawing benefits, the base amount can be easily exceeded. Form SSA 1099 shows the social security benefits received and is sent each January to every Social Security recipient for inclusion in the federal income tax return.

## **Considerations and Issues to Be Aware Of if You Already Receive Some Benefit(s) From the Social Security Administration**

Social Security has rules which require you, as beneficiary of Social Security, to report changes to the Social Security Administration. There can be consequences to you if you fail or neglect to report changes to Social Security, and these consequences can include sanctions against you, such as overpayment requests, fraud charges or termination of your benefits. Here are a few of the many things to be aware of if you already receive Social Security benefits:

### **1. If you receive Social Security retirement or survivors' benefits:**

- You must report any changes in your address, or if you change your name, via marriage or divorce;
- If you work and get benefits at the same time:
- If you are over your full retirement age, you will continue to receive full Social Security benefits regardless of how much you earn in wages or salaries;
- However, an earnings limit applies to people under full retirement age who collect Social Security and earn wages or salaries over a specified exempt amount. In 2025 for every \$2 in earnings above the limit (\$23,400 per year), \$1 in benefits will be withheld. See Social Security Publication No. 05-10069, How Work Affects Your Benefits, if you want more information on how earnings affect your retirement benefit. It has current annual and monthly earnings limits.

If you receive SSI disability benefits:

- You must report any income changes (increases, decreases) to the Social Security Administration. You should also report any changes in the income of other family members living with you (i.e. spouse, child). Income is a very broad term and includes many things, including wages from a job, the value of food or shelter or clothing that someone else gives to you or the amount of money they give you to help pay your bills, unemployment, annuities, pensions, etc. You must also report any increase in your (or your spouse's) assets.
- You must inform Social Security if you move and provide them with your new address.
- You must inform Social Security if there is a change in the number of people who live with you or if you get married or if your marriage ends. For example, if someone moves into or out of your home, or if someone who lives with you dies.
- You must inform Social Security if you enter or leave an institution such as a nursing home, hospital, shelter or penal institution.
- If you return to work, part-time or full-time, you must report this to Social Security. There are special SSI rules to help you try to work. In some cases, your SSI benefits may continue while you work and are still disabled; as your earnings increase, the amount of your SSI will decrease and may eventually stop if you earn too much each month.

### **2. If you receive SSD disability benefits, your benefits will generally continue for as long as your impairment has not medically improved, and you cannot work. Social Security will review your case periodically to confirm you are still disabled. If you receive SSD benefits:**

- You must report any changes such as change of address or marriage or divorce, or changes (i.e., improvements) in your medical conditions. Failure to report such changes in your medical



conditions could mean that you will get payments that are not due to you, and that will have to be repaid to Social Security.

- If you go to work, part-time or full-time, you must report any earnings to Social Security because earnings may affect your Social Security benefits. Consult SSA-05-10095 for more information.
- Even after you start receiving disability benefits, there are many work incentives that are designed to ease the transition back to work. To understand how work affects your disability benefits, you need to understand how Social Security measures your work. Disability benefits can be paid only if you are unable to do any “substantial” work. The amount of your earnings is the key to determining whether your work is substantial. As of 2025, if your wages are more than \$1620 per month, you are generally considered to be performing substantial gainful activity (SGA). In addition, Social Security permits a “trial work period” for nine months during which you can test your ability to work. In 2025, earnings over \$1160 a month constitute a trial work month. You must report all earnings to Social Security during such a period. During the trial work period, Social Security disability beneficiaries may work and receive Social Security Disability benefits. After completion of 9 cumulative trial work months within a 60-month period, the substantial gainful activity level (\$1620 per month in 2025) is used to determine whether earnings are substantial or not. If they fall below that level, full benefits will generally continue. If earnings are higher than this level, then cash benefits from Social Security are normally suspended while medical benefits continue. Extended period of eligibility: After your trial work period, you have 36 months during which you can work and still receive benefits for any month your earnings are not “substantial”. In 2025, earnings of \$1620 or more (\$2,700 if you are blind), are considered substantial. Your free Medicare Part A coverage will continue if your Social Security Disability benefits stop because of your earnings. During the trial work period there are no limits on your earnings. During the 36 month extended period of eligibility however, you usually can make no more than \$1620 in 2025 per month or your benefits will stop, unless you have extra work expenses as a result of your disability. Extreme care is urged to report all work in writing to Social Security and document all income and when it is earned to avoid problems. See “Working While Disabled: How We Can Help” SSA-05-10095.

### **3. Advance Designation of Representative Payee:**

Advance designation of a Representative Payee is available to any capable adult who is receiving social security or SSI benefits. It allows you to designate in advance up to 3 individuals who could serve as your “rep payee” in the event that you become unable to manage your benefit on your own. You can submit an advance designation at the time you apply for benefits online with your personal Social Security account or by phone.

## **Resources**

### **Social Security pamphlets include:**

- “Understanding the Benefits” SSA-05-10024
- “Retirement Benefits” SSA-05-10035
- “Social Security Update” SSA-05-1003
- “Disability Benefits” SSA-05-10029
- “Supplemental Security Income” SSA-05-11008
- “Survivor Benefits” SSA-05-10084
- “What You Need To Know When You Get Retirement Or Survivors Benefits” SSA-05- 10077
- “What You Need To Know When You Get SSI” SSA-05-11011
- “If You Are Blind How We Can Help” SSA-05-10052
- “A Guide For Representative Payees” SSA-05-10076
- “What You Should Know When A Representative Payee Manages Your Money” SAA-05- 10097

These are available by calling the Social Security toll-free number 1-800-772-1213 or through their website.

## MEDICARE

**NOTE: The Handbook's Section on Medicare was updated in February 2025; at the time of updating, President Trump's Administration had announced intentions to make significant changes in Medicare, but specific proposals had not yet been made public. If you are considering retirement or otherwise moving onto Medicare for health care coverage, it will be an especially important time to consult with experienced advisors, including attorneys or specialist organizations, some of which are referenced here. You need to be careful to enroll in Medicare Part A and B and make any changes in a timely manner so as not to trigger lifetime penalties or exclusions.**

Instituted in 1965, Medicare is a program administered by the federal government to assist older Americans in meeting their medical expenses. The program also assists younger persons who are disabled. Medicare is run by the Center for Medicare and Medicaid Services (CMS), under the U.S. Department of Health and Human Services.

The Original Medicare program has two parts. Part A helps to cover costs for stays in hospitals and skilled nursing facilities, and also covers, home health services and hospice care. Part B assists with doctors' and therapists' services, lab costs, many preventive services, and durable medical equipment. Only services that are considered medically necessary will be paid for through the Medicare program. In 2006, Medicare added Part D for outpatient prescription medication.

Most people become eligible for Medicare on the first day of the month that they turn 65. You also become Medicare eligible if you are under 65 but have been receiving disability benefits from Social Security for 24 months, or if you have ALS (Lou Gehrig's disease).

Prior to reaching age 65, all prospective retirees should carefully consider the Enrollment Requirements for Medicare. Enrollment is not usually automatic and requires active steps to be taken. The penalties for late enrollment are significant. In fact, the longer you wait, the more these penalties increase over time, thus making your health care costs higher for the rest of your life. If you are still working past the age of 65 and are covered by employer health insurance, you may qualify for a Special Enrollment period; you should consult with your employer's benefits program advisor for details. It is very important to understand that neither Medicare Part A nor Medicare Part B covers long-term nursing home or other residential long-term care services. Medicaid is a separate program, with income and resource limits on availability, which may offer coverage for long-term care. Medicare and Medicaid are not the same; rather, they are two separate programs.

A program called **Pennsylvania Medicare Education and Decision Insight (PA MEDI)** is a statewide service operated by the Pennsylvania Department of Aging and may provide free, confidential services about Medicare and Medigap Insurance policies. As of January 2025, PA MEDI may also be reached by a toll-free number at 1-800-783-7067. The Pennsylvania Department of Insurance may also provide guidance or assistance on billing concerns and there are consumer-complaint forms available online at: <https://www.pa.gov/agencies/insurance/consumer-help-center/complaints-questions-help.html>.

## Medicare Part A: Hospital Insurance

For most people, Part A is premium-free because Medicare taxes were withheld from your (or your spouse's) earned income during your working years. However, persons with less than 10 years of covered employment can purchase Part A insurance by paying a monthly premium of up to \$506 (in January 2025).

You are required to pay a deductible for each benefit period. For example, as of January 2025, the deductible is \$1,632. For extended hospital stays, there are coinsurance charges. As of January 2025, for hospital stays between 61 and 90 days, you pay \$408 per day. The daily rate increases for days 91-150. You pay all costs for hospital care after you reach a “lifetime reserve” of covered days.

There are additional options for Medicare Part A coverage if you receive care in a skilled nursing facility following a hospitalization. You should carefully consult with your hospital about any plans for discharge, to determine how much and for how long such rehabilitation care will be covered by Medicare. You are entitled to up to 20 days each benefit period. However, people who are terminally ill can receive hospice care, which is usually given in your home by a Medicare-approved provider. There is no premium payment for hospice care but there is an additional deductible.

You should be aware that all of the deductible and coinsurance amounts cited above are subject to increase every year. Please note that Medicare does not pay for elective and cosmetic surgery; nor will it cover vision, hearing, or dental services unless they are medically necessary. During your hospital stay, Medicare will not pay for your TV or telephone.

## **Medicare Part B: Medical Insurance**

Part B covers outpatient services such as doctor visits, preventive care and durable medical equipment. Most persons enrolled in Part B pay a standard monthly premium. For example, in January 2025, that monthly premium was \$185.00. For most people, this monthly premium is deducted from their Social Security check. Higher-income beneficiaries may also pay an Income-Related Monthly Adjustment Amount (IRMAA), which can increase the premium to as much as \$627 (July 2025 amount).

Under Part B, you pay an annual deductible (\$240 as of January 2025). After reaching the annual deductible, Medicare Part B covers 80% of approved medical services while you will be responsible for 20% as your co-insurance amount. This is sometimes described as the 80/20 cost-sharing model for coverage of Medicare-approved medical expenses. Certain additional expenses may be fully covered by Part B, especially with respect to preventive health services and an annual “wellness” exam.

If you (or your spouse) are still working and you have coverage through the employer’s or union’s group health insurance policy, you do not have to enroll in Part B because the other insurance will pay for these services. However, if/when your job-related insurance is going to end, you should enroll in Part B so that you can make a smooth transition to Medicare and not have a break in your health coverage.

The Part B premium and the annual deductible are subject to change every year. The scope of services included under Part B can also change.

## **Introduction to Supplemental Insurance for Parts A and B**

Medicare pays a lot, but beneficiaries also pay some of the costs through the various deductibles and coinsurance charges mentioned above. Many medical procedures can be extremely expensive; and even if Medicare picks up significant portions of the costs, your deductibles and coinsurance responsibilities could become quite substantial. Some or all of those expenses can be covered by other insurance, such as a Medicare supplement insurance policy (Medigap Insurance) or through an alternative plan such as a Medicare Advantage plan.

Some retirees receive help with medical costs through group health insurance they have from a former employer or union, or through a spouse’ job. Such coverage usually is cost-effective; but often, if you ever decide to leave that plan, you cannot rejoin it later. Typically, retiree coverage will be provided through a supplemental insurance policy or a managed-care plan that may resemble (but isn’t exactly like) a Medicare-contracted plan.

## **Medicare Supplement (“Medigap” Insurance)**

You can supplement your Original Medicare coverage by purchasing a private “Medigap” insurance policy. They are nicknamed “MediGap Insurance” because they can pay for some or all of the deductible and coinsurance “gaps” in Medicare Parts A and B. Your local, licensed insurance brokers can often assist in

choosing a Medigap policy.

In Pennsylvania, Medigap policies are sold by insurance companies, which are regulated and must be approved by the Pennsylvania Department of Insurance. When you purchase a Medigap policy from one of these companies, you will be charged a premium, usually payable monthly. A program called Pennsylvania Medicare Education and Decision Insight (PA MEDI) is a statewide service operated by the Pennsylvania Department of Aging and may provide free, confidential additional services about Medicare and Medigap Insurance policies.

The best time to buy a Medicare supplement policy is when you first enroll in Part B, because you can select any Medigap policy sold by any company, without regard to pre-existing health conditions. Because you may develop serious health conditions as you age, you could find it very difficult to be obtaining a Medigap policy later in your life. For married couples, each spouse must purchase their own Medigap policy.

