

**WOMEN AND LONG TERM CARE:
“Where Will I Live and Who Will Take Care of Me?”
Older Women’s League - Portland, Oregon Chapter
May 13, 2006
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12% of the U.S. population is age 65 or older. That percentage is growing. The number of people with severe disabilities increases sharply with age. In a 1997 study, more than 37% of people age 65 and older reported having at least one severe disability. The percentage rose to over 57% for people age 80 and older, with about 35% of that age group needing assistance with activities of daily living. Older women have a higher rate of chronic disability than older men.

Older women are also more likely to live by themselves. 42% of women age 65 and older are married, compared with 72% of older men. Some live with other family members, such as adult children and grandchildren, but close to 40% of older women live alone. Most people want to stay in their homes and communities as they age. However, 40% of those age 65 and older will enter a care facility for at least a short stay. About 4.5% of people age 65 and older live in nursing homes, where more than two-thirds of the residents are women. In November 2005, approximately 31,450 Oregonians were in nursing homes, residential care facilities, adult foster homes, and assisted living facilities. About half of them were receiving assistance from the Medicaid program to help pay for their care. Another 11,850 people were getting Medicaid assistance to help pay for services in their own homes.

A recent report by the AARP Public Policy Institute found that 66% of people age 65 and older who had disabilities relied solely on unpaid care by spouses, children, and other family and friends. Another 25% used a combination of unpaid care and formal, paid care. The family caregivers are aging - 11% of the caregiving spouses were age 85 or older and 13% of the caregiving children were age 65 or older. 85% of the people who work in care facilities and as home care providers are women, and they are often people of color. The average wage for a CNA (certified nursing assistant) is around \$10.00 an hour. There are high turnover rates due to the low wages, the lack of benefits, and the physically and emotionally demanding work.

There are a number of issues that need to be addressed at national and state policy levels. On a personal level, advance planning that includes health care decisions, long term care options, financial decisions, and estate planning can help you maintain more control over your living arrangements, your choices concerning care, and your quality of life.

Useful Tools for Advance Planning

Advance Directive for Health Care. Oregon’s Advance Directive for Health Care allows you to name a trusted relative or friend (the “health care representative”) to make decisions about health care if you become incapable of making or communicating those

decisions. The Advance Directive also has spaces for instructing doctors and other providers about the types of care that you do or do not want, including choices about end-of-life decisions such as tube feeding. The Advance Directive forms are available at most hospitals. Oregon Health Decisions, (503)241-0744, publishes a helpful booklet that includes the form and instructions for completing it. The order form is at www.oregonhealthdecisions.org. If you are not able to make or communicate health care decisions and you do not have an Advance Directive, someone may have to go to court to be appointed as your guardian in order to make health care decisions.

Physician Orders for Life-Sustaining Treatment (POLST). This bright pink form was developed in Oregon for the purpose of recording and communicating the wishes of a seriously ill person as the person moves from one health care setting to another. It includes any limits that the person wishes to place on medical treatment, Since the form is a medical order, it has to be completed with and signed by the person's physician or nurse practitioner. Information about the POLST form is available at www.ohsu.edu/ethics/polst.

Durable Financial Power of Attorney. A durable financial power of attorney authorizes another trusted person (the "agent") to manage finances and conduct business for you. The scope of the agent's authority can be limited to handling a single bank account, or it can be broad enough to cover buying and selling property, directing investments, and running a business. When long term care may be needed, a lawyer can draft a custom power of attorney that authorizes the agent to hire in-home help, transfer property to your spouse, make insurance claims, and apply for Medicaid assistance. If you do not have a durable financial power of attorney or a trust and you are not able to manage your finances, someone may have to go to court to be appointed as your conservator in order to take care of your money and property.

Trusts. A revocable living trust can be used to manage finances during your lifetime either by naming another person as the trustee or by providing for a successor trustee who can take over when you become unable to act. The trust agreement can give the trustee the same type of powers described above. In addition, a revocable living trust can direct how property will be managed and distributed upon your death without going through probate. Other types of trusts include a special (or supplemental) needs trust, which is intended to protect the beneficiary's eligibility for government benefits, and an income cap trust, which can make it possible for a person who is over the Medicaid income limit to qualify for assistance to help pay for long term care.

Will. A will is a formal set of instructions that describes how you want your money and property distributed after you die and who you want to be in charge of managing your estate during the probate process. If you do not have a will or a revocable living trust, the Oregon laws on intestate succession define who your closest relatives are and determine who gets the money and property that is in your estate.

Long Term Care Options and Costs

The phrase “long term care” is used to describe the help needed by people who have problems living independently due to chronic medical problems or severe disabilities. The range of long term care services that can be provided in the home includes community services such as Meals on Wheels, respite care for family caregivers, visits by home health nurses and aides, housekeeping, and 24 hour care. The costs vary according to the hours of service and the type of provider. A 2003 survey found that the average charge for a home health aide in Oregon was about \$18.00 per hour. People who employ in-home caregivers have certain legal responsibilities as employers regarding FICA, withholding, workers’ compensation, and unemployment insurance. Information about employer responsibilities is available from the Oregon Bureau of Labor and Industries, (971) 673-0761 or www.boli.state.or.us.

Oregon has encouraged the development of a range of facilities that provide care and services for people who are not able to live independently. Adult foster homes care for five or fewer residents in a home-like environment, with either the owner or live-in resident manager preparing meals, cleaning, doing personal care, and providing 24 hour coverage. Adult foster homes for the elderly and people with physical disabilities are either licensed by the state Department of Human Services (DHS) Seniors and People with Physical Disabilities central office in Salem, (503) 945-5811 or (800) 282-8096 or www.oregon.gov/dhs/spwpd, or by the county. Locally, Multnomah and Clackamas have their own licensing programs.

Residential care facilities provide room, board, care, and services for six or more residents, with 24 hour coverage. Adult foster homes and residential care facilities tend to cost less than other types of care facilities. Assisted living facilities have six or more private apartments and provide several levels of care with 24 hour coverage. The 2003 survey found that assisted living facilities in Oregon were charging between \$1,800 and \$2,800 per month. Nursing facilities (which may be called convalescent centers, rehabilitation centers, and similar names) provide regular nursing services as well as personal care and assistance with ADLs. According to the state, the average nursing home cost is now \$4,700 per month. In the 2003 survey, Oregon nursing home costs ranged from \$3,100 to more than \$10,000 per month, with the higher amounts being charged for private rooms and for the more intensive “skilled nursing facility” or “SNF” care typically needed by people recently discharged from hospitals. Residential care facilities, assisted living facilities, and nursing facilities are all licensed by the DHS Seniors and People with Physical Disabilities central office.

Medicare

Medicare is the federal health insurance program for people age 65 and over and certain people with disabilities. Medicare has three parts. Part A, Hospital Insurance, covers in-patient hospital stays and a maximum of 100 days of skilled nursing facility (SNF) care following a hospital stay of at least three days. The person must meet the Medicare requirements for “skilled care,” and there is a co-payment (\$119.00 per day in 2006) after the first 20 days. Part A also covers hospice care for people who are terminally ill and expected to live six months or less. There is no premium for Part A, but there are deductibles and co-payments.

Part B, Medical Insurance, covers physician services, laboratory tests, ambulance transportation, and durable medical equipment. Part B can also cover certain in-home services when they are provided by a Medicare-certified home health agency for a person who is homebound and needs some skilled care. The monthly premium for Part B (\$88.50 in 2006) is automatically deducted from the Social Security disability or retirement benefit payment. There is an annual deductible (\$124.00 in 2006), and co-payments.

