



# NURSING HOME GUIDE

**Legacy Lawyers  
428 Eastwood Road  
Wilmington, NC 28403  
(910) 452-3577**

## INTRODUCTION

The decision to move a family member or a loved one into a nursing home is one of the most difficult decisions you can make.

Perhaps the move is being made because the family member can no longer care for him or herself...or perhaps the person has a progressive disease like Alzheimer's...or has had a stroke or heart attack.

No matter the reason, those involved are almost always under great stress. At times like these, it's important that you pause, take a deep breath and understand there are things you can do. Good information is available and you can make the right choices for you and your loved one.

This booklet is designed to help provide you with information and answers to the questions which I, John J. Peck as an Elder Law attorney, deal with on a daily basis.

I found it helpful to my clients as I put the information together, and I hope you will find it useful as well.

John J. Peck  
Attorney at Law

## Selecting a Nursing Facility

**W**hen someone is faced with the overwhelming job of finding a nursing home for a loved one, the question often asked is, “Where do I begin?” Although this is a job that no one wants to do, it can be done with forethought and confidence that the best decision was made for everyone involved.

When nursing home placement is necessary, it is crucial that the family and/or potential resident decide what’s most important to them in looking for a facility. It is important that the resident’s needs and wants be included in the evaluation. Things such as location of the facility, if a special care unit is necessary and type of payer source should be considered when beginning this process.

The next step is to identify the facilities in your area which meet the criteria you established above. Beyond this guide, listings of facilities in the North Carolina can be obtained from Medicare.gov, and at the end of this guide.

If placement is “down the road” and you have time, call the nursing facilities and ask them to send you their information packet including an activity calendar and a menu.

Get ready to tour the facilities you have chosen. Don’t schedule your tours. Just show up during regular business hours. You will be able to meet with the administrative staff who will answer all your questions. Next, you will want to tour a second time in the evening or on the weekend just to see if there is a drastic difference in the atmosphere of the facility or the care being provided. It is important to tour at least two facilities so you can see the difference in the physical plant and the staff. When you are touring, pay attention to your gut feeling. Ask yourself the following questions... Did I feel welcome? How long did I have to wait to meet with someone? Did the admission director find out my family member’s wants and needs? Was the facility clean? Were there any strong odors? Was the staff friendly? Did they seem to generally care for the resident? Did the staff seem to get along with each other? Listen and observe. You can learn so much just by watching and paying attention.

When touring a facility, ask any questions that come to mind. There are no “dumb” questions. Here are a few examples of questions you will want to ask to make sure that the administration of the facility is giving proactive care instead of reacting to crisis.

- How do you ensure that call lights are answered promptly regardless of your staffing?
- If someone is not able to move or turn him or herself, how do you ensure that they are turned and do not develop bedsores?
- How do you make sure that someone is assisted with the activities of daily living like dressing, toileting and transferring?
- Can residents bring in their own supplies?
- Can residents use any pharmacy?
- How many direct care staff members do you have on each shift? Does this number exceed the minimal number that state regulations say you have to have or do you just meet the minimum standard?
- What payer sources do you accept?
- How long has the medical director been with your facility?
- How were your last state survey results? (Ask to see a copy)

- How did you correct these deficiencies and what process did you put in place to make sure you do not make these mistakes again?
- Has the state prohibited this facility from accepting new residents at any time during the last 2 years?
- What is your policy on family care planning conferences? Will you adjust your schedule to make sure that I can attend the meeting?
- Do you have references I can talk with?
- Can my loved one come in on for a meal to see if he/she fits in and likes the facility?

Attached is a form you can use when touring facilities. This will help you keep track of which facility you liked best and those you did not care for.

Once a facility has been chosen, there are some definite steps you can take to make the process less traumatic on the resident. First, plan the admission carefully. If you know the resident becomes very difficult to deal with in the late afternoon, plan the admission for midmorning. Next, complete the admission paperwork before your loved one actually moves into the facility. This will allow you to spend the first few hours that they are there with them getting them settled and making them feel secure in their new living environment.