Congress established 10 standardized Medicare Supplement plans in 1992 and labeled them “A” through “N” though some previously approved plans have been dropped from this alphabetic sequence. Plan F covers all the deductibles and coinsurance gaps of original Medicare and is the most popular supplement policy. Plan C is similar. Plans A and B offer less coverage but are also less expensive. The other supplement plans provide variations in gap coverage that perhaps can be tailored to suit your needs. New Plans labeled K and L became available beginning in 2006 to pay for 50% and 75% of Part A and Part B deductibles and coinsurances. The additional options or new plans M and N became available in June 2010. Besides the introduction of these two new plans, a number of other changes in the Medigap lineup occurred on June 1, 2010. Perhaps most importantly, insurance companies are no longer allowed to sell plans “E”, “H” and “J” to new enrollees, though if you currently hold one of these policies you will be permitted to keep it. Additional changes are anticipated in 2025.

In Pennsylvania, you can see a list of currently available Medicare Supplement (Medigap) on the PA.GOV website. You must have Medicare Parts A and B to purchase a Medigap policy. If you have a Medicare Advantage Plan, also known as Medicare Part C, you cannot purchase a Medigap policy.

Medigap policies generally do not cover long-term care, vision or dental care, hearing aids, eyeglasses, or private-duty nursing. As with any insurance policy, review the language of a policy you are considering carefully to determine whether it meets your needs.

If you are an individual with Original Medicare with a Medigap supplement, you show the hospital or doctor your Medicare card and your insurance card when you receive service. The health care provider will submit their claims to Medicare, which will pay the appropriate Medicare-approved amount. Then, Medicare will forward the balance of the claim to your Medigap insurance company. Depending on which supplement plan you have purchased, the insurance company will pay its share; and if there still is a remaining balance not covered under your policy, you will be responsible for that amount.

## **Medicare Advantage Plans (Medicare Part C)**

Medicare Advantage Plans fall under Part C of the Medicare program but are privately administered. Until recently, these plans were typically composed of managed-care plans such as Health Maintenance Organizations (HMOs) and Preferred Provider Organizations (PPOs). However, they now include several types of arrangements, known as Private-Fee-For-Service (PFFS) plans and Medical Savings Accounts (MSAs), Special Needs Plans (SNPs) and Special Supplemental Benefits for the Chronically Ill (SSBCI). In some instances, Medicare Advantage plan-companies may offer benefits not provided by Original Medicare.

Medicare Advantage is the means by which the federal government pays private health insurance companies to provide you Part A and Part B Medicare-covered services — and often your Part D benefit as well. If you enroll in a Medicare Advantage plan, you are still in the Medicare program, but the billing arrangements for health services involve you, the service provider, and the plan’s company. No claims are forwarded to Medicare.

As of January 2025, there are approximately 200 different Medicare Advantage Plans offered in

Pennsylvania. Not every plan is available in each of the counties in the state. A licensed insurance broker or agent can help you locate and compare the availability, benefits and costs of Medicare Advantage plans in your area. In addition, Medicare offers an online tool for identifying and comparing Medicare Advantage plans by region. See [Medicare.gov/plan-compare](https://www.medicare.gov/plan-compare) or <https://www.medicare.gov/plan-compare/#/?year=2025&lang=en>.

An example of a “non-governmental” commercial resource available on the internet to assist in getting started on locating Medicare Advantage plans in your area of the state is <https://MedicareAdvantage.com>. See <https://www.medicareadvantage.com/plans-by-state/pennsylvania#costs>.

If you want to enroll in a Medicare Advantage Plan, you must first be enrolled in Medicare Part A and Part B. Medicare then pays a fixed amount for your coverage each month to the private company providing you with the Medicare Advantage Plan. Each Medicare Advantage plan can charge different out-of-pocket costs and have different rules for how you get services, such as whether you need a referral to use a specialist. These rules can change each year. The plan must notify you about any changes before the start of the Open Enrollment period for the next year, through the Annual Notice of Change, usually mailed before September 30. Open Enrollment is October 15 through December 7 of every year.

The Centers for Medicare and Medicaid Services (CMS) issues “ratings” for Medicare Advantage plans with a system of one to five stars (with 5 stars being the highest rating). Medicare Advantage plans are reviewed and rated for reporting under the following categories:

- Preventive care and health maintenance (screenings, tests, vaccines, etc.)
- Management of chronic conditions
- Member experiences and ratings of the plan
- Member complaints, problems receiving services and member retention
- Customer service

The federal government, through CMS, regularly publishes information, including a brochure, on “Understanding Medicare Advantage Plans, which provides detailed suggestions for how to compare prices and services for Medicare Advantage Plans. As of January 2025, the brochure in PDF format was available online at <https://www.medicare.gov/publications/12026-understanding-medicare-advantage-plans.pdf>.

## Medicare Savings Program

Additional programs may be able to help you pay for Parts A and B of Medicare. These are Medicaid programs that are typically funded jointly by the federal government and each state. For example, in Pennsylvania, a Medicare Savings Program is run by the Pennsylvania Department of Human Services. Various levels of assistance are possible, depending on your level of income and the amount you maintain as resource. The resource limitations are often very restrictive. (However, the resource limit is waived for beneficiaries who have dependent children living with them.)

Apply for Healthy Horizons through the County Assistance Office in your region. Generally, you must be eligible or already enrolled in Medicare Part A and B. As an indication of limitations on income and resources in order to obtain help under these types of programs, for Healthy Horizons you must be an individual with monthly income no greater than a threshold amount (\$1,469 per month for an individual or \$1,980 for a couple, as of January 2025). Further, you must not have resources (also known as assets or savings) above a threshold number to be eligible (\$7,970 for an individual, or \$11,960 for a couple, as of January 2025). When calculating the threshold resources, you do not include the value of your home, your auto, burial plots or irrevocable burial reserves.

If you have limited income and limited resources, other programs may also offer financial assistance, such as the Qualified Medicare Beneficiary (QMB) Program also administered in Pennsylvania. Your County Assistance Office can provide up-to-date details on income and savings limitations for all such programs. Income limits for the various Medicare Savings Programs are revised every year, usually in March.

## Part D: Prescription Drug Coverage

Medicare Part D is a voluntary (but not free) program offering prescription drug coverage for Medicare beneficiaries, administered under a federal law that went into effect on January 1, 2023 as a way for people to save money on out-of-pocket drug expenses. The plans vary in costs and drugs covered and you will want to take the time to review which plan provides you with the best savings. Generally speaking, savings come about because the federal government has negotiated maximum prices for certain high-use drugs, such as insulin, for Part D participants. As of December 2024, several vaccines are available under Part D without co-pays or deductibles applying. Additional drug price maximums were announced for 2025, with predictions for additional pricing limitations through negotiations for 2026 and beyond. The new federal Administration coming into office in January 2025 announced potential changes to Part D coverage, but the details were not available at the time of updating this Guide. Nonetheless, the ways to get coverage remain and are:

1. Medicare Prescription Drug Plans add coverage to various Medicare plans. You must have Part A and/or Part B to join a Medicare Prescription drug plan.
2. Medicare Advantage Plans offer Medicare prescription drug coverage. You get all of your part A, Part B, and RX Part D coverage through these plans, but you must have Part A and Part B to join and not all of these plans offer drug coverage and you must live in the service area you want to join.

Persons with very low income and limited assets may qualify for “Extra Help” under Part D, which provides for reduced or even zero premiums, low or no deductibles, and generally minimal co-pays. It is important to know what is counted in your “out of pocket” costs. It includes any deductible you pay, all co-pays and all payments you make in the coverage gap. It does not include the amount of your monthly premium. If you can purchase prescription drugs, such as generics, for less than what your plan requires as your co-pay, you might consider buying them off-plan, that is without using your card.

## Selecting a Part D Plan

You can join, switch, or drop a Medicare drug plan when you first become eligible for Medicare or when you get Part B for the first time and during Open Enrollment, between October 15 to December 7 each year, or at any time if you qualify for Extra Help. There are penalties for late enrollment in Part D Drug Plans.

How much you pay depends on which Medicare drug plan you select. Your actual plan costs vary depending on your prescriptions, whether the drugs you use are on your plan’s list of covered drugs and what tier the drug is in. Additional factors can be which pharmacy you use, and whether you get Extra Help paying your Part D costs. The monthly premium varies by plan. You pay this in addition to the Part B premium. If you have higher income, you may pay more for Part D.

You will want to look for annual income limits affecting beneficiaries under specific Part D drug prescription plans, plus the amounts for yearly deductibles, co-pays, and discounts, if any. You can visit the Medicare Drug Coverage (Part D) website for the latest information at [www.medicare.gov/health-drug-plans/part-d](https://www.medicare.gov/health-drug-plans/part-d). In addition, you may find additional information through a state-specific health insurance assistance program online at [www.shiphelp.org](https://www.shiphelp.org).

Pennsylvania maintains a website on Prescription Drug Coverage options at [www.pa.gov/agencies/dhs/resources/medicaid/prescription-drug-coverage.html](https://www.pa.gov/agencies/dhs/resources/medicaid/prescription-drug-coverage.html). Your local Social Security Office or County Assistance Office can assist you in completing a subsidy application.

Finally, questions can also be directed to 1-800-MEDICARE or 1-800-633-4227. Starting in 2017 all drug prescribers need to be enrolled in Medicare or have an opt-out request on file for your prescriptions to be covered by your Medicare drug plan.

## Medicare-Related Notices, Questions and Appeals

If you have Original Medicare (with or without a Medigap), claims are submitted to and processed by companies that are under contract to Medicare. For every month that claims are received and processed on your behalf, you will receive a Medicare Summary Notice (MSN) that identifies the service providers and the medical services for which they submitted claims. You should review the MSNs to make sure that



you actually received the specified services.

If you disagree with a coverage or payment decision by Original Medicare, your Medicare Advantage Plan, or other Medicare health or drug plan, you can file an appeal. If you are charged for services that you think you did not receive, or if you are denied Medicare benefits to which you believe you are entitled, you have the right to appeal. Your MSN will include information on when and how to appeal. Medicare also has a contract with an independent Quality Improvement Organization (QIO) to which you can submit complaints about the care you have received. For example, if you are denied admission to a hospital, or are asked to leave the hospital before you feel you are well enough, or if you are dissatisfied with the quality of hospital or medical care that you received, you should not hesitate to register your appeal with the QIO.

If you have a trusted family member or friend helping you with a complaint or appeal, you can appoint them as a “representative” by designating them on your Medicare account, or by filing out a separate Medicare appointment of representative form, known as CMS 1696 (effective from September 2024 through August 31, 2025). These forms are available online at [Medicare.gov](https://www.medicare.gov).

Questions and appeals can be cumbersome, however. If you have a question about any Medicare claims, or about the nature and quality of your services call 1-800-633-4227 (1-800- MEDICARE). Notice that the automated voice begins by identifying itself as “Medicare.” You will be offered several voice-activated options. Pick “Billing” at the first prompt; then depending on what has influenced you to call, pick “Hospital” for Part A claims, “Doctor” for Part B claims, “DME” for durable medical equipment. You will have to specify that you live in Pennsylvania, and you then will be connected to the appropriate Medicare contractor who handled those claims. If you ask for “Agent,” you will be able to get to the Quality Improvement Organization.

For those who are enrolled in Medicare Advantage plans, questions and appeals are directed - at least initially - to your insurance company, which is required by law to establish procedures for you to raise your concerns and challenge unfavorable decisions. You probably will have several levels of appeal open to you, so if you are denied at one point, you can continue to a subsequent level.

## Pennsylvania-Based Assistance on Medicare Questions and Appeals

You may find you need assistance with your Medicare complaints and appeals. Medicare requires that every state have a health insurance information program. In Pennsylvania, the program is administered by the Department of Aging and currently is called **PA-MEDI** (for **Pennsylvania Medicare Education and Decision Insight**). The toll-free PA-MEDI Hotline Number is: 1-800-783-7067. All services are free and confidential. Some counselors have experience with complaints and appeals and might be able to assist you directly or forward you to another appropriate office.

**CARIE** is another source of help. This group is the **Center for Advocacy for the Rights and Interests of Elders**. It serves primarily to protect the elderly from abuse and fraud, but its staff also has a deep understanding of Medicare rules and procedures. CARIE maintains a website at [www.carie.org](http://www.carie.org) and operates a free telephone consultation service for older persons, their caregivers, and professionals. Their toll-free number is 215-545-5728.

The **Pennsylvania Health Law Project (PHLP)** provides free legal services and advocacy to Pennsylvanians who are having trouble accessing publicly funded health care coverage or services. Their website is [www.phlp.org](http://www.phlp.org). Their toll-free helpline is 1-800-274-3258 and you can also send a message to [staff@phlp.org](mailto:staff@phlp.org).

