The Delaware County

ELDER LAW HANDBOOK & RESOURCE GUIDE

For Seniors and Their Families in Delaware County, Pennsylvania

PUBLISHED BY

Delaware County Bar Association – Elder Law Committee

Delaware County Office of Services for the Aging (COSA)

EIGHTH EDITION

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Acknowledgments – Eighth Edition

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Acknowledgments – Eighth Edition

Since its inception in 2003, the Delaware County Elder Law Handbook and Resource Guide has been a joint effort of the Delaware County Bar Association (in particular the Elder Law Committee), and the Delaware County Office of Services for the Aging (COSA). In 2025, COSA will celebrate 50 years of being an invaluable resource to older adults in Delaware County and their loved ones. COSA is the primary funder for the production of this Handbook and the annual COSA Senior Expo is one of the chief ways we get the book into the hands of Delaware County residents. We wish to express our gratitude to COSA and wish it another 50 years of continued success!

Contributions have taken the form of many volunteer hours performing the work of researching, writing, reviewing, updating, editing, publishing, distributing as well as, of course, monetary contributions. Once again, we are very grateful to our donors, whose generosity has allowed us to publish another print version of this Handbook, and provide it to the public free of charge, without relying on paid advertising within the book. In this increasingly "paperless" world, we are sincerely grateful for the financial support that allows us to continue to print actual hard copies of the book to assure that our intended audience can access the invaluable information contained in this Handbook. To expand the reach of the Handbook, we have included for the first time a "QR Code" on the cover to allow for an immediate electronic download of the book from COSA's website.

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mcollins@delcofoundation.org, 610-744-1015

delcofoundation.org

The attorneys and other knowledgeable people who contributed to the material presented in this Handbook are listed on page i, and the biographies and contact information for each contributor appears in chapter 40. We greatly appreciate their taking time out of their busy schedules to contribute to this edition.

We would specifically like to acknowledge Cynthia A McNicholas, Esquire, for her contribution to this project extending from the 2006 Edition to this, the 8th Edition. She was both a tireless editor as well as a prolific contributor, writing not only on her own favorite topics but always willing to pitch in and update articles when we could not find anyone else. She was always able to "think outside the box" and at one point she persuaded well known consumer reporter Herb Denenberg to contribute to the book for the 2008 edition. She retired from the practice of law this past December after a career of 41 years. She had been a sole practitioner from 1994, but then served Delaware County Orphan's Court as a law clerk and later as a Master, (later known as Hearing Officer) from 2016 to January of 2013.

Lastly, we wish to thank the printer of this edition, Alcom Printing, 140 Christopher Lane, Harleysville, PA 19438-2034, www.alcom.com, (215) 513-1600 - Fax (215) 513-1840

Editor's Notes – Eighth Edition

As we go to print on this Eighth Edition in 2024, we recall where we were in 2020 as we put the final touches on the Seventh Edition. The pandemic impacted all of our lives in many ways.

One of the most striking is how it brought to new awareness the need for older adults to remain connected to loved ones and communities. Older adults were among the most vulnerable populations affected by the pandemic, making it even more important to do the work of providing our readers with the timely and relevant information contained in this Elder Law Handbook and Resource Guide.

We also wanted the cover of this edition to reflect the end of the pandemic and the much-needed return to community activities such as the COSA Senior Games and attending the local senior center. Many thanks to COSA and the Chester Senior Center for providing the photographs that you will find on the cover of this edition.

With each new Edition of the Elder Law Handbook and Resource Guide, we strive to improve the content, its presentation, and clarity. We also try to ensure that the most relevant and current information is provided. For example, Eighth Edition has a newly reorganized and updated Chapter 2 on Federal, State, and Local Resources with additional hyperlinks to directly connect users of the digital copy of this book with access to the resources described in the chapter, and for the first time has a section specifically focused on mental health and substance abuse resources. Chapter 3, Estate Planning, includes information on planning with digital assets.

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

On a more general level, the reader should be aware that the material in this Handbook was accurate when written but that laws, regulations and policies can change at any time, and therefore, one should check the Bar Association and COSA websites as well as the various government websites, call the appropriate agency, and/or consult with a qualified attorney or other expert when necessary, to verify that the information being relied upon is still accurate. We are aware that many readers access the online version of this Handbook, so the Eighth Edition includes more hyperlinks to information than in previous editions to provide easier access to information on a particular topic.

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

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

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

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Chapter 1

Elder Law

Elder Law is a term used in the legal world to address the unique legal needs and challenges faced by older adults and individuals with disabilities. Lawyers who specialize in this field need to stay updated on a constantly changing set of rules and regulations that cover important areas including Estate Planning with planning on incapacity as well as post death planning; Long-Term Care Planning; Guardianship and Conservatorship; Health Care Decision Making; Housing and Care issues; Elder Abuse and Neglect; Special Needs Planning; Taxation; Estate and Trust Administration.

Attorney-Client Relations

A big question in elder law is: "Who is the client?" Attorneys often find that an adult child brings in a parent to the attorney's office. That child and parent may have differing interests. 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 attorney is to do and how much these professional services will cost. If a fee dispute arises with a Delaware County attorney, contact the Delaware County Bar Association at 610-566-6625. If the attorney in question is not a member of the Delaware County Bar Association, contact the Office of Disciplinary Counsel, District II, 820 Adams Avenue, Suite 170, Trooper, PA 19403; telephone 610-650-8210.

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

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

Pennsylvania Lawyers Fund For Client Security

Although the percentage of lawyers involved in fraud and theft is extremely low, the news of attorney misconduct is often given wide play in the media. The fact is that lawyers are often put in positions of trust and temptation, yet it very rarely results in a financial loss to a client. In such cases, the Pennsylvania Lawyers Fund for Client Security can help to recoup some or all of the losses.

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

Resources for Choosing an Elder Law 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 elder law matters, you should first think about your goals. Is it a simple question of updating your Will? Or is it the more complex process of planning the series of financial steps for retirement or disability planning? Once your needs are outlined, you can consult friends, relatives, business colleagues, clergy and others for recommendations about an attorney.

The National Elder Law Foundation ("NELF")

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

Phone: 520- 881-1076
Web: www.nelf.org/

The National Academy of Elder Law Attorneys

("NAELA"), a professional association of attorneys dedicated to improving the
quality of legal services provided to people as they age and people with special needs,
Phone: 520-881-4005
www.naela.org

The Delaware County Bar Association Lawyer Referral Service

There is no charge for calling the Delaware County Bar Association Lawyer Referral Service. However, please remember that the staff of the Lawyer Referral Service are not lawyers and cannot provide legal advice to you.
Phone: 610-566-6625
Web: https://delcobar.org/?pg=legal-assistance

Legal Aid of Southeastern Pennsylvania

(LASP), a non-profit corporation, that provides legal services to individuals in Bucks, Chester, Montgomery, and Delaware counties.
Helpline at 1-877-429-5994
Web: www.lasp.org

Chapter 2

Federal, State, and Local Resources for Older Adults

More Americans are living longer and demanding more from local, state, and federal lawmakers so that more programs for elders are offered, enlarged, or refined.

Federal

One of the most important laws which provide a basic framework for services to older adults and people with disabilities is the **Older Americans Act (OAA)** of 1965. The OAA is considered to be a major vehicle for the organization and delivery of social and nutrition services to the elderly and their caregivers. The OAA authorizes a wide array of service programs through a national network of 56 state agencies on aging, and 618 area agencies on aging.

State

In Pennsylvania, AAAs are administered by the **Pennsylvania Department of Aging (PDA)**,
http://www.aging.state.pa.us/
The PDA publishes the "Benefits & Rights for Older Pennsylvanians," which provides information about aging services available across Pennsylvania, and is also available in Spanish.

Pennsylvania Association of Area Agencies on Aging, https://p4a.org also known as P4A is a statewide association of Area Agencies on Aging, serving as advocates and resources for older Pennsylvanians.

The **Pennsylvania Link to Aging and Disability Resource Center (ADRC)**
https://www.aging.pa.gov/local-resources/pa-link/Pages/default.aspx
is a federal initiative that supports state efforts in better coordinating and integrating their existing access functions to create a new interface between participants and the long-term care system. States developed local community centers that make it easier for older adults and individuals with disabilities to learn about and quickly access the long-term services and supports that best meet their needs. This program improves access to long-term services and supports for individuals, their loved ones and caregivers, regardless of age, income or ability through an integrated network of partner agencies committed to expanding the use of community-based solutions while promoting person-centered decision making and enhancing the quality of services.

The Link in Delaware County utilizing Person Centered Counseling (PCC), serves as the entry point to publicly administered long-term supports including those funded under Medicaid, the Older Americans Act and state funded programs. The Link in Delaware County supports consumer-friendly entry points into long-term care at the community level and provides information on all aspects of life related to aging or living with a disability. For more information, call the

Pennsylvania Link to PDRC Helpline at 1-800-753-8827 or go to www.delcosa.org/linkadrc

Local

Delaware County's AAA is Delaware County Office of Services for the Aging also known as "COSA."

1510 Chester Pike, Suite 250
Eddystone, PA 19022
Hours: 8:30 a.m. to 4:30 p.m.
Phone: 610-490-1300, Toll-free 800-416-4504, TDD: 610-490-1900.
www.delcosa.org
COSA@co.delaware.pa.us

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

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

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

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

For more information visit http://www.delcosa.org/information-and-referral

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

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

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

Older Adult Protective Services of COSA investigates reports of suspected abuse, neglect, financial exploitation, or abandonment for county residents over the age of sixty (60). **REPORTS OF SUSPECTED ABUSE CAN BE MADE ANONYMOUSLY AND CONFIDENTIALITY IS ASSURED IN ALL CASES. SUSPECTED ABUSE CAN BE REPORTED 24 HOURS A DAY BY CALLING COSA AT (610) 490-1300.**

Community-Based Long-Term Care Services

COSA provides level of care assessments and can help direct consumers with their choices and next steps to receive care to stay living at home safely.
More information can be found at www.delcosa.org/in-home-servicesltss.

Specifically, the **OPTIONS** Program provides community services to seniors needing assistance in the home. Community-based services can include adult day care, personal care, home delivered meals, respite care, home health care and home support. Contact COSA to learn what services you may be eligible to receive.

Community HealthChoices Waiver Program

CHC is Pennsylvania's mandatory managed care program for individuals who are eligible for both Medicare and Medicaid, also known as "dual eligibles," and individuals with physical disabilities. The CHC Waiver program is for lower income older adults who would like to receive

long-term care services in their own home. Financial eligibility is determined by the County Assistance Office after the level of care is determined by the COSA assessment unit.

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

- Phone: 877-550-4227
- E-Mail: PAIEB@MAXIMUS.com
- Website: https://paieb.com/en

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

Mental Health and Substance Abuse Resources

PA Crisis Text Line: Text PA to 741741 (Free, 24/7, Confidential) to connect with a volunteer Crisis Counselor. https://www.crisistextline.org/

PA Get Help Now - Drug and Alcohol Treatment and Crisis Line
1-800-662-HELP (4357): Through the Pennsylvania Department of Drug and Alcohol Programs, this resource can help you find drug and alcohol treatment care providers.
https://apps.ddap.pa.gov/gethelpnow/careprovider.aspx

Dial 988: The 988 Suicide & Crisis Lifeline, previously known as the National Suicide Prevention Lifeline, offers 24/7 call, text and chat access to trained crisis counselors who can help people experiencing suicidal, substance use, and/or mental health crisis, or any other kind of emotional distress. People can also call, text or chat 988 if they are worried about a loved one who may need crisis support.
https://988lifeline.org/

When 988 is contacted, individuals are automatically connected to a crisis call center in Pennsylvania, and crisis response professionals can help immediately by talking through the situation over the phone, sending help to provide in-person support, or connecting the caller directly to local resources, such as transportation for further evaluation, and referrals for relevant resources, ongoing care, and follow-up services. By comparison, 911 works by dispatching fire, EMS, law enforcement to intervene and help the caller. With 988, the contact IS the intervention, and help can be immediate.

Adult Mental Health Division of Delaware County Department of Human Services: The Adult Mental Health division assures appropriate services are available for individuals who experience mental health challenges.

- Referrals by Phone: 610-713-2365 (8:30 AM and 4:30 PM Monday-Friday)
- Referrals by Email: HumanServices@DelcoHSA.org.
- **Direct intake at Base Units during normal business hours:**
  - Merakey - 800 Chester Pike, Sharon Hill, PA 19079 (610) 534-3636
  - Crozer-Chester Medical Center - 301 W. 15th Street, Chester, PA 19013 (610) 619-8700

https://delcohsa.org/mentalhealth.html

The Delaware County Crisis Connections Team (DCCCT)

- Phone: 1-855-889-7827 (24 hours/day, 7 days/week)

Delaware County Peer Support Warm Line: A warmline is a peer-run listening line staffed by people in mental health recovery themselves.

- Phone: 1-855-464-9342

Mental Health First Aid: A List of Mental Health and Substance Abuse Resources from National Council for Mental Wellbeing, and offers training for Mental Health First Aiders.
https://www.mentalhealthfirstaid.org/mental-health-resources/

NAMI (National Alliance on Mental Illness)

- NAMI Delaware County
  - www.namipadelco.org
  - 610-623-0071
  - 140 N Lansdowne Avenue, Lansdowne, PA 19050
- Call NAMI HelpLine

- To talk with a NAMI HelpLine specialist: 1-800-950-NAMI (6264)
- Text NAMI HelpLine
  - To connect with a HelpLine specialist when you need support, information and resources over text: Text "HELPLINE" to 62640
- Chat Online with NAMI HelpLine
  - To chat with a HelpLine specialist: Go to NAMI.org/help

Delaware County Office of Services for the Aging (COSA) – GATEWAY Program: GATEWAY (Giving Assessment, Treatment, and Empowerment in the Aging Years) targets and identifies isolated, at-risk older adults with behavior health (mental health and/or substance abuse) issues. The program evaluates older adults aged sixty and older who are experiencing behavior health difficulties and links them with the appropriate formal and informal community resources and monitors them to track their progress. Note the program requires the older adult to voluntarily enter the program. Call the COSA Information and Referral Department at 1-800-416-4504 or 610-490-1300 to ask for a referral.

Community Care Behavioral Health: For those with Medical Assistance Insurance (Medicaid)

- Delaware County Member Services: 1-833-577-2682
- En español: 1-866-229-3187
- TTY/TDD: (Dial 711) Request 1-833-545-9191
- Website: www.ccbh.com

Chapter 3

Income Tax & Financial Planning

All of us, and especially those approaching their retirement years, are well advised to plan now, while mentally able, to make sure our estates are sufficient, at the least, for our needs for the remainder of our life expectancies, and are passed to intended beneficiaries after death. Planning can help you achieve those goals, reduce death taxes and administrative expenses, and lessen the possibilities of disputes among family members and others. Planning also gives you the peace of mind that their financial affairs are in order.

Income Taxes and Planning

Income taxes play an important role in our financial lives. An excellent starting point for information affecting senior citizens is the Internal Revenue Services webpage on "Publications for Older Americans," which contains a number of resources to help individuals who are aged 60 or older. Publication 554, "Tax Guide for Seniors," provides updated information on tax information most relevant to older adults, and a free copy can be ordered from the IRS at 1-800-TAX-FORM. You can also contact your attorney or accountant for information.

The IRS has a Delaware County office location at:

1400 N. Providence Road, STE 100
Media, PA 19063
610-891-6002
8:30 a.m. to 4:30 p.m. (closed 1:00 p.m. to 2:00 p.m. for lunch)

Tax Preparation

Some seniors, especially those with fixed incomes, find it difficult to hire a tax professional.

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

The IRS has a Tax Counseling for the Elderly program which offers free tax help to individuals aged 60 or older. For more information on TCE, call (800) 829-1040. AARP offers the Tax-AIDE program as part of the TCE program, assisting with tax services. To locate the nearest AARP Tax-Aide site, call (888) 227-7669 or visit the AARP Tax-Aide webpage. Before going to a volunteer tax preparer, you should consult Publication 3676-B for services provided and "What to Bring" to ensure you have all the required documents and information the volunteers will need to help you.

Veterans can call the Delaware County Bar Association (610) 566-

6625 to inquire about a free tax preparation program run by Delaware County attorneys for veterans.

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

Taxpayers who made $73,000 or less can also use IRS Free File software to prepare and e-file their own returns for free. Fourteen companies make their brand-name tax software products available. For those who earned more, Free File Fillable Forms, the electronic version of IRS paper forms, can be used. Taxpayers should be comfortable preparing their own returns. Free File is available only at www.irs.gov/filing/free-file-do-your-federal-taxes-for-free

Standard Deduction at Age 65

There is a basic standard deduction allowed that varies according to your filing status, and is adjusted annually for inflation. For 2024 Single or Married Filing Separately, the standard deduction is $14,600. For Married Filing Jointly/Qualifying Widow(er) the standard deduction is $29,200. If you are age 65 or older, you may increase your standard deduction by $1,750 if you file Single or Head of Household. If you are Married Filing Jointly and you or your spouse is 65 or older, you may increase your standard deduction by $1,550.

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

Medical Expense Deductions

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

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

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

For 2024, the standard mileage rate for operating expenses for a car when used for medical reasons is $0.21 per mile. See Transportation in IRS Publication 502, under What Medical Expenses are Includible.

When a person dies owing medical expenses, which are paid by the estate within one year from the day after the decedent's death, a medical expense deduction can be taken on the decedent's final income tax return (Form 1040), or on the federal estate tax return (Form 706). If the estate is under the federal taxable limit ($13,610,000 in 2024), or if there will be no estate tax due because of the unlimited marital deduction, or the Estate is going to charities, it usually makes sense to deduct these expenses on the personal income tax return. The surviving spouse or estate executor must attach a statement to the tax return saying the expenses have not been and will not be claimed on the estate tax return.

Sale of Residence: Exclusion of Gain from Income

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

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

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

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

Illustration 2:
• If the husband in Illustration 1 dies and the same jointly-held stock is worth $10,000 on the date of death, and then the stock is sold, the tax basis "steps-up" from $1,000 to $5,500, (one half of the date-of-death value plus one half the purchase price). When the surviving spouse sells the stock for $10,000, the taxable gain is $4,500, instead of $9,000, and the tax is therefore reduced significantly.

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

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

Estimated Tax Payments

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

Chapter 4
Estate Planning

What is Estate Planning?

Your "estate" is another name for your property, and "estate planning" is simply planning ahead to make sure that your property passes according to your wishes. Some people think that estate planning is only for very wealthy people. Nothing

is further from the truth! Regardless of how little property you own, you should plan to make sure that trusted people are appointed to serve as your Executor of your Will, Agent under a Durable Power of Attorney and Health Care Power of Attorney, and that your Will and beneficiary designations reflect your intentions for who should receive your property after your death.

Your estate planning decisions will be reflected in various documents as described below.

Which Estate Planning Documents Do I Need?

At a minimum, you should have these essential estate planning documents: Last Will and Testament, General Durable Power of Attorney, Health Care Power of Attorney, and Living Will. This Chapter will discuss the Last Will and Testament, Trusts, and titling of assets. The other estate planning documents will be discussed in subsequent chapters of this book.

Last Will and Testament

Your Last Will and Testament ("Will") is the most fundamental document, as it determines who will receive your "probate" property, which is property owned outright in your sole name that does not have a beneficiary designation.

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

If you die without a Will ("intestate"), your probate assets, including your home, money and other property, will be distributed to your heirs according to Pennsylvania's "intestacy" laws. The intestacy laws were created to distribute property according to the supposed wishes of an average person, and they cannot take into account your unique situation. The application of the intestate law could lead to unintended consequences, such as limiting the share passing to your surviving spouse on your death.

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

Even if **all** of your assets were to pass outside of probate, your estate needs to have a personal representative who can handle final affairs, prepare an inheritance tax return and arrange for payment of the inheritance tax.

Understanding Probate and Non-Probate Property

A well-considered estate plan coordinates how both your Probate and Non-Probate assets will transfer at your death to help avoid disputes among your beneficiaries and give you the peace of mind of knowing that your final wishes regarding all pf your assets will be carried out.

It is a common misunderstanding that a Will distributes all of your property at your death. A Will distributes Probate property and includes your home (if solely in your name or a share held as a "tenant in common"), any bank accounts or securities solely in your name and without a beneficiary designation, and your car, jewelry and other personal effects. As noted above, your Will also designates the Executor who will carry out the distributive provisions included in your Will.

Other important documents will determine the recipients of your Non-Probate property, which is property that passes outside of your Will based on decisions and transactions made during your life, and/or based on an agreement with the account holder. As discussed in more detail below, examples of Non-Probate property include:

- Jointly held property such as homes held as joint tenants with right of survivorship or tenants by the entireties and joint bank accounts;
- Property that passes by beneficiary designation such as life insurance

policies; annuities; IRAs, 401(k) or403(b) accounts
- Property owned by a revocable living trust.

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

Non-Probate Property

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

Joint Property

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

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

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

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

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

If you want certain property to go to a particular person after your death, you should discuss with your lawyer whether this should be done by putting the property in joint names, by passing the property through your Will, or by creating a trust or by some other arrangement in your estate plan.

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

Trusts

Your attorney might recommend the use of a "trust" for larger estates, estates with young beneficiaries, and in other special circumstances. **However, there is no one-size-fits-all solution when it comes to trusts, and you should always consult with an attorney or tax advisor to determine if trust planning makes sense for you.** The transfer of property to a trust without the proper guidance could bring unintended consequences, such as a loss of control or income tax liability.

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

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

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

In addition to the costs of drafting a trust, there may be costs associated with funding the trust (the transfer of assets into the trust) and possible continuing costs for attorneys' fees, accountants' fees and trustees' commissions as a trust is administered over time.

Most, but not all, trusts are separate tax paying entities and must file annual fiduciary income tax returns, requiring the cost of an accountant or attorney to help prepare and file these tax returns. You should always check with your tax preparer to determine whether an annual fiduciary tax return is required for your trust.

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

Supplemental Needs or Special Needs Trusts

A supplemental needs or special needs trust can be used by anyone who wishes to set aside money for a disabled beneficiary but hesitates to do so for fear of disqualifying that beneficiary from certain means-tested government benefits. For example, a parent or grandparent could fund a carefully drafted supplemental needs or special needs trust, designate a trustee to invest and safeguard the funds, and enable the disabled child to benefit from the trust for "supplemental needs" while maintaining the beneficiary's eligibility for "needs-based" government benefits such as Medicaid or Supplemental Security Income (SSI) payments. Depending on the circumstances, a supplemental or special needs trust may be created for a beneficiary in one's Will or during one's lifetime. To qualify as a supplemental or special needs trust, there are many provisions that must be included in order to have it withstand scrutiny by the Medicaid office and Social Security. An improperly drafted trust may disqualify the beneficiary from receiving benefits to which he or she may be entitled. Public benefits are a vital safety net for individuals with special

needs. **Therefore, it is imperative that you consult your attorney to determine whether a supplemental or special needs trust is appropriate for your situation and to have it properly drafted so that the trust can be administered to preserve the beneficiary's right to receive public benefits.**

Testamentary Trusts

A testamentary trust (a trust established under your Will after your death) often is used to provide asset management for family members who are not capable of managing assets themselves, such as children, persons suffering from disabilities, or persons who are not good at managing money. Discretionary trusts can be written to protect spendthrift beneficiaries from squandering their inheritance through wasteful spending habits. Testamentary Trusts also can be used to set aside money for designated purposes, such as for education.