Some practical things you want to be sure to do ... mark *every* piece of clothing with a permanent laundry marker. When a facility is washing the clothes for 120 people, it is common for things to occasionally end up in the wrong room; however you can help ensure getting the item back if it is properly marked. If you are going to do your loved one's laundry, post a sign on the closet door to notify staff and provide a laundry bag where dirty clothes can be placed.

Also, bring in familiar things for the resident so that there is a feeling of home. However, realize that space is limited especially in a semi-private room.

A very important thing for you to remember is that the staff of the facility is just meeting your loved one for the first time. They do not know his or her likes or dislikes, or those little nuances that make providing care go smoother. The best way you can help your loved one is to tell the staff, in writing, as much information as possible about your loved one ... his/her likes and dislikes, typical daily schedule, pet peeves, and so on.

It is important that you get to know the people who are caring for your loved one. Most importantly, stay involved. Let everyone know how much you care and how committed you are to your loved one's care. Also understand you will not help your loved one by becoming anxious or emotional. Assure them that although this is not an ideal situation, you will be there to assist them in making it as pleasurable as possible.

## Nursing Home Evaluation

As you visit nursing homes, use the following form for each place you visit. Don't expect every nursing home to score well on every question. The presence or absence of any of these items does not automatically mean a facility is good or bad. Each has its own strengths and weaknesses. Simply consider what is most important to the resident and you.

Record your observations for each question by circling a number from one to five. (If a question is unimportant to you or doesn't apply to your loved one, leave the evaluation area for that question blank.) Then total all blanks you checked.

Your ratings will help you compare nursing homes and choose the best one for your situation. But, don't rely simply on the numbers. Ask to speak to family members of other residents. Also, contact the local or state ombudsman for information about the nursing home and get a copy of the facility's state inspection report from the nursing home, the agency that licenses (or certifies) nursing homes or the ombudsman.

## Nursing Home Evaluation Form

Name of Nursing Home: \_\_\_\_\_

Date Visited: \_\_\_\_\_

Poor === Excellent  
1===== 5

### The Building and Surroundings

What is your first impression of the facility?	1 2 3 4 5
What is the condition of the facility's exterior paint, gutters and trim?	1 2 3 4 5
Are the grounds pleasant and well-kept?	1 2 3 4 5
Do you like the view from residents' rooms and other windows?	1 2 3 4 5
Do residents with Alzheimer's disease live in a separate Alzheimer's unit?	1 2 3 4 5
Does the nursing home provide a secure outdoor area?	1 2 3 4 5
Is there a secure area where a resident with Alzheimer's disease can safely wander on walking paths?	1 2 3 4 5
Are there appropriate areas for physical therapy and occupational therapy?	1 2 3 4 5
Are facilities for barber or beauty salon services available?	1 2 3 4 5
Is there a well-ventilated room for smokers?	1 2 3 4 5
What is your impression of general cleanliness throughout the facility?	1 2 3 4 5
Does the facility smell clean?	1 2 3 4 5
Is there enough space in resident rooms and common areas for the number of residents?	1 2 3 4 5
How noisy are hallways and common areas?	1 2 3 4 5
Is the dining area clean and pleasant?	1 2 3 4 5
Is there room at and between tables for both residents and aides for those who need assistance with meals?	1 2 3 4 5
Are common areas like lounges and activity rooms in use?	1 2 3 4 5
Are residents allowed to bring pieces of furniture and other personal items to decorate their rooms?	1 2 3 4 5

## **The Staff, Policies and Practices**

- Does the administrator know residents by name and speak to them in a pleasant, friendly way? 1 2 3 4 5
- Do staff and residents communicate with cheerful, respectful attitudes? 1 2 3 4 5
- Do staff and administration seem to work well with each other in a spirit of cooperation? 1 2 3 4 5
- Do residents get permanent assignment of staff? 1 2 3 4 5
- Do nursing assistants participate in the resident's care planning process? 1 2 3 4 5
- How good is the nursing home's record for employee retention? 1 2 3 4 5
- Does a state ombudsman visit the nursing home on a regular basis? 1 2 3 4 5
- How likely is an increase in private pay rates? 1 2 3 4 5
- Are there any additional charges not included in the daily or monthly rate? 1 2 3 4 5

