

-Long Term Care- Elder Law Thoughts

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Die in your sleep at home, at 100 years old!

<http://mentalfloss.com/article/54286/100-pieces-advice-100-year-olds>

Care in the home?

Assisted Living?

Adult Foster Care/Homes for the Aged?

Continuing Care Communities?

Nursing Home?

Hospice?

What's Really Needed Most?

- Medical Needs?

- More typically provided by institutions and/or professionals
- Coverage often by ltc insurances/Medicare/Medic aid/Pace/MI Choice Waiver Program/Veterans Benefits

- Activities of Daily Living (ADL's)?

- More typically provided family friends or community/programs
- Usually private pay or charity or grant/gov. programs

Long Term Care

In the USA estimates suggest more than 11 million need some form of long-term care

--long-term care is used by all ages, and not just the elderly-perhaps 37 percent under 65 years old in one study, but 63 percent for those above 65 years of age

How long one might need long-term is sometimes debated, but women seem to use it, if at all, for an average of 3.7 years, and men 2.2 years.

Much of this can be delivered at home-but not always.
(www.LongTermCare.gov)

Medical Care and Activities of Daily Living (ADL)

Not all long-term care is *medical*—a good deal of long-term care covers *Activities of Daily Living (ADL)*:

Bathing

Dressing

Transferring (to or from bed or chair)

Incontinence and toileting

Eating

And to a lesser degree (Instrumental Activities of Daily Living) shopping, money management, cooking or cleaning, taking medicines, using the telephone, caring for pets, responding to emergencies like fire alarms, etc.

Care in the Home/Community

Much care in USA still provided mostly in an informal way by family or friends

Push to have non-institutionalized care continues



Americans are currently providing long-term care to a loved one.

2013 Long-Term Care Poll by AP

<http://www.longtermcarepoll.org/Pages/Polls/Report.aspx>

Many findings, including, satisfaction in helping BUT also stress in helping

Planning for long-term care seems hit or miss

Fewer than half (45 percent) of Americans 40 or older are concerned with paying for care as they age. Even though many types of health care insurance plans do not cover the costs of long-term care, Americans who are currently covered are less likely than those who are not covered to say they are quite a bit or a great deal concerned about being able to pay for care

Paying for long-term care

Savings and investments

Current income (S.S., Pension, IRA, etc.)

Friend and family contributions

Long-term care insurance

Employer provided health insurance

Medicare including Medicare Advantage Plans

Medicaid-LTC and MI-Choice Waiver

PACE (Program of All-Inclusive Care for the Elderly)

Veterans Benefits

Winning the lottery

Medicare and Long- Term Care

Custodial care? Not
really. . .

Skilled nursing care?
Yes but limits. . .

People with Medicare are covered if they meet all of these conditions:

You have Part A and have days left in your benefit period.

You have a qualifying hospital stay.

Your doctor has decided that you need daily skilled care given by, or under the direct supervision of, skilled nursing or therapy staff. If you're in the SNF for skilled rehabilitation services only, your care is considered daily care even if these therapy services are offered just 5 or 6 days a week, as long as you need and get the therapy services each day they're offered.

You get these skilled services in a SNF that's certified by Medicare.

You need these skilled services for a medical condition that was either:

A hospital-related medical condition.

A condition that started while you were getting care in the skilled nursing facility for a hospital-related medical condition.

Medicare Cost Sharing

(skilled care)

Your skilled nursing home costs in Original Medicare

You pay:

Days 1–20: \$0 for each benefit period paid by consumer.

Days 21–100: \$167.50 coinsurance per day of each benefit period paid by consumer (compare \$270 per day if \$8100 per month).

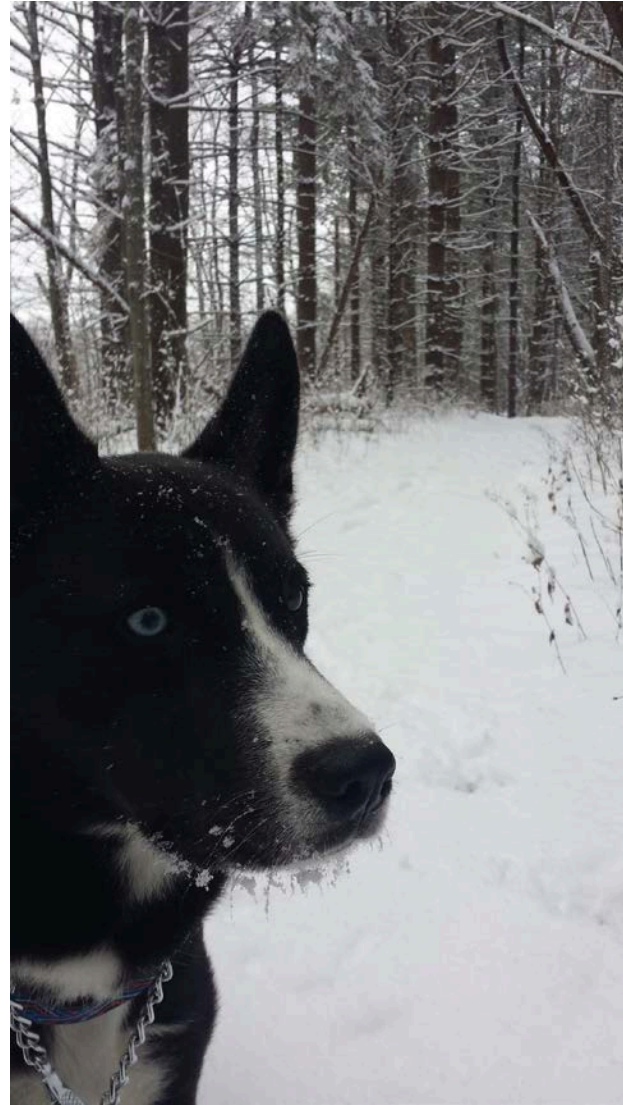
Days 101 and beyond: all costs left to consumer.