## PACE and PACENET

(Pharmaceutical Assistance Contract for the Elderly)

Pennsylvania's PACE and PACENET Programs help qualified residents, age 65 and up, get prescription medicine at a lower cost. You can be enrolled in PACE or PACENET and have health insurance or another prescription plan at the same time. The Program works with Medicare Part D plans and other prescription drug plans such as retiree/union coverage, employer plans, Medicare Advantage (HMO,

PPO) and Veterans' Benefits (VA) to lower out-of-pocket costs for medications. These drug plans wrap around the PACE benefit and act as a secondary payor providing you maximum costs savings.

### **PACE and PACENET Eligibility**

- 65 years of age or older
- PA resident for at least 90 consecutive days prior to the date of the application
- Not be enrolled in pharmaceutical benefits under medical assistance
- Income requirements based on previous gross income. Assets are NOT counted.

### **PACE Income Limits**

- For a single person, total income must be \$14,500 or less
- For a married couple, combined total income must be \$17,700 or less
- PACENET Income Limits
- For a single person, total income can be between \$14,501 to \$33,500
- For a married couple, combined total income can be between \$17,701 to \$41,500

PACE cardholders pay no more than \$6 for a 30-day supply of generic medication and \$9 for a 30-day supply of brand-name medication. PACENET cardholders pay a little more in co-pays for their medication. A 30-day supply of generic medication is \$8, and a 30-day supply of brand-name medication is \$15. Cardholders can get a 90-day supply if they have a Medicare Part D plan that offers this option.

The Program pays monthly Part D premiums for PACE cardholders if you are enrolled in a plan that has an agreement with the Department. PACENET cardholders pay their monthly Part D premiums. The Program may pay your Medicare Part D Late Enrollment Penalty (LEP) if you are enrolled in a plan that has an agreement with the Department.

Applications can be taken over the phone at 1-800-225-7223. The online application can be found at <https://pacecares.primetherapeutics.com/>.

## **The Clearinghouse**

The Clearinghouse assists PA residents over the age of 18 with social and life services. Based on individual needs, they research local, state, and national programs to find resources to help. The Clearinghouse can connect Pennsylvanians to:

- **Medical and prescription programs** – programs to assist with medication and medical expenses; medical and dental clinics with sliding-scale and no cost services; Medicare, Medicaid, Veterans benefits and other private plans
- **Food programs** – local food pantries and sources of meal assistance; SNAP and food stamp programs
- **Housing assistance** – programs available through state and federal agencies; rental properties, shelters, and transitional housing; utility assistance programs
- **Employment** – listings of employers or temp agencies; online employment applications, training programs,
- **Social and life services** – local bus lines and transportation assistance programs; legal aid; furniture and clothing donation programs

There is no defined income limit. Each program benefit sets income guidelines. The trained call center staff review information and explain each program's guidelines. The Clearinghouse does not charge a fee, but some assistance programs have fees which are discussed prior to enrollment.

The Clearinghouse can be reached at 1-800-955-0989. The online application can be found at <https://pacecares.primetherapeutics.com/>.

## **Medicaid**

Medicaid is another federal program that helps pay for long-term care. In most cases, the individual



receiving these benefits must contribute their monthly income, less \$60 for personal needs, and less an allowance for the spouse who remains in the community. Some benefits are available for at-home care.

## Eligibility

Benefits are available only to individuals who meet these Medicaid eligibility standards:

### Medical:

- An applicant for Medicaid benefits must actually need long-term care in a skilled nursing facility or, in limited cases, at home. Usually, the nursing home requests a medical assessment automatically when an application for Medicaid benefits is made. To avoid delay, one should be certain this assessment is completed.

### Financial and General:

- The applicant must be 65 or older or disabled;
- The applicant must be a citizen of the USA or equivalent;
- The applicant must be a resident of Pennsylvania.

Benefits are available only to individuals who meet these Medicaid eligibility standards. An applicant for Medicaid benefits must prove medical and financial eligibility. The Office of Aging and Adult Services in the County in which the facility is located determines medical eligibility for nursing facility care. The nursing home requests a medical assessment automatically when an application for Medicaid benefits is made. To avoid delay, one should be certain this assessment is completed. Establishing medical eligibility is rarely a problem in qualifying for Medicaid to cover nursing home costs. The main challenge is verifying financial eligibility.

All income and resources must be disclosed to the Medicaid caseworker. The applicant's non-excluded, available resources must not exceed the applicable limit. In 2025 single applicants with monthly income over \$2,901 must have total resources under \$2,400. Single applicants with income equal to or less than \$2,901 have a resource limit of \$8,000.

The eligibility rules for married Medicaid applicants are much more complicated. An elder law attorney familiar with Medicaid planning should be consulted in order to make sure you do not spend-down more money on nursing home costs than is required under Medicaid rules. Medicaid rules provide that the person in the nursing home will have the \$2,400 or \$8,000 limit described above. The spouse of the nursing home resident (community spouse) must also meet certain resource limits. Absent exceptional circumstances, the maximum community spouse resource allowance in 2025 is \$157,920. In 2025 the minimum allowance is \$31,584. The community spouse is also allowed to have a certain level of income to avoid impoverishment, between \$2,555 and \$3,948.50 in 2025 depending on shelter costs.

Some assets are "excluded resources" and are not counted when determining initial eligibility. For example, the residence is usually an excluded resource where the applicant intends to return home or in cases where there is a spouse. An automobile is also an example of an excluded resource.

## Disqualification

Certain gifts or transfers for less than fair market value will make the applicant temporarily ineligible for Medicaid benefits even if all of the stated criteria have been satisfied. In 2025 such gifts within that window cause one month of Medicaid ineligibility for every \$12,160.58 given away starting on the first day of the month in which the gift is made. Gifts made after February 8, 2006, are subject to a five (5) year look-back, and the penalty period begins to run when the Medicaid applicant is otherwise eligible for Medicaid but for the gift. In short, gifting of any kind can cause major problems with Medicaid eligibility.

Gifts made more than five years before the trigger date do not cause ineligibility. However, if nursing home care and Medicaid benefits are needed within five years after the date of the gift, the gift may well cause ineligibility for a very long time.

A gift to a spouse does not cause ineligibility. Neither does a gift to a specially established trust for the

benefit of a disabled child. In some circumstances, a gift of a home will not cause ineligibility if it is to a child caregiver under specific circumstances.

## Estate Recovery

Upon the death of a person who has received Medicaid benefits, the government must attempt by law to recover the amounts paid to a nursing home for that person. At present, recovery is permitted only from the “probate estate” of that person, i.e., any assets titled in the individual’s name alone at the time of death. The services of a skilled elder law attorney may avoid or plan for estate recovery.

## Medicaid Planning

Under certain circumstances, Pennsylvania law allows individuals or their spouses to keep their homes and some or all of their money without becoming ineligible for Medicaid benefits, to protect against spousal impoverishment. However, relevant laws are extremely complicated and extremely vague, so Medicaid planning should not be attempted without the assistance of an elder law attorney.

## Medicaid Eligibility Numbers

The numbers pertaining to Medicaid eligibility change every year. In order to find out the current eligibility numbers the following link should be used:

- [Current Medicaid Eligibility Numbers](#)

## PA MEDI

PA MEDI is the Pennsylvania Medicare Education and Decision Insight program coordinated through the PA Department of Aging. PA MEDI is part of a nationwide network of State Health Insurance Assistance Programs, also known as SHIP. Pennsylvania’s SHIP has provided Medicare assistance and information to Medicare-eligible individuals since 1995.

PA MEDI provides free, unbiased personalized help with detailed information about:

- Original Medicare
- Medigap (Medicare supplement)
- Medicare Advantage plans
- Prescription drug plans
- Enrollment assistance
- Medicare rules, notices, and billing concerns
- Medicare financial assistance programs
- Medicare appeals
- Long-term care insurance
- Coordination of benefits

PA MEDI provides easy-to-understand, unbiased help and information for those on Medicare, their families, and caregivers. PA MEDI does NOT sell or recommend Medicare insurance products, insurance agents, or brokers. PA MEDI also provides educational presentations and events for the general public.

For year-round Medicare assistance call your local PA MEDI program or the toll-free PA MEDI Helpline at 1-800-783-7067 Monday through Friday, 8 a.m. to 5 p.m. To find a county PA MEDI site, a list of all the PA county programs can be found at <https://www.pa.gov/services/aging/request-help-understanding---enrolling-in-medicare-and-filing-ap.html#accordion-7c79ff8f17-item-3d3cf8d01b>.

## Pennsylvania Low Income Home Energy Assistance Program (LIHEAP)

The Pennsylvania Department of Human Services, through its network of County Assistance Offices and

partner agencies, offers a program to help individuals and families pay for a portion of their heating bill in the winter. Eligibility for the program is based on household income and size. After someone is deemed eligible, the program will work with your utility company to provide a cash grant ranging in size from \$200-\$1,000 depending on household size, income and fuel type. This is considered a grant and does not need to be repaid, nor is there a lien placed on the residence. Applying for LIHEAP must be done between early November and early April. To learn more about the program, contact your local County Assistance Office or local Area Agency on Aging. Applications are accepted at the local County Assistance Office, or you can apply online using COMPASS. For information on eligibility guidelines call your local County Assistance Office or apply online with COMPASS. COMPASS is an online portal for applying to and checking on the status of several programs offered by the state. COMPASS can be accessed here

<https://www.compass.dhs.pa.gov/home/#/>. To learn about applying at your local County Assistance Office, call the LIHEAP hotline at 866-857-7095.

## Public Benefits

The Pennsylvania Department of Human Services administers several other programs which may provide benefits such as food stamps and medical assistance. For information you should use the following link: <https://www.pa.gov/agencies/dhs.html>. The Department of Health that serves you can be accessed by this link: <https://www.pa.gov/agencies/health.html>. Information about Meals on Wheels can be found at <https://www.pa.gov/agencies/aging/aging-programs-and-services/health-wellness/meals-and-food-assistance.html>. An excellent website launched to help connect people aged 55 and over is [www.benefitscheckup.org](http://www.benefitscheckup.org). By accessing the website, you can receive information, addresses and telephone numbers for programs such as Supplemental Security Income, Medicaid, state prescription drug benefits, Meals on Wheels, food stamps, health insurance counseling, veterans' medical care and transportation for which you may qualify. This is determined by answering a confidential on-line questionnaire.

## Railroad Retirement Benefits

A variety of benefits, such as retirement annuities, are offered for railroad workers and their families. An applicant may also be eligible for other benefits including benefits for survivors, sickness, unemployment and temporary or permanent disability. Information and applications for benefits may be obtained by accessing the independent website of the United States Railroad Retirement Board at [www.rrb.gov](http://www.rrb.gov) or by contacting your local district office of the Railroad Retirement Benefits Board. Military service in a branch of the uniformed Armed Forces of the U.S. may increase or provide eligibility for a RRB benefit. Proof of birth is required for all applications. Retirement benefits are available if the worker is age 62 or older and was employed by the railroad industry no less than ten years. If a railroad employee was employed for 30 years or more, that employee may be eligible for retirement with benefits at age 60.

## Disability Benefits

Occupational Disability - If a railroad employee has been employed for at least 10 years with the railroad at age 60, or at any age if the employee has been employed at least 20 years, that worker may obtain disability benefits providing other conditions are met. Those conditions are that the worker be disabled from work in their regular railroad job and has been employed for the railroad job for 12 months of the previous 30 months before the month the railroad retirement annuity began. This is the "current connection" requirement that may entitle an applicant to benefits.

- **Total Disability** - Total disability benefits may be available to a railroad employee permanently disabled from all regular railroad work providing they had at least ten years of employment and meet other requirements.
- **Benefits for a Spouse, Widow(er), Unmarried Parent, Divorced Spouse** - Benefits may be available for these additional classes of people. You should investigate whether you are eligible for benefits.

## Veterans' Benefits

## Federal Benefits for Veterans and Dependents

There are a variety of federal benefits available to veterans and their dependents. Eligibility depends upon individual circumstances. Contact the nearest Veterans Affairs Benefits Office at 1- 800-827-1000 to apply. Counselors can answer questions about benefits, eligibility and application procedures. They may also make referrals to other VA Offices and facilities, such as medical centers and national cemeteries. You may find telephone numbers of VA Offices and facilities in the Federal Government section of your local telephone directory under “Department of Veterans Affairs”.

## Veterans’ Health Care

For most veterans, entry into the VA healthcare system starts with enrollment at a VA healthcare facility. Veterans with Internet access may apply for enrollment on-line at <https://www.va.gov/find-forms/about-form-10-10ez/> by completing VA Form 10-10EZ, Application for Health Benefits, which can also be obtained by calling the toll-free Veterans Affairs telephone number. Once enrolled, a veteran is eligible to receive services at VA facilities anywhere in the country. VA healthcare facilities also provide information on medical care. Veterans who have enrolled at the VA are eligible for a benefits package of in-patient and out-patient services. These include: nursing home care, adult day healthcare and homeless programs, preventive medicine services, primary care, surgery, mental health and substance abuse treatment, home healthcare, respite and hospice care, emergency care in VA facilities and drugs and pharmaceuticals.

