

# MY LOVED ONE NEEDS A NURSING HOME: WHAT NOW?

## *A Crisis Planning Guide*

THE ELDER LAW CENTER AT SHAH & ASSOCIATES



**THE ELDER LAW CENTER**

at



# **My Loved One Needs a Nursing Home: What Now? A Crisis Planning Guide by Shah & Associates**

There's no doubt that family is important to you, and that you would do most everything in your power to protect those individuals who you love the most. When a parent is in need, it can be heartbreaking to realize that your loved one needs help beyond what you or other family members can offer. Knowing that your mother or father cared for you and sacrificed for you often ignites a desire to return that favor. It can also initiate your own thought process about protecting yourself and your own future, too. The goal of this ebook is to help you plan for managing an immediate crisis. To learn more about how to plan ahead for yourself or a loved one, please take a look at our other ebook entitled "A New Jersey Long Term Care Pre-Planning Guide".



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## Focusing on the Family

At the law firm of Shah & Associates, we pride ourselves on helping families. Whether it's through VA planning, Medicaid planning, other tools, or a combination, we care about helping you protect the wealth that your parents or you have spent a lifetime building. The costs of a nursing home or other long-term care can be devastating if you're not prepared for it. We can help create wills and/or living trusts, manage estate probate, and generate plans to help protect the assets of our clients. What sets our firm apart is the personalized approach we take for each client.



# Meet Our Team

## Neel Shah

My law practice is focused on helping individuals, families & business owners who wish to protect their wealth and their legacy for current & future generations from estate taxes, law suits, the escalating costs of nursing homes and other sources of attack.

My past & present clients include parents, grandparents, children, established corporations, LLCs, individual entrepreneurs, and start-up ventures. Clients value my diverse training & expertise across the Wealth-planning, Business Law & Real Estate Law disciplines.



## Leena A. Lauger

My law practice is focused on helping individuals and families preserve their resources for current & future generations by safeguarding them from the astronomical and often unexpected costs of long-term care in New Jersey.

Past and present clients include families who have found themselves financially and mentally unprepared to be in a position of having a loved one in imminent need of either nursing home care, assisted living care or at home health care. Others are proactively planning ahead to protect their assets from being severely depleted in the event a family member will require long-term care in the future. In either situation, we are able to effectively guide them through what can be an exceedingly confusing and overwhelming subject matter. Clients value my breadth of experience in elder law planning, wealth and estate planning, commercial real estate and non-profit management.



## Rekha V. Rao

Our law practice is focused on helping individuals, families & business owners who wish to protect their wealth and their legacy for current & future generations from estate taxes, the escalating costs of nursing homes and other burdens. Clients include multi-generational families, individuals or married couples with diverse estate planning needs.

My past experience in the areas of corporate litigation, family law, residential real estate, elder law & special needs planning allows me to provide an integrated approach when designing our client's estate plans as I can foresee, analyze and incorporate customized solutions to our client's specific needs. Every client receives my individual attention and personalized level of care in order to achieve our client's maximum satisfaction.



The majority of Americans in the middle class work hard throughout their life to save assets for retirement. After saving what they hope is enough for a comfortable retirement, their secondary goal is often to pass on some of the estate value to their heirs. Unfortunately, however, a sudden medical issue can cause those assets to be drained very quickly.

If this sounds like a situation you are facing, you may be feeling overwhelmed about the magnitude and the difficulty of the decisions ahead of you. Even if you have already made their move into a nursing home, you may have concerns about your loved one's assets being enough to pay those healthcare bills every month.

Whether your loved one is already in a facility or whether you're planning to make this transition in the near future, this book is designed to help you by providing you with a map. We hope to help you answer some of the key questions about when and how to help your loved one and what to do. By reading this book, you'll feel more confident about your next steps and you'll be on the path to getting the help your loved one truly needs.

Many Americans spend most of their life saving for retirement, but an unforeseen medical crisis can generate a lot of concerns.