## **Residents' Concerns**

- What method is used in selecting roommates? 1 2 3 4 5
- What is a typical day like? 1 2 3 4 5
- Can residents choose what time to go to bed and wake up? 1 2 3 4 5
- Are meaningful activities available that are appropriate for residents? 1 2 3 4 5
- If activities are in progress, what is the level of resident participation? 1 2 3 4 5
- Can residents continue to participate in interests like gardening or contact with pets? 1 2 3 4 5
- Does the nursing home provide transportation for community outings and activities? 1 2 3 4 5
- Is a van or bus with wheel chair access available? 1 2 3 4 5
- Do residents on Medicaid get mental health services or occupational, speech or physical therapies if needed? 1 2 3 4 5
- What is your impression of the general cleanliness and grooming of residents? 1 2 3 4 5

How are decisions about method and frequency of bathing made?	1 2 3 4 5
How do residents get their clothes laundered?	1 2 3 4 5
What happens when clothing or other items are missing?	1 2 3 4 5
Are meals appetizing and served promptly at mealtime?	1 2 3 4 5
Are snacks available between meals?	1 2 3 4 5
If residents call out for help or use a call light, do they get prompt, appropriate responses?	1 2 3 4 5
Does each resident have the same nursing assistant(s) most of the time?	1 2 3 4 5
How does a resident with problems voice a complaint?	1 2 3 4 5
Do residents who are able to participate in care plan meetings?	1 2 3 4 5
Does the nursing home have an effective resident council?	1 2 3 4 5
<b>Family Considerations</b>	
How convenient is the nursing home's location to family members who may want to visit the resident?	1 2 3 4 5
Are there areas other than the resident's room where family members can visit?	1 2 3 4 5
Does the facility have safe, well-lighted, convenient parking?	1 2 3 4 5
Are hotels/motels nearby for out-of-town family members?	1 2 3 4 5
Are area restaurants suitable for taking residents out for a meal with family members?	1 2 3 4 5
How convenient will care planning conferences be for interested family members?	1 2 3 4 5
Is an effective family council in place?	1 2 3 4 5
Can family/staff meetings be scheduled to discuss and work out any problems that may arise?	1 2 3 4 5
Can residents choose what time to go to bed and wake up?	1 2 3 4 5
Are meaningful activities available that are appropriate for residents?	1 2 3 4 5

Total Score: \_\_\_\_\_

## How to Get Good Care in a Nursing Home

Once you find a nursing home placement for your loved one, you can begin the process of easing the transition from one level of care to another.

The most important way you can help is to ensure that your loved one gets good care in the new environment.

If you have been providing some or all of your loved one's care, you'll notice a change in your role. Rather than functioning as a caregiver, you'll instead become a care advocate.

You will still be caring for your loved one, but in a new way.

Your key roles are to participate in planning for your loved one's care and in frequent communication with the nursing home staff.

### Care Planning

The care planning process begins with a baseline assessment. This assessment occurs soon after a resident moves into a nursing home, certainly within the first two weeks.

A team from the nursing home which may include a doctor, nurse, social worker, dietitian and physical, occupational or recreational therapist uses information from both the resident and the family about the resident's medical and emotional needs.

This baseline assessment then becomes the yardstick against which the caregivers can measure the resident's progress.

The team asks family members about the resident's medical, psychological, spiritual and social needs. You can also contribute information about your loved one's preferences and usual routine. For example, you might tell the staff, "Dad likes to listen to the radio as he falls asleep. He's been doing this since I was a child."

During the assessment process, you can help by making your own list of your loved one's needs and giving the list to a member of the assessment team. For example, you may have noticed signs of depression along with symptoms of Alzheimer's. The assessment team may not notice these signs, so your input will be invaluable.

In the space below list your loved one's medical needs:

---

---

---

---

---

---

In the space below list your loved one's psychological needs:

---

---

---

---

---

---

---

In the space below list your loved one's spiritual needs:

---

---

---

---

---

---

---

In the space below list your loved one's social needs:

---

---

---

---

---

---

---

In the space below list your loved one's preferences and usual routines:

---

---

---

---

---

---

---

The assessment team uses all the information they gather to develop an individualized formal care plan. The care plan defines specific care the resident needs and outlines strategies the staff will use to meet them. The assessment team meets during the first month of a new resident's placement at a care planning meeting. Family members, as well as the resident, may attend.