There is a pension benefit available to all veterans and their families for home health and assisted living/personal care homes. It is the “Aid and Attendance Program” (AA). In order to be eligible for the AA program, a veteran must have served 90 days on active duty (the requirement is longer for recent veterans) with at least one day during a wartime period and must have been discharged or released under conditions other than dishonorable. Also, the veteran must be 65 years or older or permanently and totally disabled due to a non-service-connected condition. In 2025, a veteran is eligible for up to \$2,358.33 per month, while a surviving spouse is eligible for up to \$1,515.58 per month. A couple is eligible for up to \$3,750.50 per month. Their assets must be under \$159,240. The Aid and Attendance Benefit is considered to be the third tier of a VA program called Improved Pension. The other two tiers are Basic and Housebound. Each tier has its own level of benefits and qualifications.

Eligibility for hearing aids, eyeglasses and dental care is determined by whether the veteran has been given a disability rating by the VA which is a percentage rating of “service connected.” “Service connected” means that the veteran has been given a disability rating by the VA which is for an injury or illness related to their military service. In many cases, veterans are receiving compensation for that disability. A Means Test is also imposed as a measure of the veteran’s family’s annual income and assets and used to determine if non-service connected and zero percent connected veterans need to make co-payments for medical care.

Co-payments are charged by the VA for in-patient and out-patient medical treatment, daily charges for in-patient treatment and for medication co-payments. The VA pharmacy will only fill prescriptions written by VA clinicians. In some instances, some co-payments may be as low as two dollars or may be waived for certain classes of veterans. Veterans may also be eligible for other benefits such as Aid and Attendance and Extended Care Services.

## The Veterans’ Uniform Benefits Package and Medicare

A veteran’s Medicare and supplemental insurance policy may pay up to twenty percent (20%) of charges. If the supplemental does not cover the VA co-payment, the veteran is responsible for the remaining amount. The VA is not presently authorized to bill Medicare for healthcare services to veterans. However, the VA can file claims with any other insurance under which you are covered. In all cases though, veterans should apply for benefits under the Uniform Benefits Package because the VA’s Uniform Benefits Package emphasizes preventive and primary care.

## Additional Prescription Benefits for Members of the Uniformed Services

There are additional pharmacy programs providing pharmacy benefits available in the United States to older Americans who are registered in the Defense Enrollment Eligibility Reporting System, were in the Uniformed Services, are age 65 and over and are eligible for Tricare. Eligible beneficiaries must be enrolled in Medicare Part B in order to use mail-order and retail pharmacy benefits which may be available to them.

Beneficiaries may also continue to use military hospitals and clinical pharmacies, but additionally, may be eligible for benefits to obtain low-cost prescription medications. The providers of low-cost prescriptions are the National Mail Order Pharmacy (NMOP) and Tricare Network and non-network civilian pharmacies. Initial registration forms can be obtained by calling Tricare toll-free at 1-800- 444-5445. In addition, you must ensure that the Defense Enrollment Eligibility Reporting System has your current address by contacting them at 1-800-538-9552. For more information, the toll-free helpline at (1-877-363-1303) or [www.tricare.mil/pharmacy](http://www.tricare.mil/pharmacy) can be contacted.

## Legal Counseling for Veteran's Benefits

It is a violation of federal law for an individual to charge a fee to represent an applicant in the filing of a VA benefit claim. Law firms may file VA claims free of charge or pro bono. However, attorneys are permitted to charge a fee for counseling individuals on eligibility for VA benefits and for arranging their affairs to enable them to qualify for benefits. Therefore, the legal services of an attorney specially certified to counsel veterans can be sought if needed.

## Public Benefits for Non-Citizens in Pennsylvania

As of August 2001, some non-citizens (aliens) who were present when the Welfare Act was passed in 1996 that subjected them to a five-year ban may now become eligible for Medicaid, Medicare and Social Security benefits if they fit the definition as being qualified immigrants. Aliens who were receiving SSI prior to August 1996 currently retain their program eligibility. Also, individuals who were legally residing in the USA prior to August 1996 and who become disabled can currently obtain SSI.

A qualified non-citizen is as follows: a lawful, permanent resident, an alien granted asylum or granted withholding of deportation, a Cuban/Haitian entrant, or certain battered spouses and children. However, the Welfare Act gives states the option to deny benefits to qualified immigrants. Pennsylvania offers state-funded medical assistance to lawfully residing immigrants or qualified non-citizens who are otherwise eligible.

Due to the complexity of the laws governing benefits for senior non-citizens, an experienced immigration lawyer familiar with governmental benefits should be consulted.

## No Cost and Low-Cost Legal Services

The Pennsylvania Legal Aid Network (PLAN) offers legal information and representation for low-income individuals. For individuals who qualify and meet program criteria, legal services can be obtained for free through PLAN. Individuals may reach the Pennsylvania Legal Aid Network at 1-800-692-7375 or look in the Guide to Human Services section of your local telephone book for the county Legal Aid office. Pennsylvania Legal Aid also has a website online at <https://palegalaid.net>. By accessing the website, you can obtain information from the statewide network tab of a map, color-coded by region that will direct you to the appropriate county Legal Aid office. Individuals needing assistance with problems such as bankruptcy, debtors' rights, expungements, or landlord/tenant issues and other civil legal issues may find legal assistance through the Pennsylvania Legal Aid Network.

Individuals that do not qualify for Legal Aid, may qualify for discounted legal advice and representation through their county bar association. You may contact the Pennsylvania Bar Association (PBA) Lawyer Referral Service at [Lawyer Referral Service \(pabar.org\)](http://LawyerReferralService(pabar.org)) or call at 1-800-692-7375, to reach your local bar association for their lawyer referral service if available.

The Pennsylvania Bar Association (PBA) in conjunction with the American Bar Association (ABA) offers

<https://pa.freelegalanswers.org/> as another no cost resource. Pennsylvania Free Legal Answers is an online legal advice clinic where qualifying users can post civil legal questions and receive an emailed responses at no cost. The PBA's Pro Bono Office organizes Pennsylvania volunteer attorneys to offer brief advice and counsel on specific various civil legal questions that have been posted. Free Legal Answers may respond to legal issues involving the following topics, Family, Divorce, Custody, Housing, Eviction, Consumer Rights, Financial, Work, Employment, Unemployment Health and Disability Civil Rights, Income Maintenance, Juvenile and Education Law. For instructions on how to determine if you qualify and how to post a question or engage in dialogue with an attorney, please visit <https://pa.freelegalanswers.org/>.

Pennsylvanians who do not qualify for PLAN may still receive legal assistance through PA Law Help by applying for legal aid here: [PALawHELP.org - Your Online Guide to Legal Information and Legal Services in Pennsylvania](https://palawhelp.org/). The organization works to locate information on a variety of legal issues to assist individuals who may need legal services.

Additionally, the Pennsylvania Senior Law help line is a toll-free, state-wide, legal information, advice and referral service for Pennsylvania older adults (60 years and older). The Senior Law Center Help Line at 1-877-727-7529 is another resource that can be contacted since they are dedicated to the legal rights and interests of seniors in need. They provide legal advice through a toll-free HelpLine throughout the state. They focus on and prioritize the problems of seniors most in need including housing issues, family law, financial exploitation, consumer protection, and advanced planning. The Senior Law Center provides a combination of legal services, community education, outreach, and advocacy, incorporating a comprehensive approach to representing and empowering its clients. The Center's legal staff and volunteer attorneys serve seniors including victims of elder abuse and financial exploitation, elders facing housing crises and homelessness, and grandparents raising grandchildren. They are based in Philadelphia however the HelpLine is available throughout the state. More information about the SeniorLaw Center available at [www.seniorlawcenter.org](http://www.seniorlawcenter.org). You may access the HelpLine at 1-877-PA SR LAW or 1 877-727-7529.

## 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 homes, assisted living facilities and continuing care retirement communities. For a list of these facilities contact your local Area Agency on Aging which can be found through Pennsylvania Department of Aging's Your Area Agency on Aging can be located through the Department's website on <https://www.aging.pa.gov/local-resources> or by phone at 717-541-4214.

## 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 usually enters a nursing home after all other long-term care options, such as an assisted living facility or living at home with supportive services, are found to be inadequate.

Medicare does not provide substantial coverage for long-term nursing home care. Medicare may pay for a portion of the cost for the first 100 days of a nursing home stay, under very limited circumstances. Those circumstances are:

- Skilled nursing or rehabilitation services are provided within 30 days of a Medicare- covered hospital stay of at least 3 days;
- A doctor certifies the resident's need for skilled care on a daily basis;
- Skilled care is actually received on a daily basis;
- The facility is Medicare-approved.

If these requirements are met, Medicare will fully cover the first 20 days of skilled care and a portion of



the cost for the next 80 days of skilled care. Note that Medicare does not cover custodial care. Medicaid is the only public benefit program that covers intermediate or skilled care provided in a nursing home after Medicare benefits are exhausted, as described above.

## Residents' Rights

A prospective resident's admission into a nursing home can thrust that person's family into emotional turmoil. Upon admission to a nursing home, a resident or his/her family will be required to sign an admission contract. A prospective resident or the family member or members responsible 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 elder law attorney can make sure that you get the benefit of these protections. For example:

A nursing home cannot require a resident to waive his/her right to apply for Medicaid. Furthermore, a nursing home 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 guaranty of 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, without the agent incurring any personal liability.
- 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.
- 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 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 copy of Your Residents Rights and Protections from the Centers for Medicare and Medicaid Services may be found at [LONG-TERM CARE FACILITY \(cms.gov\)](https://www.cms.gov/long-term-care/facility).

A nursing home must inform every resident of his/her legal rights, orally and in writing, at the time of admission. Pennsylvania maintains an ombudsman program to investigate and resolve complaints or allegations made by or on behalf of residents of nursing homes and other long-term care facilities. Local ombudsmen educate residents on their rights and advocate for those who cannot advocate for

themselves. The Pennsylvania Department of Aging has designated the Area Agency on Aging for each county to include an independent local ombudsman to provide services in the local service area by the local providers of these ombudsman services. Your local Long-Term Care Ombudsperson can be contacted at your local Area Agency on Aging or through the State Long-term care Ombudsman at **717-783-8975** or [LTC-ombudsman@pa.gov](mailto:LTC-ombudsman@pa.gov).

## **Senior Living Options: Assisted Living Residences, Personal Care Homes, and Continuing Care Retirement Communities**

Nursing Homes, also known as Skilled Care Facilities, are at one end of the residential care spectrum and because of funding through Medicare and Medicaid they are also regulated by federal laws, as well as state laws. Additional options in “senior living” exist and should be explored. In Pennsylvania, options include “Assisted Living Residences (ALR),” “Personal Care Homes,” and “Continuing Care Retirement Communities (CCRCs).” CCRCs are sometimes also referred to by providers as “Life Plan Communities.” In each instance, an important goal is to select the facility that provides the “right” help to enable people to live as independently as possible, while meeting their particularized needs for assistance and care. Pennsylvania has statutes and regulations that provide some “regulation” of each of these forms of senior living, and the laws may restrict or limit what care can be provided. The differences can be subtle and important, and lawyers can play an important role in helping clients in evaluating options and in making the best choice.

An important benefit of residency in an assisted living facility (ALR) or a personal care home is help with medication. A resident can be reminded when to take medication and a nurse can assist the resident in taking medications.

Personal care homes differ from assisted living facilities as a result of 2011 legislation. In order for an ALR to be licensed as such, it must meet particular requirements in its construction and units offered, staffing and personnel, and the level of care provided which is higher than that provided by a personal care home. Both facilities must have an initial assessment of the resident, develop a support plan, and have a written contract between the resident and the residence. Many facilities have decided not to become licensed as ALRS and instead provide services as a personal care home and meet those licensing requirements. Their residents are not supposed to require the services in or of a licensed long-term care facility but do require supervision or assistance in activities of daily living.

Payment for residency in an assisted living facility is almost exclusively through private arrangements with the resident. If a resident needs some sort of skilled medical or nursing care, Medicare may cover such care under the same rules that would apply to home health care in general. Long-term care insurance will pay benefits for residency in an assisted living facility or personal care home if the policy’s “benefit triggers” requirements are met by a resident’s need for assistance with activities of daily living or by a resident’s cognitive impairment. Most long-term care insurance policies define “activities of daily living” as including dressing, eating, bathing, toileting and transferring from a bed to a chair, and usually require that an individual needs assistance with a certain number of these activities of daily living.