Living Trusts

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

Irrevocable Living Trusts

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

Revocable Living Trusts

Most often, the term "Living Trust" refers to a funded Revocable Living Trust. The person who creates and funds the trust is called the grantor. The person who manages the trust is called the trustee. The person for whom the trust is designed to benefit is called the beneficiary. In most situations, during his or her lifetime, the person who creates the trust "wears all three hats," that of grantor, trustee, and beneficiary. The grantor of a funded Revocable Living Trust retains full control over the assets placed in the trust and retains the right to alter or terminate the trust at any time. While the grantor is serving as the Trustee, the trust typically has the grantor’s social security number. At the grantor’s death, the assets are distributed to the beneficiaries according to the terms of the trust. This is why some people refer to a Living Trust as a “Will substitute.” However, since your Living Trust controls only property transferred into the trust during your lifetime, it is important that you have a Will to control the distribution of any property not transferred to the Living Trust.

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

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

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

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

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

A revocable Living Trust is appropriate and may be the best choice if you own real estate in another state, such as a second home in New Jersey or Florida. If you own real estate located in another state at your death, it ordinarily must go through separate probate administration ("ancillary probate") in the other state. Property transferred into a revocable Living Trust will not be subject to ancillary probate in that other state at your death, which can save considerable cost and simplify the administration of your estate.

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

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

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

Before considering a revocable living trust, consult an attorney to determine whether it will be useful for your situation.

Scams involving Living Trusts are increasingly common. Promoters of such scams frequently target seniors through free seminars and mail solicitations. These promoters know that seniors are concerned about making sure their "affairs are in order" and can be susceptible to high pressure sales techniques. Living Trust scam promoters emphasize allegedly high probate fees, delays, and the supposedly damaging psychological impact of the probate process, and they suggest you can avoid all of these fees and problems by using a revocable living trust.

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

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

- Unsolicited sales visits
- Calls and visits by non-lawyers
- Suggestion that "attorneys don't want you to know this information"
- Use of pre-printed, "one-size-fits-all" forms
- Excessive prices for the trust and related forms
- Suggestion that the Living Trust will avoid death taxes
- Suggestion that the Living Trust will avoid claims by creditors or nursing homes
- Suggestion that the Living Trust is the "only document you'll ever need" and other high-pressure sales tactics

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

Transferring Property from an Estate or Trust

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

Inheritance, Estate and Gift Taxes

Over the years, senior citizens 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

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

The rate of Pennsylvania Inheritance Tax is determined by the relationship of the beneficiary to the decedent. Property passing to a charity, to a surviving spouse, or from a child under the age of 21 to a parent is taxed at a rate of **0%**. Transfers to a child (or stepchild) or grandchild (or to a parent or grandparent) are taxed at a rate of **4½%,** while property passing to a sibling is taxed at a rate of **12%.** All other transfers are taxed at a rate of **15%.**

Pennsylvania Inheritance Tax must be paid within nine (9) months of the date of death to avoid paying interest. If you pay all or part of the tax within three (3) months of death, you will receive a 5% discount on the amount paid. See Chapter 5 for more information on what to do when a loved one dies.

Federal Estate Tax

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

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

For 2024, the lifetime exclusion amount is set at $13.61 million. However, under current law, on December 31, 2025, the federal lifetime tax exclusion amount is scheduled to revert back to the 2017 exclusion amount of $5.49 million (adjusted for inflation). Under current law, the maximum estate tax rate is 40%; therefore, the

value of all assets over the exclusion amount will be subject to a 40% federal estate tax.

Federal estate tax rules allow married couples to plan to minimize federal estate tax. As stated above, in 2024 an individual is entitled gift or leave up to $13.61 million without federal transfer tax. Each of us can also leave all of our estate to a surviving spouse with no federal transfer tax. However, if we leave everything to a surviving spouse (and the combined net estate exceeds the exclusion amount), we are potentially wasting the exclusion amount available to the first spouse to die. Married couples whose estates exceed the exclusion amount are able to protect each spouse's exemption amount by establishing a Credit Shelter Bypass Trust or through "portability" of the deceased spouse's unused exclusion amount.

Portability allows for planning after the death of the first spouse if planning was not completed prior to the first spouse's death. But "portability" should only be used as a default planning technique. If you have significant wealth that is expected to exceed the current or projected exemption amounts, it is much more tax-efficient to have proactively planned your estate to minimize death taxes. Filing for "portability" after the death of the first spouse must be done on a timely basis. In 2022, the IRS issued a revenue procedure that enables the personal representative of a decedent's estate to elect portability of the decedent's unused estate and gift tax exemption for up to five (5) years after death on an IRS Form 706. Consultation with a competent estate planning attorney is crucial for taxpayers to determine whether it makes sense to file Form 706 with the IRS for portability.

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

Pennsylvania Gift and Estate Tax

Pennsylvania does not have a Gift Tax and the Pennsylvania Estate Tax applies only to estates of decedents dying before 2005, with a federally taxable estate.

Federal Gift Tax

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

The amount of gift tax is based on the total amount of lifetime gifts. Under current (2024) law, which is subject to change, no tax is owed until total lifetime gifts exceed $13.61 million (adjusted annually for inflation). However, as stated above, that amount is scheduled to decrease at the end of 2025 to the amount in effect in 2017 ($5.49 million, adjusted for inflation).

The federal gift tax applies only to gifts to any person in any year that exceed the "annual exclusion" amount. For many years, the annual exclusion amount was $10,000 per donee. In 2002, the exclusion was increased to $11,000, and it has been adjusted upwards every few years. **For 2024, the annual exclusion amount is $18,000.** Thus, a person can make annual gifts of up to $18,000 per donee without having to file a gift tax return. **For gifts in excess of $18,000 per donee, a gift tax return must be filed, but may not result in any gift tax paid.** Annual gifts in excess of $18,000 per donee simply use up a portion of the donor's lifetime exclusion amount. **No federal gift tax is owed until total lifetime gifts exceed the lifetime exclusion amount.**

For a married couple, each spouse can take advantage of the annual exclusion from gift tax reporting. Together, they can transfer up to $36,000 to each donee (for example, $36,000 to each of their children and each of their grandchildren) per year without using up any of the lifetime tax exclusion and without even having to file a gift tax return for that year.

Planning for Gifts

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

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

Planning for Incapacity

Estate planning primarily addresses the disposition of your property at your death. When you make your estate plan, you also should consider the possibility that you become incapacitated. Planning for management of your property and for personal care decisions in the event you become incapacitated is accomplished with a durable power of attorney, a topic addressed in a later chapter of this Handbook. Your estate planning attorney should talk with you about the desirability of creating a power of attorney as part of your estate plan.

Preparing to Meet with Your Attorney

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

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

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

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

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

It generally is advisable to nominate one executor and one or more alternates rather

than naming two individuals to serve as co-executors. Co-executors frequently have difficulty getting paperwork signed in a timely manner, which can delay estate administration and increase administration costs.

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

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

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

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

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

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

Where Should I Keep My Estate Planning Documents?

Keep your original Will in a secure place, such as a fire-proof box in your home. A safe deposit box is not recommended because is can be difficult to access and banks have limited hours. In Pennsylvania, a safe deposit box is "frozen" or sealed upon death of the owner except for the limited purposes of retrieving the decedent's Will and cemetery deed. However, even though the law is clear that the safe deposit box may be entered to retrieve a Will, financial institution personnel are not always familiar with the rules and can make for a time-consuming and frustrating process at a time when you are grieving. It is important to note that the safe deposit box is not frozen, however, if the co-owner of the box is the surviving spouse.

For your Power of Attorney, it is best to keep the original where it will be readily accessible and to give copies to your Agent. Under Pennsylvania law, a copy is sufficient evidence that your Agent has the authority to act on your behalf. You should provide copies of your Health Care Power of Attorney, Living Will, and HIPAA Authorization to your Agent, trusted family members, and health care providers. Many health systems now have online patient portals where you can upload your advance directives for easy access by your health care providers.

If you do not want others to know the contents of your Will or are afraid that people might tamper with or destroy your Will if they were to read it, you can leave it with your attorney or place it in a safe deposit box, subject to the caveat above. If your attorney is holding your Will, ask whether it is being held in a fireproof vault or other protected location.

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

Updating Your Will and Estate Plan

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

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

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

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

Chapter 5

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

There are many things to be done almost at once. A lawyer experienced in estate work can provide valuable help, and prompt initial consultation is recommended. Call the lawyer who prepared the Will, as he or she may have important info in the file. Many false starts and missed deadlines can be avoided. This priority list will provide guidance on getting started.

There is a statutory order of payment of claims, and nothing should be given to heirs or family before proper notices have been given and arrangements made to pay all claims and taxes.

I. Immediately:

1. Notify the Organ Bank / Hospital (If appropriate).
2. Notify next of kin; Agent under Durable Power of Attorney (since the authority under the Decedent's
3. Power of Attorney automatically ceases at death); and/or Guardian.
4. Locate vital documents: Last Will and Testament, burial instructions, address book, digital diary containing usernames and passwords, insurance policies, bank and brokerage statements, recent income tax returns, Armed Service discharge papers (Form DD-214), anything that looks important.
5. Secure safe deposit box keys, credit/debit/ATM cards from loss or misuse.
6. Secure decedent's home and vehicles.
7. Determine if any tax, mortgage, rent, or utility payments are due.

II. Make the Following Calls:

1. Executor named in Will (who can make the following calls).
2. Lawyer (even if no Will found).
3. Funeral director (even if cremation specified).
4. Anyone who has been acting as guardian, agent under Power of Attorney, Guardian, Trustee or custodian of money or property.

III. Take to Meeting with Lawyer:

1. Will.
2. Death Certificates
3. Checkbook, check register, bank statements
4. Personal directory
5. Income tax returns
6. Property deed(s) or lease(s)

7. Stocks, bonds, and brokerage statements
8. Next of kin addresses and birth dates.
9. Funeral and related bills
10. Addresses of executors, and those named in Will.

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

IV. Take to meeting with Funeral Director:

1. Burial instructions
2. Cemetery deed
3. Birth certificate
4. Armed Services discharge (DD-214)

A Funeral Director can arrange with church, cemetery, obtain death certificates, offer suggestions on funeral luncheon, death notices, obituary, etc.

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

Determine if probate of the Estate is necessary. If total value of the decedent's assets is low enough, or if all assets are held jointly or with beneficiary designations or in trust, the probate process may not be necessary. Even so, there may be other reasons to probate and obtain Letters Testamentary or Letters of Administration (no Will). Consult with an attorney to determine which option is best. Probate can only take place after the burial or cremation of the decedent and must be in the county of decedent's last residence. Whether or not there is to be probate and formal administration of the estate, certain notices must be given in accordance with statutes and rules of court. Many things need to be done after starting an estate, such as opening an estate checking account, giving notice to heirs, legatees, and next of kin, filing inheritance and income tax returns.

If probate is necessary, contact the Register of Wills office in the County where the decedent resided to learn the requirements for probate, which vary from County to County. Appointments can be made with the Office of the Register of Wills of Delaware County to probate an estate at a predetermined date and time. Making an appointment is much preferred to appearing at the Register of Wills and waiting for a clerk to be available. In Delaware County, you will need to present the following at the Register of Wills office:

- **ORIGINAL** death certificate
- **ORIGINAL** Will and codicil(s) if any
- Photo ID of the person seeking appointment as Personal Representative (Executor/trix, if there is a Will, or Administrator/trix if there is no Will)
- Blank check for probate fee
- In certain instances, Witness Affidavits, Renunciations or Death Certificates of other named Personal Representatives, or Bond.

For further Information, check the Delaware County Register of Wills website at https://www.delcopa.gov/row/wills.html or call 610-891-4400.

If you probate the Estate, a **short certificate** is the document that you can obtain and use to transfer assets. If you've filed a Petition for Settlement of a Small Estate, a certified copy of the Decree of the Orphans' Court may be used. Be aware that if you have not probated the Estate, but need to file an Inheritance Tax Return, a filing fee will be assessed when the Return is filed.

There are a number of other details, tasks, and deadlines that must be considered, such as:

The deadline for the prepayment of Pennsylvania Inheritance Tax to receive a 5% discount on the tax due is **3 months from date of death** and the deadline for the filing of the Pennsylvania inheritance Tax Return (REV-1500) is **9 months from date of death**

Obtain enough short certificates for all accounts

Obtain EIN (tax ID number) from the IRS for the Estate if necessary, and choose fiscal year

Send legal notices to heirs and legatees, and advertise the Estate

Notify banks, investment companies, retirement account administrators, financial advisors, post office, employer, insurance agents, credit card companies, utilities, Social Security Administration and/or Medicare if applicable, other payors of government benefits, payors of pensions and annuities, health care plans, unions, veterans organizations and bureaus, accountants and tax preparers

Write or call Mortgage or Reverse Mortgage Lender to obtain information on options and deadlines

If the decedent's home is to be sold, consider as soon as possible what needs to be done to ready the house for sale

Follow Pennsylvania Department of Revenue procedure for opening and inventory of safety deposit box

Inventory real and personal property and obtain any necessary appraisals of tangible assets

Send proper Notice to Pennsylvania Department of Human Services (f/k/a Department of Public Welfare) to determine if there is a Medical Assistance (Medicaid) Estate Recovery claim, if decedent was at least 55 years of age and received services.

Open Estate checking account, for deposit of funds and payment of bills

Gather all claims and bills, and pay according to statutory priority. Consult an attorney if you are concerned about the estate having more liabilities than assets.

Keep detailed records, especially of receipts and expenditures.

Consult with your lawyer about further requirements and deadlines, as applied to the particular Estate and situation.

Chapter 6

Power of Attorney (POA)

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

Pennsylvania law concerning POAs for finances and property modified several times since 2014. Most of the changes are effective for POAs signed on *or* after January 1, 2015 (POAs signed before 1/1/2015 are still valid). As under the old law, all new POA documents must carry a large NOTICE provision that WARNS the Principal of the significant breadth and scope of the powers being given to his agent. Additionally, in order for the POA to be legally binding, the Agent must sign an ACKNOWLEDGMENT. In the Acknowledgement the Agent promises to act in accordance with the reasonable expectations of the Principal to the extent actually known by the agent, otherwise in the Principal's best interest, and to act in good faith and only within the scope of authority granted to the Agent by the Principal. For example, your Agent may be granted power to sell part or all of your property, handle your investments, or have other far reaching powers. For that reason, the **SELECTION OF YOUR AGENT IS CRITICAL.**

A Power of Attorney becomes particularly valuable should the Principal later become incapacitated - whether this incapacity is short

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

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

A Power of Attorney may be effective immediately or only when a specific, future event has occurred. Such a future *or* "triggering" event might be when your doctor certifies that you are disabled either physically and/or mentally. This type of triggering mechanism is often called a "springing" clause. However, the delay and expense to certify a future or "triggering" circumstance can work against your more general desire to enable your agent to act for you. Therefore, you should carefully evaluate the advantages and disadvantages of this option.

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

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

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

More recently, people are recognizing the need for their Powers of Attorney to include the agent’s ability to access digital assets and electronic communication. These are evolving to specifically access cryptocurrency (including Bitcoin, virtual real estate and other forms) social media and cloud-based assets. Pennsylvania law was recently amended so that it must be clear and specific that the agent has the power to access digital assets and electronic communications.

Chapter 7

Durable Health Care Power of Attorney

Sometimes, an event, illness or similar circumstance might make it impossible for a patient to interact with her doctor. Perhaps, for example, she has been in an accident or has been given medicine to control her pain. She may have undergone surgery and still be feeling the

effects of her anesthesia. Under such circumstances, her ability to listen to her doctor's explanation of treatment choices and her ability to think and evaluate alternatives may be significantly impaired. Similarly, if a person is suffering from Alzheimer's or other dementia, she may not be able to effectively interact with her health care providers and/or may be unable to give informed consent to a proposed form of treatment.

Many people prudently choose to anticipate this and name an agent (sometimes called a surrogate) to act for them regarding some or ALL health care decisions. **HIPAA (Health Insurance Portability and Accountability Act) has made this increasingly important and relevant for all adults over 18 years of age.**

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

Similar to the power of attorney that enables your agent to attend to your financial and property decisions, the DHCPOA can enable your agent to make your health care decisions for you if you are too ill to make them for yourself. Your agent for health care decisions may be the same person who is your agent for your financial and property decisions or it may be someone else. This is so because the abilities and characteristics needed for each task are different; an agent for your health care decisions should be able to represent your desires without regard to the agent's own personal feelings or beliefs. However, if you name two different people for the roles (one as your healthcare agent and the other as your Power of Attorney) be specific which decision will control if there is a dispute regarding payment for your healthcare needs.

Additionally, because we are now living longer than ever before, more people recognize that the possibility is that much greater that they will have some period of incapacity - whether temporary (for an operation) or longer (with a progressive or cognitive illness like Alzheimer's disease). Some states recognize a DHCPOA specifically addressing advanced dementia. These are not currently recognized by Pennsylvania law at the time of this publication.

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

The freedom to name a person who is not your spouse as your agent of choice for a DHCPOA was affirmed by a Pennsylvania Superior Court case called Duran. In November 2006 our legislature passed and the Governor signed a (then) new law specifically enabling a DHCPOA (Act 169).

Pennsylvania's statute contains a sample combined HCPOA/Living Will form and there are many online as well. When in doubt, ask an attorney before signing any legal document.

For persons with mental health issues, Pennsylvania also has a Mental Health Power of Attorney. The law can be found in chapter 58 of the PA Probate Estates and Fiduciaries Code.

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

Chapter 8

Living Wills

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

The Pennsylvania Statutory Living Will form is composed of limited yes or no questions related to your care at the end of your life. **The form has evolved to be goal oriented as it relates to healthcare decisions at end of life instead of specific treatment decisions. Most people find this change preferable as a result of the speed of medicine and inability for a document to predict all possible situations.**

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

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

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

However, your doctor may not be the doctor who is treating you in a hospital setting. It is imperative you let your named surrogate know what your wishes are. Your surrogate should also know where you keep a copy of your healthcare documents.

By law, hospitals and nursing homes must provide patients with limited information concerning Living Wills. However, information concerning DHCPOA and Health Care Declarations is optional. Hospitals and nursing homes may not charge different fees depending upon whether or not a patient has a DHCPOA or Living Will. Again, a Pennsylvania Statutory Living Will becomes operable (or empowers your agent) ONLY when the attending physician is provided with a copy AND the attending physician determines that the patient is incompetent AND in a terminal condition OR in a state of permanent unconsciousness (end-stage condition). The attending doctor must certify this diagnosis in writing and this diagnosis must be confirmed by another physician. ONLY WHEN AND ONLY IF ALL of these steps are followed is the Pennsylvania Statutory Living Will able to give your agent authority to make end-of-life decisions for you.

POLST

Pennsylvania's version of Physicians Orders for Life Sustaining Treatment is called Pennsylvania Orders for Life Sustaining Treatment ("POLST"). This document is an expression of a patient's wishes for healthcare treatment for end-of-life care. A POLST differs from a Healthcare Directive as it includes an order signed by a doctor, certified nurse practitioner or physician assistant. It must be signed by the patient or the patient's surrogate. A POLST is intended to coordinate with the patient's current HCD. Although POSLT forms are available, it is important to know that Pennsylvania does not currently have any enabling legislation to provide uniformity and guidance on how these forms should be used.

Absence of a Living Will

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

Chapter 9

Privacy of Health Information: Health Insurance Portability and Accountability Act

While medical and related records are maintained as confidential under various federal and state laws, a federal law called the Health Insurance Portability and Accountability Act of 1996 (HIPAA) further increases the privacy of your identifiable health information which is held by health care providers, health plans, health care clearinghouses, and "business associates" providing services to those directly covered by the law and their contractors. Remember that HIPAA does not protect your health information if it is sent to third parties not covered by the law. Only share your health information with those you trust.

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

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

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

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

You can find out more information about your rights under HIPAA at: hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html.

Chapter 10

Out-of-Hospital Do Not Resuscitate Orders

Emergency medical service providers, including paramedics, emergency medical technicians, ambulance attendants, and other first responders, will act to preserve life when a

person becomes unconscious because their heart stopped beating or they have stopped breathing on their own. This would generally entail providing cardiopulmonary resuscitation (CPR). CPR can include chest compressions, use of a defibrillator to provide an electrical charge to restore heart rhythm, artificial airway insertion, and other procedures to maintain circulation and respiration.

There are times when a person is very ill and CPR is not desired or appropriate. Pennsylvania has enacted a law which allows a person (or their authorized surrogate: their health care agent or health care representative) who is terminally ill, has an end-stage medical condition, or is permanently unconscious, to have their attending physician write an order directing emergency medical service providers to not provide CPR for this person. This Out-of-Hospital Do-Not-Resuscitate Order (Out-of-Hospital DNR Order, or Order) has a specific format and is also signed by the patient or the patient's surrogate. All other care, including comfort care, would still be provided as appropriate. This Order would apply outside of a hospital setting.

When the physician writes an Out-of-Hospital DNR Order, the Order and a state-approved bracelet or necklace will be provided to the patient. To have the Out-of-Hospital DNR Order implemented, the emergency medical services provider must know that it exists, either by being given a copy of the signed Order or by seeing that the patient is wearing the necklace or bracelet, or by being instructed by the authorized emergency medical command physician to not perform CPR.

Out-of-Hospital DNR Orders can be revoked at any time and in any manner by the patient or the patient's surrogate, whoever requested the Order. The patient can revoke this Order without regard to their physical or mental condition.

If this is something that is appropriate for you or someone under your care, you should discuss this with the attending physician.

Chapter 11

Palliative Care and Hospice

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

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

Hospice utilizes palliative care but is limited to persons who are terminally ill. The main focus of hospice is on making the person comfortable and preparing the person and their family for the end of life; the focus is not on a cure. Hospice is appropriate when it is determined that treatment for the terminal illness will not be pursued and life-prolonging medications or treatments will no longer be used.

Hospice care is multi-disciplinary, including family caregivers and physicians, nurses, aides, social workers, clergy, counselors, pharmacists, physical or other therapists, and trained volunteers as appropriate to the situation. It includes maintenance medications and those which provide comfort and improve the quality of life, and necessary medical supplies and equipment. Hospice can be offered in a variety of settings, such as in a person's home, in a nursing home or other care facility, or occasionally in a hospital.

