

ElderLaw Advisor

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Special Issue

RESOURCE AND BENEFIT PLANNING FOR LONG-TERM CARE

As Elder Law attorneys, we are often called upon to help clients and their families find and pay for the cost of long-term care. Depending on the health care needs of the elder, they may receive long-term care at home or in a more formal setting, such as a nursing home. At-home care may be provided by family, friends or paid caregivers. Long-term care in a more formal setting may be at an assisted living center, residential care facility or nursing home. The cost of such care can range from zero (if provided at home by family or friends) to \$10,000 per month with full-time paid caregivers at home or \$8,000 per month at a nursing home.

Depending on each individual's or family's circumstances, long-term care expenses will generally be paid out of some combination of the following resources:

1. The individual's/couple's fixed income (e.g., Social Security and pension income)
2. Income generated from a retirement portfolio of investments
3. Long-term care insurance

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SHE HAD TO BE BOTH – A MOTHER AND A FATHER

by John Nale

As Elder Law attorneys we often meet with the adult children of the elder parents and quite often during the conference the children will reminisce about their parents. They may talk about what their mother did that made her a special, loving mother, or what their father did to make him a special, caring dad. As I sit and listen to their family stories, I think of my dear late mother who, because she raised us six children as a single mother, had to be both a mother and a father. While I can't talk of my mother during our client conferences, I would like to take this opportunity to reminisce about my mother – "Ma" as we would call her.

She showed us what kind of mother she would be right from the start, when shortly after I, her fourth child, was born in our father's hometown of Farmerville, Louisiana, she, believing she could make a better life for us children back here in Maine, packed us up, put together as much money as she could and without obtaining spousal approval, hitched a ride to the train station 35 miles away in Truxno, Louisiana where, with two children

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JOHN NALE

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MARK NALE



She had to be both – a Mother and a Father,
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on her lap and two children in the seat beside her, began to make her way north to Maine only to be put off the train in Charlottesville, Virginia, where she had run out of ticket and run out of money. After waiting at the train station all day and all night, her brother was able to come to the train station, feed us, and give her enough money to get us back to Maine, where she settled at first in Bangor. After our father had rejoined us and we lived there for several years, we were burnt out of our apartment by an accidental fire and again, believing that she could make a better life for us, she packed us up and, again, without obtaining spousal approval, moved us to Waterville where she began the most challenging task of raising six children - on her own - on welfare.

And when you're raising six children on your own on welfare, that means that when the Parish Priest sends a note home asking where is the husband and where is the school dues, she was the one who had to open the envelope, read the note, and explain that she had neither.

And when the school principal called to say that perhaps one of her boys was not cut out for the college preparatory course, she was the one who had to take the call and say, "No, you're not going to tell my son he can't go to college."

And when the local police came knocking at the door because one of her boys had maybe stepped a little too far out of line, she was the one who had to answer the door and beg for forgiveness.

And when the state welfare people came to do their annual inspection and interrogation, she was the one who was on trial defending herself.

And when the refrigerator was empty and the cupboard was bare, she was the only one there. She was the one who never slept in a bedroom. She was the one who always slept on the couch. She was the one who never bought anything new for herself. She was the one who always went without.

Our mother was not a particularly well-educated person as far as her formal education went. Perhaps she completed the eighth grade. So she was not a doctor, although she helped nurse many

a sick child and grandchild back to good health. And she was not a lawyer, although she helped settle many an argument and knew how to advocate for the people and principles she believed in. And she was not a successful businessperson who accumulated a lot of wealth and real estate, although she always had what she needed...her family, her friends, her God.

So, not being particularly well-educated and having the task of raising six children on her own, she did not have the time or the talent to sit and teach us our reading, our writing and our arithmetic, but she did teach us. And when she taught, she taught with maxims and metaphors and principles. She had to make her point, she had to make it quick, and she had to make it stick.

When it came time to teach us not to fight with other children on the school playground or at the Boys' Club, she would tell us that "it takes a man to walk away from a fight." And if you stood there and insisted that you were right because the other boy had started it, she would remind you that "two wrongs never, ever, make a right."

And when she wanted to teach us the value of education, she would stand in front of us and tell us that we "had to get that education under your belt" because once we did it would open doors for us and that it was something that nobody could ever take away from us.

And when it came time to teach us to be fair and honest in our dealings with others, she would tell us that we only had one reputation and if we ever lost it we could never get it back and nobody could ever give it back to us.

