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Long Term Care and the Farm

An Examination of long-term care needs, risks, and strategies for protecting farm assets.

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Long-Term Care and the Farm

Using this information

This publication aims to provide a basic explanation of Long-Term Care (LTC) issues and strategies that may minimize exposure to LTC risks. **The publication is not a substitute for professional legal advice.** Presenting every law and exception related to LTC planning is beyond the scope of this material, but the guide introduces concepts and strategies that can help a farmer begin a detailed discussion with professional advisors. LTC planning can be technical and complicated and should occur in conjunction with a careful review of an individual's situation. Before taking any actions on LTC, consult with an attorney and other professional advisors experienced in LTC issues.

This publication is based on **Pennsylvania** laws and regulations. Each state has its own Medicaid rules, and other laws may vary from state to state. While strategies addressed in this publication may generally apply across all states, it is imperative to understand the laws and Medicaid regulations of the state of residence before taking any LTC planning actions.

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The original Ohio document was also reviewed by attorneys **Craig Vandervoort** and **Joseph Nixon** of the law firm of **Sitterley, Vandervoort and Nixon in Lancaster, Ohio**.

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1. The Risk of Long-Term Care

Family farms are unique from other types of businesses in that a family farm is not just a business. The family farm is also a way of life and a celebration of family heritage. For most farm families, a primary goal of estate and succession planning is continuing that family farm legacy for future generations.

In the past, perhaps the biggest threat to the continuation of family farms was estate taxes. In 2002, the exemption from federal estate taxes was only $1 million per person and the tax rate on estate assets over the exemption was 50%. Many states also had estate taxes. Due to the relatively low estate tax exemptions and high tax rates, even moderately sized farms faced significant estate tax risk. If cash was not available, farm assets, including farmland, were often sold to pay estate taxes.

The estate tax environment is very different today. In 2024, the federal estate tax exemption is $13.61 million with an estate tax rate of 40%.[1] According to the Congressional Budget Office, only about 0.2% of estates pay estate taxes. So, estate taxes are no longer the primary threat to farmers who want to leave their farms to future generations.

Instead, the biggest financial threat to continuing the farm today is likely Long-Term Care (LTC) costs. Many farm families may struggle to pay LTC costs for the older generation. When cash or insurance runs out, farm assets may have to be sold to pay for the care. As our population continues to age and care costs continue to increase, the problem is not likely to go away. In fact, the financial

[1] The current estate tax exemption is scheduled to revert to 2017 levels ($5.49 million plus indexing for inflation) after 2025.

pressure of LTC costs on family farm succession will probably increase.

This publication takes a closer look at how LTC might affect the future of farms. It examines the potential risk of needing LTC and statistics that help predict the expected costs of LTC. It also presents strategies that can help mitigate LTC threats to the farm. The intent is to provide a general understanding of the issues of LTC so that farmers can make informed decisions about how to plan for LTC.

This area of the law is fraught with exceptions as well as technical and nuanced rules and regulations. It is not possible to address every scenario for every farm family. Therefore, farm families should only implement LTC strategies after careful consultation with legal counsel and other professional advisors.

What is long-term care?

The Administration for Community Living defines LTC as:

> *Services that include medical and non-medical care for people with a chronic illness or disability. LTC helps meet health or personal needs. Most LTC services assist people with Activities of Daily Living, such as dressing, bathing, and using the bathroom. LTC can be provided at home, in the community, or in a facility. For purposes of Medicaid eligibility and payment, LTC services are those provided to an individual who requires a level of care equivalent to that received in a nursing facility.* [2]

As the definition indicates, LTC can mean different types of services for different types of needs. On one end of the spectrum, LTC may be occasional, in-home personal care assistance. On the other end, LTC may be a nursing home providing skilled services. The type of LTC greatly affects the costs of the services. The most common types of LTC are home-base care and facility-based care.

Home-based care

Most LTC is home-based, providing care that allows a person to remain at home.[3] Unpaid family members and friends are typical providers but paid caregivers may be involved. A range of services such as the following are available for home-based care.

Home health care involves part-time medical services ordered by a physician for nursing care or assistance after surgery, an accident, or an illness. It may include physical, occupational, or speech therapy services.

> *"The biggest threat to continuing the farm today is likely long-term care costs… the financial pressure of LTC costs on family farm succession will probably increase."*

[2] https://acl.gov. The Administration for Community Living is within the U.S. Department of Health and Human Services. Its mission is to maximize the independence, well-being, and health of older adults, people with disabilities across the lifespan, and their families and caregivers.

[3] National Institute on Aging, https://www.nia.nih.gov/health/what-long-term-care

Homemaker and personal care services assist individuals at home with meals, household chores, and personal care needs.