When you go to the care plan meeting, bring along a copy of the list of needs you gave the assessment team earlier. Together, you can discuss your loved one's needs and the care plan the team has developed. And, if some need has been overlooked, you can ensure that the assessment team addresses it during this meeting.

Federal law requires that nursing home care result in improvement, if improvement is possible. In cases where improvement is not possible, the care must maintain abilities or slow the loss of function.

For example, if your mother has little problem with language when she moves into the nursing home, the care plan should include activities that encourage her use of language unless or until the disease's progression changes this ability.

The care plan becomes part of the nursing home contract. It should detail the resident's medical, emotional and social needs and spell out what will be done to improve (when possible) or maintain the resident's health.

According to federal law, nursing homes must review the resident's care plan every three months and whenever the resident's condition changes. It must also reassess the resident annually. At these times additional care planning meetings are held to update the resident's care plan.

For example, if your father had bladder control when he entered the nursing home, but has become incontinent, this significant change in his status means the nursing home staff must develop a new care plan that addresses his new need.

As a care advocate, you'll want to monitor your loved one's care to be sure the nursing home is providing the care outlined in the care plan. You may also attend all care planning meetings, whether regularly scheduled or when held because of a change in your loved one's health. This is the best way to ensure that your loved one gets personal and appropriate care in the nursing home.

## **Division of Assets and Medicaid Planning . . .**

### **How to Pay for the Nursing Home Without Going Broke**

**O**ne of the things that concerns people most about nursing home care is how to pay for that care. There are basically three ways that you can pay the cost of a nursing home:

**1. Long Term Care Insurance** - If you are fortunate enough to have this type of coverage, it may go a long way toward paying the cost of the nursing home. Unfortunately, long term care insurance has only started to become popular in the last couple of years and most people facing a nursing home stay do not have this coverage.

**2. Pay with Your Own Funds** - This is the method many people choose at first. Quite simply, it means paying for the cost of a nursing home out of your own pocket. Unfortunately, with nursing home bills averaging around \$5,000 to \$6,000 per month in our area, few people can afford a long term stay in a nursing home.

**3. Medicaid** - This is a primarily federally-funded and state-administered program which pays for the cost of the nursing home if certain asset and income tests are met. Since the first two methods, (long term care insurance and paying with your own funds) are self-explanatory; we'll concentrate on Medicaid and Medicare and on the process known as division of assets.

## **What About Medicare?**

There is a great deal of confusion about Medicare and Medicaid.

Medicare is the federally-funded health insurance program primarily designed for older individuals (i.e., those over age 65). There is a limited long term care component to Medicare. In general, if you've had a hospital stay of at least three days, and then you need to go into a skilled nursing facility (often for rehabilitation), then Medicare may pay for a while.

Typically, in that circumstance, Medicare will pay the full cost of the nursing home stay for the first 20 days and will continue to pay the cost of the nursing home stay for the *next* 80 days, but with a deductible of \$137.50 per day for 2010. Often times your Medicare supplement will pay the cost of that deductible. So in the best case scenario, Medicare may pay up to 100 days. In order to qualify for these 100 days of coverage, however, the nursing home resident generally must continue to "improve."

While it's never possible to predict at the outset how long Medicare will cover the rehabilitation, from our experience it often falls far short of the 100 day standard. But even if Medicare does cover the 100 day period, what then? What happens after the 100 days of coverage have been used?

At that point, you're back to one of the other alternatives...long term care insurance, or paying the bills with your own assets, or Medicaid.

## **What is Medicaid?**

Medicaid is a benefits program which is primarily funded by the federal government and administered by each state. So the Medicaid rules will vary from state to state.

One of the primary benefits of Medicaid is that, unlike Medicare which only pays for *skilled nursing*, the Medicaid program will pay for long term *custodial care* in a nursing home.

Custodial care refers to assistance with the activities of daily living (i.e., activities like dressing, bathing, toileting, preparing meals and so on). The inability of some older persons to manage these activities on their own often results in the need to move to a nursing home.