Hospice is covered by Medicare and Medicaid and most private insurers. Appropriateness must be determined and certified as required by the health plan. Hospice can be stopped at any time and restarted when the person is recertified. There are different levels of hospice care depending on what is needed.

Hospice provides care related to a terminal condition and to conditions related to the

terminal condition. The hospice provider can provide a list of items, services, and medications that are not related to the terminal condition, including the reasons for such determination. Treatment of an acute illness or injury unrelated to the terminal illness can be provided, but that may not be covered under the hospice benefit. The hospice provider should be consulted to help determine insurance coverage for treatments for health problems unrelated to the terminal illness and, once covered under hospice, before pursuing any changes in care.

Chapter 12

Guardianships

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

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

Because a ruling of "incapacity" and appointment of a guardian curtails many important legal rights, high standards must be met. A guardian can be appointed only if the court finds by clear and convincing evidence that the "alleged incapacitated person" is impaired to such an extent that he is partially or totally unable to meet essential requirements for his physical health and safety or to manage his financial resources, and, due to a lack of adequate support, needs a guardian. "Incapacity" for guardianship is an impairment of decision-making ability; a person may be physically limited but not be incapacitated because they are able to make decisions regarding their care. Just because a person has periods of confusion, this does not necessarily mean that they will be found to be incapacitated under the law. The most common way to establish incapacity is to have a healthcare professional, who is familiar with the alleged incapacitated person, evaluate him or her and complete an Expert Report in which the professional renders an opinion as to capacity. The Expert Report was created by the Commonwealth of Pennsylvania and is the only permissible written proof of capacity without testimony. The Expert Report form is available on the Delaware County Orphans' Court website.

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

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

Hearing Before the Court

After the petition is filed, a hearing is scheduled before the Orphans' Court of the county in which the alleged incapacitated person resides and the person is required to attend unless excused. The person may only be excused if a health care professional concludes that it would be harmful for him or her to attend the hearing. "Harmful" in

this context does not mean confusing or upsetting but, rather, means actual harm to the person's mental or physical condition.

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

When testimony by a person qualified to perform an evaluation of capacity, such as a psychiatrist, establishes by clear and convincing evidence that the person is incapacitated, and it is shown that the person needs a guardian due to a lack of an adequate support system, a guardian will be appointed.

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

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

Powers and Duties

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

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

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

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

A guardian's authority ceases upon the death of the incapacitated person. A guardian's final duty

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

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

Chapter 13

Social Security

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

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

Contacting Social Security

By Toll-Free Telephone:
800-772-1213 (includes automated services 24 hours per day as well as agents 8 am – 7:00 pm M–F)

TTY for the Hearing Impaired:
800-325-0778

In Person – Delaware County Offices (Office Hours 9 am – 4pm M-F):
807 Crosby Street
Chester, PA 19013
Telephone: 866-398-1456
TTY for the Hearing Impaired: 1-800-325-0778

8645 West Chester Pike
Upper Darby, PA 19082
Telephone: 866-964-0780
TTY for the Hearing Impaired:
800-325-0778

Online services at www.ssa.gov include:

- Obtaining a copy of your earnings record and an estimate of the benefits (including retirement benefits, disability benefits and survivors benefits) you and your family will receive when eligible
- Filing an application for retirement and/or Social Security disability benefits
- Changing your address on file with Social Security
- Setting up direct deposit for your Social Security benefits
- Replacing a Social Security or Medicare card
- downloading copies of booklets and factsheets about benefits

NOTE: To access these services, you will first need to create an online account at www.ssa.gov.

Retirement Benefits: Full Retirement Age

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

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

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

- 62 years old is about 30 percent;
- 63 years old is about 25 percent;
- 64 years old is about 20 percent;
- 65 years old is about 13.3 percent; and
- 66 is about 6.7 percent.

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

ALERT: If you decide to delay your benefits beyond age 65, you should still apply for Medicare benefits within three months of your 65th birthday to avoid increased costs for Part B (medical) and Part D (prescription drugs). However, if you are actively working and covered medically by your employer (or your spouse is working and covering you), then you can delay filing for Part B until you (or your spouse) stops working.

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

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

Effect of Earnings on Retirement Benefits

Retirees that collect Social Security retirement benefits before their Full Retirement Age (see chart above), and have earnings from work or self-employment will have $1.00 in retirement benefits deducted for each $2.00 of earnings above the exempt amount. The exempt amount is $22,320 in 2024.

In the year you reach your full retirement age, $1.00 in retirement benefits will be deducted for each $3.00 you earn above the exempt amount ($59,520 in 2024). After you reach your full retirement age, you can collect your Social Security benefits with no reduction based on earnings.

Retirement Benefits for Spouse

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

If you wish to file on your spouse's record but you also have worked at least 10 years yourself, you must first file on your own record. Once SSA determines your retirement amount, it will determine if you can receive any additional benefits as a spouse.

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

Retirement Benefits for a Divorced Spouse

Divorce does not prevent the divorced spouse from collecting benefits on the contributing spouse's record ("derivative benefits") IF the marriage was at least ten years long and the divorced spouse is at least 62 years old and has not remarried. The divorced spouse can receive retirement benefits based on the contributing spouse's earnings record as long as the contributing spouse is eligible for retirement benefits, e.g., is at least 62 years of age and fully insured, even if he/she is not actually collecting benefits. However, if the contributing spouse is not collecting benefits, the divorced spouse must wait two years from the date of the divorce to begin collecting benefits.
The contributing spouse's benefits are not affected by the divorced spouse's election to collect benefits in this manner rather than on his or her own wage-earning record.
If the divorced spouse remarries, he/she will not be eligible for derivative benefits from the contributing spouse. However, if such remarriage terminates, the divorced spouse becomes eligible for derivative benefits once again from the former contributing spouse. If a divorced spouse has been married more than once and each time for at least ten years, derivative benefits can come from whichever former spouse's contributions provide the higher benefits.

Retirement Benefits for Divorced Widow(er)s

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

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

The surviving divorced widow(er) receives a benefit percentage that is determined by their age when they start the benefits. So, a surviving spouse's percentage ranges from 71.5% at age 60, to as much as 100% if the widow/er is filing at their full age.

Death Benefits for Surviving Child

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

SSI Benefits for the Aged

Social Security administers a program known as Supplemental Security Income (SSI) for older adults who have little or no income or assets. SSI is available to someone who is 65 or older (or who, as described below, is disabled) and who, if unmarried, has no more than $2,000 in resources ($3,000 for a married couple). SSI may be used to supplement other income, e.g.,

from Social Security Disability, retirement benefits or a pension if the income and asset guidelines are met.

In general terms, "resources" refers to all assets – although there are certain exclusions, including a home and one car. SSI pays up to $914 per month in 2023 for an individual or $1,371 for an individual with an eligible spouse, with the benefit amount being reduced by income on a dollar-for-dollar basis (although there are various exclusions).

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

Disability Benefits – SSD and SSI

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

Each program requires the same medical proof of disability, e.g., a medically determinable physical or mental impairment which has lasted or is expected to last for at least 12 months and that makes it impossible for the applicant to keep a job. (Using Social Security's term of art, the applicant cannot be capable of engaging in "substantial gainful activity"). SSD is not normally payable for a temporary condition (i.e., less than 12 months) or for a partial disability; however, you can make up to $1,550 per month in 2024 and still be considered unable to engage in "substantial gainful activity."

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

Although SSD has no income or assets test, the applicant must have paid Federal Insurance Contributions Act (FICA) taxes for a certain number of years and earned "credits" based on employment. Generally speaking, the applicant must have worked on the books 5 out of the past 10 years; someone who works under the table and who does not report that income on a federal tax return has not paid FICA taxes during period.

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

SSD pays benefits to the wage-earner and qualifying family members. It also provides a special program to help adults who are unmarried, have never engaged in substantial gainful activity and who become disabled before they attain age 22. If such a disabled adult's parents are deceased (having been fully insured for retirement benefits at the time of death), or are eligible to collect retirement benefits, the disabled adult child can receive 50% or 75% of his or her parents' benefits.

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

Sources for Finding Social Security Attorneys

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

Applying for Benefits; Denials; SSA Records

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

Social Security will give you a deadline to finish certain tasks (e.g., file a written application after

you call them; file a written appeal if you are dissatisfied with their decision, etc.) and you must comply with their timelines or you will lose your right to potential benefits. Typically, their deadlines are within 60 days; however, some deadlines might be shorter so you must check this carefully.

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

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

Chapter 14

Medicare

Instituted in 1965, Medicare is a program administered by the federal government to assist older Americans, along with others who are disabled, with payment of medical costs. The traditional Medicare program has three parts. Part A consists of coverage for most of the costs involved in a hospital stay; Part B is medical insurance which pays a portion of the cost for doctor and outpatient medical care. In Pennsylvania, Part B is administered by Highmark Medicare Services in Camp Hill. Part D is a prescription drug plan. The Medicare website, www.medicare.gov is a helpful resource to understand Medicare benefits.

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

Part A – Hospital Insurance

Part A has two types of eligibility. Most people aged sixty-five (65) or older are covered, for free, based on their work records or on their spouses' work records. People over age sixty-five (65) but who are not eligible for free Part A coverage based on their work record can enroll and pay a monthly premium. This premium amount changes from year to year. For 2024, the maximum Part A premium is $545 per month.

Part B – Medical Insurance

Anyone who is age sixty-five (65) or older and a citizen of the United States or a resident of the United States who has been here lawfully for five (5) consecutive years is eligible to enroll in Medicare Part B medical insurance. This is true whether or not the individual is eligible for Part A hospital insurance. Everyone enrolled must pay a monthly premium. The amount of premium depends on your income. The standard Part B premium for 2024 is $174.70 per month and depending on your income can be as much as $594.00 per month. Eligibility and enrollment are handled by the Social Security Administration Chester Office, 807 Crosby Street, Chester, PA 19013 at 800-772-1213 or the Upper Darby Office, 8645 West Chester Pike, Upper Darby, PA 19082 at 866-964-0780. The website is www.SocialSecurity.gov.

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

Cost of Treatment

Part A of Medicare covers most of the costs incurred directly from a hospital as inpatient care. In addition, some of the costs of inpatient treatment in a skilled nursing facility may also be covered. Medicare Part A also covers hospice care (including drugs; medical, nursing and social services; certain durable medical equipment; and some other services such as spiritual and grief counseling) for people with a terminal illness. However, doctors' bills are not covered under Part A as they fall under Part B. To be eligible for Part A hospital insurance coverage, the care and treatment must be medically reasonable and necessary. This means that if the treatment could safely be given in an outpatient setting at the doctor's office or even at the patient's home, Part A will not provide coverage. It also rules out elective or cosmetic surgery. During each benefit period, the individual must pay the hospital insurance deductible before Medicare will pay anything toward the incurred bill. In 2024, the deductible is $1,632 To be covered by Medicare Part A, a stay in a skilled nursing facility must be preceded by a stay of at least three (3) days in a hospital and the patient's doctor must verify that the individual requires daily skilled nursing care. Medicare will cover up to one hundred (100) days of skilled care in a skilled nursing facility during any one benefit period and the first twenty (20) of these days is covered 100%. For the balance of the days, the patient is responsible for the daily co-payment, which in 2024 is $204 per day. Once a person has been in a skilled nursing facility for one hundred (100) days in a benefit period, there will be no further coverage from Medicare Part A and the patient will be totally responsible thereafter.

Part B medical insurance requires that the services provided by the doctors, clinics and laboratories are medically necessary. With the passage of health care reform, traditional Medicare now provides many more preventive medical procedures. For Medicare Part B, there is an annual deductible of $240 per year (2024). Medicare Part B then pays eighty percent (80%) of the Medicare approved amount and the individual is responsible for twenty percent (20%) which is usually covered by his or her supplemental health insurance.

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

Appeals in Denials of Benefits

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

As of July 1, 2007, all Medicare participating hospitals must provide Medicare patients with a notice of discharge and appeal rights within two (2) days of admission. If a beneficiary receives notice of discharge, he or she may make a request for review with Livanta, the contracted quality improvement organization, at 888-396-4646 or visit https://www.livantaqio.com/en/states/pennsylvania. Filing a timely request for review should stay the discharge, pending review. You can also call the Medicare Hotline at 800-Medicare (800-633-4227) or TTY/TDD at 877-486-2048 or the website at www.medicare.gov.

As a general rule, no Medicare coverage is available outside the USA with one exception: a citizen of the USA would be covered in Canada if he/she were en route to Alaska. Questions concerning Medicare Part B should be addressed to Highmark Medicare Services, Part B Claims,

P.O. Box 890418 Camp Hill, PA 17089-0418; telephone, or contact the Delaware County PA MEDI program by calling 484-494-3769.

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

Program Changes

Medicare has been undergoing substantial change. One way to keep current is to refer to the Medicare handbook, *Medicare and You*, which is periodically mailed to every person covered under the Pennsylvania program and is available at Medicare & You (2024), https://www.medicare.gov/Pubs/pdf/10050-Medicare-and-You.pdf, call 800-633-4227, or go to the website at www.medicare.gov to get help with your Medicare questions. You may also request a Medicare handbook on audiotape, in large type or in Braille.

Supplemental Health Insurance for Traditional Medicare

Even after Medicare pays its portion of an individual's medical bills, the remaining balance can be staggering. Therefore, it is recommended that people purchase some type of private insurance to pay all or part of that balance. Because these Medicare Supplemental insurance policies are designed to fill the "gaps" in Medicare payments, they are commonly referred to as "Medigap" plans. As of 2024, the standardized policies are: Plan A, Plan B, Plan D, Plan F, Plan G, Plan K, Plan L, Plan M, and Plan N. As of 2010, Plans E, H, I and J are no longer sold. As of January 1, 2020, Plans C and F are no longer sold, but, if you already have one of these plans, you can keep it.

Plan A offers the most basic coverage and all insurance companies selling Medigap policies are required to make Plan A available. All the Medigap Plans are regulated by the federal government, so that they offer the same benefits, BUT they are not all at the same price for the same plan. It pays to shop for the best price. (Example: Plan B with one company offers the same basic benefits as Plan B in another company, but the price can vary). For information on your Medigap plan options or contact the Delaware County PA MEDI program by calling 484-494-3769.

Caution: Be very careful to coordinate your Medigap Insurance or any employer insurance with the drug plan you choose. For more on Medicare Prescription Drug plans see Chapter 15.

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

Medicare Advantage Plans

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

- HMOs are managed care plans that require you to go to doctors and hospitals in the plan's network, except in a medical emergency.

- PPOs are managed care plans that allow you to see specialists without a referral. You pay more if you go to a doctor or hospital outside the plan's network, except in a medical emergency.

- PFFSs plans are private fee-for-service plans that allow you to go to any doctor or hospital that accepts their terms. Not all providers agree to them; they can reject or accept a plan on a visit-to-visit basis. In an emergency, the plans must cover treatment by any doctor or hospital.

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

Chapter 15

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

The Medicare Prescription Drug Benefit – Medicare Part D

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

Keep in mind the following points:

- The program is voluntary although there is a financial penalty for those who do not sign up during their initial enrollment period.
- To obtain the coverage, in 2024 you will pay a monthly premium of approximately $55.50 or more depending on the coverage you choose. However, it will be waived in instances of those with limited income and limited resources. (These amounts change yearly.)
- Be careful when you decide to enroll because you normally can only switch plans one time per year.

The Medicare D standard plans allow for maximum deduction of $505 in 2023 and $545 in 2024. Most Medicare prescription drug plans offer a coverage gap after you and your Plan have paid a set amount for medications in that year. You will pay a percentage of the cost of medications while in this gap and that percentage is set annually by Medicare.

In 2023 the initial coverage limit before you reach the coverage gap is $4,660, including deductibles ($5,030 in 2024). Once in this gap you will pay 25% for both generic and brand name prescription drugs. Once you reach an out-of-pocket threshold, you are eligible for catastrophic coverage. The out-of-pocket threshold for 2023 is $7,400, which includes all the money you paid for prescriptions throughout the year, including the coverage gap. Medicare will cover at least 95% of the cost of your medications for the remainder of the year once catastrophic coverage begins.

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

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

Items that count toward the coverage gap:

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

Note: Insulin charges in 2024 - Part D Plan cannot charge greater than $35 for a one-month supply of each Part D covered insulin, and you do not have to pay a deductible. If you get a three-month supply, you cannot be charged greater than $105 for the three-month supply.

Items that do not count toward the coverage gap:

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

Drug plans may also charge you a portion of the cost of your medications. These charges are known as co-insurance or co-payments. Costs may vary based on whether your drugs are brand name or generic, and are also set depending on the medication tier.

Co-insurance is a percentage of the total cost of the prescription drug. These percentages may be higher for drugs in higher tiers or for brand name vs. generic medications. These amounts are set by the provider and should be considered when determining your Medicare D costs for 2023. They are not regulated by Medicare.

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

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

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

- Another MA-PD plan;
- An MA-Only plan; and
- Original Medicare, with or without a PDP.

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

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

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

Enrollment

Anyone with Medicare is eligible to enroll in a Part D plan. To enroll in a PDP, the individual must have Part A OR Part B. To enroll in an MA-PD, the consumer must have Part A and Part B. Sign up or changes in plans are made in the open enrollment period each year between **OCTOBER 15TH AND DECEMBER 7TH**.

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

First, you may go onto the Medicare website at www.medicare.gov or call Medicare at (800) 633-4227. Second, you may call the Delaware County PA MEDI program at Senior Community Services at (484) 494-3769. The PA MEDI program was formerly called the APPRISE program.

Creditable Coverage

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

Late Enrollment Penalties

If you choose not to enroll in Medicare Part D during your initial enrollment period, there can be a penalty. The Medicare Part D premium will increase at least one percent (1%) per month of the average national premium until the month that you do enroll. You do not pay the penalty if you are currently enrolled in a drug program through a private insurer such as through a retirement plan that has creditable or equivalent coverage nor do you pay a penalty if you are under Medicaid or PACE/PACENET.

Extra Help for People with Limited Incomes

The Social Security Administration offers extra financial help in paying premiums and co-pays for people with limited incomes and assets. You may qualify for this Extra Help if your income is below $1,641/month (or $2,219/month if you are married and living with your spouse—and more if you have dependent children or grandchildren living with you), and if your assets are below $16,060 if single (or $33,240 if you are married). These include the $1,500 per person disregard given to applicants who plan to use their assets for funeral and burial expenses. Your assets include things like bank accounts, stocks, and bonds. They do not include the house you live in, your car and other personal possessions such as your furniture or jewelry and life insurance.

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

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

By Internet—you may apply online through the Social Security Administration's https://www.ssa.gov/medicare/part-d-extra-help.

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

Send the application to:
Social Security Administration
Wilkes-Barre Data Operation Center
P.O. Box 1020
Wilkes-Barre, PA 18767-9910

By Phone—Call the Social Security Administration at 1-800-772-1213 (TTY: 1-800-325-0778).

In Person—you may apply by going to the local Social Security office.

Additional Sources of Information

- The Medicare and You Annual Booklet www.medicare.gov/Pubs/pdf/10050-medicare-and-you.pdf
- Medicare web site at www.medicare.gov
- Medicare Help Line 1-800-Medicare or 1-800-633-4227

- AARP Medicare Part D Guide. www.aarp.org/health/medicare-insurance/medicare_partD_guide/
- The Center for Medicare Advocacy Part D/Prescription Drug Benefits. www.medicareadvocacy.org/medicare-info/medicare-part-d/
- Delaware County PA MEDI Program at (484) 494-3769, or PA MEDI at 1-800-783-7067, www.aging.pa.gov/aging-services/medicare-counseling/Pages/default.aspx
- PA Department of Aging web site at www.aging.pa.gov.
- PA Long Term Care Hotline at 1-866-286-3636 or web site at www.longtermcare.state.pa.us.
- Social Security Administration web site at http://www.ssa.gov

PACE and PACENET: (Pharmaceutical Assistance Contract for the Elderly)

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

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

The PACE and PACENET programs are based on income only and not on assets. PACENET's income limits are slightly higher than PACE. A single person's total income can be at or below $33,500, not including the cost of the Part B premium.

A couple's combined total income can be at or below $41,500, not including the cost of the Part B premium. PACE/ PACENET eligibility is subject to annual renewal on review of income. Eligibility could be terminated if you move out of state or are found guilty of fraud or abuse by the Department of Aging or if you are covered by another plan which pays the full costs of your prescriptions.

PACE PLUS is the term used when PACE and PACENET cardholders are also enrolled in Medicare Part D. PACENET cardholders will pay the equivalent of the Medicare Part D plan premium, $41.03 in 2023, to either the pharmacy or directly to the non-partner Part D plan, plus any additional premium amount above the benchmark, if applicable. Once the monthly premium has been paid, they will pay no more than the PACENET co-payments of $8 for each generic prescription and $15 for each brand name.

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

Note: Income for both PACE and PACENET is based on prior year; therefore, if you apply in 2024, eligibility is based on 2024 income. Your income does not include the cost of your Medicare Part B premium, which is $164.90 for most covered individuals in 2023. Applications are available from your local area Agency for the Aging, PA MEDI, senior citizen center or your local legislator's office. Or you can apply online through the website at https://pacecares.magellanhealth.com. Your completed application must be accompanied by proof of age and residency.

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

If you have other questions about PACE or PACENET or want to enroll, visit https://pacecares.magellanhealth.com/ or call toll-free 800-225-7223. In Delaware County you can contact the PA MEDI Program at (484) 494-3769.

Veterans Benefits

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

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

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

Pharmaceutical Company Programs

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

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

The Clearinghouse

https://pacecares.magellanhealth.com/The-Clearinghouse.html is a program sponsored by PACE and assists Pennsylvania residents to find programs to assist with medication and medical expenses, among other resources. The Clearinghouse can be contacted at (800) 955-0989 or via email at TheClearinghouse@magellahealth.com

Another website is www.needymeds.org or (800) 503-6897. This site allows you to print the application. Some pharmacies have discount plans or in store programs for discounts. Medications purchased from drug discount programs do not count towards the out-of-pocket costs for the consumer.

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

Ways to Hold Down Drug Costs

Here are some additional tips:

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

Chapter 16
Medicaid

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

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

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

Eligibility for Nursing Home Benefits

Medicaid benefits are available under the following eligibility standards:

General Eligibility

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

Medical Eligibility

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

Financial Eligibility: There are two components to consider – Income and Assets.

Assets

As a general rule someone is eligible for Medicaid in a nursing home if the assets (generally cash, stocks, bonds and real estate) of the nursing home resident are below $2,400; however, there are a number of exemptions or excluded assets. For someone whose income is under $2,829 per month in 2024, there is a disregard of $6,000 of assets so the nursing home applicant may have up to $8,000 in assets.

Asset Exemptions (whether a single applicant or married applicant)

Assets which are not counted for purposes of the above calculation and which may be protected include, but are not limited to: the family residence (however, special rules apply as to possible estate recovery and for 2024 there is a limitation on home equity of no more than $713,000), one motor vehicle, property used in a trade or business, term insurance, life insurance with a face value of a maximum of $1,500, an irrevocable burial reserve, household goods and personal effects, and a community spouse's (spouse at home) qualified retirement account or IRA.