Friendly visitor and companion services are typically volunteers who regularly pay short social visits to an individual in their home.

Transportation services help people with shopping, medical appointments, and similar transportation needs.

Emergency medical response systems summon emergency medical assistance via an alert system like a necklace or remote. These systems usually involve a monthly fee.

Facility-based care

If adequate care cannot be provided at home, a person might require care from an LTC facility. The services range according to need.[4]

Independent living apartments are ideal for those who want social interaction and planned events but don't need personal or medical care. These facilities do not require licensing or governmental oversight.

Adult homes are licensed to provide short or long-term residence in a small setting and usually include supervision, personal care, housekeeping, and three meals a day.

Enriched housing is also licensed like adult homes, but residents live in independent housing units. Adult day health centers are licensed and provide care in a safe environment. Participants return home overnight.

Adult Day Health Centers are licensed and provide care in a safe environment. Participants return home over night.

Family-type homes are licensed and offer long-term residential care for up to four adults who are not related to the operator.

Assisted living programs are an alternative to nursing homes for those who need daily help but not 24-hour care.

Continuing care or lifecare communities have a variety of facilities on one campus to allow "aging in place" for a resident to move from one level of care to the next as needs change. They usually require an up-front purchase price and ongoing monthly payments.

Nursing homes and skilled care facilities offer 24-hour-a-day care by staff and trained medical professionals, with daily care and medical services for those who can no longer live independently or are suffering from on-going health and recovery issues.

What do statistics say about long-term care risk?

There is no doubt that LTC costs are a financial threat to many farms. Some farmers may go to great lengths to protect their farm assets from potential LTC costs by gifting assets to family members, transferring farm assets to irrevocable trusts, or buying LTC insurance. But when is it necessary to take such actions, and what might be the **actual risk** that LTC costs will affect a farmer and farm assets?

Statistics can help us better understand potential LTC needs. The following data presents the type of LTC required for a typical person over the age of 65, the average length

[4] University of Rochester Medical Center, https://www.urmc.rochester.edu/senior-health/long-term-care/facility-types.aspx

of time a person will require each type of LTC, and the average costs of LTC services.

Data on length and type of LTC

A person turning age 65 today has a 69% chance of needing some type of LTC services in their remaining years, according to the Administration for Community Living.[5] On the other hand, 31% of those over 65 will not require LTC.

On average, 3 years of care will be needed. Due to women having longer life expectancies, women will require an average of 3.7 years of care and men on average will need 2.2 years of LTC. Some people will require a longer period of care, however. Twenty percent of adults will need LTC care for longer than 5 years.

Table 1 summarizes the current data on the length of care someone 65-years or older may need in the future, and the expected type of care that will fulfill their care needs. The table shows that of the 3 years of LTC a person will need on average, 2 of those years would be provided at home. A majority of LTC services are reportedly given at home because people do not want to leave home and go to a facility. Only 1 year of the average 3 years of care needed would be provided in a facility.

Additionally, a portion of at-home care needs are met through unpaid care provided by family or friends. When there is a cost for home-based care, the cost is typically less expensive than facility-based care. A person might expect that all LTC will be provided in a facility, but as **Table 1** shows, most care is the home-based care.

Table 1. Expected type and length of LTC services

Type of LTC	Years needed	% who will need it
Any LTC Services	3	69
Home-Based Care		
Any Services	2	65
Unpaid	1	59
Paid	<1	42
Facility-Based Care		
An Services	1	37
Nursing Home	1	35
Assisted Living	<1	13