## **Why Plan for Medicaid?**

As life expectancies and long term care costs continue to rise, the challenge quickly becomes how to pay for these services. Many people cannot afford to pay \$5,000 per month or more for the cost of a nursing home, and those who can pay for a while may find their life savings wiped out in a matter of months, rather than years.

Fortunately, the Medicaid Program is there to help. In fact, in our lifetime, Medicaid has become the long term care insurance of the middle class. But the eligibility to receive Medicaid benefits requires

that you pass certain tests on the amount of income and assets that you have. The reason for Medicaid planning is simple...you plan so that if you need it, you will be eligible to receive Medicaid benefits.

## **Exempt Assets and Countable Assets: What Can You Keep and What is at Risk?**

To qualify for Medicaid, you must pass some fairly strict tests on the amount of assets you can keep.

To understand how Medicaid works, we first need to review what are known as exempt and non-exempt (or countable) assets.

Exempt assets are those which Medicaid will not take into account (at least for the time being). The following are the primary exempt assets in North Carolina:

- **The Home**, (so as long as the equity is no greater than \$500,000). The home must be the principal place of residence. The nursing home resident may be required to show some “intent to return home” even if this never actually takes place.
- **Household and Personal Belongings** such as furniture, appliances, jewelry and clothing.
- **One Car**
- **Burial Plot** for you and your spouse.
- **Cash Value of Life Insurance** policies as long as the face value of all of policies added together does not exceed \$10,000. If it does exceed \$10,000 in total face amount, then the cash value in these policies is countable.
- **Cash** (e.g., a small checking or savings account) not to exceed \$2,000.

All other assets which are not exempt (i.e., not listed above) are countable. This includes checking accounts, savings accounts, CDs, money markets, stocks, mutual funds, bonds, IRAs, pensions, 401Ks, 403Bs, second cars and so on (In certain instances retirement plans and IRAs may be exempt). Basically all money and property, and any item that can be valued and turned into cash, is a countable asset unless it is one of those assets listed above as exempt.

While the Medicaid rules themselves are complicated and tricky, for a single person it's safe to say that you will qualify for Medicaid so long as you have only exempt assets plus a small amount of cash (i.e., \$2,000 in North Carolina).

Does this mean that if you're single and need Medicaid assistance, you'll have to spend nearly all of your assets to qualify?

No. Actually there are a number of strategies which can be used to protect your estate. For instance, consider the following case study:

### **Case Study No. 1 Medicaid Planning for Single People**

**S**ara was a good daughter. For as long as she could remember, she'd been in the role of caregiver.

When she was little, and Mom was hospitalized for three and a half weeks, Sara had taken over running the family...even though she was only 13. And that wasn't the only time.

But it seemed like Sara had finally escaped from that role, until three years ago when Mom had a stroke. Since Mom could no longer care for herself, Sara moved back home and took over Mom's care. And she's been doing it for the past three years, but now it's gotten to the point where Mom needs more care than Sara can give.

Mom owns a \$150,000 house and she would like to give the house to Sara as a way of saying thank you for all that Sara has done for her. But when Mom and Sara check around, they're told that if they gift the house to Sara, Mom will be ineligible for Medicaid for years, and it may even be a criminal act!

They come to you in tears. You calmly tell them that there's a provision in the Federal Law (42 U.S.C. § 1396P (c)(2)(a) which is binding in North Carolina. The law states that you can give a home to an adult child who resides in the home for at least two years, if the child provided care which permitted Mom to stay at home rather than in an institution or facility.

In other words, if a child moves back home and cares for a parent, and if that child's care has kept the parent out of a nursing home for *at least* the last two years, then the home may be given to the child without Medicaid penalties.

So how should Sara document her care for Mom? The best thing would be to keep a log or journal that sets forth specific incidents or events that, but for the child's care, might have resulted in Mom's institutionalization. For instance, note things like gas burners not being shut off, water left running in the tub, Mom's wandering or other medically dangerous actions.