And when it came time to teach us to be kind and understanding of those less fortunate than us, she would say the Arabic word, "Haddom." "Haddom on that poor soul," she would say. "Have mercy on that poor soul," she would say.

Our dear mother passed away four years ago at age 92. There were times, when in response to our objections to her loving acts of "mothering" she would tell us "You're gonna miss this ol' chicken when she's gone." Well, as usual, she was right, we do miss her dearly. But like the adult children who visit us for help with their aging parents, we have many fond memories of her – as a mother and as a "father."



Resource and Benefit Planning for Long-Term Care, *continued from page 1*

4. Medicare and Medigap insurance (for short periods of care)
5. Reverse mortgage, family sale-leaseback, sale of the home (or a remainder interest in the home) or another technique that extracts cash from home equity
6. For those eligible, a Veterans Administration (VA) pension
7. For those eligible, MaineCare

Numerous planning strategies can be devised that coordinate the above categories of resources to pay for long-term care so as to:

1. maximize the effectiveness of the client's fixed income and investments (categories #1 and #2 above), but, to the extent those resources fall short, then
2. effectively combine them with other types of resources and benefits in categories farther down the list.

Because "one size does not fit all" in long-term care planning, we will describe each of the above seven possible resources and how each one may be used to pay for long-term care.

1. The individual's/couple's fixed income is usually the primary source of payment in most situations, either alone or in combination with one of the other six resources. However, because most people's fixed income is limited, it usually is never enough to cover the full cost of long-term care.
2. Income generated from a retirement portfolio of investments is another primary source of payment. Although retirement funds are

shielded from income tax when deposited, they are subject to income tax when withdrawn. However, the tax can usually be offset by deducting part of the cost of long-term care from one's income.

3. Long-term care insurance can be helpful, particularly if it qualifies for "special treatment" under the MaineCare Long-Term Care Partnership Program. Under this program, the benefit amount paid out under a qualified policy will increase the amount of assets an individual or couple can keep when qualifying for MaineCare long-term care benefits. The MaineCare long-term care benefit will either help pay or completely pay for an individual's or couple's long-term care cost. Not all long-term care insurance policies qualify for the MaineCare benefit. One should consult with an experienced elder law attorney before purchasing a long-term care insurance policy.
4. Medicare and Medigap policies only pay for short periods at the nursing home while an individual is receiving skilled care or rehabilitation treatment. Medicare will pay the first 20 days in full and about 2/3 of the next 80 days in a nursing home provided skilled care or rehabilitation is necessary. If not, this coverage ends before the full 100 days are used. A Medigap policy would pay the Medicare deductible and copay.
5. Reverse mortgages, family sale-leaseback or another technique that extracts cash from home equity can be an excellent resource to pay for at-home care. The reverse mortgage allows an elder to stay in their home and access their home equity without making monthly mortgage payments. The cash can then be used to pay caregivers, who may or may not be family members.
6. For those eligible, a Veterans Administration (VA) pension and Aid and Attendance benefits can help offset one's cost of care. To qualify, the veteran must have served in active duty for 90 days with 1 day having been during a war time period, have a perma-

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Resource and Benefit Planning for Long-Term Care, *continued from page 3*

ment and total disability (does not have to be service related), and have limited assets and income. If the veteran is living in a nursing home, assisted living or Alzheimer's facility, these expenses can be deducted from one's income, thereby making the veteran eligible for the Aid and Attendance benefit that can pay up to almost \$20,000 per year for a single veteran and over \$23,000 per year for a veteran and spouse and almost \$13,000 for a widow. These benefits can be used to pay for home health care, help pay for assisted living, Alzheimer's or nursing home care.

7. For those eligible, the MaineCare long-term care benefit can play an important role in paying for one's long-term care. This MaineCare benefit will help pay for some or all of the cost for at-home care, care in an assisted living facility, Alzheimer's facility or nursing home. Although some restrictions

apply, with proper guidance an elder may qualify for the benefit and preserve assets and income for the family and at-home spouse, if married. An asset preservation plan can be put in place at any time. However, proper planning should only be done with an experienced elder law attorney.

A good long-term care and estate plan will incorporate and take advantage of as many of the above resources as possible. When we counsel our clients, we advise the elder and the family that our goal is to make certain that the elder always receives the care they need and that their assets are used wisely in paying for that care. Using their assets "wisely" means accessing as many of the seven different resources as possible, thereby preserving their assets for their extended care needs and their estate plan goals.