Income for a Single Applicant

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

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

Special Rules for Married Couples' Assets

For married couples, the community spouse can keep $30,828 in 2024 as a minimum or one-half of the combined countable assets of both

spouses up to a maximum amount, which in 2024 is $154,140. This figure is known as the Community Spousal Resource Allowance (CSRA) or the "spousal share."

Available assets consist of assets owned individually by the applicant or his/her spouse, assets titled jointly between spouses, and assets titled jointly with a spouse and any third party (assuming the third party did not contribute the funds). However, as stated above, the community spouse's IRA or pension type savings is completely exempt. In order to determine the CSRA, the value of assets is calculated based on completion of a Resource Assessment Form which lists the amounts as of the date of the admission of the applicant to the nursing home.

Income for a Married Applicant

For husband and wife, the income of the spouse who remains at home is not counted. In 2024, if the community spouse's income is below the range of $2,465 to $3,853.50, then it may be possible for the community spouse to keep some of the institutionalized spouse's income. Also, if the community spouse has extraordinary needs, such as pharmacy bills or assisted living costs then it is possible to receive more than the limit. There is also a possibility of increasing the amount of income allocated to the community spouse based on shelter costs.

Ineligibility (whether single or married)

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

Under the prior gifting rules for those gifts made before February 8, 2006, (the date of the enactment of the DRA), a gift made the applicant temporarily ineligible for Medicaid benefits even if all of the other eligibility criteria had been satisfied. Under the prior rules, a person who made a gift transfer would be ineligible from the first day of the month in which the gift was made, and the penalty having begun in that month, would continue for the number of months that the gifted funds could have been used to fund his/her care. The actual length of time that a person was ineligible varied on the size of the gift, but the starting point for the penalty period began during the month that a gift was made. Also under these prior rules, an individual would have to supply financial information for a "look-back" period of thirty-six (36) months prior to the Medicaid application date, but that actual period of ineligibility could be shorter or longer depending on the size of the gift. Please note, even under the prior rules, certain transfers into and out of certain trusts were subject to a sixty (60) month look-back period.

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

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

Only after an individual has depleted his/her assets, become medically eligible and submitted an application which is denied solely due to transfers, will the transfer penalties begin to run. The length of the penalties continues to be measured by the size of the total amount gifted, but is now determined by the number of days (and no longer the number of months) of ineligibility. Transfer penalty rules may create

hardship cases (where a denial will deprive an individual of medical care and endanger his/her health or life). The Department of Human Services (DHS) will consider whether to impose a penalty for a transfer where it would cause an undue hardship. Requesting relief requires a timely filed appeal. The advice of an experienced elder law attorney is often required to resolve many of the difficult issues which arise from the extended look-back period of 60 months, and the delayed commencement of the transfer penalty. Elder law attorneys can help you understand these complex rules

Medical Assistance Estate Recovery

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

There are also provisions for a person or family to request waiver of the recovery due to hardship or to request postponement of the recovery. For additional information, contact visit the Estate Recovery Program's website, https://www.dhs.pa.gov/Services/Other-Services/Pages/Estate-Recovery.aspx

You may also email the Department of Human Services at RA-PWESTATERECOVERY@pa.gov, call 800-528-3708, contact an experienced elder law attorney, or Legal Aid of Southeastern Pennsylvania – Delaware County Division at 610-422-7053.

Chapter 17

2024 Important Elder Law Numbers

MEDICAID (MEDICAL ASSISTANCE):

Minimum community spouse resource allowance (CSRA):	*$30,828 (1/2024)*
Maximum CSRA:	*$154,140 (1/2024)*
Minimum MMNA:	*$2,465/month (7/2023)*
Shelter Allowance:	*$740/month (7/2023)*
Maximum MMNA:	*$3,853.50/month (1/2024)*
Income cap for Waiver (MA for Home Services)	*$2,829/month (gross) (1/2024)*
Average Monthly Cost of Care in PA	*$11,547.69/month (1/2024)*
Daily Penalty Divisor	*$379.65/day (1/2024)*
Monthly Personal Needs Allowance	*$45/month*
Maximum Home Equity Limits	*$713,000 (1/2024)*
Monthly Utility Standard	*$750 (10/2023)*

MEDICARE: PART A & PART B & PART D:

Part A: (Per each benefit period)

Hospital Deductible	*$1,600*
Hospital Co-Pay (days 1-60)	*$0/day*
Hospital Co-Pay (days 61-90)	*$400/day*
Hospital Co-Pay Lifetime Reserve Days	*$800/day*
SNF Co-Pay (day 1-20)	*$0/day*
SNF Co-Pay (day 21-100)	*$200/day*

Part B:

Part B Standard Premium	*174.70/month**
Part B deductible	*$240/year*

**$174.70 is the new standard monthly premium. Note: Part B Premiums may also be higher for those whose income exceeds $103,000/$206,000 (single/married) per year (1/2024). For additional premium information, see* www.Medicare.gov .

Part D:

Beneficiaries who do not qualify for any level of subsidy will pay the following for a 2024 standard Part D Plan in addition to the plan's premium:

* An annual deductible of $545
* During the initial coverage period, a 25% co-pay for each prescription until the consumer's total drug costs reach $5,040
* During the coverage gap (also referred to as the "doughnut hole"), a percentage of the costs of drugs 25% of the cost of brand name drugs and 25% for generic drugs plus a small dispensing fee) until the consumer's total out-of-pocket expenses reach $8,000.
* During the catastrophic coverage period, a co-pay of $4.50 for generics and $111.20 for name brand drugs, or a 5% co-pay, whichever is greater
* Not all of the costs consumers pay during the doughnut hole count toward out-of-pocket expenses.

PACE/PACENET ELIGIBILTY NUMBERS (2024):

- PACE Single–income up to $14,500/year
  PACE Married – income up to $17,700/year
- PACENET Single–income up to $33,500/year
  PACENET Married–income up to $41,500/year

VA: AID & ATTENDANCE (2024):

• $2,300/month for a Single Veteran	$27,609/yr.
• $2,727/month for a Veteran and Spouse	$32,729/yr.
• $1,478/month for a Surviving Spouse (no dependents)	$17,743/yr.
• $3,649/month for a Vet married to a Vet (both A & A)	$43,791/yr.

Note: effective 10/18/2018, the VA established new eligibility rules including a 3-year look-back period and potential transfer penalties. In addition, effective 12/1/2023 to 11/30/2024, the "net worth bright-line limit" is $155,356.

ALERT: The important Elder Law Numbers change annually and are effective as of the dates shown. If you are using a physical copy of this book, please visit
https://www.delcosa.org/Data/Sites/1/media/docs/elder_law_handbook.pdf
for the most up to date figures.

Chapter 18

Low-Cost Legal Services for Seniors

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

COSA (Delaware County Office of Services for the Aging)

COSA can assist with referrals to low-cost legal clinics or agencies.
Phone: 610-490-1300 or 1-800-416-4504
Fax: 610-490-1500
Web: www.delcosa.org

SeniorLAW Center

SeniorLAW Center provides a wide range of services in our mission to protect the legal rights and interests of the elderly.
Phone: 610-910-0215 (Delaware County Office) or 1-877-727-7529 (statewide number)
Fax: 215-988-1243
Web: https://seniorlawcenter.org/

Legal Aid of Southeast Pennsylvania (LASP)

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

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

Advice and Referral Helpline: 877-429-5994 – Monday through Friday 9am to 1pm
Chester City Office number: 610-874-8421
Media Office number: 610-422-7053 (Domestic violence and Protection from Abuse matters)
Web: www.lasp.org

PA Health Law Project

PHLP is a 501(c)(3) non-profit organization providing free legal services to people having trouble getting or keeping health coverage.
Phone: 1-800-274-3258
Email: staff@PHLP.org
Web: www.phlp.org/en/

Delaware County Bar Association

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

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

Phone: 610-566-6625
Web: www.delcobar.org/public/lawyer-referral/

Chapter 19

Public Benefits for Non-Citizens

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

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

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

Chapter 20

Food Stamps (SNAP)

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

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

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

701 Crosby Street Chester, PA 19013 (610) 447-5500	845 Main Street Darby, PA 19023 (610) 461-3800

Chapter 21

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

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

"65/20" Exception

Key Points:

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

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

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

"50/20" Exception

Key Points:

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

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

"55/15" Exception

Key Point:

- English Exam: Exempt

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

Medical Disability Exception

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

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

Chapter 22
Veterans' Benefits & Contact Directory

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

General Eligibility

Eligibility for most VA benefits is based upon discharge from active military service under conditions other than dishonorable. Less than honorable discharges (including other than honorable, bad conduct, and dishonorable discharges) may bar VA benefits. There are certain statutory and regulatory bars to benefits, which include discharges as a result of: sentence of general court martial; deserver or AWOL for at least 180 days (but there are compelling circumstances); conscientious objector; undesirable discharge to escape trial by general court-martial; mutiny/spying; offense involving moral turpitude; willful and persistent misconduct. If a veteran applies for benefits with

a less than honorable discharge, VA is obligated to conduct a character of discharge determination to ascertain whether the veteran's service was indeed dishonorable.

Active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, or as a commissioned officer of the Public Health Service, Environmental Science Services Administration or National Oceanic and Atmospheric Administration, or its predecessor, the Coast and Geodetic Survey. Members of the Reserve or National Guard, if called to active duty or if injured as a result of certain training time, may be eligible for the same VA benefits as any other veteran. Certain VA benefits also require service during wartime.

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

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

Important Note for Veterans With Less Than Honorable Discharges

If a veteran with a less than honorable discharge wishes to apply for benefits and meets one of the statutory or regulatory bars to benefits (some are listed above), they may have to apply for a discharge upgrade to the branch of service from which they were discharged. If the veteran was discharged in the past 15 years, they can request a change to the character of discharge or narrative reason for separation ONLY to their branch's Discharge Review Board. If the veteran was discharged more than 15 years ago, they can request a correction of their military/naval review through their branch's Board of Correction for Military or Naval Records. Each of these applications require a showing that the discharge should be upgraded based on equity (fairness) and propriety (legality) or error, injustice, or clemency. If the circumstances of discharge were the result of PTSD or another mental health condition, TBI, or sexual assault/harassment, the claimant may be eligible for "liberal" consideration under the Hagel and/or Kurta Memos and related laws.

- For a **BCMR** or **BCNR** application (DD Form 149), visit http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0149.pdf
- For a DRB application (DD Form 293), visit http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf

For more information, you can visit the individual Board websites:

- Air Force/Space Force
  BCMR: http://www.afpc.af.mil/board-for-correction-of-military-records
  DRB: http://www.afpc.af.mil/board-for-correction-of-military-records
- Army
  BCMR: http://arba.army.pentagon.mil/
  DRB: http://arba.army.pentagon.mil
- Navy/Marine Corps
  BCNR: http://www.secnav.navy.mil/mra/bcnr/Pages/home.aspx
  DRB: http://www.secnav.navy.mil/mra/CORB/Pages/NDRB/default.aspx

Veterans' Health Care Benefits

VA operates the nation's largest integrated health care system with more than 1,200 sites of care, including hospitals, community clinics, nursing homes, domiciliaries, readjustment counseling

centers, and various other facilities. For additional information on VA health care, call 1-877-222-8387 or visit www.va.gov/health/.

Enrollment

For most veterans, entry into the VA health care system begins by applying for enrollment. Claimants are required to complete VA Form 10-10EZ (Application for Health Benefits) which may be obtained from any VA health care facility or regional benefits office, via the Internet at https://www.va.gov/vaforms/medical/pdf/VA_Form_10-10EZ.pdf or by calling 1-877-222-8387. The VA also offers an online tool (https://www.va.gov/health-care/apply/application/introduction) that can be used instead of filling out and mailing in the paper form. Once enrolled, veterans can receive health care at VA health care facilities anywhere in the country.

It is important to note that there are certain benefits and programs available to veterans who may not otherwise be eligible for benefits, such as those experiencing or at risk of experiencing homelessness, those who are dealing with a mental health condition such as PTSD, or those who are survivors of Military Sexual Trauma (MST).

Financial Assessment

Most veterans not receiving VA disability compensation or pension payments must provide information on their gross annual household income and net worth to determine whether they are below the annually adjusted financial thresholds. The financial assessment includes all household income and net worth, including Social Security, retirement pay, unemployment insurance, interest and dividends, workers' compensation, black lung benefits and any other income. Also considered are assets such as the market value of property that is not the primary residence, stocks, bonds, notes, individual retirement accounts, bank deposits, savings accounts and cash.

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

VA Medical Programs

Obtaining Prosthetic and Sensory Aids

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

Home Improvements and Structural Alterations for Disability Access

VA provides up to $6,800 for service-connected veterans and up to $2,000 for non service-connected veterans to make home improvements necessary for the continuation of treatment or for disability access to the home and essential lavatory and sanitary facilities. For application information, contact the prosthetic representative at the nearest VA health care facility.

Services for Blind Veterans

Blind veterans may be eligible for services at a VA medical center or for admission to a VA blind rehabilitation center. In addition, blind veterans enrolled in the VA health care system may receive: (1) A total health and benefits review; (2) Adjustment to blindness training; (3) Home improvements and structural alterations; (4) Specially adapted housing and adaptations;

(5) Automobile grant; (6) Low-vision aids and training in their use; (7) Electronic and mechanical aids for the blind, including adaptive computers and computer-assisted devices such as reading machines and electronic travel aids; (8) Guide dogs, including cost of training the veteran to use the dog; and (9) Talking books, tapes and Braille literature. For more information, visit https://www.va.gov/health-care/about-va-health-benefits/vision-care/blind-low-vision-rehab-services/.

Domiciliary Care Provides Rehabilitative and Long-Term Care

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

Outpatient Pharmacy Services

VA provides free outpatient pharmacy services to the following veterans: Veterans with a service-connected disability of 50 percent or more; Veterans receiving medication for service-connected conditions; Veterans whose annual income does not exceed the maximum annual rate of the VA pension; Certain veterans receiving medication for treatment of cancer of the head or neck; Veterans receiving medication for a VA approved research project; and Former POWs.

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

Nursing Home Care

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

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

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

meet the nursing home needs of veterans who require long-term nursing home care in their own community, close to their families.

Long-Term Care Services

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

Emergency Medical Care in Non-VA Facilities

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

Disability Compensation (Veterans with Service-Connected Disability)

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

VA Pension

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

As of October 18, 2018, the pension rules changed to change the eligibility threshold for benefits and to include a lookback period for uncompensated transfers. A claimant must now have a net worth that includes all assets plus annual gross income (minus unreimbursed, recurring medical expenses). Certain assets such as a home on less than 2 acres, personal vehicles and personal effects are not counted. The maximum amount is set every December 1st and increases with inflation. The 2024 amount is $155,356.

There is now a 36-month look-back period that penalizes a veteran (or a surviving spouse) for giving away assets, including transferring assets to fund a trust or purchasing an annuity. The "penalty period" that results from giving away assets is determined by dividing the amount of the gift by the published penalty divisor. For 2024 the divisor is $2,727 and this amount changes annually. The maximum penalty period is 5 years.

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

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

Burial and Memorial Benefits

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

Eligibility

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

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

Burial in VA National Cemeteries

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

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

Inscribed Headstones and Markers for Veterans' Graves

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

Headstones and markers previously provided by the government may be replaced at the government's expense if badly deteriorated, illegible, vandalized or stolen. To check the status of an application for a headstone or marker for a national or state veterans cemetery, call the cemetery. To check the status of one being placed in a private cemetery, call 1-800-697-6947.

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

Private Cemeteries: To apply for a headstone or marker for a private cemetery, mail a completed

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

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

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

Burial Allowance

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

Plot Allowance

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

Military Funeral Honors at Veterans' Funerals

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

Benefits for Dependents and Survivors

Survivor's Pension

VA provides pensions to low-income surviving spouses and unmarried children of deceased veterans with wartime service. Claimants are required to complete VA Form 21-534 (Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child). Additional information, including benefit rate tables, can be found at https://www.va.gov/pension/veterans-pension-rates/ or by calling 1-800-827-1000.
To be eligible, spouses must not have remarried and children must be under age 18, or under age 23 if attending a VA approved school or have become permanently incapable of self-support because of disability before age 18.

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

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

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

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

Dependency and Indemnity Compensation

Dependency and Indemnity Compensation is a monetary benefit paid to eligible survivors of a military service member who died while on active duty; a veteran whose death resulted from a service-related injury or disease; or a veteran whose death resulted from a non service-related injury or disease, and who was receiving, or was entitled to receive VA Disability Compensation.

Claimants are required to complete VA Form 21-534 (Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving
Spouse or Child). Questions and additional information, including benefit rate tables can be found at https://www.va.gov/disability/survivor-dic-rates/or by calling 1-800-827-1000.

Appeals of VA Claims Decisions

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

A claimant has one year from the date of the notification of a VA decision to file an appeal. For decisions issues prior to February 2019, a claimant would have one year to submit a notice of disagreement and have a Statement of the Case issued by the Regional Office. After this determination, if the claimant still disagreed with the decision, they could file a VA form 9 and request review by the Board of Veterans' Appeals ("the Board").

Following the passage of the Appeals Modernization Act (AMA) in 2017, as of February 19, 2019, claimants have three "lanes" in which to submit an appeal.

1. Higher-Level Review: If the claimant has no additional evidence to submit and wants a new review of the claim based on the evidence of record, they can submit VA form 20-0996. Through an HLR a claimant can also request an informal conference with a VA adjudicator to identify errors and discuss why the decision should change. More information can be found at https://www.va.gov/decision-reviews/higher-level-review.

2. Supplemental Claim: If the claimant disagrees with the decision and has new and relevant evidence to submit, they can submit VA form 20-0995. New evidence is information the claimant did not submit to VA in the past and relevant evidence is information the proves or disproves something in the claim. More information can be found at https://www.va.gov/decision-reviews/supplemental-claim.

IMPORTANT NOTE: If you were previously denied benefits and it has been more than one year, claimant will have to file a request to reopen via VA form 20-0995 (Supplemental Claim) with new and relevant evidence.

3. Board of Veterans Appeals (Notice of Disagreement): If the claimant disagrees with the decision and wants to appeal to a Veterans

Law Judge at the Board of Veterans' Appeals in Washington, DC, they can submit VA form 10182. More information can be found at https://www.va.gov/decision-reviews/board-appeal/. There are three options in submitting an appeal to the Board

Option 1: Request a direct review—If you choose this option, a VLJ with review your appeal based on evidence already submitted. You cannot submit new evidence, and you cannot have a hearing. This appeal option takes an average of 365 days (1 year) for the Board to complete.

Option 2: Submit new evidence—If you choose this option, you can submit new evidence for a VLJ to review. You must submit this new evidence within 90 days of your appeal. This appeal option takes an average of 550 days (1.5 years) for the Board to complete.

Option 3: Request a hearing—If you choose this option, you will have a hearing before a VLJ and be able to submit new and relevant evidence at the hearing or within 90 days after the hearing. The hearing will either be conducted virtually, via videoconference at a local VA facility, or in-person at the Board headquarters in Washington, D.C. This appeal options takes an average of 730 days (2 years) for the Board to complete.

Military Medals and Records

Replacing Military Medals

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

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

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

Replacing Military Records

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

It is not necessary to request a duplicate copy of a veteran's discharge or separation papers solely for the purpose of filing a claim for VA benefits. If complete information about the veteran's service is furnished on the application, VA will obtain verification of service.

Veterans' Benefits Contact Directory

Phone Numbers & Addresses

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

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

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

Veterans – Regional Office:
Regional Office and Insurance Center
P.O. Box 8079
5000 Wissahickon Avenue
Philadelphia, PA 19101,
1-800-827-1000

Veterans – Medical Centers:
Philadelphia, 19104
University & Woodland Aves.
215-823-5800 or 1-800-949-1001

Wilkes-Barre, 18711
1111 East End Blvd.
570-824-3521 or 1-877-928-2621

Veterans – Legal Assistance:
Legal Aid of Southeastern PA Veterans Unit
610-283-0884
www.lasp.org/veterans

PA Bar Association Lawyers Saluting Veterans
https://www.pabar.org/site/For-Public/Lawyers-Saluting-Veterans-Program/Saluting-Veterans-Request-Form

Veterans – Clinics:

- Allentown, 18103
  3110 Hamilton Blvd.
  (610) 776-4304 or 1-866-249-6472
- Wyomissing, 19610
  2762 Century Blvd.
  (484) 220-2572
- Spring City, 19475
  11 Independence Dr.
  (610) 948-1082
- Newtown Square, 19073
- 4883 West Chester Pike
- (610) 383-0239
- Willow Grove/Horsham, 19044
  433 Caredean Dr.
  (215) 823-6050

Veteran – Centers:

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

Veterans' Web Sites:

- Burial and Memorial Benefit
  www.cem.va.gov
- Department of Defense
  www.defense.gov
- Health Care Eligibility
  www.va.gov/health-care/eligibility
- Life Insurance
  www.va.gov/life-insurance
- Records
  www.archives.gov/veterans/military-service-records
- VA Benefit Payment Rates
  www.va.gov/pension/veterans-pension-rates/
- Facilities
  www.va.gov/directory/guide/home.asp
- VA Forms
  www.va.gov/find-forms
- VA Home Page
  www.va.gov/find-forms

Chapter 23

Long Term Care Facilities

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

Nursing Homes

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

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

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

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

Nursing Home Residents' Rights

Upon admission to a nursing home, a resident or his/her representative will be required to sign an admission contract. A prospective resident or the representative for the resident might feel pressure under emergency circumstances to sign a nursing home admission contract without a careful review of its terms. Do not be pressured. Read the admissions contract and it is strongly recommended to have it reviewed by an attorney before signing. Federal and state laws have been enacted, and recently revised, to protect individuals entering nursing homes and an experienced advisor can make sure that you get the benefit of these protections. For example:

- Although not all nursing homes accept Medicaid, if a nursing home is licensed for Medicare/Medicaid, then a nursing home cannot require a resident to waive his/her right to apply for Medicaid. However, if a nursing accepts Medicaid, then it cannot discriminate against the resident who is receiving or would likely receive Medicaid benefits. Nursing homes must establish and maintain identical policies and practices regarding transfer, discharge and covered services for all residents regardless of source of payment.

- If a nursing home is Medicare/Medicaid approved, the nursing home cannot require a third party to guarantee payment as a condition of admission or continued stay. A nursing home is allowed to require that an individual having legal access to a resident's income and assets, such as an agent under a power of attorney, sign a contract promising to pay for a resident's care from the resident's funds.