In addition, it would be helpful to have statements from other family members or neighbors telling of any events or circumstances that reinforce Sara's position. Finally, it would be most helpful to have a letter from a physician and/or visiting nurse or home health care provider saying that Sara's care did in fact keep Mom out of the nursing home for at least two years.

You explain this to Sara and her Mom and they are both delighted that all of Sara's good deeds will not go unrewarded. The house may be given to Sara and Mom can still qualify for Medicaid.

**FYI:** There are other situations where the home may be transferred without penalty. They include transfers to the following:

- the spouse;
- a minor, blind or disabled child;
- a sibling who has an equity interest in the home and who has resided there for at least one year before the Medicaid applicant became institutionalized.

## **Division of Assets Medicaid Planning for Married Couples**

Division of Assets is the name commonly used for the Spousal Impoverishment provisions of the Medicare Catastrophic Act of 1988. It applies only to couples. The intent of the law was to change the eligibility requirements for Medicaid in situations where one spouse needs nursing home care while the other spouse remains in the community, (i.e., at home). The law, in effect, recognizes that it makes little sense to impoverish both spouses when only one needs to qualify for Medicaid assistance for nursing home care.

As a result of this recognition, division of assets was born. Basically, in a division of assets, the couple gathers all of their countable assets together in a review. The exempt assets which we discussed earlier are not counted.

The countable assets are then divided in two, with the at-home or community spouse allowed to keep one-half of all countable assets up to 109,560 for 2010. The other half of the countable assets must be “spent down” until less than \$2,000. The amount of the countable assets which the at home spouse gets to keep is called the Community Spouse Resource Allowance (CSRA).

Each state also establishes a monthly income floor for the at-home spouse. This is called the Minimum Monthly Maintenance Needs Allowance. This permits the community spouse to keep a minimum monthly income ranging from about \$1,822 to \$2,739.

If the community spouse does not have at least \$1,822 in income, then he or she is allowed to take the income of the nursing home spouse in an amount large enough to reach the Minimum Monthly Maintenance Needs Allowance (i.e., up to at least \$1,822). The nursing home spouse’s remaining income goes to the nursing home. This avoids the necessity (hopefully) for the at-home spouse to dip into savings each month, which would result in gradual impoverishment.

To illustrate, let’s assume the at-home spouse receives \$800 per month in income. Let’s also assume that her needs are calculated to be the minimum of \$1,822.00. With her Social Security she is \$1,022 short each month.

\$1,822 at-home spouse’s monthly needs (as determined by formula)  
\$ 800 at-home spouse’s Social Security  
\$1,022 short fall

In this case, the community spouse will receive \$1,022 (the shortfall amount) per month from the nursing home spouse’s Social Security and the rest of the nursing home spouse’s income will then go to pay for the cost of his care. Once again, this does not mean that there are not other planning alternatives which the couple can pursue. Consider the following case studies:

## **Case Study No. 2 Medicaid Planning for Married People**

**R**alph and Alice were high school sweethearts who lived in Wilmington, North Carolina their entire adult lives. Two weeks ago Ralph and Alice celebrated their 51st Anniversary. Yesterday, Alice, who has Alzheimer's wandered away from home. Hours later, she was found sitting on a street curb talking incoherently. She was taken to a hospital and treated for dehydration.

Ralph comes to see you after their family doctor tells him he needs to place Alice in a nursing home. He tells you they both grew up during the Depression and have always tried to save something each month. Their assets, totaling \$100,000, not including their house, are as follows:

Savings Account \$15,000  
CD’s \$45,000  
Money Market Account \$37,000  
Checking Account \$ 3,000  
Residence (no mortgage) \$80,000

Ralph gets a Social Security and Pension checks totaling \$1,500 each month; Alice’s check is \$450. His eyes fill with tears as he says “At \$5,000 to the nursing home every month, our entire life savings will be gone in less than 3 years!” What’s more, he’s concerned he won’t be able to pay her monthly

nursing home bill because a neighbor told him that the nursing home will be entitled to all of their Social Security checks.

There is good news for Ralph and Alice. It's possible he will get to keep his income and most of their assets... and still have the state Medicaid program pay Alice's nursing home costs. While the process may take a little while, the end result will be worth it.