## **Questions**

Upon entrance to an assisted living facility or personal care home, 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 recreation 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?

## Residents' Rights

Under Pennsylvania law, residents of an assisted living facility have the following rights:

- The right to privacy of self and possessions, including the right to have access in reasonable privacy to a telephone and the right to have uncensored access to the mail;
- The right to be free from mental, physical and sexual abuse and exploitation, financial exploitation and involuntary seclusion;
- The right to receive visitors;
- The right to be treated with dignity and respect;
- The right to leave and return to the home;
- The right to participate in religious activities or not to practice any religion or faith;
- The right to file complaints or appeals with any individual or agency;
- The right 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; and
- The right to be free of restraint of any kind.

## Continuing Care Retirement Communities (CCRCs) and Life Plan Communities

Continuing Care Retirement Communities typically provide a range of different levels of services, including assistance or care, based on the particular needs of the individual resident or couple. New residents usually start by moving into independent living units. As individuals age and if they become physically disabled and need assistance with activities and needs of daily living, residents will often move into a higher level of care that is usually offered on the grounds of the CCRC. The range of services available may mimic "assisted living" stand-alone facilities, or may provide additional care, including dementia care, rehabilitation care, or skilled nursing care, again, all at the same location. Contrary to what some people assume about the label for CCRCs, Pennsylvania law does not specify what services must be provided by CCRCs, but Pennsylvania law does require complete disclosures be made to prospective residents about the services promised.

The stated reason for Pennsylvania's regulatory authority over CCRCs reflects a concern that "tragic consequences can result to citizens of the Commonwealth when a provider of services under a continuing-care agreement becomes insolvent or unable to provide responsible care...." 40 Pa. C. S. § 3202. As outlined below, over the years and continuing in recent years, insolvencies have occurred. The good news is that Pennsylvania has been remarkably adept at reorganizing CCRCs within the Commonwealth to adapt to changing financial circumstances.

Pennsylvania first adopted overall licensing standards for CCRCs in 1984, when the Pennsylvania legislature enacted the Continuing-Care Provider Registration and Disclosure Act, at 40 Pa C. S. §§ 3201 et seq, with regulations soon promulgated by the Department of Insurance and available at Title 31, Chapter 151 of the Pennsylvania Code. Pennsylvania's approach reflects two key concepts: (1) Mandates for public disclosure about certain details of the financial structure (or structures) of the particular enterprise, in recognition that most of the structures involve some form of up-front resident payment with an expectation of future services, and (2) Authorization for the State to collect information, including

financial information, and to ask questions and seek assurances, especially if financial insolvency is a concern.

In Pennsylvania, statutory authority over CCRCs arises when the provider offers care, board and lodging together with nursing services, medical services “or other health-related services, regardless of whether or not the lodging and service are provided at the same location,” where the contract is either for the “life of the individual” or “for a period in excess of one year, including mutually terminable contracts and in consideration of the payment of an entrance fee with or without other periodic charges.” 40 Pa. C. S. § 3203 (Definitions: Continuing Care).

As of July 1, 2024, there are 294 CCRCs listed on the Pennsylvania Insurance Department’s website (with listings organized by counties). This makes Pennsylvania a leader in the total number of CCRCs operating within any single state. Some of these entities originally identified as skilled care facilities only (in other words, “nursing homes”), but were incentivized to register as CCRCs beginning in 2005-6 to take advantage of a lower “bed charge” rate. Again, it is important to recognize that Pennsylvania does not “require” a CCRC to offer multiple levels of care or to guarantee any form of care for the lifetime of the resident; rather the CCRC label and the corresponding regulations attach whenever the provision of some form of housing and care is offered *either* for the life-time of the resident OR “for a period in excess of one year.”

The key provisions of Pennsylvania’s Continuing Care Registration and Disclosure Act and accompanying regulations mandate that disclosures “at the time of or prior to” the customer’s execution of an admission contract shall be made, including clear statements about “which services are included in basic contracts for continuing care and which services are made available at or by the facility at extra charge.” 40 Pa. C. S. § 3207 (a)(6). In other words, the contract — usually labeled an Admission Agreement — becomes the governing “law” of the relationship between the parties. The contract terms control what promises exist and the extent to which any promises are enforceable over time. A “description of all fees required of residents, including the entrance fee and periodic charges, if any” are to be included in the initial disclosures and the contract, but significantly, the law also permits “adjustments” of periodic charges or other recurring fees, as long as the “manner” is disclosed in the initial contract. 40 Pa. C. S. § 3207 (a)(7).

As we were preparing this updated Guide, we observed several recurring issues for CCRCs. On both a national and state level, the CCRC model for senior living has proven to be “sensitive” to marketplace disruptions, including the world-wide financial crisis of 2008-2010, and the real estate market disruptions associated with the COVID-19 epidemic. Prospective residents were sometimes frustrated in their attempts to sell their homes at pre-crisis prices, and thus did not have the money for “large entry fee” CCRC models. Some facilities were unable to keep their communities sufficiently “full” to stay solvent. Slower turnovers in occupancy also affected some CCRCs’ willingness or ability to make promised payments of so-called “refundable entrance fees.” Nationally, some CCRCs were forced into bankruptcy court, usually with the outcome that new management stepped in, sometimes finding it necessary to make changes in services and imposing new contract terms. See e.g., Akiko Matsuda, “Retirees’ Life Savings Can Vanish in Continuing Care Bankruptcies,” *The Wall Street Journal*, published June 13, 2024 (detailing CCRC insolvencies in Detroit, Dallas, New York, and Tampa). See also Michelle Crouch, “State Regulators Step In to Supervise Aldersgate’s Financial Operation,” published in the *Charlotte Ledger* and the *North Carolina Health News* on August 26, 2023 (detailing the financial mismanagement of a long-standing CCRC in North Carolina).

In light of the CCRC history of sensitivity to real estate market changes, it is especially important for prospective residents to carefully review their proposed admission contract, preferably with the assistance of an attorney, to make sure the residents understand what they are buying and the potential risks of changes in management, services, pricing, and refunds. No one should make assumptions based on “marketing materials” alone. Increasingly, CCRCs are offering “fee-for-services” arrangements (sometimes called Type C contracts), rather than “life-care contracts” (sometimes called Type A contracts) and thus the scope of services and prices may change over the resident’s time in the community. Other important issues to consider before agreeing to sign a CCRC contract are:

- Who determines when a resident must change living arrangements due to a decline in health? Does the CCRC plan to continue to provide skilled care, and/or memory care on the same

campus?

- 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 and what has been the recent history of such fee changes?
- What services are not covered by the monthly service fee?
- Do residents at this community have a residents' council or other formal or informal group to share information?

In Pennsylvania, state law provides CCRC residents with certain guaranteed rights, including a statutory "right of self-organization." Thus, residents can and should work together, and work with management, to address potential challenges for the financial future of the community. See 40 Pa. C. S. § 3215. The advantages of living in a Continuing Care Retirement Community in Pennsylvania are many, but as with any "investment," residents still may be exposed to market-based changes that can affect both the solvency of the operation and their expectations about who is bearing the risk of such changes.

Finally, following a 2015 marketing study by LeadingAge, a national organization that represents nonprofit CCRCs and certain other senior living operations, the recommendation was made to change the label for "Continuing Care Retirement Communities" to "Life Plan Communities." Some CCRCs in Pennsylvania have adopted the new name in their marketing materials; however, the CCRC label is still recognized by Pennsylvania law. On the one hand, this label change may be attractive to healthier new residents. On the other hand, because Pennsylvania law does not actually mandate any particular "care" services be provided over time (and only "requires" disclosures), the change may also reflect the reality that some communities will attempt to discontinue higher cost services.

## Housing Options

The Pennsylvania Department of Aging outlines several types of housing options for all levels of independence.

### Services for Individuals Who Remain in Their Homes

- Homemaker assistance for daily household activities.
- Personal care for those who cannot manage alone.
- Home delivered meals.
- Family caregiver support which includes one-time grants for home modifications to help with mobility problems.
- Transportation services.
- Senior community centers where older people can get together for social activities, recreation, education, creative arts, physical health programs, and nutritious meals.
- Adult day care centers which provide personal care and medication management for individuals who cannot be left alone during the day.

You can contact your local Area Agency on Aging for more information regarding these services.

### Independent Housing Options

- Continuing Care Retirement Communities (CCRCs), described above, offers independent living, usually in an apartment or cottage, and access to a higher level of care such as personal care or a nursing facility. Residents move between levels of care as their needs change. Services, such as meals, medical care, social and recreational activities, are provided through a contractual arrangement for the lifetime of the resident. Residents usually pay an entrance fee and a monthly

charge.

- Retirement Communities offer independent living in an apartment or cottage. They are intended for healthy, mobile older people and generally offer no special services. Units may be rented or purchased. Many retirement communities offer recreational amenities such as golf, swimming or tennis.
- Subsidized Housing is made available by the federal government providing rental assistance to low-income elderly people. Income eligibility is 50% of the median income for the county of residence; individuals must be age 62 or older. Assistance is determined by an individual's income with tenants paying 30% of their income toward the rent.

## **Housing Options for Individuals Who May Require Assistance or Supervision**

- Domiciliary Care Services for Adults is a supervised living arrangement in a home-like environment for adults who are unable to live alone because of demonstrated difficulties in accomplishing daily activities, social or personal adjustment, or resulting from disabilities. The Area Agency on Aging is responsible for assessment and placement of residents in domiciliary care homes. Residents are eligible for a domiciliary care supplement payment if they are eligible for SSI or have an income less than the combined federal/state payment for domiciliary care and are not related to the provider.
- Nursing Facilities provide medical care, rehabilitation, or other health services to individuals who do not require the care and treatment of an acute-care hospital. Most nursing facility residents are unable to take care of themselves on their own and may have chronic illnesses or were transferred from a hospital following a serious illness, accident or operation.
- Personal Care Homes, sometimes called "assisted living facilities," also described above, offer room and board and assistance with the activities of daily living (such as bathing, grooming and meal preparation, taking prescription medication) but do not require the level of care offered by a hospital or nursing home.

## **National Housing Locator for Seniors Pennsylvania Nursing Care Facility Locator**

You can visit the Pennsylvania Department of Health Nursing Care Facility Locator to search homes and facilities in the state. The locator can list nursing care facilities by counties, or you can use the filters to narrow down results based on preference. The Nursing Care Facility Locator can be found on this website, [sais.health.pa.gov/commonpoc/nhlocator.asp](https://sais.health.pa.gov/commonpoc/nhlocator.asp).

## **Services Provided by USAging**

USAging ([www.usaging.org](http://www.usaging.org)) provides a wide range of services to older Americans, including the Housing and Services Resource Center (HSRC). HSRC is an initiative of the US Department of Health and Human Services and the US Department of Housing and Urban Development "to foster partnerships between community-based supportive service networks and the housing sector." Review the website to learn of the full range of services offered.

## **The National Family Caregiver Support Program**

The National Family Caregiver Support Program (NFCSP) provides grants to states and territories to fund various supports that help family and informal caregivers care for older adults in their homes for as long as possible. The motto of this program is "home is where you want to be, no matter what your age". The major focus of the National Family Caregiver Support Program (FCSP) is to provide supportive services to caregivers of older adults with functional deficits, individuals with Alzheimer's Disease or other related disorders, as well as grandparents and other relatives aged 55 and older who are raising grandchildren or caring for adults with disabilities. The NFCSP also allows caregivers to choose from available services and to provide the type and quality of care they would like to choose for their loved ones at home. The caregiver may not need to reside with the individual receiving the care.

Pennsylvania's Caregiver Support Program (CSP), which is funded by state and federal dollars, provides assistance and support to caregivers in their caregiving role to encourage a healthy, ongoing relationship with their care receivers. The program, administered by the Pennsylvania Department of Aging and its network of 52 Area Agencies on Aging (AAA), aims to alleviate the stress associated with caregiving by focusing on the well-being of the caregiver, providing access to respite care, addressing the need for formal and informal supports and providing financial reimbursement of out-of-pocket costs associated with the purchase of caregiving-related services and supplies. Caregivers who seek to enroll in the CSP are assigned a Care Manager from their local AAA who will meet with them at their care receiver's home to conduct a comprehensive assessment of the needs of the caregiver, provide support, and work with them to develop a person-centered plan of care. Eligible caregivers may receive up to \$600 per month in reimbursement for the purchase of approved caregiving-related services and supplies such as respite care, adult day care, personal care or other in-home services, incontinence supplies and nutritional supplements. Caregivers enrolled in the CSP may also receive up to \$5,000 for the purchase of home modifications or assistive devices needed for the provision of care of their care receiver. Services and items include, but are not limited to, the installation of stair glides or ramps, bathroom remodeling, wheelchairs, walkers or lift chairs.