- A nursing home cannot require a resident to agree to pay privately for a specified period of time before the nursing home

will "allow" the resident to convert to Medicaid. However, a resident and his representative needs to cooperate in the Medicaid Application process. Also, if the resident (or the representative) had inappropriately disposed or gifted assets so that Medicaid eligibility is denied, the facility may sue the children under the Pennsylvania Filial Support Law. (See chapters on Medicaid and Filial Support.)

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

For example:

- A nursing home must conduct a comprehensive assessment of every resident's functional capacity within 14 days of admission. This assessment must be used to develop, review and periodically revise, as necessary, an individualized plan of care for each resident. The resident, the resident's family and, if desired, the resident's legal representative, must be given full opportunity to participate in the development of the plan of care.

- A resident has the right to choose a personal attending physician and to be kept fully informed about care and treatment.

- A resident has the right to remain free of physical and chemical restraints which are not required to treat the resident's medical condition.

- A resident has the right to privacy with regard to communications in writing and by telephone and with regard to visits of family and meetings of resident groups. A resident must be provided with reasonable access to the use of a telephone where calls can be made without being overheard.

- A resident has the right to access to clinical records upon request by the resident or the resident's legal representative.

- A resident has the right to voice grievances with respect to treatment or care without fear of reprisal.

- A resident can only be transferred or discharged from a nursing home under limited circumstances which are spelled out in the law, and with advance written notice.

- Both the Federal government and Pennsylvania's have enacted revised Nursing Home Regulations that have increased staffing, training and other requirements to ensure quality of care.

A nursing home must inform every resident of the resident's legal rights, orally and in writing, at the time of admission. Pennsylvania maintains an Ombudsman program to investigate and resolve complaints made by or on behalf of residents of nursing homes and other long-term care facilities. COSA provides these Ombudsman services. Call 610-872-1868 or the State Hotline, 800-490-8505 (24 Hour Hotline); 717.783.8975 or email Ombudsman@pa.gov.

ALERT! Be very careful to look at the Arbitration Clause in the contract. This is usually towards the end of the contract. The nursing home cannot require you to accept arbitration in lieu of pursuing legal recourse. However, they can ask you to voluntarily agree to this provision. The facility cannot deny admission if you refuse to accept the arbitration clause.

Assisted Living Facilities & Personal Care Boarding Homes / Special Care Units

Assisted Living. Memory Care. Personal Care. Senior Residence. What's in a name? A lot as it turns out! Many consumers tend to use the industry or marketing term "assisted living" to mean "anyplace that's not a nursing home." However, the reality is a bit more complicated. Until 2011, Pennsylvania did not license assisted living residences.

Prior to January 2011, every assisted living residence in Delaware County was licensed only as a "personal care boarding home," and regulated pursuant to

55 Pa. Code Chapter 2600. Pennsylvania finally passed regulations for the licensing of assisted living residences, effective January 1, 2011, and they can be found at 55 Pa Code Chapter 2800. Facilities can now apply for a license to operate as an assisted living. However, as of 2022, there were less than 50 licensed assisted living facilities in Pennsylvania while there were approximately 1,200 personal care homes. Most of what used to be called assisted living residences are now called "senior residences." So, it can be really confusing.

When you are evaluating a facility for care, you must ask whether the facility is licensed as a personal care boarding home or an assisted living residence to assure that your loved one receives the proper care. Personal care boarding homes are a living arrangement whereby someone who needs assistance with activities of daily living can receive that assistance, but do not need 24-hour nursing home care. **Personal care homes are not medical facilities and they do not have to hire nurses or other medical staff**. They also have lower staffing requirements than assisted living. Consumers should also be aware that a personal care boarding home is not allowed pursuant to Pennsylvania regulations to have a resident who needs greater services to hire the extra help at the resident's own cost. In spite of this prohibition, many of personal care homes look the other way when the resident hires additional help. Note, there is an exception for a resident who needs hospice care.

On the other hand, assisted living residences are able to deliver health services to their residents in addition to assistance with activities of daily living. Assisted living residences **are required to enable the resident to age in place** and therefore to enable supplemental care so that the facility employees will assist residents in obtaining outside medical help, including physical therapy, hospice, dental, vision or the resident/families may choose independent contractors to provide this. Personal care homes do not need to coordinate with outside health care.

A special care unit (memory care/ dementia care) is permitted in both personal care homes and assisted living. But keep in mind that the required staffing and training is less in personal care homes. Also, in a personal care home, there cannot be a key operated lock. All locks must be magnetic and able to open automatically in the case a fire alarm sounds. In assisted living, standard key locks are allowed with permission from the Department of Labor and Industry. When evaluating a facility, whether it be a personal care home or an assisted living, the environment can be critical –particularly for those with dementing illnesses. For example, persons with dementia can benefit when they spend time in open air. You should check to see if there an outdoor area which is secure for this to occur. You should also look to see if there simple layouts, such as a circular hallway that does not run into a dead end and softer paint colors. Check to see if there is brighter lighting in the dining and congregate areas.

The distinction between assisted living and personal care facilities will be important if Pennsylvania Medicaid Program ever covers assisted living, or if someone has a long-term care insurance policy which would only cover a stay in a licensed assisted living facility. However, Pennsylvania is also considering whether its in-home waiver benefits would cover some personal care boarding home services at the time of writing this edition of the Handbook, it is not certain that will occur.

Contract Questions

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

- What personal care services are to be provided? Who delivers these services? Is the service provider licensed or certified?
- What are the monthly or other charges for such services?
- Are housekeeping services included?
- How can fees be increased and what happens if fees are increased and a resident cannot afford the higher fee?
- In the case of a married couple, what happens upon the death of a spouse?

Is a change of living unit required? How would fees be affected?
- What recreational or cultural activities are available and are they included with the monthly fee?
- Is transportation provided to such things as doctor appointments, shopping and community activities? Is a separate fee charged?
- Are nursing services available at the site? What happens if a resident's health declines? Is the facility responsible for coordinating medical care?
- How does the facility determine the point at which a resident cannot be served by the facility?
- What recourse does a resident have to challenge the facility's decision? Is there a grievance process?
- How does the facility determine the point at which a resident cannot be served by the facility?
- What recourse does a resident have to challenge the facility's decision? Is there a grievance process?
- Is there an arbitration clause?

Assisted Living Facilities/Personal Care Homes: Residents' Rights

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

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

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

- A medical evaluation must be completed sixty (60) days before entry or within fifteen (15) days if the admission was under certain emergency circumstances;
- Each resident must have an initial assessment thirty days prior to admission or within fifteen (15) days of admission under an emergency admission. The initial assessment will spell out the needs for assistance with activities of daily living or need for supplemental health services and special needs.
- A core package of services in an assisted living facility and an enhanced core package for those with greater needs. (This will enable a consumer to compare one assisted living facility against another);
- A process for informed consent, i.e. if resident needs additional help or the provider determines a resident is at risk, there is a process to work out how the individual resident may remain in the facility;

NOTE: The very detailed regulations for Personal Care are found at 55 Pa. Code Chapter 2600; the Assisted Living Regulations are at 55 Pa. Code Chapter 2800; Special Care Units under the Assisted Living Regulations are at 55 Pa. Code 2800.231-.239; Personal Care Home / Dementia Units are at 55 Pa. Code 2600.231-.239.

Continuing Care Retirement Communities (CCRC)

Continuing Care Retirement Communities in most circumstances provide independent apartments, personal care or assisted living and nursing home care. New residents usually move into independent living units. As they age and become physically disabled and need assistance with the activities and needs of daily living, residents move to a personal care or assisted living facility located on the grounds of the Continuing Care Retirement Community. Some

CCRC provide home care services to the independent living units so that the resident does not have to move. If physical decline continues and more intensive care is needed, nursing home care is also available within the premises of the Continuing Care Retirement Community.

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

There are three major types of contracts.

1. The resident pays a significant entry fee and monthly fee for the independent apartment. As they need more care, and move into the personal care/assisted living, or the skilled care units, the monthly fee stays the same. Please note this monthly fee can go up each year according to the contract generally based on the cost of living increases and operating costs. This method gives some certainty to the resident that there will be no significant increases as the level of need increases. However, the down side is, if the resident lives longer than a few years, there is no refund of the entry fee. The entry fee usually has a pro-rated basis whereby it decreases a certain percentage each month the resident lives there for the next few years. (It is usually somewhere between 3 and 5 years.)

2. The resident pays a significant entry fee and a monthly fee for the independent living unit. However, if the resident needs more care, then they pay a considerable amount more for assisting living/personal care, or for nursing home care. Upon the death of the resident, or the resident vacating the CCRC, there is a refund or a large percentage of refund of the entry fee to the resident, if still alive, or to a designated beneficiary or to the resident's estate. In most cases the refund is dependent upon the resident's independent unit being "sold", i.e. re-occupied by a new resident entering the CCRC. The entry fee is also utilized to pay for the resident's additional care if the resident is no longer able to pay for the stay, or additional care, i.e. the resident runs out of money. If there is anything left of the entry fee when the resident dies, then the balance is returned to the designated beneficiary or estate of the resident.

3. The third type of contract is a hybrid of the above two whereby the resident pays the entry fee and moves into the independent unit. The resident will pay more for personal/assisted living care or nursing care, but not the same rate as someone who would enter from outside the CCRC and pay privately for that same care. A portion of the entry fee will be refunded to the resident's beneficiaries or estate when the resident dies unless the refundable entry fee was utilized to pay for the resident's care if the resident has run out of money.

There is a fourth method which is not a true CCRC in accordance with the Pennsylvania regulations, but a pure rental situation. A person will move into an apartment paying a very small security deposit and monthly rent. If the care needs increase, then the resident can move to the communities setting which provides more care. Some of these communities only provide personal care/assisted living or memory care. This type of setting has become very popular of late. Oftentimes, even with the independent apartments, at least one major meal is provided during the day and certain amenities such as linen service, etc. Other communities will also have a skilled nursing home section. But, as the resident needs these additional settings, they pay the going rate for the care in that setting. Of course, these are attractive as there is no large entry fee to go in. However, a resident who moves in often will need to move out in a relatively short time if their care need become greater than what the community can provide.

A careful review of the contract, preferably by an attorney, is advised to make sure the resident understands what they are buying.

WARNING: Before signing a contract for a CCRC and moving in, look at the financial viability of the community, its corporation and its parent

corporation. In Pennsylvania, the oversight of Continuing Care Retirement Communities falls under the Pennsylvania Insurance Department. Under its regulations, the CCRC is required to provide any prospective buyer full disclosure of its financial affairs, ability to access any audits. Also inquire as to the occupancy rate, as this may affect future fees and/or services.

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

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

- Who determines when a resident must change living arrangements due to a decline in health?
- What are a resident's rights and responsibilities with regard to furnishing and altering his/her living unit?
- Under what circumstances would the entrance fee be refundable?
- Under what circumstances can the monthly service fee be increased?
- If the entrance fee is refundable, in whole or in part, will the fee be held in escrow or only paid after the unit is reoccupied by another resident.
- What happens if you run out of money to pay the monthly fee especially when you or your spouse move to a higher level of care? If there is a Benevolent Fund or Resident Care Fund - what are the requirements to qualify?
- What services are not covered by the monthly service fee?
- Does the nursing home section accept your health insurance? Is it Medicare approved? Does it accept Medicaid?
- Pennsylvania law mandates that all Continuing Care Retirement Community contracts:
  - Provide for continuing care;
  - Specify all services to be provided and provide that a resident cannot be liable to a health care provider for services that the continuing care retirement community promises to furnish;
  - Describe any exclusions or limitations on coverage for pre-existing conditions;
  - Provide for termination by either party upon 30 days written notice and the terms for refund upon termination;
  - Contain notice of rescission rights before moving in.

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

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

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

these services and they would be protected by the laws that apply to nursing homes when residing in the nursing home component of the Continuing Care Retirement Community.

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

Long Term Care Facilities Licenses: Problems, Sanctions and Revocations

Although long term care placement is a difficult decision, there are people and agencies to help in the event of an issue or problem with the long-term care facility. One contact person is the Ombudsperson who responds to care issues in all licensed facilities in your county. **The telephone number for Delaware County's Ombudsman is 610-872-1868**. Family members and friends can call the Ombudsman on behalf of a resident of a nursing home or assisted living facility. The PA State Hotline: 800-490-8505 and during regular hours: 717-783-8975, or ombudsman@pa.gov.

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

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

Any employee or administrator of a licensed facility who has reasonable cause to believe that a resident of the facility is a victim of abuse is required under Pennsylvania law to report the abuse immediately. The law does not require that the reporter be a direct 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 long term care facility residents by requiring criminal history background checks by the Pennsylvania State Police of all employees of public or private nursing homes, assisted living residences, personal care facilities, adult daycare and home healthcare providers. Employees with certain felony and misdemeanor convictions are precluded from working in these facilities.

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

Helpful Resources on Long Term Care Facilities

The COVID-19 Pandemic was especially harmful to residents and staff of long-term care facilities. While we are no longer in a state of Public Health Emergency, both on a federal level and a state level there have been continued challenges. In Pennsylvania there are recently passed regulations for better staffing and training which hopefully will greatly improve the quality of care. Nonetheless, the following are places you can call and contact if you or someone dear to you is experiencing problems:

- The Pennsylvania Department of Health website: www.health.pa.gov to review surveys and onsite inspections
- Nursing Home Compare (Medicare): www.medicare.gov/care-compare/
- Pennsylvania Link to Aging & Disability Resource Center: www.aging.pa.gov/local-resources/pa-link/ 1-866-286-3636.

- Pennsylvania Department of Human Services Office of Long-Term Living Bureau of Human Services Licensing: www.dhs.pa.gov/Licensing/BHSL-Licensing/Pages/PCH-ALR-Licensing.aspx 1-717-783-3670
- Pennsylvania Department of Health – Home Health Complaints: 1-800-254-5164
- County of Delaware Services for Aging: www.delcosa.org, 610-490-1300 or COSA@county.delaware.pa.us
- Delaware County Ombudsman: 610-872-1868;
- Statewide Elder Abuse Hotline: 800-490-8505 and during regular hours: 717-783-8975
- Legal Aid of Southeast Pennsylvania, Media Office: 610.422.7053 (Domestic Violence Hotline and other matters); Chester office: 610-874-8421
- SeniorLAW Center Help Line: 1-877-727-7529
- CARIE - Center for Advocacy for Rights & Interests of Elderly - https://www.carie.org/; 215-545-5728; 1-800-356-3606
- Pennsylvania Health Law Project Help Line: 1-800-274-3258
- Delaware County Bar Association Referral: 610-566-6625, ext 221; and Pro Bono Program, in conjunction with the Legal Aid of Southeast Pennsylvania: 610-874-8421 or 610-422-7053
- AARP - PA State office: 1-888-687-2277
- Medicare Hotline: 800-633-4227

Pennsylvania's Nursing Home Regulations

In 2023, the Department of Health's new Long Term Care Facility Regulations became effective. This marks the first update in more than two decades.

Title 28, Subpart C, Long-Term Care Facilities

Pennsylvania Department of Health 2023 Nursing Home Licensure Regulation Updates: https://youtu.be/yVTbjhrANxM - (Webinar)

Chapter 24

Long Term Care Insurance

Basic Long Term Care Insurance Decisions

Comprehensive long term care insurance (LTCI) pays for home health care, adult day care, as well as assisted living facility and skilled nursing facility care. A well-structured policy can help to preserve your independence and your assets by assuring that you are in control of your care.

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

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

Insurability

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

Benefit Triggers

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

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

A Pool of Money

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

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

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

Benefit Amount

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

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

Shared Care

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

Shared care is, in its most basic form, a provision in a limited benefit period policy whereby one insured can, should he or she exhaust their own policy's benefits, access, with the permission of their spouse/partner, the benefits of the other's policy. The individuals must apply for issuance of coverage at the same time and have identical policy benefits. Shared care may also be provided through a single policy insuring two individuals, each having access to a single pool of money.

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

A Deductible

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

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

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

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

Premiums

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

Inflation

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

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

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

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

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

Tax Benefits

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

You may also receive an individual federal income tax deduction for some or all of your premium. The deduction depends on whether the *eligible* portion of your premiums paid in the current tax year, together with your other unreimbursed medical and dental expenses, exceeds 7.5% (for 2020) of your adjusted gross income. The HIPAA eligible premiums are age graded, adjusted yearly for inflation, and can be found at IRC Sec. 213(d)(10)(A).
None of us wants to consider the personal and possible financial impact on ourselves and on our families should we need long-term care. The reality, however, is that, should such a need develop, our choices are to pay out-of-pocket or to seek Medical Assistance (Medicaid).

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

The Pennsylvania Partnership Program

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

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

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

- If you are age 60 or younger at the time your policy is issued, the policy must include provision for *compound* annual inflation protection at a rate equal to the Consumer Price Index (CPI) or at a fixed rate of not less than 3%.
- If your "issue age" is between 61 and 75, the policy must include *either* compound or simple annual inflation protection at a rate equal to the CPI or at a fixed rate of not less than 3%.
- If your "issue age" is 76 or older, inflation protection is *not* required.

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

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

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

Chapter 25

Housing and Energy Assistance and Resources

LIHEAP

The Low Income Home Energy Assistance Program ("LIHEAP"), https://www.dhs.pa.gov/Services/Assistance/Pages/LIHEAP.aspx provides cash grants to eligible low income households to pay their home heating bills. The cash grant is a once per season (November through April) payment made to a utility company or fuel provider as a credit to the household's bill. The grants may range from $200 to $1,000 depending upon household size and heating type. Households in danger of being immediately without heat (including breakdown of heating equipment, no or low amount of heating fuel, imminent shut-off) may be eligible for a crisis grant.

Eligible households may be either renters or owners, do not need to be on public assistance and do not need to have unpaid heating bills at the time of application. For the 2023 - 2024 heating season the income limits were $21,870 for a one-person household and $29,580 for a two-person household.

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

There are two ways to apply for LIHEAP:

- **Online:** Apply for benefits online using COMPASS, http://www.compass.state.pa.us/ the online tool for Pennsylvanians to apply for health and human service programs and manage benefit information.

On paper: You can download a paper application, print it, fill it out, and return it to the Delaware County Assistance Office:
701 Crosby Street, Suite A
Chester PA 19013
LIHEAP Number: 610-447-3099

- 2023-2024 LIHEAP Application — English
  https://www.dhs.pa.gov/Services/Assistance/Documents/Heating%20Assistance_LIHEAP/HSEA-1.pdf

- 2023-2024 LIHEAP Application — Spanish
  https://www.dhs.pa.gov/Services/Assistance/Documents/Heating%20Assistance_LIHEAP/HSEA-1-S.pdf

After your application is reviewed, you will receive written notice explaining your eligibility and the amount of assistance you will receive. Please allow 30 days for a response.

Delaware County Weatherization Program

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

To apply, contact:

Community Action Agency of Delaware County

1414 Meetinghouse Road
Boothwyn, PA 19061
610-521-8770
www.caadc.org

Delaware County Homeownership First Program

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

For more information, go to
https://www.delcopa.gov/hcd/housinginitiatives.html

Contact:
Chester Community Improvement Project
412 Avenue of the States
Chester, PA 19013
(610) 876-8663

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

Affordable Housing Centers of PA
(215) 765-1221
https://www.ahcopa.org/

PECO Programs

Customer Assistance Program – Percentage of Income Payment Plan (CAP-PIPP)

PECO has made changes to its Customer Assistance Program. The new program, known as the Customer Assistance Program – Percentage of Income Payment Plan ("CAP-PIPP"), can provide eligible applicants with a fixed monthly utility bill that is calculated as a percentage of the total household income. In order to qualify, the total gross household income must be at or below 150% of the Federal Poverty Income Guidelines. For example, a household of two must have a monthly income at or less than $2,355.

Applicants who are accepted into the new CAP-PIPP program will pay the lower of the fixed CAO-PIPP bill amount for the charges based on the customer's actual usage. There is a minimum monthly billing amount -- $10 for electric, $20 for electric heating, and $20 for gas. New customers accepted into the program may have forgiveness of past due balances for a fresh start.

To apply, customers must provide PECO with the account number and service address, the names and proof of income of all household members. For more information or to obtain an application, contact PECO at 1-800-774-7040 or go to https://www.peco.com/my-account/customer-support/assistance-programs/cap-rate

Low-Income Usage Reduction Program (LIURP)

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

Your annual total household income must be at or below 200% of the Federal Poverty Level (FPL). To apply, contact 1-800-675-0222 or visit https://www.peco.com/my-account/customer-support/assistance-programs/liurp

PECO Customer Assistance and Referral Evaluation Services (PECO CARES)

PECO Customer Assistance and Referral Evaluation Services (PECO CARES) is a referral and information service that assists special needs and low- income customers experiencing temporary hardship (e.g. family or medical emergency, unemployment) that prevents payment of the utility bill. To apply for assistance, contact PECO at 1-800-774-7040. Customers with serious medical conditions can contact PECO Customer Service at 1-888-480-1533 to see if they are eligible for special assistance with their utility bills. PECO will reach out to the customer's physician to obtain a medical certification to qualify them for this aid.

Matching Energy Assistance Fund (MEAF)

The Matching Energy Assistance Fund (MEAF) provides grants to households with income at or below 200% of Federal poverty income guidelines (2024 annual income of $30,120 for a household of one or $40,880 for a household of two) to pay a utility bill to stop shut-off, or reconnect service. The program requires that the grant must bring the customer's balance to zero and the recipient must not have received a grant in the prior 12 months.

Delaware County residents can apply for assistance by contacting Community Action Agency of Delaware County at 610-874-8451 or www.caadc.org.

Pennsylvania Housing Finance Agency (PHFA) Programs:

Homeowners' Emergency Mortgage Assistance Program/Act 91 (HEMAP)

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

Homeowners may apply for HEMAP assistance by having an in-person meeting with an approved credit counseling agency where counselors can assist with the completion of the HEMAP application. For more information, contact the PHFA HEMAP Program Information Line at 800-342-2397 (TTY 711) or visit the PHFA website HEMAP page at https://www.phfa.org/counseling/hemap.aspx.

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

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

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

Access Home Modification

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

Eligible modification items may include:

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

To apply, contact a PHFA participating lender. For more information or for a list of participating lenders, visit the PHFA website at https://www.phfa.org/programs/accesshomemod.aspx or call the PHFA Homeownership Program Information Line at 1-800-822-1174.

Homestyle Renovation Program

The Homestyle Renovation Program allows eligible homebuyers or homeowners seeking to refinance to repair, remodel, renovate or make energy improvements. Borrowers may fund up to 75% of the appraised value of the property once the requested repairs are made. The improvement must be permanently affixed to the premises and may include:

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

To apply, contact a PHFA participating lender. For more information or for a list of participating lenders, visit the PHFA website at https://www.phfa.org/programs/homestyle.aspx or call the PHFA Homeownership Program Information Line at 1-800-822-1174.