To apply for Medicaid, he will have to go through the North Carolina Department of Social Services (DSS). If he does things strictly according to the way DSS tells him, he will only be able to keep about ½ of their assets(or about \$50,000) plus he will keep his income.

But the results can actually be much better than the traditional spend-down, which everyone talks about. Ralph might be able to turn the spend down amount of roughly \$50,000 into an income stream for him that will increase his income and meet the Medicaid spend down virtually right away. In other words, if handled properly she may be eligible for Medicaid from the first month that she goes into the nursing home.

Please note this will not work in every case. That's why it's important to have an Elder Law Attorney guide you through the system and the Medicaid process to find the strategies that will be most beneficial in your situation. So, he will have to get advice from someone who knows how to navigate the system. But with proper advice he may be able to keep most of what he and Alice worked so hard for.

This is possible because *the law does not intend to impoverish one spouse because the other needs care in a nursing home*. This is certainly an example where knowledge of the rules and how to apply them can be used to resolve Ralph and Alice's dilemma.

Of course, proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the state law.

## **Can't I Just Give My Assets Away?**

Many people wonder, can't I give my assets away? The answer is, maybe, but only if it's done just right and in a timely manner. The law has severe penalties for people who simply give away their assets to create Medicaid eligibility. In North Carolina, for example, every \$5,500 given away during the three years prior to a Medicaid application creates a one month period of ineligibility. So even though the federal Gift Tax laws allow you to give away up to \$13,000 per year *without gift tax consequences*, those gifts could result in a period of ineligibility for North Carolina Medicaid of three months. In addition, new legislation enacted on February 8, 2006, and enacted in North Carolina on November 1, 2007, states that gifts made after November 1, 2007 will be subject to a five year lookback along with other harsh penalties.

Next consider the following case study:

## Case Study No. 3

### Can Financial Gifts to Children Protect Your Assets from Medicaid?

**A**fter her 73-year-old husband, Harold, suffers a paralyzing stroke, Mildred and her daughter, Joan, need advice. Dark circles have formed under Mildred's eyes. Her hair is disheveled. Joan holds her hand.

"The doctor says Harold needs long-term care in a nursing home," Mildred says. "I have some money in savings, but not enough. I don't want to lose my house and all our hard-earned money. I don't know what to do."

Joan has heard about Medicaid benefits for nursing homes, but doesn't want her mother left destitute in order for Harold to qualify for them. Joan wants to ensure that her father's medical needs are met, but she also wants to preserve Mildred's assets.

"Can't Mom just give her money to me as a gift?" she asks. "Can't she give away \$13,000 a year? I could keep the money for her so she doesn't lose it when Dad applies for Medicaid."

Joan has confused general estate and tax laws with the issue of *asset transfers and Medicaid eligibility*. A "gift" to a child in this case is actually a transfer and Medicaid has very specific rules about transfers.

At the time Harold applies for Medicaid, for gifts made prior to November 1, 2007, the state will "look back" 3 years to see if any gifts have been made. Gifts made after November 1, 2007 will be subject to a five year look back. The state won't let you just give away your money or your property to qualify for Medicaid. Any gifts or *transfers for less than fair market value* which are uncovered in the look-back period will cause a delay in Harold's eligibility for Medicaid.

In North Carolina, for example, under the old laws every \$5,500 given away during the 3 years prior to a Medicaid application creates a one month period of ineligibility. So if Harold and Mildred give their daughter \$13,000, Harold will be ineligible for Medicaid for 3 months.

In addition to the changes in the look back period from three to five years, the new law also states that the penalty period on asset transfers will not begin until the Medicaid applicant is in the nursing home and already spent down. This will frustrate the gifting plans of most people.

So what can Harold and Mildred do? They may be able to institute a gifting program, save a good portion of their estate, and still qualify for Medicaid. But they have to set it up just right. The new rules are very "nit-picky". You should consult a knowledgeable advisor on how this may be done.

### Will I Lose My Home?

Many people who apply for Medicaid benefits to pay for nursing home costs ask this question. For many, the home constitutes much or most of their life savings. Often it is all the couple has to pass on to their children.