There is no financial eligibility requirement for Caregiver Support Program services. However, the amount of reimbursement is based on income and household size of the care receiver. The reimbursement percentage is determined using a sliding scale that covers the range of income of the care receiver's household from 200% to 380% of the current Federal Poverty Level.

For more information on the PA Department of Aging's Caregiver Support Program, contact your local Area Agency on Aging.

## Geriatric Care Managers

What is a Geriatric Care Manager? In this day and age of many options for seniors, a Geriatric Care Manager can help connect families to services that are appropriate for their needs. A Geriatric Care Manager can:

- provide assessment, if certified to do so;
- evaluate physical, emotional, and financial needs and propose an individualized life care plan for you or your family members;
- evaluate housing options for seniors;
- help select an appropriate placement and assist with the admission process;
- coordinate a move or home sale by working with real estate agents, moving services, and others.
- In the event that staying in the home is appropriate, a Geriatric Care Manager can provide a variety of services such as:
  - arrange for home health care services;
  - review adult daycare options;
  - help coordinate insurance and public benefits and suggest consultations with elder lawyers and other professionals;
  - provide every day assistance to the homebound such as shopping for seniors, transporting seniors to doctors' appointments and following up with care.

Occasionally assistance in financial matters is necessary and Geriatric Care Managers can provide bill paying and record keeping services, coordinate insurance, Medicare, and other entitlements and assist in these matters. There are banks that have financial programs that are specifically tailored to Geriatric Care Managers and their clients.

In the event of nursing home placement, a Geriatric Care Manager can interface with the facility and advocate on behalf of the resident, if necessary. In selecting a Geriatric Care Manager with whom you wish to work, you should consult your network of advisors. Always ask for references.

## Nursing Home Licenses: Problems, Sanctions and Revocations

Although nursing home placement is a difficult decision, there are people to help you verify that you are placing your loved one in a secure environment. One contact person is your county's Long-term Care Ombudsperson who responds to care issues in all licensed facilities in your county. Your county's Area Agency on Aging can provide you with the telephone number, and it is required to be posted at the nursing home.

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 eyewitness; 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 nursing home residents by requiring criminal history background checks by the Pennsylvania State Police of all employees of nursing homes, personal care facilities, adult daycare and home healthcare providers. Employees with certain felony and misdemeanor convictions are precluded from working in these facilities.

Nursing homes are regularly inspected to ensure compliance with state standards. Sanctions under Pennsylvania law for a facility that fails to meet those standards include being fined, having a ban on admissions, losing the right to participate in Medicare and Medicaid, or having its license revoked.

To learn more about licensed personal care homes, contact your county's Department of Human Services. To learn more about nursing homes, check with your county's Department of Health or the Pennsylvania Department of Health. Check with the Pennsylvania Department of Health regarding home health agencies. To search for various types of long-term care facilities, consult the website for the Office of Long-term Living in the Pennsylvania Department of Human Services.

The Pennsylvania Department of Health website, [www.health.pa.gov](http://www.health.pa.gov), is a valuable resource that reports the results of surveys and on-site inspections of all long-term care facilities in Pennsylvania. Survey results of complaints and deficiencies are reported for a number of past years. Frequent checking of the website is recommended, especially in the event of a change in the administration of the facility.

## Resources

- "Access Long-term Care Services", "A Guide for Selecting a Nursing Home in Pennsylvania", "Know Your Rights as a Nursing Home Resident" and related articles are available on the websites for the Pennsylvania Department of Aging, Pennsylvania Department of Health and Commonwealth of Pennsylvania.
- "Family Caregiving", American Association of Retired Persons website, [www.aarp.org](http://www.aarp.org).

## Long-term Care Insurance

The term "long-term" care has generally been understood to mean the kind of care needed by the old and frail who are, for example, suffering from a form of dementia or other disabilities of old age. Today, people realize that long-term care is any degree of care, support, or supervision received for a year or more, with roughly 40% of the people receiving care in the US under the age of 65. Long-term care mostly consists of custodial care, i.e., care designed to assist an individual perform the activities and meet the needs of daily living. Such activities and needs include eating, bathing, dressing, toileting and transferring from a bed to a chair. Supervision or assistance to assure the safety of those with cognitive impairments is also considered custodial care. Long-term care can be provided in the home or in a long-term care facility, such as a nursing home or an assisted living or adult day care facility. Facilities are either free-standing or, in a growing number of cases, part of retirement communities.

Neither Medicare nor supplemental Medigap insurance covers long-term custodial care – at best, these programs may only cover skilled, post-hospital, recuperative care and together cover only a small percentage of long-term care expense. Long-term care insurance sold by commercial insurance

companies can be purchased to cover the vast majority of long-term care expenses that other insurance does not cover.

## Long-term Care Costs

The statewide average cost of nursing home care in Pennsylvania can vary depending on the type of unit chosen; units can range from \$8,500 to \$11,560. According to AARP's Long-term calculator Pennsylvania's average private nursing unit can cost \$9,425 a month. Assisted living and personal care home costs are usually less than nursing home care, running approximately \$4,000 to \$5,500 per month on average. Hourly in-home care may be a less expensive alternative for long-term care, particularly if family caregivers can assist. However, around-the-clock care can cost as much as or more than nursing home care. Senior day care facilities are another option and provide care services, and stimulation and socialization.

## Services Covered

While most people receiving care are older than 65, it is critical that people look into their options, including long-term care insurance, when they are fairly young and healthy. Denial ("it's not going to happen to me" or "I'm young and healthy – I'll wait until I'm older") and lack of information often preclude people from addressing the issue until health issues or age makes insurance unattainable or unaffordable.

When you purchase a long-term care insurance policy, it is critical that you understand the types of services that will be covered. Most policies today are labeled "comprehensive," and cover care provided in a home as well as facility setting, again including assisted living facilities, adult day care, as well as nursing homes. A policy should be carefully reviewed so you understand exactly the kinds of services that it will cover.

Most people would prefer to stay at home, and today policies generally include features such as care coordinators to help people, including those without spouses or children in the area, to remain at home. Policies differ widely in how home care coverage is provided, so a very careful review of this type of coverage is strongly advised. While some policies limit home care coverage to skilled services, i.e., those performed by registered nurses, licensed practical nurses and occupational, speech or physical therapists, most comprehensive policies today cover informal home care which includes services of home health aides who can assist with custodial care, as well as homemaker and other types of services such as aides who cook meals and do housework. Some policies will pay benefits to family members who perform home care services.

## Coverage Needed

Most policies express benefits in terms of a daily or monthly amount. In order to make an informed decision as to the amount of coverage that you will need, you must have an idea of the amount of long-term care costs that you anticipate. If your ideal long-term care facility charges \$200 a day today, you may want to buy a policy that covers that amount, or you may want to co-insure a portion of the costs out of income. You might consider a policy that covers that amount or you might want to pay a portion of the costs out of income and assets. Each situation will be different, and you might need professional financial guidance to choose the best policy coverage.

## Factors Affecting Cost

Most policies include a waiting period, usually called an "elimination period", before benefits can begin. This means that you can choose to have benefits begin 30, 60, 90 or more days after you satisfy the benefit triggers, described below. You will need resources to cover the cost of care during the elimination period. Many policies offer the option to waive the elimination period, which adds to the cost of the policy. An important feature to consider in a long-term care policy is inflation protection, which also adds to the cost of the policy. Ask for a detailed explanation of the effect of various levels of inflation protection on cost.

## Benefit Triggers

When the benefits under a long-term care insurance policy are payable is determined by benefit triggers. A benefit trigger is a medical condition or a level of physical or mental disability that an individual must suffer before qualifying for benefits.

For a person with a physical disability, benefits are usually triggered when that person cannot perform a specified number, usually two, of the activities of daily living (ADLs): eating, bathing, dressing, continence, toileting and transferring (such as from a bed to a chair), for a period of 90 days or more. The more clearly a policy defines the benefit triggers, the easier it will be to make a claim when necessary.

Most policies provide a separate trigger for cognitive impairment. Many people with dementia or other cognitive impairment can do the ADLs but still require care and supervision. You should check the exclusions section of the long-term care policy to ensure that other mental conditions, such as depression, are not excluded from coverage. In general, you should be sure you understand the costs, benefits and tax consequences of any long-term care policy you are considering buying.

## Newest Developments

Before 2006, only four states (New York, California, Connecticut, and Indiana) offered two types of plans, including a type called a “partnership plan” which allowed purchasers buying certain minimum benefit levels to legally shelter some of their assets (and in some cases, income) and receive the benefit of quality care while still enrolled on Medicaid, the state-administered health program designed for the impoverished. While partnership plans are right for some purchasers and not for others, this clearly created a situation in which people who purchased private long-term care insurance could get access to quality care, generally including care in the home, and the states would lessen their exposure to already-strained Medicaid funding of long-term care expenses.

In the Deficit Reduction Act of 2005, Congress passed legislation to allow other states to develop partnership plans that shield some assets, and Pennsylvania passed enabling legislation in 2007. A detailed description of how partnership plans work can be found on the website of the Pennsylvania Insurance Department, [www.insurance.pa.gov](http://www.insurance.pa.gov).

## Independent Advice

While a long-term care insurance expert can help you determine when to apply for long-term care insurance, and what levels of monthly benefits, benefit terms, deductibles, and other initial selections are best, an independent advisor, such as an elder law attorney, can be invaluable in providing the following services:

- Reviewing the financial suitability of an individual for long-term care insurance.
- Confirming the financial soundness of prospective insurance companies.
- Understanding, explaining and comparing policy features.
- Pinpointing uncertain terms in the policy and obtaining written clarification from insurance companies.
- Recommending a policy that services the individual’s needs over the long-term.

## Resources

- US Department of Health and Human Services
- A Shopper’s Guide to Long-term Care Insurance, National Association of Insurance Commissioners, [content.naic.org](http://content.naic.org)
- Your Guide to Long-term Care Insurance, Pennsylvania Insurance Department, [insurance.pa.gov](http://insurance.pa.gov)
- “Overview of Long-Term Care Insurance,” Pennsylvania Department of Aging, 1-800-783- 7067.
- Long-term Care Planning Guide, 9th Edition, 1999; by Phyllis A. Skelton.
- American Health Care Association; [www.ahca.org](http://www.ahca.org) ; “What Consumers Need To Know About



Private Long-term Care Insurance.”

- National Care Planning Council-- <https://www.longtermcarelink.net/>
- Health Insurance Association of America; [www.ahip.org](http://www.ahip.org) ; “Guide to Long-term Care Insurance.”
- Long-term Care Partnership Policies-Questions and Answers about Pennsylvania’s newest option for long-term care insurance.

## Elder Abuse and Neglect

Be aware that elder abuse or neglect can occur at any time, in any community, at any economic level, among all races and nationalities. Federal and state laws now affirm everyone’s right to be safe; no one has to tolerate abusive situations. Federal and state laws also protect older adults who lack the capacity to protect themselves and are at immediate risk of abuse, neglect, exploitation or abandonment.

## Signs of Abuse or Neglect

Abuse can be any one or more of the following:

- infliction of injury;
- unreasonable confinement;
- intimidation;
- any punishment that results in physical harm;
- causing mental anguish;
- depriving food, necessary medication or medical services;
- sexual harassment;
- rape;
- any physically or emotionally controlling behavior that restricts independence or activity.
- Elder abuse and neglect is not always easy to identify; signs to consider include:
- bruises and broken bones blamed on falls; the real cause may be pinching or beating;
- weight loss might be result of starvation or neglect, not just illness or lack of appetite;
- dementia is not always a part of aging; malnutrition or the misuse of medications can also be causes.

**IF YOU OBSERVE ABUSE OR NEGLECT CALL YOUR LOCAL PROTECTIVE SERVICES!  
IF YOU ARE ABUSED, IN AN EMERGENCY: CALL 911**

You should not confront your abuser. You need to wait until the abuser is gone or has calmed down so you can secretly and safely call one of these numbers for help:

- Elder Abuse Hotline: 1-800-490-8505
- Domestic Violence Hotline: 1-800-799-7233
- Pennsylvania Department of Aging: 1-717-783-1550

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.

## Protection from Abuse Orders (PFAs)

You can go to court to obtain an order to keep your abuser away from you. Your local Women’s Center will help you file the necessary papers and will go with you to court. The abuser may be arrested and if a court deems it appropriate, they may be imprisoned and/or fined.