# The Caring Connection

Your parents worked hard to care for you, and it's only natural that you want to help care for them in a time of need. It might start small, pitching in with household chores, keeping up with their yard maintenance, or running errands. Over time, those responsibilities may evolve into helping them get to doctor's appointments, paying their monthly bills, and more. Many people with elderly parents or relatives find themselves suddenly facing greater and greater duties as the caregiver. No matter what your relationship is to the person in a crisis, this book can help you. Although this book frequently refers to "mom" or "dad", remember that it could be any person you care about facing a care crisis.

"The 'sandwich generation' is a term that refers to the generation facing the challenge of caring for their own children as well as their parents. The demands of helping out so much in two households can be overwhelming, and yet you might still be feeling guilty if you are not able to help when your parent needs help. Trying to juggle these responsibilities can lead to lost vacation days and work days, and sometimes even spending your own money to finance your loved one's needs. You may even be reading this book because you feel like you can no longer juggle it all.

It could even be that your spouse needs help and you're not sure about allowing someone else to provide care because that person would be outside the family. It can be difficult to make this decision, but when you are truly feeling overwhelmed by everything in front of you, it's time to consider getting assistance.

# Where Do I Start?

Know that there is help for you. An experienced Elder Law lawyer guides you through the process by giving you a roadmap of your options. The first step is to contact our office as soon as possible to begin planning for a crisis.

There are four major assignments we need to tackle when figuring out next steps in a crisis planning situation. Let's walk through what's involved with each.

## **Step #1: Figuring Out What Your Loved One Needs**

Get a doctor involved to assess the current health of your loved one. Is it something that can be corrected under a doctor's care? If the condition is not something that can be corrected, what are your options for elder care? Nursing home care, assisted living, or in-home care are all options.

Nursing home care is advisable when the patient's medical needs require supervision but not the intensive attention provided by a hospital. If your loved one is unable to perform activities of daily living like dressing, bathing, transferring out of a bed or chair, using the toilet, eating, or walking, he or she may need supervision inside a nursing home.

## **Step #2: Review Finances**

You can't make an educated decision about the next step if you aren't aware of the financials. Get a comprehensive and accurate view of all assets and determine their fair market value. These might include stocks and bonds, investment accounts, bank accounts, retirement accounts, life insurance, automobiles, and real estate.

You also need to calculate the total monthly income that your loved one receives. After calculating the income, you need to total monthly living expenses for your loved one. This may include drug expenses, medical costs, rental payments or mortgage payments, groceries and utilities.

### Step #3: Determining Existence of Legal Documents

There are several general estate planning documents that your loved one should have in place. One of the most important ones is known as a power of attorney. This allows another individual to act on your loved one's behalf. Even though it's a very important document, many people do not have one already. This may be a good opportunity to contact an elder law attorney to have one put together for your loved one.

A power of attorney can address a wide range of issues, so it's important to read through the document completely if one is already in existence. A power of attorney may only become activated on certain circumstances, but in any case you need to be aware of the specifics.

Some of the most common concepts referenced in powers of attorney include:

- Real property management
- Powers of appointment
- Trusts
- Safe deposit boxes
- Loans and notes
- Business succession agreements
- Securities
- Power to deal with tax authorities
- HIPAA authorization
- Partnership interests
- Fiduciary positions
- Intent to return home
- Domicile
- Marital agreements and spouse issues
- Support of dependents

One optional aspect that should be included in a power of attorney is the authority granted to an agent to aid in the application for government assistance. Without doing this, it can be difficult to implement several elder law strategies.

## Step #4: Think About Where You Want Your Loved One to Live

The look of a building alone is not going to tell you much about a nursing home. It's very important you do your research and make actual site visits to the nursing home. Visit at various times during the day and talk to other residents and their family members to determine if it's a good fit for your loved one. You'll also want to know:

- What state inspection ratings has the facility received?
- The kinds of therapy available
- How many certified nurses are on staff?
- When doctors make rounds?
- How often employees are trained?
- Whether residents can choose a personalized schedule
- What kinds of social activities are available?