Homeowners Energy Efficiency Loan Program (HEELP)

This Homeowners Energy Efficiency Loan Program (HEELP) program offers loans ranging between $1,000 to $10,000 for energy efficiency repairs at a fixed 1% interest rate for a 10-year term with no prepayment penalty. The allowable uses are:

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

The income limits for this program are $53,540 for a one-person household and $61,050 for a two-person household. Work must be performed by a PHFA approved contractor. If your contractor is not approved, he/she may apply for approval.

For more information or to download a borrower application, visit the PHFA website at https://www.phfa.org/programs/heelp.aspx or call PHFA at 1-855-827-3466.

Homebuyer Counseling and Education

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

- mortgage readiness, budgeting for mortgage payments and money management skills;
- avoiding predatory lending (lending practices that impose unfair or abusive loan terms on borrowers);
- fair housing

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

Fair Housing

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

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

Chapter 26

Reverse Mortgages

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

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

- Lower the maximum limits of borrowing by as much as 15% from pre-September, 2013 reverse mortgages;
- May require property repairs following a pre-loan appraisal either prior to the settlement on the loan or from the loan proceeds;
- Require a financial assessment of the Borrower(s) to insure they have the "capacity and willingness" to meet the obligations of the loan. This includes a credit history check and/or review of the Borrowers' debt to verify satisfactory payment on credit cards, mortgages and property taxes. The assessment will also analyze household cash flows and debt levels;
- May require a set aside of a portion of the available proceeds to guarantee payment of property taxes and hazard insurance;
- May require substantially higher M.I.P. payments (Mortgage Insurance Premium) where greater than 60% of the maximum available loan is initially distributed equal to 2.5% of the maximum available loan amount. However, where upfront distributions are less than 60% of the maximum available loan the M.I.P. may be as low as 50%.

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

The basic requirements of a reverse mort- gage are as follows:

- At least one borrower must be 55 years of age or older with no maximum age limit.
- The mortgaged property must be used as the principal residence of the Borrower.
- The property to be mortgaged must be free and clear of all existing mortgages. The Borrower will be required to pay the balance of any existing mortgage or liens from the proceeds of the reverse mortgage.

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

The amount of cash you can get from your home depends on a variety of factors including the value of the home, your age and interest rates. Those funds may be distributed as a lump sum, as a line of credit or in a monthly amount. For the monthly option, it may be for a specific number of years, or as long as you live in your home. All of the re- verse mortgages have costs and almost

all of them can be included in the borrowed amount so that the only up-front costs to the senior is the appraisal.

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

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

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

The funds received are not subject to income taxes. Another important feature of these loans is that you can never owe more than the value of the home. In banking terminology, they are known as "non-recourse" loans.

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

Further information can be obtained from the National Reverse Mortgage Lenders Association (NRMLA) at www.reversemortgage.org and AARP at https://www.aarp.org/money/credit-loans-debt/info-2019/reverse-mortgage-loan-advice.html

Chapter 27

Property Tax & Rent Rebates

Property Tax & Rent Rebates have been expanded for 2023 under Act 7 of 2003. As discussed below, the maximum standard rebate increased from $650 to $1,000 and the income cap for both renters and homeowners is now equal and increased to $45,000 per year. In addition, income caps will be tied to cost-of-living adjustments for Social Security, so seniors who receive a rebate won't lose their eligibility due to increases in Social Security payments.

In Pennsylvania, homeowners or renters aged 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 $45,000 or less for homeowners and renters, may file a claim with the Pennsylvania Department of Revenue for a real property tax or rent rebate. Claimants may exclude 50% of their Social Security/Railroad Retirement income in determining their eligibility requirements. Claim applications are due for filing between January 1 and June 30 of the year following the year in which the individual paid the tax or rent. (This June 30th deadline is often extended but no guarantees).

Act 7 of 2023 increased the maximum rebate to $1,000 and the income cap to $45,000 per year.

In addition, owners must have paid the taxes for 2023 prior to filing and renters must make certain their landlords were required to pay property taxes or make payments in lieu of property taxes on their rental property. Rebate checks are mailed beginning July 1st of each year. Proof of income is required, such as copies of the state or federal income tax returns for the claim year in which you are filing. If you are claiming a rent rebate, you must submit a "Rent Certificate" which includes proof of the rent you paid, such as an affidavit signed by the landlord or the landlord's agent. If the landlord's signature

cannot be obtained, the claimant must complete and submit a notarized rental Occupancy Affidavit with the Rent Certificate. Rent receipts (not canceled checks) are also accepted.

Starting with claims filed for rent or property taxes paid in 2023 the rebate is as follows:

For renters or owners with income $8,000 or less, the maximum rebate is $1,000. For renters or owners with income between $8,001 and $15,000, the maximum rebate is $770, for renters or owners with incomes between $15,001 and $18,000 the maximum rebate is $460 and for renters or owners with income between $18,001 and $45,000 the maximum rebate is $380.

The expansion of benefits for future years will be tied to inflation.

If you require further information on this program, you may call the Pennsylvania Department of Revenue at 1-888-222-9190 to talk with a representative or their website:

http://www.revenue.pa.gov/PTRR. You may also apply online at www.mypat.pa.gov.

If you applied for a rebate in a prior year, you should be automatically sent a paper instructions booklet/application form and paper applications are available at http://www.revenue.pa.gov/PTRR. Additional help is available by contacting the Revenue District Office at 610-270-1780.

Chapter 28

Landlord-Tenant

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

Leases

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

Most written form leases contain provisions that are mostly favorable to the landlord. The tenant usually waives or gives up some rights when he signs a lease. Rights that may be waived include notice of lease termination due to nonpayment of rent or other lease violations. Rights that may not be waived include the right to a hearing for eviction and the right to self-represent in court.

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

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

At the end of the term, many leases provide for automatic renewal until either the landlord or the tenant gives notice that they wish to end the agreement. Unless waived, a written lease may provide the number of days' notice that must be given the other party to end the agreement. If there is no provision in the lease, then in a year to year lease, 30 days' notice by either party is required to end the lease. In a month to month lease, 15 days' notice is required to end the

lease. If there is a failure to pay rent, the landlord need give only 10 days' notice. The landlord does not have to renew the lease and does not have to give a reason for not doing so. A landlord may end the lease by simply giving the proper notice. However, a landlord may not evict or refuse to renew a lease for reasons of race, color, national origin, gender, familial status (family with children), disability, creed, ancestry or age. If you think you have been the victim of such discrimination, you can consult an attorney and/or contact:

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

Housing Equality Center of Pennsylvania
866-540-FAIR
www. Equalhousing.org

Renters' Insurance

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

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

Repairs

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

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

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

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

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

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

- Repair and Deduct – where habitability issue can be remedied for an amount that is less than the remaining rent due on the lease, the tenant may have the repair done and deduct it from the rent. The tenant should provide the landlord with a copy of the repair invoice along with any remaining rent due for the following month(s).
- Contacting the local building inspector to document the issue- Tenants should keep in

mind that if the property is deemed uninhabitable, they may be Instructed to leave. The landlord may be cited.

- Withhold/escrow of rent – withholding rent and putting it into an escrow account may be an option where the repair costs more than the monthly rent, the problem is so serious that all or part of the home is uninhabitable, and it has been documented by the building inspector. The tenant must establish an escrow account at a local bank. The tenant must also send a letter to the landlord stating that since the landlord failed to make the repairs indicated in the tenant's previous letter within a reasonable period of time, future rent payments will be placed into the escrow account. Each month, a copy of the deposit slip should be sent to the landlord.

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

Eviction

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

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

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

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

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

Tenants should seek legal advice and may contact the **Delaware County Bar Association Lawyer Referral Service,** www.delcobar.org, 610-566-6625 **Senior Law Center**, 1-877-PA SR LAW (727-7529); or **Legal Aid of Southeastern Pennsylvania**, www.lasp.org, 1-877-429-5994. Statewide forms are free to the public and may be obtained online at https://www.pacourts.us/forms/for-the-public

Tenant forms are under the "Appeals and Objections" heading and Landlord forms are

under the "Landlord" heading. The tenant may use the Civil Complaint form for a counterclaim and reference the Landlord Tenant Complaint. Make sure that the hearings are scheduled on the same date and heard together. Also, bring all documents needed to prove or defend your case (bills, receipts, written agreements, letters or notices and/or pictures).

If a judgment is entered for rent alone (no other lease violation) the tenant can stop eviction by paying the amount of the judgment, including court costs, to bring the rent account current. A landlord who wins a judgment for possession of the premises can enforce it by having the Constable serve an Order for Possession after the 10th day following the date of the entry of judgment if the tenant does not appeal to the Court of Common Pleas. This is a notice telling the tenant that unless the tenant does not leave the property by the date set forth on the notice (10 days to move after service of the Order), the Constable or Sheriff can forcibly put the tenant out of the rental unit. After the expiration of the 10-day period, the landlord may return to the Magisterial Court and request the forcible eviction.

Appeals

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

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

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

Property Left Behind by the Tenant

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

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

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

call should also send a follow-up letter and keep a copy.

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

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

Security Deposits

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

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

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

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

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

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

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

Chapter 29
Family Law

Protection from Abuse

In order to help protect victims of domestic violence, Pennsylvania law allows both criminal and civil protections. In addition to criminal charges, Pennsylvania provides a civil remedy to protect against physical abuse at the hands of spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners, and persons who share biological parenthood. This remedy is known as "The Protection From Abuse" Act, or PFA.

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

Abuse may be perpetrated by a weapon, which is defined as anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for any lawful uses which it may have.

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

Final orders entered under the PFA can remain in force for as long as 36 months. The order can be extended if there is a violation of the order or abusive acts continue the Order is in effect.

If you need help or know anyone that needs this kind of protection for themselves or other protected persons, call someone as soon as you can. In Delaware County, you can call: the police, a family law attorney, the Lawyers' Reference Service of the Delaware County Bar Association, www.delcobar.org, (610-566-6625), the Domestic Abuse Project of Delaware County, https://dapdc.org/ (610-565-6272), Delaware County Victim Assistance Center, http://www.delcovictimassistance.org/ (610) 566-6463. **If there is active abuse and you are afraid, call 9-1-1 immediately.**

Obtaining a Protection From Abuse (PFA) Order

To obtain a PFA Order, you must file a Petition for a PFA. How you do this, depends on what day and time you are filing. There are 2 ways to file for a PFA order:

On Monday through Friday, during regular Courthouse business hours, you will file at the courthouse in your county. A judge can issue a temporary order or just assign a hearing date or just assign a hearing date. Temporary orders will continue in effect until a hearing for a Permanent PFA Order is held.

When the courthouse is not open, a Magisterial District Judge, www.delcopa.gov/courts/districtjudges/pdf/MDJList.pdf can hear your petition. If a temporary order is issued, it will remain in effect until the next business day at the Court of Common Pleas, at which time you must go to the Courthouse and file a petition there.

At the hearing, a Final Order may be issued after judge hears the facts. The hearing will be scheduled within 2 weeks of the date you filed.

You do not have to file for a PFA immediately. You will want to file it as soon as it is practical. There is no charge to file for PFA. There are limited resources that provide free legal representation.

In any emergency, call 911. The police will assist you at the time of an incident and after. They can also suggest you file a PFA Order. If you call the police, they will write a report. If needed, they will also serve the petition and hearing date on the defendant (the person who is the alleged abuser).

Marriage

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

On January 1, 2005, Common Law Marriage was abolished in Pennsylvania.
The Pennsylvania Legislature has now enacted a law that provides that no "common law marriage" entered into on <u>or after</u> January 1, 2005, will be recognized as valid. A common law marriage entered into <u>before</u> January 1, 2005, may be found to be valid, if all the requirements for a common law marriage can be proven. A person who claims benefits based upon the existence of a common law marriage should consult a family law attorney for guidance. Proving that a common law marriage exists is extremely difficult. A person must show numerous things to prove that a couple enter into a common law marriage. Some of these things include: the parties exchanged vows in front of people; they lived as husband and wife, and they held themselves out as husband and wife.

Same sex marriage became legal in Pennsylvania on May 20, 2014, when a U.S. Federal District Judge ruled that the Commonwealth's 1996 statutory ban on recognizing same sex marriage was unconstitutional. Additionally, a same sex marriage performed in another state is now recognized in Pennsylvania. Spouses of same sex marriages have the same legal rights and responsibility as all married spouses.

Marriage - Rights and Responsibilities

Marriage is a statutorily-created legal relationship which creates certain rights and responsibilities. You should always contact a qualified attorney to discuss these matters. These rights and responsibilities are financial as well as non-financial. For example, a spouse has the right to receive a share of his or her spouse's estate, upon his/her death, and may have a right to financial support should the marriage end. Marriage presents a couple with the opportunity for certain tax advantages and options with regard to Social Security and retirement benefits. (These concepts are treated in more detail elsewhere in this Handbook.) As for responsibilities, a spouse may owe a duty to provide medical necessities for his or her spouse and may be required to contribute to hospital or nursing home costs incurred by his or her spouse. (See the chapters on Medicaid and nursing home costs.)

A spouse's rights may change in the event that the spouses separate or there is a divorce. Pennsylvania does not recognize a legal separation, but the date of separation is important in a divorce case.

Planning for Marriage and Subsequent Marriages

The rights and responsibilities of married people are set forth by the state. An individual may modify his/her rights and responsibilities with certain legal documents.

Estate Planning

If you without a will or other estate planning documents, the intestate law determines how the estate will be divided and who gets your belongings. You should talk to an estate attorney to help draft documents so that your wishes are carried out when you pass away.

NOTE: Be Proactive! Each spouse should have a durable financial power of attorney and a durable medical power of attorney,

You do want to be proactive in handling your affairs during your life and what should happen after. For example, in the event that you are not able to speak for yourself (you are in an accident or incapacitate) you can have your spouse act as your agent. Spouses are not automatically agents for one another. Therefore,, granting power to his or her spouse to handle financial matters and to make medical decisions in the event of incapacity. The power of attorney should also allow the agent to obtain medical information under HIPAA. One or more alternate agents should be named as well.

Divorce

No one gets married thinking they will get a divorce. However, the reality is that up to 50% of marriages will end up in a divorce. Prior to getting married, you should consider what will happen should your marriage end. Pennsylvania is a no-fault state. This means that if the marriage is "irretrievably broken" a court will grant a divorce decree. Pennsylvania does allow for a "fault" divorce. However, it is very rare that a divorce will be granted on a fault basis.

In order to be granted a divorce decree, a party must file a Complaint for Divorce. The court must then have proof that 1) the marriage is irretrievably broken (which shows grounds for the divorce) and 2) any martial property (assets and debts) have been divided before it enters a decree. If the parties are in agreement that the marriage is irretrievably broken, they both can file Affidavits of Consent to that affect. If one spouse is not in agreement that the marriage is irretrievably broken, one spouse can file an Affidavit of Consent after the parties have been separated for 1 year. The date of separation and the definition of separated are legal terms. Parties may be separated and living under the same roof, if certain conditions can be shown to the court – mainly that the parties were not longer living as husband and wife.

Once it has been shown that the marriage is irretrievably broken, the parties can show the court how the assets and debts of the parties will be divided. This process is called Equitable Distribution and the purpose is to divide the Marital Property. If the parties are unable to do this on their own, or through attorneys, one spouse can file with the court to have a Hearing Officer appointed to resolve all issues on the division of assets and debts. The division of assets and debts may include a monthly support obligation or payment. Monthly support may be awarded before a divorce complaint is filed, during the pendency of the divorce matter, and after a divorce decree is entered (this is also called alimony).

Effects of Divorce

"Marital property" is property that is obtained during the marriage. This can include wages, savings, purchases, as well as increases in pre-marital property or investments. How something is titled does not determine whether it is marital property. A spouse may be entitled to a portion of all of the marital property and more in the event of a divorce. Spouses may divide their assets on their own through a document called a Property Settlement Agreement. If they cannot, it will be divided in a process called Equitable Distribution in which the court considers a series of factors including the length of the marriage, the source of the assets, and the needs and future economic prospects of the parties. Some property may not considered to be marital property.

The court will divide all marital property based on an "equitable" standard by looking at the facts and circumstances surrounding the parties. This division may also include monthly support payments, as outline above.

Effect of the Death of Spouse

Marriage also vests substantial rights to a spouse in the event of the death of the other. These rights, as set forth by law, may be contrary to the wishes of the party. If a party who has remarried dies without a Will, the surviving spouse is entitled to an intestate share of the party's estate. If a party who has remarried dies with a Will, even if the Will makes no, or minimal, provision for the surviving spouse, the surviving spouse can claim an "elective share" of the party's estate. The size of the surviving spouse's intestate or elective share depends upon the size of the estate and the identity and degree of kinship of the decedent's next of kin, even if you are married. Planning in advance is very important.

For these reasons, people who intend to marry, or remarry, should be aware of, and should plan for, the legal consequences of the marriage. Planning is especially important for people with children from prior marriages or relationships to ensure what assets are left to those children; how to pass along a family or closely-held business; or for people who come into the marriage with substantial pre-marital assets.

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

Prenuptial Agreements

Just as the law determines how your assets will be divided if you die without a will, the law will determine how your pre-marital assets will be divided in a divorce without a prenuptial agreement. If an individual wishes to retain separate ownership of pre-marital or marital property in order to leave their assets to a non-spouse (such as children of a previous relationship) or if the parties wish to determine monthly support obligations should a divorce occur, they should enter into a "Prenuptial Agreement" or similar document prior to the marriage. This should be prepared and signed along with a will and other estate planning documents.

Married couples can also enter into a Marital Agreement during the marriage which would alter the marital rights already established by law.

Always consult a qualified attorney before entering into any agreement related to the rights of your marriage.

Chapter 30

Grandparents' and Great-grandparents' Custodial Rights

Today, many grandparents and great-grandparents have assumed the unexpected role and responsibility of caring for and, in many cases, raising their grandchildren or great-grandchildren. Many reasons can give rise to a grandparent seeking custody or guardianship of a grandchild such as the death of a parent, divorce, physical or emotional abuse, substance abuse/addiction or mental health issues of a parent, neglect, or a combination of these factors. Sometimes grands step in with the consent of the parent. Sometimes not. When the grandparent is caring for the child, there are times when the grandparent needs legal custody to fully care for these children.

At these times, grandparents are thrust into the legal system in order to protect the health, welfare and best interests of their grandchildren.

When there is a dispute between the parent and grandparent on how to care for the child, the court may intervene. If the parent and grandparent cannot arrive at an informal agreement, a grandparent can petition the court in the county in which the child resides for varying degrees of custody. Physical custody is where the child stays. This can be sole, partial,

or be by supervision. Legal custody is the right to determine where the child goes to school and to make medical and religious decisions for the child.

The court presumes that a parent has the right to custody of a child. Should a grandparent petition the court, the grandparent bears a heavy burden of persuasion to show that is in the best interest of the child for the grandparent to be awarded custody.

Petition for Custody

Under Pennsylvania law, a grandparent can file a complaint seeking any form of physical custody or legal custody. Whether or not the grandparent will be successful depends on his/her relationship with the child and the parent.

When a grandparent who is acting *in loco parentis* to the child, they are likely to be awarded physical and legal custody of a child. A person stands *in loco parentis* to a child when he or she has assumed and all parental duties of a parent on behalf of a child for a significant period of time.

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

Pennsylvania law also specifically gives grandparents the right to petition for partial physical custody and supervised physical custody rights, but not legal custody, when (1) the parent of a child is deceased and (2) the relationship with the child began either with the consent of a parent of the child or under a Court Order **and** where the parents of the child: (a) have commenced a proceeding for custody and; (b) do not agree as to whether the grandparents or great-grandparents should have custody under this section or; (3) where the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case an action must be filed within 6 months after removal of the child from the home. when the parents are divorced or divorcing or have been separated for a period of six months. (These provisions do not apply where the child has been adopted by a third party.)

If you need to file for custody of a grandchild, you are encouraged to get legal advice.

Custody Order

Once a grandparent has filed for custody of a child, court proceedings will begin. In most counties in Pennsylvania, the first time the court sees the parties is a conference before a Hearing Officer. Each county has a unique procedure. If the parties are unable to reach an agreement before the Hearing Officer, the case will be assigned to a Judge. A grandparent will always have to show the court why it is in the best interest of the children that custody is awarded to a grandparent and that such award will not interfere with the parent/child relationship. The Court will look at the relationship between the grandparent and the parent in deciding custody issues.

The Court is always looking to determine what is in the best interest of the children.

As such, all custody orders are modifiable. If a parent can show that it is in the best interest of the children for the grandparent not to have custody, the grandparents' custodial rights may be modified.

Alternate Ways Grandparents May Obtain Custody

There are times when the state steps in and removes a child from a parent for safety reasons. These cases are separate from custody complaints filed in Family Court. In Dependency cases, Children and Youth Services/Department of Human Services may seek out a grandparent to care for the child while the agency determines whether there can be reunification between the parent and the child. During the pendency of these cases, if it can be shown that a grandparent can care for the child, a grandparent can be awarded custody. If this happens, a grandparent should file with Family Court to confirm their custody award.

Custody cases involving grandparents and third parties can be legally challenging. In any contested custody/visitation case, grandparents should contact experienced counsel to guide them through the Family Court process.

There are also situations in which a grandparent may petition the court for guardianship of their grandchildren. In this instance, a grandparent would require file a petition in the Orphans Court Division of the Court of Common Pleas. In guardianship situations, the parent or parents may consent to the grandparents' guardianship petition or they may contest the matter. The decision to determine whether to petition the court for custody or guardianship of a grandchild should be made after consultation with Family Law and/or Elder Law or Orphans Court litigation practitioners with experience in Orphans Court Litigation.

Other Kinship Caregivers

There are many people that form a family. Not all of them are blood relatives. Should an individual, like an aunt or family friend be instrumental in caring for a child, or be caring for a child in loco parentis that "third party" may be awarded any form of physical or legal custody if he or she establishes by clear and convincing evidence all of the following: (1) the individual has assumed or is willing to resume responsibility for the child; (2) the individual has a sustained, substantial and sincere interest in the welfare of the child. (in determining whether the individual meets the requirements of this subparagraph, the Court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child's life); and (3) neither parent has any form of care and control of the child.

The determination of which Petitions are most appropriate for the grandparents to file under this new law is always dependent on the specific family circumstances and the best interests of the child. These can be discussed and determined after consultation with your legal counsel and other professionals who can advise what is in the best interest of the child.

Chapter 31

Elder Abuse & Neglect

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

IN AN EMERGENCY, CALL 911.

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

- Delaware County Office of Services for the Aging, Older Adult Protective Services
  1510 Chester Pike, Suite 250
  Eddystone, PA 19022,
  (610) 490-1300 or (800) 416-4504

After business hours: (610) 622-9284
Services are initiated to protect victims, stop abuse, and prevent future incidents. Reports can be made anonymously 24/7 - confidentiality is assured in all cases.