Under Medicaid, the home is an exempt asset (so long as the equity is less than \$500,000). This means its value is not taken into account when calculating eligibility for Medicaid benefits. But under a change made in 1993, (Omnibus Budget Reconciliation Act of 1993) states are required to set up an Estate Recovery Unit to seek recovery of all Medicaid payments from the estates of those who receive coverage. Because the home is the single largest asset which a couple can keep, while still qualifying for Medicaid, it is also the main target of estate recovery in most states.

Here's how the process works. While the community spouse (i.e., at home) is living in the home, it remains an exempt asset. But if the community spouse passes away before the nursing home spouse, the Estate Recovery laws allow the state to demand repayment of benefits paid to the nursing home spouse. Under OBRA-93, the states have broad authority to seek payment for Medicaid services rendered from virtually any property owned by the Medicaid recipient. Fortunately, there may be ways to protect your property. The solutions can range from re-titling assets to selling or even gifting them. Since the Medicaid rules are constantly changing, you will need to seek help from an experienced Elder Law attorney to help you in your planning.

## **In Conclusion**

As you can see, there are a number of strategies that you can use to qualify for Medicaid and still preserve some or all of the estate you've spent a lifetime building.

These strategies are legal. They are moral. They are ethical. Please be advised, however, that Medicaid planning requires a great deal of knowledge on the ins and outs of the system. This is even truer with the new Medicaid laws enacted on November 1, 2007. Now, more than ever, it's important to work with an experienced advisor who knows the rules and can advise you accordingly.

In the previous pages, we've talked about how to find the right nursing home, how to get good care there, and how to pay for it without going broke. But where do you actually start looking? Where should you begin your search?

To assist you, we've compiled a list of the nursing homes and assisted living facilities in Eastern North Carolina and arranged according to county at the end of this booklet.

The listings at the end of this booklet contain the name and address of the facility along with the telephone number. Once you've determined which facilities you want to tour, then you can use the evaluation tool to help you compare them.

## ***Hospice***

The Hospice philosophy affirms life and accepts that dying is a natural process.

Hospice emphasizes a shift in focus from quantity to quality using palliative, or comfort, care in place of curative treatments.

Hospice is a service available to individuals who have a terminal condition with a physician's prognosis of six months or less to live. It is a benefit covered by both Medicare and Medicaid in North Carolina. It is best to check with each individual hospice to determine what sources of payment they will accept.

Hospice provides a “team” approach to patient care. Teams consist of physicians, nurses, social workers, nursing assistants, clergy and volunteers. The team’s goal is to provide a holistic approach to end of life care. Following the death of the patient, support services are also provided to the patient’s family and loved ones.

Medical equipment, supplies and medications related to the terminal diagnosis are typically covered under hospice care. Alternative services may also be available but vary from hospice to hospice. Some examples of such services include pet therapy, massage and/or aroma therapy, music therapy and art therapy. Contact the hospice directly to inquire about any additional services they may provide.

### **Common Myths about Hospice**

**•Myth 1:**

**Hospice care is strictly an out of pocket expense.**

**Fact:**

Most insurance cover the cost of hospice care. Hospice is also a benefit through Medicare.

**•Myth 2:**

**Hospice becomes available only when a patient has weeks or less to live.**

**Fact:**

Patients don’t have to give up hope to have hospice care. The sooner a person accepts hospice assistance, the greater the opportunity to build relationships with hospice staff who can then assist in stabilizing the medical condition and control any pain concerns. It is not uncommon for a patient to actually improve while on hospice to the point where he or she no longer needs hospice assistance.

**•Myth 3:**

**Only Cancer patients are eligible for hospice.**

**Fact:**

Hospice benefits are available to patients with any number of illness including, but not limited to cancer, dementia, kidney failure and congestive heart failure.

## **Seeking Legal Help**

Aging persons and their family members often face unique legal issues, including division of assets and Medicaid planning, property disposition, durable powers of attorney, establishing guardianship and conservatorship and so on.

John J. Peck is the founding partner of Legacy Lawyers in Wilmington, North Carolina. He is a member of the National Academy of Elder Law Attorneys, a professional association of attorneys concerned with improving the availability and delivery of legal services to older persons.

**This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is published with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.**

**.THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES**