

ELDER LAW – THE BASICS
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1. SOCIAL SECURITY BENEFITS:

What are the documents needed to make your application?

- Your Social Security number.
- Your birth certificate.
- W-2 forms or self-employment tax returns for last year.
- Military discharge papers if you served in the military.
- Your spouse's birth certificate and Social Security number if he or she is applying for benefits on your earnings at the same time.
- Your children's birth certificates and Social Security numbers, if they're applying for children's benefits based on your earnings at the same time.
- Proof of U.S. citizenship or lawful alien status if you (or a spouse or child applying for benefits) were not born in the United States.
- The name of your bank and your account number if you want your benefits directly deposited into your account.

When is the right time to begin collecting Social Security?

- At age 62 or any time thereafter BUT your monthly benefits will be permanently reduced if you retire before your full retirement age. Depending on birthday, your full retirement age may be 65, 66 or 67. All people born after 1960 have a full retirement age of 67.
- Your monthly benefit amount will increase if you wait to retire until past your full retirement age, BUT the latest date that you should begin receiving benefits is age 70 because there is no increase in benefits after that time.
- The Exact age to begin receiving benefits is based on many variables. The two most important are your financial resources and how healthy you are.

What are the benefits to a Spouse; an ex-Spouse?

- Spouses are entitled to receive Social Security benefits based on their own earnings or 50% of the Social Security benefits received by their spouse, whichever is greater.
- A divorced spouse who was married for at least 10 years is still entitled to 50% of the ex-spouse's benefits BUT in most situations, the divorced spouse cannot receive benefits as a spouse if he or she is remarried.

Do Spousal Benefits continue after the death of the spouse?

- No, however Survivors' Benefits are paid after the death of the spouse. The amount of the benefits could be as high as 100% of the deceased spouse's benefits depending on the retirement age.
- A divorced spouse who is receiving benefits based on an ex-spouse's earnings could receive Survivors' Benefits as high as 100% of the deceased spouse's benefits depending on the retirement age.

Some matters effecting Social Security Benefits.

- Pensions derived from a federal, state or local government agency where the employee did not pay Social Security taxes can offset Social Security Benefits or Survivors' Benefits.
- Your other income may reduce Social Security Benefits or Survivors' Benefits.
- Withdrawals from 401(k) plans are not considered earned income and do not reduce Social Security Benefits or Survivors' Benefits.

Do Social Security Benefits increase based on the economy?

- Social Security is an inflation-protected benefit and is adjusted for inflation by Cost of Living Adjustments.

Can you outlive your Social Security Benefits?

- No (unless the Social Security fund is depleted).

2. ENROLLMENT IN MEDICARE

The majority of people eligible for Medicare health insurance are 65 years or older and entitled to Social Security. People that are entitled to Railroad Retirement benefits and Railroad Retirement disability benefits and those with end stage renal disease are also eligible to participate. Some federal, state, and local government employees have restrictions on their participation eligibility.

Retired Individuals. Retired individuals less than 65 years of age should submit their Medicare enrollment documents 3 months before their 65th birthday. They do have their birthday month and 3 months after their birthday month to enroll. Medicare calls this seven month time period the "initial enrollment period". After this period, a surcharge of 10% per year is assessed on the Medicare Part B premiums for each year that the individual fails to enroll and will likely subject the person to costly out-of-pocket medical expenses.

Employed Individuals. Enrollment for an individual that is still working is affected by whether or not the individual participates in an employer group health plan (EGHP) and whether or not his or her employer has 20 or more employees. Medicare provides for a “special enrollment period” which will be triggered by the individual’s retirement date if he or she works and receives benefits through an EGHP.

- **Individuals participating in an EGHP where there are 20 OR MORE employees** have the option to enroll in Medicare past age 65 without incurring a premium surcharge. However, this is not advisable. In this case, Medicare benefits would be secondary to the benefits payable under the EGHP and the individual would be paying for Medicare coverage which might be duplicative.

A “special enrollment period” exists for individual participating in an EGHP where there are 20 or more employees. In this case, when an individual decides to retire, Medicare enrollment can occur while he or she is still covered by the EGHP. The individual can elect to have Medicare coverage begin in the month of enrollment or any of the following three months. This “special enrollment period” will continue for 8 months after the EGHP ends. One should not wait to be retired to enroll in Medicare because there may be a gap in coverage. Also, if an individual does not enroll during the “special enrollment period”, there is a surcharge per year assessed on the Part B premiums for each year that the individual fails to enroll. This may also result in costly out-of-pocket medical expenses.

- **Individuals participating in an EGHP where there are FEWER THAN 20 employees** do not have a Medicare enrollment choice. These individuals must enroll in Medicare within the seven month window previously mentioned called the “initial enrollment period” which started 3 months before their 65th birthday. These individuals should check with their employers as to whether any supplemental health insurance will be offered to the 65+ employee as a work benefit. Individuals should be aware that Medicare would be the primary payer for health costs in this situation and any supplemental health insurance would be the secondary payer.

3. ESTATE PLANNING IMPORTANT BASIC DOCUMENTS

Will: legal declaration of a person's wishes as to the disposition of his or her property or estate after death, usually written and signed by the testator and attested by witnesses. Matters to be discuss before preparing a draft document:

- Identify beneficiaries (individuals, charities, etc.).
- Identify any issues with the beneficiaries, e.g., would the beneficiary be responsible administering an inheritance?
- Identify what he or she owns, how it is titled and its value.

- Determine how he or she wants to divide the property owned among the beneficiaries.
- Probate vs. nonprobate assets (assets that pass by beneficiary designation (e.g., life insurance policies and retirement plan assets where the beneficiary survives the decedent are not subject to the dispositions made in a will).
- Discuss and determine how taxes (income, estate, inheritance) will be paid.
- Identify the people he or she trust to be the executor and/or trustee under the will.
- Identify and address special issues and concerns.

Power of Attorney: a written document in which a person (the “Principal”) gives another person (the “Agent”) the authority to act for him or her on the terms and conditions specified in the document, generally giving broad powers to handle all the Principal’s property, which would be set forth in the Power of Attorney document

Health Care Power of Attorney: a written document in which a person (the “Principal”) appoints another person (the “Agent”) to make decisions whenever the Principal lacks capacity to do so. The Principal can authorize an Agent to make health-care decisions whenever the Principal is unable to do so. The Principal’s philosophy regarding end-of-life care and other situations that may arise would be included in the document.

Living Will: a written document in which a person (the “Principal”) states his or her wishes regarding medical treatment, especially treatment that sustains or prolongs life by extraordinary means, for use if he or she becomes mentally incompetent or unable to communicate.

4. SUPPORTIVE CARE FACILITIES: A wide range of Supportive Care Facilities are available to the elderly. These facilities vary quite a bit but all provide senior housing and offer some personal assistance while encouraging independence and personal dignity. Many facilities should be considered to find the correct match of housing and services for each individual. Attorney review of Supportive Care Facilities contracts is highly recommended.

Board and Care Facilities (\$350 - \$3,000 / month):

- Group residences – provide room, board and 24-hour supervision, as well as help with some of the five activities of daily living (eating, dressing, bathing, using the toilet and transferring from one position to another), some help with preparing meals, walking outdoors, taking medications, shopping, housekeeping, using the telephone and handling money

Assisted Living Facilities (\$2,000 - \$6,000 / month. Additional charges based on the level of skilled nursing care or therapy needed):

- Same services as board and care facilities (see above) but in a more “upscale” and homelike environment.
- Premium on retaining as much independent living as possible.
- Apartments with more space, privacy and recreational options.
- Supportive services 24 hours a day to provide different levels of help with activities of daily living.
- Some medical supervision available.

Continuing Care Retirement Communities:

- Entire residential continuum from independent housing to assisted living to round-the-clock nursing services.
- Entry fee and adjustable monthly rent in return for guarantee of care for the rest of their life.
- Assortment of on-site medical and social services and facilities.
- Meals, housekeeping, maintenance, transportation, social activities and security.
- Enter community when healthy and move on to more intensive care as it becomes necessary.
- If you need nursing care and units are full, the CCRC may place the resident in another nursing home in the community.
- Evaluate financial soundness of facility.

Fee arrangements for Continuing Care Retirement Communities

- Entry fee \$20,000 to \$500,000+.
- Monthly charges from \$200 - \$3,200.
- Rental vs. Equity arrangements.
- Extensive, modified and fee-for-service contracts.

5. Programs for People with Limited Income and Resources (short list)

Medicare Savings Programs (MSPs): Medicaid programs that help Medicare beneficiaries with low incomes and resources pay all or some of Medicare’s premiums, deductibles and copayments for parts A (hospital) and B (physician) services. These individuals have limited incomes but are above the levels that would qualify them for full Medicaid coverage.

- **Qualified Medicare Beneficiary (QMB) program-** income below 100% of the federal poverty line;
- **Specified Low-Income Medicare Beneficiary (SLMB) program-** income between 100% and 120% of the federal poverty line; and
- **Qualified Individual (QI) program-** income between 120% and 135% of federal poverty levels.

Low-Income Subsidy (LIS): subsidy from Medicare to pay prescription drug costs if yearly income and resources are below certain limits.

Medicaid: joint Federal and State program that helps pay medical costs if you have limited income and resources and meet other eligibility requirements.

State Pharmacy Assistance Programs (SPAPs): State program that helps pay for prescription drugs based on financial need, age, or medical condition.

Programs of All-Inclusive Care for the Elderly (PACE): Medicare and Medicaid program that allows people who otherwise need a nursing home-level of care to remain in the community; provides coverage for prescription drugs, doctor visits, transportation, home care, check-ups, hospital visits, and even nursing home stays whenever necessary.

Low Income Home Energy Assistance Program (LIHEAP) - assist low income households, particularly those with the lowest incomes that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs.

Supplemental Security Income (SSI) Benefits - monthly amount paid by Social Security to people with limited income and resources who are disabled, blind, or age 65 or older. SSI benefits provide cash to meet basic needs for food, clothing, and shelter.

Supplemental Nutrition Assistance Program (SNAP) - new name for the Food Stamp program.

Meals on Wheels - network of local home-delivered and congregate meal programs that serve millions of seniors and others across the country.

DISCLAIMER - The foregoing is general information and there are many clarifications and exceptions. The foregoing material is for informational purposes only and is not to be construed as legal advice. If you would like us to discuss the application of these laws with you or a member of your family, please call our office to make an appointment.