Medicare does not cover eyeglasses, hearing aids, dental work or most types of long term care services. **Medicare does not pay for most nursing home care, most in-home care, adult day care, adult foster care or care in a residential care facility or assisted living facility.**

Medicare added Part D, prescription drug coverage, effective January 1, 2006. People who have Medicare Part A and/or Part B can join a private Medicare Part D plan. The deadline for joining is May 15, 2006. People who do not have other prescription drug coverage which is at least as good as the Medicare Part D coverage (sometimes called “creditable” coverage) and who wait until after May 15th to sign up will pay higher monthly premiums. The next opportunity to enroll will begin November 15, 2006. The maximum annual deductible is \$250.00 in 2006. The monthly premiums, co-payments, and lists of drugs covered vary from plan to plan. Information about the Medicare Part D plans in Oregon is available on the federal Medicare web site, www.medicare.gov, or from the Oregon Insurance Division’s Senior Health Insurance Benefits Assistance (SHIBA) office at (503) 947-7984 or (800) 722-4134 or www.oregonshiba.org.

Medicare supplement insurance or “Medigap” policies typically pay part or all of the deductible and co-payment charges for Medicare services. Some Medicare beneficiaries enroll in HMOs. HMO members pay the HMO’s monthly premium, plus a set fee for each doctor visit or other service. The HMO may offer benefits, such as discounts on eyeglasses, in addition to items covered by Medicare. In return, people who join an HMO have to get all of their medical services from that HMO, except for emergencies when they cannot get to the HMO.

Programs for Veterans

The **US Department of Veterans Affairs** (VA) pays Aid and Attendance cash benefits for eligible veterans (and spouses of veterans) who need long term care. The eligibility criteria include dates of service, degree of physical and mental impairment and financial need. The VA also operates some facilities itself and has contracts with local nursing homes. For more information or to apply for benefits, call (800) 827-1000 or visit the agency’s web site at www.va.gov. There are veterans services officers assigned to local aging and disability services offices to help people with the application process. The **Oregon Department of Veterans Affairs** operates a nursing home in The Dalles that accepts Medicaid reimbursement, (541) 296-7190 or (800) 846-8460 or www.odva.state.or.us.

Long Term Care Insurance

Some people have private long term care insurance policies. Policies now being sold in Oregon must cover all levels of long term care, not just nursing home care, and they cannot exclude particular illnesses, such as Alzheimer's Disease. The SHIBA program publishes a helpful guide to long term care insurance, www.oregonshiba.org. If you have been diagnosed with a chronic disability and do not have a long term care insurance policy, it is unlikely that an insurance company would sell you a policy due to the underwriting standards.

The coverage under a long term care insurance policy is based on a number of factors, including the benefits "trigger," i.e. how much help you have to require before benefits begin; the waiting period before benefits begin; the amount of the daily benefit; and the period of time for which benefits will be paid.

Medicaid

Medicaid is a complex program, with ties to other government assistance programs. In Oregon, it is sometimes called the Oregon Health Plan. To be eligible, you must meet the program's income and resource limits. The Medicaid program for long term care is administered by the local Area Agencies on Aging and the state office for Seniors and People with Physical Disabilities (see the contact information above). When you apply for Medicaid for long term care services in Oregon, your care needs and abilities to do the activities of daily living are evaluated and a service priority level is assigned. Medicaid assistance is currently available to people in service priority levels one through 13. In Oregon, most Medicaid recipients are required to enroll in a participating Health Maintenance Organization (HMO) or other managed care organization.

Oregon's Medicaid program covers the full range of long term care services, including in-home care, adult day health services, adult foster care, residential facility care, assisted living facility care, and nursing home care. Most (but not all) care facilities have contracts with the state and accept Medicaid reimbursement. If the person is eligible for Medicaid for long term care services, Medicaid also pays for the Medicare Part B premium, the Medicare Part D plan premium, doctor visits, hospital stays, medical transportation, durable medical equipment, medical supplies, eyeglasses, dental care, hearing aids, and mental health services.

Income Limit. An individual is not be eligible for Medicaid assistance for long term care services if his or her income (gross income, before any deductions for the Medicare Part B premium, taxes, union dues, etc.) is over \$1,809.00 per month in 2006. That amount changes in January of each year. Since the average cost of nursing home care is over \$4,700 per month, the income limit poses significant problems. If your income is over the limit and you need Medicaid assistance, you should talk to a lawyer about whether you should set up a Medicaid income cap trust.