## Zero Tolerance for Abuse

You should know that many organizations are working in Pennsylvania on zero tolerance of abuse. Any

time you hear or see abusive behavior you should call 911. If you ignore abuse or think it will improve without intervention you may be risking your life or the life of someone you know. Without help abuse always gets worse; everyone should know that help is available.

## **Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act was designed to protect people who suffer from a disability and to prevent discrimination against any person because of a disability. Significantly, this protection extends to a person's right to be employed. The ADA mandates that, under certain circumstances and presuming certain conditions are met, a person cannot be denied employment solely because of a disability.

### **Disability Defined**

The first question to consider is what, exactly, is a "disability"? The language of the ADA defines a disability as "a physical or mental impairment that substantially limits one or more major life activities of an individual." That means if a person has a long-term physical illness or injury or has a mental condition which prevents or limits him/her from doing something that other people normally do, they probably would be labeled as having a disability under the ADA. What are the things that people normally do? They are the simple things that the average person does with little or no difficulty, such as caring for oneself, walking, seeing, hearing, speaking, breathing, learning, sitting, standing, lifting, reaching, reading, etc. Many written cases in the law define what is a major life activity and what is not. To be considered a disability under the ADA, the disabling condition must be permanent or long-term. So even if a temporary condition, such as a broken bone, the flu, or pneumonia, limits a person's activities as described, it is not considered a disability under the ADA.

### **Accommodations**

Under the terms of the ADA an employer must make what is called "reasonable accommodations" to an employee, or potential employee, who has a disability. If an employee can perform the essential functions of a job, i.e. the primary duties of a job position, with a reasonable accommodation being made by an employer, then the employer cannot fire or refuse to hire the employee because of a disability. If an employer refuses to hire a person or fires a current employee solely because of a disability or to avoid having to accommodate that disability, then that employer has discriminated against that person, according to the ADA.

Reasonable accommodation is necessarily determined on a case-by-case basis. As a general rule, an accommodation is any change in the work environment or in the way things are normally done on the job so that a person with a disability can perform the essential functions of the job safely and adequately. This change or accommodation will vary according to the circumstances, i.e., what type of job and what type of disability. The accommodations an employer makes can be as simple as adjusting the work rules (perhaps allowing more breaks to a person with a chronic bladder problem), or as complex as removing a physical barrier (such as installing a ramp so that a person in a wheelchair can get up a flight of steps). The most common forms of accommodation are physical changes to the work area (as with the handicap ramp); part-time or modified work schedules (for example to accommodate therapy appointments); modified equipment (i.e. an amplifier for a phone for someone who is hard of hearing); or special equipment, such as a Braille typewriter for someone who is blind. But there are limits to how much an employer is obligated to do to accommodate a person with a disability.

First of all, no employer is required to lower production standards or eliminate an essential job function or duty as a reasonable accommodation. This applies across the board. While an employer may be obligated to make accommodations so that an employee can meet production standards, or perform their job duties, the production standards and job duties themselves do not have to be changed as part of that accommodation. Furthermore, an employer may argue that making a certain necessary accommodation will cause an "undue hardship" to their business, and thus, they should be relieved of that obligation. This is a very "sticky" point and is decided on a case-by-case basis. However, as a general rule, an undue hardship is any accommodation that would cause significant difficulty or expense to the company, or that would be so disruptive as to seriously affect the operation of the business and the ability of the business to continue operating.

An important factor to consider regarding undue hardship is the size of the company. What may be considered a financial hardship to a small restaurant or shop may be no big effort for a large corporation. Also, the nature of the business itself is a big factor. For instance, if a waitress in a restaurant needs to take a five-minute break every half hour, this might be considered an undue hardship since it would be disruptive to the normal demands of the business. However, if the employee requesting the five-minute break every half hour is a computer programmer, this may not be quite so disruptive to the job or the business in general. Similarly, if the very nature of the job makes an accommodation impossible or impracticable an employer will be relieved of the obligation. For instance, a blind person cannot be a proofreader of news articles and a person with a serious speech impediment cannot reasonably perform the job of a telephone receptionist.

## Reassignment

In order to qualify for protection under the ADA, an employee should be able to perform the essential functions of their job, with reasonable accommodation. However, the courts have found that if a person is unable to perform the essential job functions of their current position, the employer may still be obligated to reassign them to another position that they can perform, with or without accommodation. This obligation to reassign an employee kicks in under three different circumstances:

- if the employee cannot perform the essential functions of their present position, despite reasonable accommodations;
- if the employer claims the accommodation needed to keep the employee in their current position would cause undue hardship; or
- if no accommodation is practicable or possible for the person to perform the job duties of their current position.

Furthermore, if reassignment is appropriate, there must be a position available; the employer need not create one. The position must be vacant, and the employee must qualify for the new position. In the example where the employee has a speech impediment and cannot act as a telephone receptionist, for instance, if the employer has a vacant word processing position available and the employee can effectively use a word processor and perform the duties of that position, then reassignment is appropriate. Although reassignment seems like a great idea, it can be to a lower paying position, or outside the geographical area, in which case the employee pays the moving expenses. If the employee refuses the position because of lower pay or a move being required, they cannot later come back and make a claim against the employer under the ADA, since the employer satisfied the obligation.

## Age Discrimination in Employment Act (ADEA)

The Age Discrimination in Employment Act is designed to protect people who are age 40 and over from discrimination in the workplace. Discrimination in this instance is any act by an employer which treats a person unfairly because of their age. This not only includes firing someone because of their age but includes actions which result in those over the age of 40 being treated differently and less favorably. For instance, if someone over the age of 40 is receiving less pay for doing the same job as someone who is younger, when both employees are otherwise on the same level, there may be a claim for age discrimination. The protection also extends to hiring practices. If a person feels that they are being passed over for a job solely because they are age 40 or over, the ADEA may offer protection. The person claiming discrimination in this instance should be able to show that they are qualified for the job, that someone younger and less qualified was hired in their place, and that there was no other valid reason for the failure to hire.

Sometimes employers try to disguise age discrimination by claiming that the layoff or discharge of an employee is caused by a reduction in workforce or downsizing. Even in such an instance, if the discharged employee is over the age of 40 and can show that they are as qualified for the position as other younger employees who were retained and not fired, that employee may have the basis for a claim for protection under the ADEA.

## Protection from Discrimination Against Caregivers

Recently, the ADA and the EEOC (Equal Employment Opportunity Commission) regulations have been the subject of federal court cases. The regulations found in both these laws are very clear that people who may not have disabilities, whether age-related or otherwise, but who are discriminated against anyway based on their known relationship or association with a person with a disability may find protection in these provisions of these laws.

It is generally known that the ADA protects individuals with disabilities from employment discrimination. However, it also offers protection against discrimination that a current or future employer may impose based upon their knowledge and the employer's actions taken based on that knowledge. If the employer knows about a family member or friend's disability and then limits or terminates your job opportunities, you may be protected by this federal law. For example, if a family member who is a caregiver to either a chronically ill or disabled person, or to a person with an age-related disability is offered a job, but then has the offer withdrawn when the employer finds out that you have a family member in this situation. Watch out for employers who may deny you opportunities or promotions at work under the pretext of "reducing your stress." Also, an employer may terminate or limit hiring or job opportunities due to their concern about increasing health insurance costs for a person's relative or caregiver. The courts may extend protection in the event that it is proven that the employer discriminated based upon their knowledge of the caregiver being related to or associated with a disabled or chronically ill person. However, the courts have not been overwhelmingly favorable to the assertion of these types of associational claims.

## Special Agencies

The Pennsylvania Human Relations Commission (PHRC) is the agency set up by Pennsylvania to assist in discrimination cases; the Equal Employment Opportunity Commission (EEOC) is the parallel agency of the federal government. These agencies are fairly "user friendly," designed to assist you with any claim for discrimination you feel you may have. However, you have deadlines by which you must notify either the EEOC or the PHRC of any act of discrimination. The PHRC gives you 180 days after the discriminatory act to give them notice and file the necessary paperwork. The EEOC gives you 300 days to do so. If you feel your employer has treated you unfairly because of your age, you should not wait to take action. You should contact the EEOC or the PHRC without waiting for the matter to be resolved by your employer, because if it doesn't get resolved within their time frames, you may have lost your right to make a claim. The ADEA is there to protect your rights, but in order to be protected, you must discharge your responsibilities in the matter. Contact the PHRC at 101 South Second Street, Harrisburg, PA 17101; telephone 717-787- 4410.

## Consumer Protection Pennsylvania Consumer Protection Bureau

The Pennsylvania Consumer Protection Bureau can help you with your consumer complaints, such as if you believe you have been defrauded by a business or door-to-door salesperson, illegally harassed by an unscrupulous debt collector, or victimized in deceptive sales practices by a home improvement contractor or mail order business. This office, an agency of the Pennsylvania Office of the Attorney General, investigates and mediates consumer complaints. An office in your region can be located in the Human Services section of your telephone directory or you can call the toll- free consumer protection hotline at 1-800-441-2555 or access the Pennsylvania Attorney General's website at [www.attorneygeneral.gov](http://www.attorneygeneral.gov).

## Suggestions for Resolving Complaints

The Office of the Attorney General publishes consumer protection booklets which include these suggestions if you plan to resolve a complaint yourself:

- Decide on the specific complaint you wish to make;
- Have a clear statement of the specific action you want the person or business to take to remedy your complaint;
- Proceed without delay;
- If you are making the complaint in person, take along the purchase receipt, any guaranty or

warranty, and if possible, the product;

- Be assertive! If you are told by a salesperson or company representative that they cannot deal with your complaint, ask for a higher authority;
- If you complain by mail, give the brand name, model number, size, color and other details needed for identifying the product. Include in your letter a specific explanation of the circumstances surrounding your complaint;
- Keep copies of your letter and all correspondence you receive. If you return the product, be sure to insure it.

If you are unable to resolve your consumer complaint, you can file a written complaint on a preprinted form with the Bureau of Consumer Protection, Strawberry Square, 15<sup>th</sup> Floor, Harrisburg, PA 17120. Their hotline number is 1-800-441-2555.

## Avoiding Scams

The Office of the Attorney General periodically publishes the “Consumer Reference Guide for Seniors,” a pamphlet that can help you avoid scams and frauds. The pamphlet reiterates the phrase “If it sounds too good to be true, it probably is,” and points out that scam artists typically use the “nice guy” approach. It also states that con artists often use words or expressions including:

- “Cash only” - Why is cash necessary for a proposed transaction? Why not a check or credit card?
- “Secret plans” - Why are you being asked not to tell anyone?
- “Get rich quick” - Any scheme should be carefully investigated.
- “Something for nothing” - A retired swindler once said that any time you are promised something for nothing, you usually get nothing.
- “Contests” - Make sure they aren’t a hoax to draw you into a money-losing scheme.
- “Haste” - Be wary of any pressure to act immediately or lose out.
- “Today only” - If something is worthwhile today, it is likely to be available tomorrow.
- “Too good to be true” - Such a scheme is probably neither good nor true.
- “Last chance” - If it is a chance worth taking, why is it offered on such short notice?
- “Left-over material” - Left-over materials might also be stolen or defective.

If you are unable to obtain the relief that you expected from the Bureau of Consumer Protection, you should promptly seek legal advice from a qualified, reputable local attorney, because there are strict time limits in which you must pursue any legal actions for fraud. Typically, a written civil complaint must be filed with the appropriate court within two years of the commission of the fraud.

## Charitable Organizations

Older adults who are solicited by charitable organizations can call the Pennsylvania Department of State’s Bureau of Corporations and Charitable Organization’s toll-free number at 1-800-732-0999 to find out if the organizations are registered to solicit contributions; how much income the organizations receive; how much the organizations spend on programs, services, administration and fundraising. Seniors can also call the toll-free number with any complaints they have about organizations which have solicited funds from them.

### Some precautions when you are called for donations:

- Ask for written information, including the charity’s name, address and telephone number.
- Ask for identification; if the solicitor refuses, hang up.
- Call the charity to check whether they are aware of the solicitation. If they are not responsible, you should report the call to your local police department so they can investigate the potential for fraud.
- Watch out for organizational names which sound like established charities; some phony groups use titles that closely resemble respected legitimate organizations.

- Know that “tax-exempt” is not the same as “tax-deductible.” The exemption refers to the organization, but your contribution may or may not be deductible and, if that is important to you, ask for a receipt for the amount of your contribution.
- Be skeptical if someone thanks you for a pledge you do not remember making. Keep records and check them.
- Refuse high pressure appeals. No legitimate organization should pressure you for your gift.