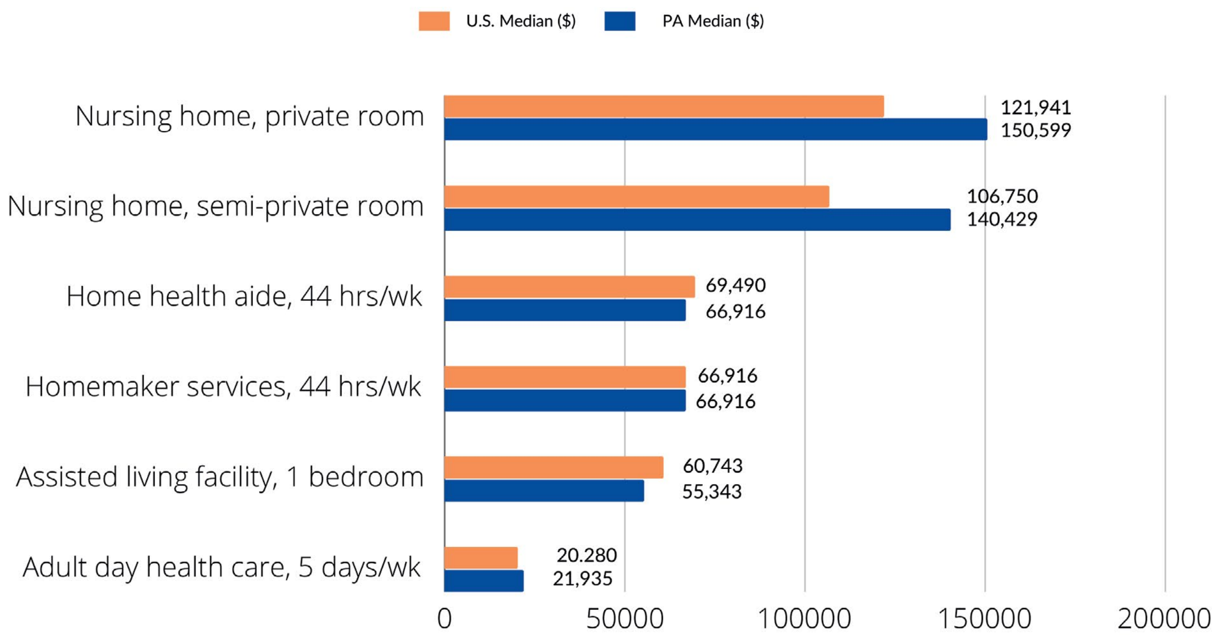
Median costs of LTC

The next important statistic that can help us understand LTC risk is median LTC costs. **Table 2** on the following page shows the median costs of different LTC services according to the *2021 Cost of Care Survey* provided by Genworth Financial, Inc.[6] The table presents both Pennsylvania and national medians. The data illustrates that facility-based costs are significantly higher than home-based care services and that in 2024, the median cost of a year of nursing home care in Pennsylvania is projected to be $150,000.

[5] Administration for Community Living, https://acl.gov/ltc/basic-needs/how-much-care-will-you-need.

[6] https://www.genworth.com/aging-and-you/finances/cost-of-care.html

Table 2. Median Annual 2024 cost of LTC services



Let's use the data above to make predictions for an average Pennsylvania farmer. **Table 3** provides LTC assumptions based on the statistics and shows that a 65-year-old Pennsylvania farmer can expect about $217,000 in LTC costs.

Table 3. Estimated LTC needs for a 65-year-old farmer

Chance of needing LTC	**69%**
Expected Length of LTC	**3 years**
One year of unpaid home-based care	**$0**
One year of pad home-based care	**$67,000**
One year of facility-based care	**$150,000**
Total cost of 3 years of LTC	**$217,000**
Chance of more than 5 years of LTC needed	**20%**

Covering LTC Costs

The next question is, can the average farm absorb the potential cost of LTC without jeopardizing farm assets? Keep in mind that these costs are per person and a married farm couple will have double these potential costs. How could a farm family pay for LTC costs? Annual income, non-farm assets, and farm assets may be available to cover LTC costs.

Annual income. First, we must consider that a farm family could have annual income to use for LTC costs. Farm income, land rent, social security income, and income from investments could all be available to pay for LTC costs.

Non-farm assets. After using annual income to pay for LTC care costs, non-farm assets like savings may be available to pay for the costs.

Farm assets. It's the portion of the LTC costs that income and savings cannot cover that causes farm assets to be at risk. For example, if a farmer has $100,000 in savings, that savings will not cover all potential LTC costs of $217,000, leaving farm assets at risk for the remaining unpaid balance of $117,000.

While a farmer would probably not want to sell any farm asset to pay for LTC, their land is probably the last asset they would want to sell. Most farmers may prefer to sell grain, crops, livestock, and machinery before selling the farmland. But if income and savings cannot pay for LTC care costs, how at risk is the farmland asset?

Data can help us answer the land risk question. According to the Economic Research Service at USDA (ERS), the total non-real estate equity owned by farmers in the U.S. for 2020 was $533.7 billion. The ERS further estimates that there were 2.02 million farmers in the U.S. in 2020. On average, farmers owned $188,654 of non-real estate equity. This suggests that if income and savings cannot pay for LTC costs, the average farmer would have an additional $188,654 of assets to sell before needing to sell real estate.

The risk of being an outlier

So, what does LTC data tell us? The average farmer, if forced to sell farm assets to pay for LTC, will probably not need to sell the land. An average farmer may need to sell crops, livestock, or machinery to pay for LTC costs but the land is probably safe. That is the good news.

The bad news is that the data analysis is based on averages. When dealing with large numbers, averages are very useful. We can say with some confidence that on average, a 65-year-old farmer in Pennsylvania will pay between $0 and $217,000 for LTC costs. However, the numbers cannot tell us with certainty what a specific person will spend on LTC.