Today, all nursing homes are regulated and it's likely that you have several to choose from. You'll need to look at pictures, visit the facility, and talk to people before making this important decision with or for your family member.

Once these assignments related to the financial and physical health of your loved one are completed, we will be ready to move forward with the next steps. Set up an appointment with an experienced elder law attorney today!



## **Affording Nursing Home Care**

The average cost for a private room in a New Jersey nursing home is \$9,885 per month

There are two main questions to consider when determining how this care can be paid for.

### **Are you self-paying?**

Your family members or your loved one entering the nursing home can pay out of pocket from their own funds to cover the cost of care. Before you make this commitment yourself, however, consider how the cost will influence you.

Writing the nursing home check each month out of your own pocket could devastate your savings. How long will the resources you have access to be able to cover this cost? If your loved one is married, will covering the cost of care decimate the savings or ability to live comfortably for the spouse? Sadly, the vast majority of Americans in the middle class cannot afford care without some help.

### **Is an insurance policy paying?**

If your loved one has long-term care insurance, review the policy in detail. Determine if this policy will cover the needs of your loved one by thinking about these questions:

- What kinds of care are covered? Is it limited to certain settings?
- What needs to be submitted to show that your loved one has qualified for the benefits?
- What is the elimination period? (the length of time before the benefits are actually received)
- What is the daily benefit in the policy?
- How long will benefits be paid?

## Will Government Programs Help?

The short answer is yes, that there are government programs that can help pay for the cost of your loved one's care. In many cases, your loved one may be concerned about preserving assets to pass on to the next generation without having them depleted to cover bills. The two most common ways to get help for long-term care are Medicaid and the Veteran's Administration pension plan. Let's take a look to see what might apply to you.

### Fast Facts on Medicaid Benefits

Medicaid pays for about two-thirds of the country's nursing home residents. In order to receive Medicaid, an individual must pass three tests:

- An Income Test
- A Health Test
- An Asset Test



**The Income Test:** This varies by state, but in New Jersey, if an applicant's income falls below 133% of the federal poverty line, he or she may qualify for benefits.

**The Health Test:** In order to be approved for Medicaid benefits, an individual must meet the requirements regarding "medical necessity". In most cases, this refers to a need for ongoing or chronic care due to an inability to perform a minimum of three activities of daily living. In addition, an applicant must be aged 65 or older or disabled or blind as well as meeting state and national residency requirements.

**The Asset Test:** In New Jersey, there are several factors that go into the asset tests.

Applicants may have:

- A spouse protecting assets between \$23,844 and \$119,220
- A monthly "maintenance needs" allowance between \$1966.25 and \$2980.50
- Home equity up to \$828,000

Under federal Medicaid guidelines, there are two categories for assets: Countable and Non-Countable Resources. Countable resources refer to those that could easily be converted into cash to pay for care and will be considered in determining eligibility by Medicaid:

- IRAs, 401k(s)
- Stocks & Bonds
- Bank and Investment Accounts
- Real estate beyond the primary home
- Life insurance policies above certain amounts

Non-countable resources are those not considered in determining eligibility for Medicaid, such as:

- One vehicle
- The homestead (under certain requirements)
- Prepaid funeral plans for the applicant, spouse, or immediate family members
- Personal effects and household goods
- Life insurance with cash limits

Figures for the asset test are for 2015

## Transferring Assets to Qualify for Medicaid

There are strict requirements in place about the gifts that you make in the period prior to applying for Medicaid. This is to prevent people from just giving their property away.

Once an application for benefits has been made, the Medicaid office will review all financial activity for the applicant over the past 60 months, which is known as a “look back period”. Medicaid will classify them as compensated or uncompensated transfers. If something is classified as an uncompensated transfer, it can lead to delays in Medicaid coverage.

**Compensated Transfers:** This is a transfer of assets to another entity or person when the giver gets something of equal value in exchange. Imagine hiring a contractor to repair your home- so long as the value of the service and the value of the transfer are the same, this is a compensated transfer.