- Domestic Abuse Project of Delaware County
  14 West Second Street
  Media, PA 19063
  (610) 565-6272, 610-565-4590 (bilingual)

- Delaware County Victim Assistance Center
  (610) 566-4342 (Intake) and 610 490-1300, assists those seniors who have been a victim of crime in Delaware County by providing counseling, accompaniment to medical and court appointments, assistance in filing for State Crime Victims Compensation claims, and referrals for other appropriate community services

- Delaware County District Attorney's Office, Senior Exploitation Unit
  201 West Front Street
  Media, PA 19063
  (610) 891-5249

- Pennsylvania Elder Abuse Hotline
  800-490-8505, abuse reports can be made on behalf of an older adult whether the person lives in their home or in a care facility such as a nursing facility, personal care home, hospital, etc. The reporters may remain anonymous and have legal protection from retaliation, discrimination and civil or criminal prosecution.

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.

Physical Abuse

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

Look for:

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

Emotional/Psychological Abuse

Emotional or psychological abuse can range from name-calling to giving the "silent treatment" to intimidating and threatening the individual. When a family member, a caregiver, or other person behaves in a way that causes fear, mental anguish, and emotional pain or distress, the behavior can be regarded as abusive. Emotional and psychological abuse can include insults and threats. It can also include treating the older person like a child and isolating the person from family, friends, and regular activities either by force or threats or through manipulation. Look for:

- Unwillingness to communicate or respond to questions
- Unreasonable fearful or suspicion

- Lack of interest in social contacts
- Chronic physical or psychiatric health problems
- Evasiveness or hesitation to talk openly
- Implausible stories
- Confusion or disorientation
- Denial
- Agitation

Sexual Abuse

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

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

Financial Abuse or Exploitation

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

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

Neglect

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

Look for:

- Sunken eyes or loss of weight
- Extreme thirst
- Bed sores
- Soiled clothing or bed.

If you feel you are being abused or neglected, your personal safety is most important. If your

abuser is threatening you with greater abuse if you tell anyone, and if the abuser refuses to leave you alone in a room with others who could help, you are probably too afraid to let anyone know what is happening to you. A good strategy is to let your physician know about the abuse. The physician has a legal obligation to report the abuser and to help you find safety. If you are able to make phone calls, call a trusted friend who can help you find safety and also find help for the person who is abusing you. You should not be ashamed or embarrassed to ask for help.

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

Protection From Abuse Orders (PFAs)

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

There are three kinds of PFAs:

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

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

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

Chapter 32

Senior Victim Services

Senior Victim Services, Office of the Delaware County District Attorney
https://delcoda.com/senior-victim-services/
serves victims of crime in Delaware County age 55 years and older. This department provides advocacy, assistance and safety within the criminal justice system and with social service agencies and community organizations, in order to restore older person's lives and prevent further victimization. The services provided are free and confidential to older adults 55 years of age and older.

The vision of Senior Victim Services is to be a visible entity advocating for the rights and services for older victims of crime in Delaware County, providing comprehensive and coordinated services, both on the individual and systemic levels, maximizing community resources through collaborative relationships to support and promote opportunities for justice, rebuilding lives, and ensuring that older victims of crime are treated with dignity and respect.

Services Include:

- Keeping you informed on the progress of your case.
- Accompanying you to any court appearance or medical treatment related to a crime.
- Offering free telephone counseling services.
- Furnish home visits.
- Helping you file a private criminal complaint.
- Giving information and referrals as needed for such services as emergency food, housing or legal services.
- Intervention with creditors on your behalf.
- Assisting with Pennsylvania Crime Victims' Compensation claims.
- Coordination of transportation services.
- Providing alternative opportunities for justice.
- Free presentations to senior groups on crime prevention and the needs of older victims of crime.

Delaware County District Attorney's Office, Senior Victim Services
20 South Olive Street, Suite 303
Media, PA 19063
Phone: (610) 627-2292
Fax: (610) 627-2249
Web: https://delcoda.com/senior-victim-services/

Chapter 33

Delaware County Criminal Investigation Division (CID) Senior Exploitation Unit

The Delaware County Office of the District Attorney includes the Senior Exploitation Unit, https://delcoda.com/investigations/senior-exploitation-unit/. This Unit was created in 2003 to investigate physical, sexual and financial crimes committed against anyone who is sixty years of age or older. Examples of senior crimes include Identity Theft, Fiduciary Theft, Credit Card Theft or Misuse, Gypsy Scams and physical or financial abuse, including misuse of power of attorney. This Unit was developed to combat the problem of rising crime against senior citizens in Delaware County. Pennsylvania has the second highest number of senior citizen residents in the country. Delaware County has the largest number of senior citizen residents when compared proportionally to other counties within the Commonwealth.

The mission of the Senior Exploitation Unit is twofold: (1) to investigate crimes against seniors; and (2) to educate the general population of Delaware County concerning the many crimes and illegal schemes perpetrated against the seniors of the county.

The education segment of the mission raises awareness about the need to identify these crimes and the need to report the crimes to the proper authorities. In support of this mission, the Senior Exploitation Unit presents programs throughout Delaware County. The Unit presents programs such topics including: Crimes Against the Elderly, Don't Allow Yourself To Be a Victim, Senior Personal Safety and other pertinent subjects explaining the increasing number of crimes committed against seniors and how seniors can protect themselves.

Statistics show that many seniors throughout the country do not report the fraudulent and illegal schemes committed against them because they are afraid the actors may return

to victimize them again or that a family member may find out and may believe the victims are not able to properly handle their own affairs. It is very important to convince the senior victims of the need to report these crimes and to cooperate in the prosecution of individuals who prey on seniors. The Unit explains to seniors that if they become victims, the District Attorney's Office will assist them and will work to preserve their dignity and rights.

The Senior Exploitation Unit works closely with other elder driven agencies, including the Delaware County Office of Services for the Aging (COSA), Senior Victim Services, The SeniorLAW Center and many other organizations both within and outside of Delaware County. The assistance of these agencies has allowed the Senior Exploitation Unit to increase the understanding and cooperation of the senior community of Delaware County. The Unit has made and will continue to make a positive impact in cutting the rate of crime and scams committed against our seniors.

Detectives from the Criminal Investigation Division work closely with the District Attorney's Office to accomplish the Unit's purpose of investigating and prosecuting those who cheat, abuse, or deceive older adults in Delaware County.

Reporting these crimes is important. If you believe that you *or* a senior you know has been a victim of any of the above-mentioned crimes, please contact your local Police Department or the Senior Exploitation Unit and discuss your circumstances. You can reach the Unit at 610-891-5249 or you can send an email to seniorcrimes@co.delaware.pa.us.

Additional information, including the District Attorney's Tips for Crime Prevention Video, is available at For more information about the Senior Exploitation Unit or to request a presentation at your church, school *or* club:

Delware County District Attorney's Office
Senior Exploitation Unit
Phone: 610-891-5249
Email: seniorcrimes@co.delaware.pa.us.
Web: https://delcoda.com/investigations/senior-exploitation-unit/

Chapter 34

Treatment Court Programs

Through the criminal court system, Delaware County has created several court programs to help defendants overcome special circumstances such as addiction and mental illness that are affecting their quality of life and potentially led them to engage in criminal activity. These programs are diversionary programs aimed to treat the offender and may prevent them from going on to commit additional crimes. These treatment courts are supervised court programs aimed at improving the lives of participants and protecting the community welfare by providing treatment options, guidance and support.

Drug Treatment Court

To better address the needs of eligible non-violent defendants suffering from drug addiction, Delaware County created this program, which contains three different tracks, each with unique eligibility requirements. One point of eligibility specifically focuses on the offender's willingness to undergo strict court supervision and mandatory drug treatment. The program allows the offender to address their substance abuse addiction while under the strict supervision of the Office of Adult Probation and Parole and the Treatment Court Judge. This program, can often help the defendant establish an individualized treatment plan, housing, vocational training and avoidance of incarceration. Applications for Drug Treatment Court are available on the Office of the District Attorney's website, www.delcoda.com.

Mental Health Court

The Mental Health Court Program is limited to those Delaware County residents, 18 or older, who suffer from a serious mental illness (SMI) diagnosis that potentially contributed to their criminal act. SMI diagnosis can include schizophrenia, major mood disorder, psychoses NOS (not otherwise specified), and borderline personality disorder. Participation in Mental Health Court is voluntary. This program allows the individual to be introduced to many services available for them through the county to aid in

their treatment. The Court prefers to address non-violent offenses but will consider each defendant's application on a case-by-case basis. Applications for Mental Health Court are available on the Office of the District Attorney's website, www.delcoda.com.

Veterans Court

In 2011, Delaware County created Veterans Court. is limited to those defendants who have served in a branch of the military. The Court's mission is to provide substance abuse and mental health treatment to veterans. Participation in the program is voluntary. The Court prefers to address non-violent offenses, but will consider each defendant's application on a case-by-case basis. Applications for Veterans Court are available on the Office of the District Attorney's website, https://www.delcoda.com/veterans-court.

Veterans Court welcomes mentors from the community to act as a role model and advocate/coach for the participants of Veterans Court as the defendant moves through the program. If you are a Veteran of any military branch, Active Duty, Reserve, or National Guard, and would like to volunteer as a Veterans Court Mentor, please download the Veterans Court Mentor Application Form, https://www.pacourts.us/Storage/media/pdfs/20210215/031729-veteranmentorapp-000246.pdf

Requirements for Mentors include passing a criminal background check, successfully completing a Veterans Court Mentor online training course, having been discharged from the Military with an Honorable or General, Under Honorable Conditions characterization of service.

Young Offender Program

Delaware County's Young Offender Program, https://delcoda.com/young-offender-program/ is for low-risk first time young adult offenders currently charged with felony marijuana drug cases. The program affords non-violent offenders the opportunity to avoid a felony conviction upon successful completion of the program. It is an eighteen month long intensive supervision program under the guidance of Adult Probation & Parole and the Treatment Court Judge. This program is limited to offenders who are between the ages of 18-25 years of age. The amount of marijuana must have a total weight of less than one (1) pound or involve less than ten (10) marijuana plants.

Participants must waive the preliminary hearing and immediately file an application for the Young Offender Program. Accepted applicants will be schedule for an admission hearing in the Delaware County Court of Common Pleas before the presiding Judge of the Young Offender Program. Applicants will tender an open nolo contendere plea to the Criminal information that is filed by the Delaware County District Attorney's Office. The nolo contendere plea will be held in abeyance pending the participants enrollment and successful completion of the Young Offender Program.

Successful completion of the Program shall result in the dismissal/nolle pros of the entire case, with the opportunity for expungement of the case no year after the successful completion; barring no new arrests within that year.

Failure to complete the program requirements and recommendations, for any reason, shall result in removal from the program and acceptance of the tendered plea and sentencing.

Applications for Young Offender Program are available on the Office of the District Attorney's Office website, https://delcoda.com/download/86/young-offender-program/2028/young-offender-program-application-may-2020.pdf

For More Information on Treatment Court Programs

For more details relative to the above Treatment Court Programs, including eligibility criteria, please visit the Delaware County District Attorney's Office Drug Treatment Court Information page at https://delcoda.com/information/drug-treatment-court-information/

Chapter 35

Financial Exploitation: What Every Older Adult Needs to Know

Susan, a 75-year-old widow with two adult children, has lived in the same Delaware County home for over 40 years. Health and mobility challenges have left her isolated from friends and family.

One day, she receives a phone call informing her that the state of New York owes her money. Friendly and professional, the caller spends time talking to Susan who grows increasingly excited at the prospect of this unexpected windfall and all she could do with the money. Her home needs long overdue repairs. She has significant credit card debt. She imagines her grandchildren's faces when she surprises them with expensive gifts.

When Susan asks what she needs to do to collect the money, the caller tells Susan that once she pays the related fees and taxes, New York will send her a check for the full amount owed her. Susan carefully follows the caller's instructions to wire money to an unknown account.

Over the next few weeks, the caller regularly "checks-in" on Susan. The two develop an easy and enjoyable rapport. They discuss their families, their hobbies, their life experiences. When Susan has a medical appointment, the caller makes certain to phone and find out how "everything went." Every now and then, the caller instructs Susan to wire a little more money.

Eventually, Susan wires the last few dollars in her savings account. After that, the calls stop. Susan never hears from the state of New York. When she calls her friend to inquire about the status of her money, she gets the familiar prerecorded message: "We're sorry, the number you have dialed has been disconnected, and is no longer in service."

Unfortunately, Susan's story remains far from unique. The shocking prevalence of financial exploitation of older adults affects Americans of every socio-economic class. While likely under-reported, estimates of elder financial abuse and fraud costs to older Americans range from $2.9 billion to $36.5 billion annually (*Public Policy*, NAT'L COUNCIL ON AGING, (May 20, 2020), www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/). The victims of these crimes need protection more than ever.

SeniorLAW Center encourages older adults to remain pro-active and vigilant. We work with older adults to increase awareness of and develop strategies against fraud. We stress one rule above all others: **never share personal information with anyone unless you verify their identity and the legitimacy of their purpose**.

Common Types of Financial Exploitation and How to Avoid Them

1. Abuse of a Power of Attorney

A power of attorney is a legal document by which one person grants another the power to handle his or her affairs. The person granting the powers is called the "principal," and the person who is given the powers is called the "agent" (identified in older powers of attorney as the "attorney-in-fact"). The agent may abuse the powers he or she has pursuant to this document.

The primary reasons that the agent misuses his or her powers are lack of monitoring by the principal and lack of thought in choosing an agent. In choosing an agent, you must be certain that the agent is honest, capable, and willing to take on these responsibilities.

- **Sit Down with a Lawyer.** Have a lawyer assist you in carefully tailoring the power of attorney document to fit your individual needs. You should only grant powers necessary to achieve your goals. Beware of granting broad powers. You may be granting the agent the power to make gifts of your property or assets. This power opens the door for the potential of abuse and misuse.

- **Read the Document Carefully Before Signing It.** Discuss any questions with your attorney. Talk with the agent about the powers you are granting him or her. Be

certain that they are willing to take on this important responsibility.

- **Monitor the Actions Taken by the Agent on Your Behalf.** Demand that the agent informs you of all his or her decisions. Granting powers to another does not mean that you release any of your rights to control your own affairs.

- **Review Your Financial Statements.** Review your account information and demand disclosure. You should appoint a co-agent if you are not in a position to monitor your financial statements. They will have oversight of each other to ensure that no exploitation is occurring.

- **Revoke If You Suspect Abuse.** If you suspect that your agent is abusing his or her powers, you may revoke his or her powers in writing, as long as you are competent to do so.

2. Joint Bank Account Problems

A joint account with another person means that both of the joint owners have access to the money in the account. There are two types of joint accounts:

- **"Either party able to sign" account:**

  Anyone named on the account can perform a transaction on their own, without the knowledge or approval of the other person. This type of joint account is open to misuse. Older adults open these accounts for convenience purposes because they may be too frail to travel to the bank. Financial exploitation occurs because the joint owner has access to everything in the account even if s/he did not contribute anything to the account.

  You should always review your bank statements in order to monitor the actions of the other owner. Take note that the bank will not be liable if the owner withdraws your money and deprives you of the funds.

- **"Both parties required to sign" account:** This type of account requires both account holders to sign for/authorize a transaction for it to be performed. The joint owner should be someone you trust.

3. DEED TRANSFERS

As a rule, do NOT sign over the deed to your property to another, including relatives UNLESS you have consulted an attorney. Once you sign over the deed to someone, you are no longer the owner of the property. The new owner can do whatever they want regarding the property, including evicting you from your home, mortgaging the property, or selling the home and keeping all the proceeds.

Be Cautious! If someone is persuading you to transfer your deed, tell him or her that you appreciate his or her concern. However, you will consult with an attorney concerning the benefits and detriments of executing a deed transfer.

Consider writing a will to convey your property instead. Your interests will be protected until your death.

4. Credit Cards

If you suspect credit card fraud, call and write the credit card company's fraud department; identify unauthorized charges and/or inform the department that you never applied for the account. The credit card company will investigate and determine whether you are liable for the charges.

To avoid credit card fraud, you should:

- Always know the location of your credit card and keep it safe.
- Check your statements frequently.
- Do not share your card or identifying information with others.
- Do not open an account in the name of someone else.

Do NOT let anyone else use your card!

5. Telemarketing Fraud

When you send money to people you do not know personally or give personal or financial information to unknown callers, you increase your chances of becoming a victim of telemarketing fraud. Once cheated, you are unlikely to get your money back. Here are some common statements you may hear by these fraudsters:

- *"You must act now or the offer won't be good."*
- *"You've won a free gift, vacation, or prize." However, you must pay for "postage and handling" or other charges.*
- *"You must send money, give a credit card or bank account number, or have a check picked up by courier." You may hear this before you have had a chance to consider the offer carefully.*
- *"You don't need to check out the company with anyone." The caller says you do not need to speak to anyone including your family, lawyer, accountant, local Better Business Bureau, or consumer protection agency.*
- *"You don't need any written information about the company or any references."*
- *"You can't afford to miss this high-profit, no-risk offer."*

Before you send any money or provide your personal or financial information, remember:

- **If it sounds too good to be true it probably is.**
- **Do NOT buy from an unfamiliar company**. Always check out unfamiliar companies with the Better Business Bureau, Pennsylvania Attorney General's Office, or other watchdog groups. Unfortunately, these organizations cannot identify all bad businesses.
- **Verify information.** Obtain a salesperson's name, business identity, telephone number, street address, mailing address, and business license number before you transact business. Some con artists give out false names, telephone numbers, addresses, and business license numbers.
- **Never pay for a "free prize."** If a caller tells you the payment is for taxes, it is likely fraud.
- **Take your time.** Always take time making a decision. Legitimate companies will not pressure you.
- **Think before you act.** Before you send money, ask yourself a simple question. "What guarantee do I really have that this solicitor will use my money in the manner we agreed upon?"
- **Talk with trusted friends and family.** Be sure to talk over big investments offered by telephone salespeople with a trusted friend, family member, or financial advisor**. It is never rude to wait and think about an offer.**

6. Other Common Scams

Sweepstakes and Lottery Scams

Calls, mailings, or messages stating that you won the lottery or sweepstakes, and asking you to pay for shipping or handling charges, registration fees, taxes, and storage fees.

Romance Scams

Scammers use fake profiles on dating sites or apps to build a trusting relationship only to then make up a story to ask for money. They may claim to be from a charity or mission and need help delivering items to another part of the world.

Gift Card Scams

Callers claiming to be with a government agency who state that you will be under arrest unless you purchase and send them gift cards.

7. COVID-19 SCAMS

Six things you can do to avoid a coronavirus scam

1. Ignore offers for vaccinations and home test kits. Scammers are selling products to treat or prevent COVID-19 without proof that they work.

2. Hang up on robocalls. Scammers use illegal sales calls to get your money and your personal information.
3. Watch out for phishing emails and text messages. Don't click on links in emails or texts you didn't expect.
4. Research before you donate. Don't let anyone rush you into making a donation. Get tips on donating wisely at ftc.gov/charity.
5. If you see a scam, report it to Federal Trade Commission at ftc.gov/complaint.
6. Stay in the know. Go to ftc.gov/coronavirus for the latest information on scams. Sign up to get FTC's alerts at ftc.gov/subscribe.

For more information visit *Coronavirus (COVID-19) Pandemic: The FTC in Action, https*://www.ftc.gov/coronavirus):

In conclusion, please remember:

- Take an active role in your affairs
- Monitor your financial statements
- Ask Questions
- Remain Aware
- Practice Self-Advocacy

You can prevent financial exploitation!

Delaware County residents, 60 or older, can discuss concerns about financial exploitation with an attorney by calling: 610-910-0215 (www.seniorlawcenter.org)

Chapter 36

Small Claims Courts

Magisterial District Courts so-called "Small Claims Courts constitute the primary level or the administration of justice in Pennsylvania. They have jurisdiction over small claims of $12,000 or under involving torts (cases where an individual or entity is harmed due to the negligent or purposeful conduct of another) and contracts.

There are thirty-three Magisterial District Courts throughout Delaware County, and you must file in the proper court. A case must be filed either: (1) where the transaction took place; (2) where the cause of action arose; or (3) where the defendant can be served.

You can access a list of all of the Magisterial District Courts and Judges at https://www.delcopa.gov/courts/districtjudges/index.html.

To file a case, you need only fill out a simple one page form that you can obtain from the Magisterial District Court or online through http://www.pacourts.us/assets/files/setting-897/file-771.pdf?cb=0bb1db. You will need to write the following information on the form: your name and address, the names and addresses of all of the defendants, and a short statement to explain the basis of your claim, including where the cause of action took place. You or your attorney must sign it, and provide your phone number.

Many people choose to represent themselves and the rules permit them to do so. However, depending on the amount of money and the complexity of the case, it may be advisable to hire an attorney, or at least consult with an attorney before filing your Complaint. Then, you may call the district court to fill out the amount of the filing fees and service costs. The court will process the complaint when it is filed properly, with the proper filing fees and service costs. In order to obtain jurisdiction over the defendant, the Court will "serve" a copy of the Complaint on the defendant(s). Service can be accomplished by certified mail, return receipt, or by constable service and must be done at least ten days prior to the hearing. District Judges have the power to allow amendment to a civil complaint. However, such amendment must be made at the hearing in the presence of the adverse party or his representative.

When the defendant receives the complaint, he or she will also receive a hearing date and be advised to notify the court if they intend to defend the case by appearing at the hearing. No written answer to a civil complaint need be filed in a District Court. A defendant only needs to inform the court that he or she intends to defend against the claim and appear at the hearing scheduled. If the defendant fails to notify the court and fails to appear at the hearing, or notifies the court that he or she intends to defend

and fails to appear, a default judgment is entered in favor of the plaintiff.

A defendant may file a counterclaim in a District Court without additional cost no later than five (5) days before the date set for a hearing. Such a counterclaim must be within the jurisdictional limits of the District Court and must be served on a plaintiff.

If all parties appear, they should bring any relevant witnesses, documents, pictures or any other information that they feel supports their case. Please note that most rules of evidence apply and that Magisterial District Judges cannot admit most statements or affidavits as they are hearsay and inadmissible. Estimates, bills, receipts and statements of account are admissible. Coming to Court prepared with copies of the necessary documents for the Judge and the other parties will make the hearing go faster. Depositions and interrogatories may not be used either for discovery or at the hearing in a District Court action. After the hearing, the Judge must make a decision within five days. All parties have the right to appeal the decision within thirty days to the Court of Common Pleas.

Chapter 37

Driver's Licenses; Driving Safely

Much has been written in recent years about senior driving safety. For an older person considering whether to limit or stop driving, the main concern may be perceived loss of independence. For family members and friends, the main concern is that their loved one may be hurt (or worse) in an accident, or hurt someone else.

According to AAA's website, seniors have the second highest (after teens) crash death rate per mile driven. The problem is not that senior drivers crash more (since they tend to drive less, particularly at night and in bad weather), but that they injure more easily than younger drivers. Most seniors begin to limit their driving long before they give up their driver's licenses. Planning for this process can reduce the emotional and financial impact of making the decision not to drive when it becomes unsafe to do so.