Using Income to Pay for Care. Once you begin receiving Medicaid assistance for long term care, the Medicaid rules determine how your income can be used. Someone who gets in-

home services and who has expenses for groceries, mortgage (or rent), property taxes, and utilities keeps the first \$604.70 in 2006. Medicaid recipients who are in care facilities keep personal needs allowances of \$30.00 to \$122.00 per month to cover clothing, stamps, snacks, cigarettes, transportation, and other personal items. People living in community-based care facilities pay \$468.70 per month for room and board in 2006. Your remaining income goes to pay for care and services after any other allowable deductions are subtracted.

Resource Limit. The resource limit for a single individual is \$2,000. Certain assets, including your home (if the equity is not more than \$500,000), household goods, one car or truck, and a funeral or burial plan (within set limits) are generally exempt and are not counted in determining eligibility for Medicaid. Most assets, such as bank accounts, stocks, bonds, IRAs, other vehicles and real property, are counted and have to be spent before you will qualify for Medicaid assistance. The excess resources can be spent in a variety of ways that will benefit you.

Gifts and Transfers. Congress made major changes to Medicaid in the Deficit Reduction Act of 2005 (DRA) including harsher penalties for gifts and transfers. Oregon is in the process of adopting new administrative rules to implement those changes. Under the new provisions, if you (or your spouse or your agent) give money or property away, or transfer anything for less than fair market value, within five years before applying for Medicaid, you will not be eligible for Medicaid assistance for a period of time based on the value of whatever was given away. The period of ineligibility will not begin until you apply for Medicaid and show that you meet the other eligibility requirements. The amount that was given away is divided by the average monthly cost of care (currently set at \$4,700 in Oregon). The result is the number of months and days of ineligibility. There are some gifts and transfers for less than fair market value which do not result in a period of ineligibility. For example, there is no penalty if the person transfers assets to his or her spouse.

Protections for Married Couples. When a married person applies for Medicaid assistance, the resources belonging to either spouse or to both spouses are counted. Again, certain assets (including the home and one vehicle) are generally exempt and are not counted. The non-exempt resources are valued as of the date on which the ill spouse began to receive long term care. The resource limit for the ill spouse is \$2,000, the same as for a single individual. However, for applications made in 2006, the community spouse can keep the largest of the following amounts of non-exempt resources:

- \$19,908;
- Half of the non-exempt assets, up to a maximum of \$99,540; or
- The amount set by court order or administrative hearing.

Lawyers familiar with the Medicaid requirements use a variety of approaches to assist clients who are trying to avoid spousal impoverishment. The options include planning the spend-down; transferring exempt assets and non-exempt assets to the community spouse; using non-exempt assets to provide income for the community spouse; and petitioning the court for a

support order awarding additional assets to the community spouse.

Although the resources that belong to a married couple are counted together in the Medicaid application process, each spouse's income is counted separately. The community spouse can receive an allowance from the ill spouse's income after the ill spouse begins receiving Medicaid assistance. The current allowance is set at the amount needed to raise the community spouse's monthly income to \$1,604.00. The figure may be higher, depending on the community spouse's housing costs. If that total is not enough, the community spouse can petition the court for additional support or for a larger share of the couple's resources. However, the allowance is limited to the amount available from the ill spouse's income after the personal needs allowance and any room and board charges have been paid.

Liens and Estate Recovery. The state has a claim against the estate of the Medicaid recipient for the amount of Medicaid assistance paid after age 55. For the purpose of this claim, the estate is defined as any interest in money or property that the Medicaid recipient has at the time of his or her death, so it includes joint accounts, property in a revocable living trust, and other assets which do not have to go through probate. The state cannot collect its claim while there is a surviving spouse or a minor or disabled child. However, the state can make a claim against the estate of the surviving spouse. That claim is for the amount of Medicaid assistance paid for the ill spouse or the amount that the surviving spouse received when the Medicaid recipient died, whichever is lower. Oregon does not have the authority to file liens against real or personal property to recover Medicaid assistance.

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