**Uncompensated Transfers:** This refers to situations where you transfer assets to another entity or person and get no value in return. Gifts made within the look-back period of 60 months can trigger a penalty for you with regard to Medicaid. Bear in mind that even giving gifts up to \$14,000 per person (the federal guidelines for making annual gifts tax free) does not exclude these gifts from being calculated as uncompensated transfers in the look back period.

The penalty period for uncompensated transfers evaluates the number of months that could have paid for nursing home care if the amount had never been transferred. This is done with a monthly divisor, so it's important you understand the difference between compensated and uncompensated transfers in the lookback period. An experienced elder law attorney can help you understand these implications more clearly.

## Protecting the Stay at Home Spouse

One of the biggest concerns you might have relates to the spouse staying at home. If all of the couple's income must be dedicated to nursing home care for one individual, this can significantly impact the other spouse. There are a few ways to prevent financial devastation from happening to the other spouse:

- Follow the "name on the check" rule. Transferring sources of income to the healthy spouse means that if your loved one's name is not on the income stream itself, it is not within that individual's estate.
- Purchase a Medicaid-compliant annuity or promissory note with the guidance of an Elder Law attorney that would protect many of your loved one's assets while still giving an income stream to the healthy spouse.

There are tools and options available to help you ensure that your loved one gets the care he or she needs while minimizing the financial impact on the healthy spouse.

## Protecting the Nest Egg

One of the best ways to protect the nest egg that your loved one has worked so hard to build is to convert your assets into non-countable resources for the purposes of Medicaid. For example, you can use assets to purchase items that the family will need regardless of whether or not long-term care is required. Pre-paid burial contracts are just one example.

You can learn more about this option and others by meeting with an elder law attorney to discuss your concerns. It's important to be as knowledgeable as possible when putting together your options.

## **Veteran's Administration Benefits**

The Department of Veteran's Affairs provides monetary support in the form of a pension to those veterans who meet eligibility requirements. In order to get these benefits, veterans must have low income, be permanently and totally disabled, or be aged 65 and over. Each veteran must have more than 90 days of active military service with at least one of those days during a war.

Veterans and their surviving spouses eligible for VA pensions may also be able to receive Housebound or Aid and Attendance benefits, both of which increase the maximum pension rate annually. In order to get these benefits, the individual must need regular assistance from someone else in order to perform activities of daily living. Those who are bedridden, in nursing homes as a result of physical or mental incapacity, blind, or substantially and permanently confined to the immediate premises as a result of a disability meet the guidelines for these programs. Typically, VA benefits are not enough to cover the full cost of long-term care, but they can be an important supplement.

Active duty veterans may also have an opportunity to live in a Veterans Nursing Home free of charge, and these are available in each state. Many of these states, though, have long waiting lists for available beds.

No matter what you are facing with long term care, the payment options mentioned above do not have to be exclusive of one another. You may have a combination of personal payment, insurance payments, and veteran's benefits.

## **The Most Important Piece of Advice For Government Aid**

If your loved one may be eligible for Medicaid or VA benefits, do not apply until you know that he or she qualifies. Doing the application too early can result in a delay of benefits that is far long than what would have been necessary. If a penalty period is triggered for Medicaid, it cannot be removed. To learn more about both these benefit types, speak to an experienced elder law attorney.

## The Importance of Acting Quickly

The sooner that you start planning, the fewer unexpected issues you will encounter. Don't delay in caring for your loved one by allowing his or her funds to be exhausted too quickly. If your loved one is eligible for benefits, act on that.

Even if your loved one is already in a nursing home, there are still strategies to help protect the majority of the family's wealth. While there is no general response to where you go from here, you can get help on your specific concerns and needs by scheduling an appointment with an elder law attorney. The strategies inside this book are a suggestion to help you get started. If it looks like your loved one will need to enter a nursing home in the next year, call our office to talk about ways to preserve your assets while getting the long term care that is necessary.



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