This article contains suggestions for seniors and their loved ones to make the process easier.

Legally speaking, a driver's license is considered a privilege, and a person's license may be recalled or suspended for a variety of reasons. The privilege of driving may be revoked upon a determination of incompetence. The privilege may also be revoked if a physician finds that a person has a condition that prevents him or her from safely operating a motor vehicle. There are a number of common physical changes that may occur with age and may affect vision or hearing or reaction time, all of which may affect a person's ability to operate a motor vehicle safely, particularly on the highway or at night. Some medical conditions and some medications also affect the ability to drive.

Seniors should also be aware that there have been changes in the traffic rules in recent years.

According to the Pennsylvania Department of Transportation (PennDOT), a number of drivers over age 45 are chosen at random each month for review at the time of license renewal and are required to undergo vision and physical exams by their doctors. If the need is indicated by those tests, the driver may be required to take a driver's examination. Also, PennDOT receives confidential reports from doctors and family members concerned about a medically incapacitated person's ability to drive; in those instances, PennDOT will initiate an evaluation process, and may add restrictions to the person's license, or recall it, or may ask the person to provide more specific medical information or to complete a driver's examination.

If a person's license has been recalled or suspended, an appeal can be filed in the Delaware County Court of Common Pleas. The appeal will not postpone the recall of a driver's license and the person still must turn over his or her license to PennDOT. A hearing will be held in court about sixty (60) days from when the

appeal was filed. The attorney for PennDOT will argue that the license should remain revoked based upon the medical evidence of the person's doctor or psychologist. (Note that the "confidential" report of a physician or family member may be admitted as evidence in these legal proceedings). A person can challenge this argument by presenting reports of other doctors or by passing a road test given by a driving rehabilitation center. They make a determination whether the person can or cannot drive.

If the person is successful in his or her appeal, a letter is sent to PennDOT and the license is returned and reinstated. If unsuccessful, the person can appeal to a higher court, but remember that filing another appeal will not reinstate the license until the next court decision. The good news is that there are many resources, on both the local and national levels, to help people deal with this process before a serious issue arises. First, there is a wealth of information available, on the internet and by telephone, from many organizations, including American Association of Retired Persons (AARP) (l-888-0UR-AARP, i.e., l-888-687-2277; www.aarp.org): American Automobile Association (AAA) (877-844-2366, www.midatlantic.aaa.com); National Safety Council (800-621-7619; www.nsc.org- search for Mature Drivers); and PennDOT (800-932-4600; www.dot.state.pa.us), to name just a few. Many of these sites offer advice on talking with loved ones about driving concerns, online quizzes, descriptions of conditions that impair driving ability, lists of warning signs that a person should limit or stop driving, etc. Informational brochures and guides are available from these organizations as well as from the National Highway Traffic Safety Administration (www.nhtsa.gov), the Pennsylvania Department of Aging (www.aging.state.pa.us), and the American Optometric Association (www.aoa.org).

In addition, there are several safe driving programs and courses available which may qualify the driver for a **discount on his or her auto insurance premium,** including AARP's well-known, and very low-cost program. AARP's website (www.aarp.org) also has an online seminar to help families determine how to assess a senior person's driving skills, as well as vision safety tips, car safety tips, and advice concerning the effect of medications on driving ability.

Since 1983, Bryn Mawr Rehab Hospital (414 Paoli Pike, Malvern, PA 19355) has offered a Driver Rehabilitation Program, which provides an objective and thorough evaluation of an individual's driving ability. Its director is an Occupational Therapist and Certified Driver Rehab Specialist. The program is medically-based, and a physician's prescription (on a one-page Referral Form) is required. The cost of the self-pay program typically is not covered by insurance. Additional training (e.g., for the PennDOT test) and adaptive vehicle equipment recommendations are also available. Family members many also initiate a referral. To make a referral, schedule an evaluation, or simply ask for advice, call 484-596-3943 or 484-596-5400.

Anonymous reports to PennDOT about a person's ability to drive can be made by calling the Medical Unit at 717-787-9662.

MIT's Age Lab and The Hartford Insurance Company developed an "Agreement with My Family about Driving," which states a person's desires about continuing to drive safely, and involves family members in the decision about when it is no longer safe for the older person to drive. Both MIT's and Hartford's websites have extensive information about having these conversations.

Rest assured that there is a great deal of support available to older drivers who wish to continue to drive safely, and for their concerned family members and friends. You only need to ask.

Chapter 38

Photo ID Cards

Driver's licenses are often requested for identification. If you do not have a driver's license (or even if you do), you can obtain a Photo Identification Card, similar in appearance to a driver's license, at the Pennsylvania Department of Transportation Driver License Centers. If you have never held a Pennsylvania Driver's License, you must apply in person for your initial Photo ID

Card, and pay a fee of $31.50. Any Pennsylvania driver who voluntarily surrenders his or her license because of health reasons which may affect his or her ability to safely operate a motor vehicle, can obtain a Non-Driver Photo ID Card for NO FEE. (Your driver's license can be reissued if you successfully complete the appropriate examination at a later date). You must bring proof of identification such as a birth certificate or your old driver's license, along with your Social Security card, and two proofs of your residency, to the Driver License Center near you to apply for your Identification Card. In an effort to reduce the incidence of identity theft, PennDOT will issue a temporary card which is valid for 15 days, and will mail you your permanent Card after checking to ensure that your photograph does not match another photograph appearing in its database under a different driver name.

Chapter 39

Handicapped Parking

If you are disabled and need a special parking placard or special parking place you must first complete Form MV-145A. Your physician must also sign the form. To get this form, contact the Pennsylvania Department of Transportation, Bureau of Motor Vehicles, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104 or call 800-932-4600. To be allocated use of a special handicapped parking spot near your home, you then need to contact your local municipality and follow their regulations. If it is approved and a designated handicapped parking spot is marked out near your home, please note that anyone with a handicapped license plate or placard may park there.

Chapter 40

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Chari is the Editor of the 8th Edition of the Delaware County Elder Law Handbook and Resource Guide and is co-chair of the Delaware County Bar Association Elder Law Committee. Certified as an Elder Law Attorney by the National Elder Law Foundation, she is a Partner at Anderson Elder Law, P.C., a firm with offices in Media, Delaware County and West Chester, Chester County that is dedicated to aiding individuals and families to navigate the legal, financial, and medical issues related to elder law, estate planning, and long-term care and special needs planning. Chari has been practicing in the areas of trust and estate administration, estate planning, and elder law since 2003. Chari is a member of the National Academy of Elder Law Attorneys (NAELA) and is on editorial board of NAELA News, and a member of the Pennsylvania Association of Elder Law Attorneys (PAELA) where she is a member of the board and serves on the public policy committee. Char is also the Secretary for the Pennsylvania Bar Association Elder Law Section Council and a co-Editor of the Pennsylvania Bar Association Elder Law Section Newsletter. Chari is a board member of the Chester County Estate Planning Council. Chari is accredited as an attorney by the U.S. Department of Veterans Affairs. Chari is a speaker on various estate and elder law topics for professional education seminars and community groups. Chari received her juris doctor degree from Temple University, her Masters degree in Public Health and a Gerontology Certificate from Boston University School of Public Health, her Bachelor of Arts from Rutgers University – New Brunswick. **Ms. Alson contributed to Chapter 2 (Mental Health and Substance Abuse Resources), Chapter 3 (Estate Planning) and Chapters 16 and 17 (Medicaid and Figures for Governmental Programs & Other Matters).**

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Certified as an Elder Law Attorney by the National Elder Law Foundation, Linda M. Anderson is the founder of Anderson Elder Law, a law firm with offices in Media and West Chester. Linda represents clients throughout the Philadelphia region. Ms. Anderson has been admitted to practice in Pennsylvania since 1986, and she is also accredited as an attorney by the U.S. Department of Veterans Affairs and is a Fellow of ACTEC (American College of Trusts and Estates Counsel). Linda's ethical and comprehensive handling of what are often sensitive and emotional matters has earned her a great deal of recognition from her fellow professionals including selection as a "Super Lawyer" in the field of Estate Planning and Elder Law since 2004 and one of the "Top 50 Female Lawyers in Pennsylvania" since 2008. Linda has also been chosen as one of the Best Lawyers in America since 2008. Linda has received the prestigious "AV" rating from Martindale Hubbell and is an invited member of the Special Needs Alliance. Linda contributed to the chapters on Elder Law and Medicare.

A significant portion of Linda's practice involves providing clients and their families with advice and counsel regarding Medicaid and other long-term care planning. She advises them on nursing home care, as well as providing them with available alternatives, such as in-home care and community services. Linda also has experience in guardianships, and her practice includes estate planning as well. In this regard, she prepares and reviews wills, special needs and other types of trusts, financial and health care powers of attorney, and advance medical directives. Linda is a 1980 graduate of Sarah Lawrence College (B.A.), and a 1985 graduate of the University of San Francisco School of Law (J.D.). Linda also holds an LL.M. in taxation from Villanova University Charles Widger School of Law. **Ms. Anderson contributed to Chapter 1 (Elder Law) and Chapter 14 (Medicare).**

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Daniel Coleman received his undergraduate degree from Yale University and his J.D. from Widener University School of Law. Daniel is an associate in the Trust and Estate Department of Eckell Sparks. Prior to joining the firm, Daniel served as Judicial Law Clerk to President Judge Chad F. Kenney in the Orphans' Court Division of the Delaware County Court of Common Pleas. While serving as a judicial law clerk, Daniel also sat as a Master hearing various guardianship issues. Daniel is a member of the Elder Law Committee of Delaware County and serves as Chairmen of the Orphans' Court Rules Subcommittee of the Delaware County Bar Association. **Mr. Coleman contributed to Chapter 12, Guardianships.**

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Brendan Corbalis serves as the Director of SeniorLAW Center's Victim Services Project – he leads a dedicated team of specially trained attorneys and legal advocates who offer free high quality direct legal services to older adults in the Greater Philadelphia Area. A graduate of Villanova University School of Law, he also holds degrees from NYU and Yale. Since its founding more than forty years ago, SeniorLAW Center has provided free legal representation for over 50,000 individuals, focusing on the most vital and recurring legal problems facing older people in our communities: housing, abuse, financial exploitation, consumer problems, grandparent custody, and personal and end-of-life planning needs. SeniorLAW Center exists solely to seek justice for older people by using the power of the law, educating the community, and advocating on local, state, and national levels. **Mr. Corbalis contributed to Chapter 35, Financial Exploitation of the Elderly.**

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Michael R. Galantino is an attorney in private practice with LaMonaca Law, a firm serving clients in family law cases. Mr. Galantino is also an instructor for the Pennsylvania Minor Judiciary Education Board and an adjunct professor in criminal justice at West Chester University of Pennsylvania. He is the former Executive Director of the National Association of Prosecutor Coordinators, and previously served for thirty years in the Delaware County (PA) District Attorney's Office including twenty-one years as Deputy District Attorney and Chief of the Special Victims / Domestic Violence Division. He has a bachelor's degree in Social Work from West Chester University and a Juris Doctor from Villanova University School of Law. He began his career in the District Attorney's Office in 1989 and was promoted to the criminal trial division in 1991, where he prosecuted a variety of cases over the next seven years. In 1998, Mr. Galantino was appointed Chief of the newly created Special Victims' Unit to specialize in cases involving Child Abuse, Sexual Assault, Domestic Violence and Internet Crimes Against Children. He prosecuted thousands of cases in his career, including more than 140 jury trials to verdict. He has taught at the National, State, and local levels on issues including computer-facilitated sexual assault, child abuse and exploitation, ethics, evidence, criminal law, search and seizure and courtroom procedures. **Mr. Galantino contributed to Chapter 32 (Senior Victim Services) and Chapter 33 (Delaware County Criminal Investigative Division (CID) Senior Exploitation Unit).**

Richard Gaudiosi
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Richard Gaudiosi conducts presentations for the Social Security Administration throughout Southeastern Pennsylvania, designed to promote a better understanding of Social Security's benefits and services. **Mr. Guadiosi contributed to Chapter 13, Social Security, originally written by Timothy Berger, Esq.**

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Dave Hennessy of the law firm of Hennessy & Bullen has been in the general practice of law in Delaware County for many years. Member of the American, Pennsylvania, and Delaware County Bar Associations, he continues to serve on the sections and committees dealing with probate, real estate, and elder law issues. Dave is a past president of the Delaware County Estate Planning Council, past chairman of the county bar association Orphans' Court Rules and Continuing Legal Education committees. He has presented and participated in programs on wills, estate planning documents, estate administration and inheritance taxes, and other topics of interest to groups at senior centers, retirement communities, and churches. **Mr. Hennessy contributed to Chapter 5, When a Loved One Dies: Priority List.**

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Mary Kennedy is a 1989 graduate of Temple University School of Law and a 1986 graduate of Temple University School of Business Administration with a BBA in Economics and Finance. Her practice includes general civil litigation, elder law and estates. Prior to joining Conan Law Offices, Mary was a staff attorney for Legal Aid of Southeastern Pennsylvania, Delaware County Division where she handled landlord-tenant, public housing, consumer, child custody, public benefits and elder law matters. She is a member of the Delaware County Bar Association's Elder Law Committee. **Ms. Kennedy contributed to Chapter 25 (Housing and Energy Assistance and Resources) and Chapter 28 (Landlord-Tenant).**

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Kim is an active member of the Delaware County Bar Association. She is a past chair of its Family Law Committee and on the executive committee of the Guy G. deFuria American Inn of Court. Kim considers herself a mediation-friendly divorce attorney and frequently collaborates with various Main Line mediation groups. Her academic background includes a Juris Doctor from the Charles Widger School of Law at Villanova University. In her free time, Kim spends time as a Mom-Taxi driving her two teenagers to sports; walking her dog, Clover, a 7 pound Cavaton, and reading a book – with real pages. **Ms. Krzyzaniak contributed to Chapter 29 (Family Law) and Chapter 30 (Grandparents' Custody of Children with Addict Parents).**

Janet M. Lis, Esquire

Janet is currently retired. While active, her law practice focused on health-care related matters, especially guardianship, advance directives, and end-of-life issues. She received J.D. and B.S.N. degrees from Georgetown University, and practiced nursing prior to practicing law. She is a member of state and local bar associations, is a Co-Vice Chair of the Pennsylvania Bar Association Health Care Law Committee, and serves on the Orphans' Court and Elder Law Committees of the Delaware County Bar Association. She was previously a member of the Delaware County Health Literacy Coalition. Janet contributed the sections on Privacy of Health Information – Health Insurance Portability and Accountability Act (HIPAA), Out-of-Hospital Do Not Resuscitate Orders and Palliative Care and Hospice.

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Guy received his undergraduate and master's degree in Business Administration from Widener University. He earned his law degree in 1979 from Temple University School of Law and a Master of Laws in Taxation from Villanova University. Additionally, he has received the C.L.U. and Chartered Financial Consultant designation from the American College. Guy's practice concentrates in all aspects of the estate planning process from the client interview to the drafting and execution of all documents. Guy's practice also involves the administration of complex estates (and trusts), including post mortem planning, and estate tax audits. Additionally, Guy prepares and conducts seminars for the public and for private organizations on various estate planning topics. He has developed and presented "The Comprehensive Estate Planning Program" on a continuing basis. Guy has been selected to Pennsylvania "Super Lawyers" list each consecutive year since 2009. **Mr. Matthews contributed to Chapter 24, Long-Term Care Insurance.**

Cynthia A. McNicholas, J.D.
As this edition of the Handbook goes to print, Cynthia is preparing to retire from the practice of law after a 41-year career. She has practiced mainly in Media, Pennsylvania. Since 1994, she has been a sole practitioner, focusing on the areas of Estate Planning, Estate Administration, Elder Law, and Orphans' Court matters. In addition, she served the Delaware County Orphans' Court as Law Clerk and Master (later known as Hearing Officer), from 2016 until January, 2023. She chaired the Orphans' Court Rules Committee and Orphans' Court Committee of the Delaware County Bar Association for many years. She was an officer of the Delaware County Estate Planning Council and served as its President in 2012-2013. She received her B.A. from Dickinson College and her J.D. from Villanova University School of Law. She served as an Editor of the Delaware County Elder Law Handbook for the editions released in 2006, 2008, 2011 and 2015. Ms. McNicholas contributed to Chapter 36 (Small Claims Courts-Magisterial District Courts), Chapter 37 (Driver's Licenses and Driving Safely), Chapter 38 (Photo ID Cards), and Chapter 39 (Parking for Persons with Disabilities)

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Neil Meyer joined SeniorLAW Center's staff in June 2022 as a Staff Attorney providing legal services to senior victims of elder abuse and financial exploitation. Neil is part of SeniorLAW Center's Victims Services team and concentrates his efforts in Delaware County. Neil provides services to senior victims of financial abuse to ensure the exploitation is stopped and advocates for victims of elder abuse in civil court when possible. He also attends outreaches on behalf of senior adults. **Mr. Meyer contributed to Chapter 31, Elder Abuse & Neglect.**

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Christopher M. Murphy is a partner and owner of the law firm Breslin, Murphy and Roberts, PC. He focuses his practice in the areas of elder law, estate planning, estate administration, as well as Orphans Court litigation. With a background in civil litigation and personal injury, Mr. Murphy now focuses his litigation experience in Orphans Court litigation representing clients in Delaware County and Chester County in guardianship matters, Will contests, probate litigation and general estate litigation. Mr. Murphy has served as Court appointed guardian for incapacitated individuals, Court appointed counsel for alleged incapacitated individuals and Court Appointed Estate Administrator in Delaware County. He has also served as conflict counsel in Guardianship Petitions on behalf of COSA , (County Offices of Services for the Aging) in Delaware County.

He received his BS from the University of Scranton in 1996 and his JD from the Widener University School of Law in 1999. He is a member of the Delaware County and Pennsylvania Bar Associations where he is a member of the Family Law Section, Family Law Advisory Committee, Elder Law Committee, Legal Education Orphans' Court Division and Orphans' Court Rules Committee Member. He is also a member of Irish organizations including the Brehon Law Society and Ancient Order of Hibernians.

Mr. Murphy volunteers for Wills for Heroes, Veterans Law Clinic and previously served as a Committee Chairman and Board Member of the non-profit organization, Senior Community Services of Delaware County (SCS), which operates several senior centers in Delaware County. He currently serves as the Divorce Review Officer in the Delaware County Court of Common Pleas - Family Court. Mr. Murphy lectures on Elder Law topics for community groups, SCS, the Pennsylvania Bar Institute and Delaware County Bar Association. A lifelong resident of Delaware County he resides with his wife and 4 children in Concord Township, PA. **Mr. Murphy contributed to Chapter 6 (Powers of Attorney), Chapter 7 (Durable Health Care Power of Attorney), and Chapter 8 (Living Wills).**

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Ricky A. Palladino devotes his entire practice to immigration law. Mr. Palladino is the managing partner of Palladino, Isbell & Casazza, LLC with offices in Philadelphia (1528 Walnut St. Suite 1701 Philadelphia, PA 19102) and Media – Delaware County (1 W 3rd St. Suite 200 Media, PA 19063). The staff at Palladino, Isbell & Casazza, LLC speak 12 different languages. Having worked for the legacy Immigration and Naturalization Service prior to entering the private bar, Ms. Palladino brings a wealth of insight and experience into his role as advocate and counselor. Mr. Palladino assists individuals in all areas of immigration law including: removal defense, family based immigration, asylum and refugee law, naturalization, F-1 student visas and all other temporary visas. Mr. Palladino assists employers and corporations in all areas of immigration law as well including: I-9 Compliance & I-9 Audits, Labor Certifications, H1b Visas, H2B & H2A visas, and TN Visas. Mr. Palladino is an active member of the American Immigration Lawyers Association where he serves as the Philadelphia chapter liaison to Immigration & Customs Enforcement ("ICE") and is a member of the Military Assistance Program which provides pro bono legal services for members of our armed forces as well as their immediate family members. **Mr. Palladino contributed to Chapter 21, Immigration.**

Jennifer Pierce, Esquire

Jennifer Pierce, Esquire was formerly Pro Bono Director at Legal Aid of Southeastern Pennsylvania. During her 9+ year tenure at LASP, she served as Managing Attorney of the Doylestown office, Bucks County Pro Bono Coordinator starting in 2018, and VOCA Supervising Attorney in 2021. Since December 2021, she has served as Pro Bono Director. **Ms. Pierce contributed to Chapter 18 (Low-Cost Legal Services for Seniors), Chapter 19 (Public Benefits of Non-Citizens) and Chapter 20 (Food Stamps (SNAP)).**

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Richard A.J. Prebil, Esq., is Supervising Attorney of the Veterans Unit at Legal Aid of Southeastern PA, which he helped establish in mid-2020. The Unit provides representation, advice, and outreach to veterans experiencing, or at risk of experiencing, homelessness, and income insecurity, or living with a disability. Richard primarily practices in the areas of VA benefits, discharge upgrades, and social security. When he joined LASP in 2019, Richard, based in the Chester City office, represented individuals in landlord/tenant, subsidized housing, child custody, public benefits, and unemployment compensation matters. Prior to joining Legal Aid, Richard was an Equal Justice Works Fellow at a non-profit in Philadelphia where he provided representation and outreach to veterans, current military personnel, and their families, in the areas of veterans benefits, discharge upgrades, and Chapter 7 bankruptcies, in PA, NJ, and DE. During law school, he worked with many veteran and legal service organizations from Minneapolis to Chicago to Philadelphia. Richard holds a JD from the Villanova University Charles Widger School of Law, where he now teaches "Representing Veterans in Administrative Practice" as an adjunct professor. He holds a BA from the University of Illinois Springfield. **Mr. Prebil contributed to Chapter 22, Veterans' Benefits & Contact Directory**

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The Delaware County

ELDER LAW HANDBOOK & RESOURCE GUIDE

For Seniors and Their Families in Delaware County, Pennsylvania

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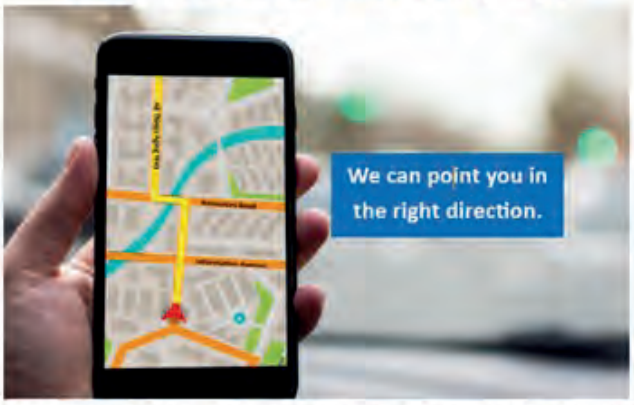

COSA is Delaware County's Area Agency on Aging. COSA has over 30 programs of service for county residents age sixty or older. COSA is an information resource for persons of any age or income needing information on benefits and services available to older or disabled persons.

COSA
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