## Mail Fraud or Identity Theft

Mail fraud is illegal, but it nevertheless remains a perfect means for a con artist to try and trick you. Do not respond to sweepstakes or contests that ask for money or your credit card. For additional information on mail fraud, call the U.S. Chief Postal Inspector at 202-268-2284 or your local postmaster. If you think you are a victim of mail fraud you can write them at ATTN: Mail Fraud, 222 S. Riverside Plaza, Suite 1250, Chicago IL 60606-6100, or visit their website at [www.usps.com](http://www.usps.com) and submit as Mail Fraud Report. If you think you are victim of theft of your personal information or identity you can call the Federal Trade Commission at 1-877-987-3728.

## Telemarketing

Telemarketing is another method commonly used to get your personal information such as credit card numbers, checking account numbers, Social Security number, driver’s license number, etc. Do not give out this information unless you placed the call yourself to a well- known, reputable company. Other tips include:

- never pay for a prize over the phone;
- never allow a caller to pressure you into acting immediately;
- the law prohibits telemarketers from calling consumers who have stated that they do not want to be called.

Pennsylvania law permits telemarketers to make calls only between the hours of 8:00 a.m. and 9:00 p.m. If you want your name removed from telemarketing lists, send your name, telephone number (including area code) and address to the Telephone Preference Service, Direct Marketing Association, P.O. Box 9014, Farmingdale, New York 11735-9014. This action will help reduce the number of unsolicited calls even if it won’t stop all the calls.

## Do Not Call Lists

Under this law, those who telemarket in Pennsylvania, with some major exceptions, such as charities and political groups, are required to check their own lists on a quarterly basis, to monitor

whom they may not call. In order to be placed on the do-not-call list, you can sign up on the internet ([www.nocallsplease.com](http://www.nocallsplease.com)) or by telephone (1-888-777-3406). Over 2.2 million Pennsylvanians have signed up for the do-not-call list.

Enforcement: If you believe a telemarketer is violating the law, you can file a complaint online or by telephone at the above number or Internet address. There are no first tries, every violation should be reported.

Prerecorded calls are more problematical, but a complaint can be filed with the FCC by calling 1888-225-5322; online at <https://consumercomplaints.fcc.gov/hc/en-us>, or by letter to the FCC

Consumer and Governmental Affairs Bureau, Consumer Inquiries and Complaints Division, 445 12th Street, S.W. Washington, DC 20554. Prerecorded calls are illegal if made to residential phone lines. Exceptions include calls from tax-exempt non-profits or from companies with which you already have an established business relationship. IRS TELEPHONE SCAMS can be reported online at <https://treasury.gov.tigta>. Click on the red box on the right side “IRS Impersonation Scam Reports”. This is the Treasury Inspector General for Tax Administration. Call 800-366-4484 to report this scam. On-line scams also are abundant in today’s age of the information superhighway.

For the most part, the same rules apply so beware of being misled. For additional information about on-

line scams, contact the National Fraud Information Center, Consumer Assistance Service at 1-202-835-3323 or visit their website at [www.fraud.org](http://www.fraud.org).

## Resources

The U. S. General Services Administration Consumer Information Center publishes annually a comprehensive “Consumers’ Resource Guide” which is available by writing the Consumer Information Center, Pueblo, CO 81009 or accessing the CIC website at [www.pueblo.gsa.gov](http://www.pueblo.gsa.gov).

This publication has two parts: “Buying Smart” contains general advice on shopping; information on how to shop for major items such as cars, credit or home improvement; suggestions on how to complain effectively including a sample letter of complaint. The second part is a “Consumer Association Directory” with lists of offices of consumer organizations, corporations, trade associations and government agencies at all levels.

## Grandparents’ Custody and Visitation Rights

### General Overview

Grandparents may request custody of a child without being in loco parentis. Grandparents to children born out of wedlock are equally entitled to invoke the provisions of the statute as grandparents of children whose parents were married. *L.A.L v. V.D.*, 72 A.3d 690 (Pa.Super. 2013).

### Definitions

*In loco parentis* is a Latin term meaning “in the place of a parent” or “instead of a parent.” The term refers to a common law doctrine which denotes the legal responsibility of some person or organization to perform some of the functions or responsibilities of a parent.

*Primary physical custody* is when a parent/guardian has custody of the child for a majority of the time.

*Partial physical custody* is when a parent/guardian has custody of the child for less than a majority of the time.

*Supervised physical custody* is when the court designates an agency or other adult to monitor the custodial time between a parent/guardian and the child.

*Legal custody* is the right to make major decisions on behalf of the child, including, but not limited to, medical, religious, and educational decisions.

*A dependent child* is a child who:

- Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his/her physical, mental, or emotional health, or morals;
- Has been placed for care or adoption in violation of law;
- Has been abandoned by his/her parents, guardian, or other custodian;
- Is without a parent, guardian, or legal custodian;
- While subject to compulsory school attendance is habitually and without justification truant from school;
- Has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his/her parent, guardian, or other custodian and who is ungovernable and found to be in need of care, treatment, or supervision;
- Is under the age of 10 and has committed a delinquent act;
- Has been formally adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable (see point (f));
- Has been referred by an agency or officer under 23 Pa.C.S. § 6323 (relating to informal adjustment) and who commits an act which is defined as ungovernable in point (f);
- Is born to a parent whose parental rights with regard to another child have been involuntarily

terminated within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child.

### **Who Can File for Custody?**

- Any form of physical or legal custody (23 Pa.C.S. § 5324)
  - A person who stands in loco parentis to the child
- A grandparent of the child who is not in loco parentis to the child:
  - If their relationship with the child began with either:
    - The consent of a parent of the child; or
    - Under a court order;
  - If the grandparent assumes or is willing to assume responsibility for the child; and
  - One of the following is met:
    - The child has been determined to be a dependent child;
    - The child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse, or incapacity; or
    - The child resided with the grandparents for at least 12 consecutive months (excluding brief temporary absences) and was removed by the parents;
  - For this to apply, the action must be filed within 6 months of the child's removal from the grandparents' home.
  - If a grandparent is seeking primary physical custody:
    - The court must consider:
      - Whether the grandparent can file for any kind of physical or legal custody
      - The Parent-Third Party Presumption (23 Pa.C.S. § 5327)
      - There is a presumption that custody shall be awarded to the parent(s) of the child in a custody action between the parent(s) and nonparent(s).
      - This presumption may be rebutted by clear and convincing evidence, meaning the evidence is highly and substantially more likely to be true than untrue
      - Best Interest Factors (23 Pa.C.S. § 5328)
      - Other factors that may be considered in grandparent custody cases more frequently than cases between parents:
        - Other household members' past or present abuse;
        - History of drug or alcohol abuse;
        - Mental and physical condition.
    - If a grandparent is seeking partial or supervised physical custody:
      - A grandparent may ask the court for custody if:
        - The parent is deceased;
        - Where the relationship with the child began with the consent of the parent or a court order and the parent of the child commenced a proceeding for custody and they do not agree that the grandparents or great-grandparents should have custody of the child; or
        - The child has lived with the grandparent/great-grandparent for 12 months or more.
      - In all of these cases, the court must consider the 16 best interest factors.
      - If the parent is deceased or the parents of the child are separated or commenced marriage dissolution, the court must also consider the amount of personal contact between the child and the grandparent prior to filing for custody and whether the award of custody interferes with any parent/child relationship.
      - If the child has lived with the grandparent/great-grandparent for 12 months or more, the amount of personal contact is presumed, and the court must only consider the 16 best interest factors. However, a parent may challenge this presumption under the correct factual scenario.



- (See 23 Pa C.S. § 5325)

### **What constitutes an interference with the parent/child relationship?**

The Pennsylvania Superior Court found interference with the parent/child relationship where the grandparent's visitation with the child negatively affected the parent's mental health status, despite the grandparent's love and devotion for the child. The adverse effect on the parent's mental health was sufficient enough to deny grandparent's contact with their grandchild. *Norris v. Tearney*, 619 A.2d 339 (Pa. Super. 1993).

Amount of time awarded to grandparents may constitute interference with the parent/child relationship. *Johnson v. Diesinger*, 589 A.2d 1160 (Pa. Super. 1991).

However, mere objection by a parent to the contact/level of contact requested by a grandparent is not, in itself, enough to defeat partial or supervised custody to a grandparent.

### **Custody Factors (23 Pa.C.S. § 5328)**

In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

- Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
- (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.
- (2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).
- (2.2) Violent or assaultive behavior committed by a party.
- (2.3) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party if contact is consistent with the safety needs of the child.
- (3) The parental duties performed by each party on behalf of the child.
- (4) The need for stability and continuity in the child's education, family life and community life.
- (5) The availability of extended family.
- (6) The child's sibling relationships.
- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.
- (8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.
- (9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.
- (10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.
- (11) The proximity of the residences of the parties.
- (12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.
- (13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.
- (14) The history of drug or alcohol abuse of a party or member of a party's household.
- (15) The mental and physical condition of a party or member of a party's household.
- (16) Any other relevant factor.

## Mediation Services

In the context of aging, there are sensitive topics such as finances, changes in living arrangements, healthcare concerns and end-of-life decision-making that need to be discussed between older adults and the significant people in their lives. Addressing these issues can be overwhelming, emotional and involve conflict. Struggles may occur regarding an older adult's desire for independence and concerns of others about safety.

Mediation is a way for those in conflict to talk together with the help of an impartial third party. Mediators are trained to listen carefully, clarify issues, and help older adults; their families and care providers better understand each other and make decisions.

- **Intergenerational family conflict** – Differences among parents, adult children and grandchildren about what is best for the aging family member including driving, safety, need for supportive services
- **Finances** – Conflict regarding financial matters, available resources, control of the finances, actions by agents under power of attorney
- **Housing Transitions** – Conflict about an elder moving from independent living into a new setting and/or the sale of the family home
- **Caregiving** – Disagree over the care of an elderly parent/relative and how to provide the care needed
- **Adult Guardianship** – Family conflict over the need for and/or selection of a guardian and the terms of adult guardianship
- **Long-Term care** – Conflicts among staff, residents and family members regarding care and relationships within the facility
- **Healthcare** – Older adult or family disagree with healthcare provider about medical decisions or quality of care

## Benefits of Elder Mediation

No matter how hard individuals and families try, sometimes they can't work it out on their own. Mediation can help those in conflict have productive conversations regarding issues associated with aging. Benefits include:

- A timely and confidential way to deal with the conflict
- Having a productive conversation that can lead to decision making
- Agreements can be reached
- All involved in the conflict have an opportunity express themselves, their preferences and their concerns
- Improves understanding
- Supports collaboration with health care and long-term care providers to improve satisfaction with care
- Provides an alternative to litigation

Seniors and their families may also contact their local bar association or consult an attorney to obtain information about participation in mediation or alternative dispute resolution.

## Drivers' Licenses

Having a driver's license is considered a privilege. Therefore, this license may be recalled or suspended and the privilege to drive an automobile may be revoked upon a determination of incompetency or a finding by a physician of a condition that prevents one from safely operating a motor vehicle. Upon the report of a physician or psychologist, the PennDOT Bureau of Driver Licensing might seek additional information. Based on the information obtained, a driver's license might be restricted or recalled. If the medical condition can be corrected, it might be possible to regain the license or remove the restriction.

Consult the PennDOT website to learn about appeal rights.

## Identification Cards

Many offices and businesses require a driver's license for identification. A REAL ID Card, similar in appearance to a driver's license, can be obtained by non-drivers at a PennDOT Driver Licensing Center. You must bring proof of identity, such as a birth certificate, expired driver's license or passport, together with proof of your physical PA address. PennDOT has an online brochure titled REAL ID in Pennsylvania.

## Handicapped Parking

If you are disabled and need a disability parking placard or plate you can contact the PennDOT; Bureau of Motor Vehicles, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104; telephone 1-800-932-4600 or [www.dmv.pa.gov](http://www.dmv.pa.gov).

## Personal Records

It is important to keep complete written records so that your personal information is readily available when needed. In only one place record where the original of your will, power of attorney, and living will are kept. Also include information such as your Social Security number, bank accounts and other investments (including account numbers), real estate holdings, insurance policies, and other important legal and financial information. All of this is required by your agent or guardian in case of your disability or incapacity and is required by your executor or personal representative upon your death.

## A Checklist for Your Personal Filing System

- ☐ Income tax returns (federal, state and local)
- ☐ Birth, marriage, divorce, custody, adoption and death certificates
- ☐ Naturalization papers
- ☐ Military records
- ☐ Papers documenting real estate and home leases and purchases, mortgages and home improvements
- ☐ Medical records
- ☐ Social Security records and communications
- ☐ Bank account, brokerage and mutual fund statements
- ☐ Business and partnership agreements
- ☐ Stock option and pension fund agreements
- ☐ Retirement funds/accounts information



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