Hospice

--services fully covered, palliative care, pain meds; but generally not room and board

Dogged Pursuit of Coverage

It's not easy but the "industry" has an incentive to fill beds/spots and get paid



Practical Pointers/Private Pay

Pressure cooker but take your time-use tools

Discharge plan?

<https://www.keproqio.com/providers/appeals.aspx#Appeals> (Toll free 855-408-8557)

Shopping around/reviews/visits and “report cards”?

[https://www.medicare.gov/nursinghomecompare/search.html?](https://www.medicare.gov/nursinghomecompare/search.html)

More Practical Pointers

Admission Contracts—let patient sign themselves if at all possible—or if you sign, do so in a representative capacity only?

Be guarded, some financial info will often be sought BUT seeking oral or written ASSURANCE that applicants are not eligible or won't apply for Medicaid or Medicare benefits is improper. 42 USC 1396r(c)(5)(A). See also MCL 333.21765a(1)-(2)

“Improvement” fable re: Medicare coverage?

<http://bradvauterlaw.com/medicare-advocacy-failure-improve-plateaus/>

And even More . . . Practical Pointers

Skilled Care? Custodial Care? Ask, Inquire and Advocate.

<http://bradvauterlaw.com/not-all-care-is-the-same/>

“High Care” or “Hard to Handle” patients/residents?—Joint efforts and problem solving approach is best—realistic expectations--BUT regulations suggest homes should not always deny applicants with high care needs. *Stick*: Wagner v Fair Acres Geriatric Ctr, 49 F3d 1002 (3d Cir 1995) *Carrot (at least with Michigan Medicaid)*: MOU to pay additional amounts MSA Bulletin 05-14.

MUST WE GO BROKE?

Nursing home bills add up

Medicare Coverage limited

Long Term Care Insurance rare

MEDICAID LTC Coverage “Means Tested”— 3 things reviewed in application process 1) medical & adl care needs 2) income and 3) assets (but “countable” assets—some assets don’t count against applicant eligibility)

Nursing Facility Eligibility

https://www.michigan.gov/documents/nursing_fac_elig_134653_7.pdf



It helps to have someone Batting for you at Times

Who can Go to Bat With You?

Batting Resources—Putting a Tiger in your Corner?

Ty Cobb .368

Harry Heilmann .342

Bob Fothergill .337

Dale Alexander .331

George Kell .325

Heinie Manush .321

Charlie Gehringer .320

Miguel Cabrera .319

Hank Greenberg .319

Gee Walker .317

Elder Law Attorney

Michigan Long Term Care
Ombudsman 517 827 8040

<http://mltcop.org/>

Mich. LARA & BCCHS and
MDHHS, for example:

http://www.michigan.gov/mdhhs/0,5885,7-339-73971_7122_3183_4894---,00.html

MMAP <http://mmapinc.org/>

Area Agencies on Aging

Some Tools To Qualify?

Basic guidelines as backdrop for Medicaid eligibility

<http://bradvauterlaw.com/medicaid-planning-helping-cover-nursing-home-bills-new-july-2017-numbers/>

Home Care/Personal Care Contracts

Intelligent Gifting/Divestment/Half a Loaf

“Lady Bird” Land Title Standard 9.3

Petitions to Probate Court

Medicaid Compliant Annuities/Notes

ALL NEED to Be Looked at “case-by-case”

Legal Needs and Tools

Estate Planning should include “life with disability planning” or 3 legs of the stool:

Estate Plan (post death) such as will or will and trust

Financial and business affairs while alive but disabled-durable power of attorney (DPOA)

Medical POA (designation of patient advocate)

In Difficult Times Advance Work Pays Off

Share your thoughts on care

Share information (carefully) with others

Get your estate and disability planning done—don't wait for perfection

Be careful of barbershop and beauty shop advice

Don't make all assets joint unless you are willing to live with consequences

Do your research

Common Elder Law Issues?

Care, and Cost of Care

Elder Abuse and Exploitation

Joint Property arrangements and alternatives

Substitute Decision making, in or out of court—

Guardianship/Conservatorship/Representative Payee, Successor Trustee, Agents

Challenging Coverage Decisions

Contract Care Arrangements-Family or Outside

Common Elder Law Issues, part 2



Pushing for Improvements in
Care/Stability

Risk Analysis/Acceptance

Driving/Transportation

Getting Rid of “Stuff”

Notes