An outlier is one whose specific circumstances are significantly different than the average. Being an outlier is the risk any farmer faces with LTC. We all know someone, or have heard of someone, who was in a nursing home for 10 years. That's close to $1.8 million in LTC costs for that outlier. Few farmers have the income, savings, and non-real estate assets to pay for $1.8 million of LTC if they end up in an outlier situation.

What LTC planning for most farmers really equates to is protecting against the outlier scenario that puts the land at risk. Most 65-year-old farmers would probably sleep well at night if they knew they would have no more than $217,000 of LTC costs for the rest of their lives. That amount of LTC costs is probably not going to cause a farm liquidation. What may keep farmers up at night, including the young next generation farmer, is the worry that they or their parents will be the outliers who will spend 10 years in a nursing home.

The outlier scenario is important to keep in mind as farmers develop an LTC strategy. For any risk management plan, the true nature of the risk must be understood and not just presumed. The facts show that most farms can probably withstand average LTC costs. It is also factual that most farms cannot withstand an outlier scenario that requires many years of LTC care. This understanding is critical to developing a LTC plan.

The LTC Contract

LTC providers typically use contracts to document and enforce payments for LTC services. The contract will likely outline the consequences of not paying the provider for their services, such as an end to the services or a requirement to move out of the facility. If a person's financial assets are exhausted, an LTC contract might state that the person must apply to Medicaid for payment.

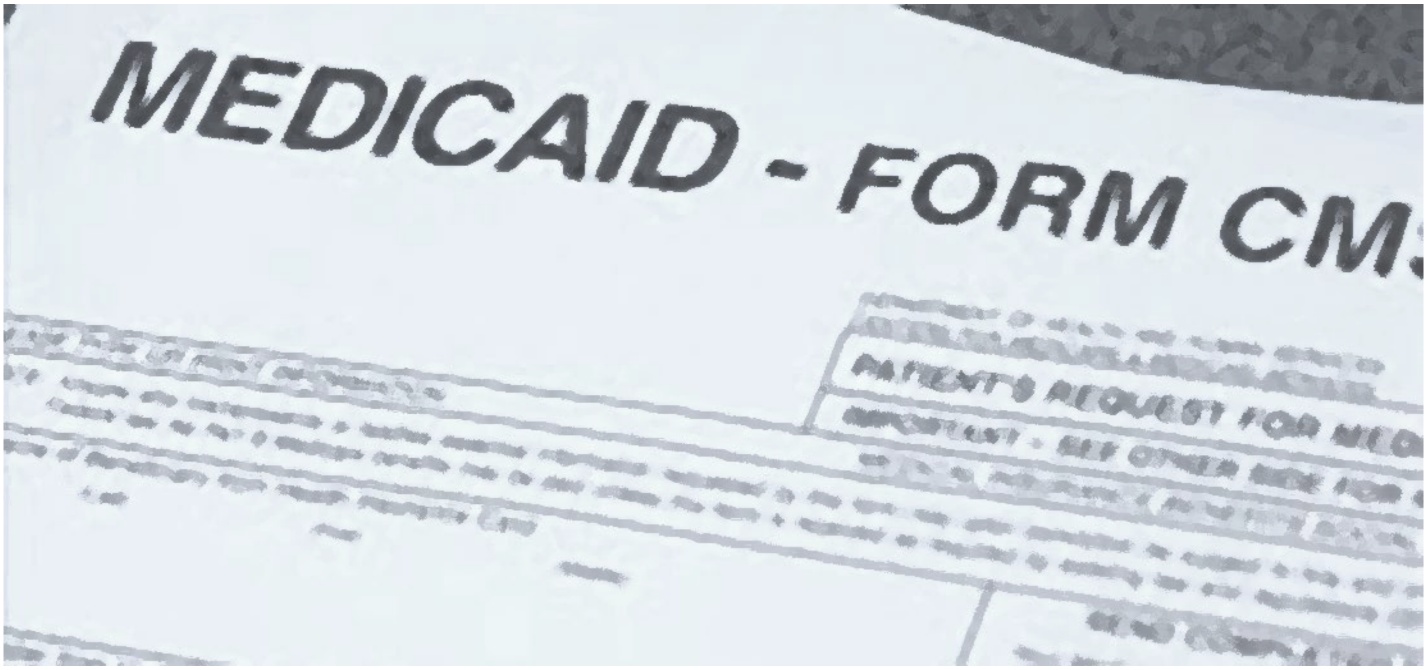
Any money owed to a service provider in a contractual situation can be collected through litigation. The LTC provider can file a lawsuit against the client and foreclose on their assets. Also, the LTC contract will likely require the client to pay for the nursing home's collection fees, including attorney fees.

Paying an LTC provider is not optional. A service provider is not under an obligation to continue to provide services if not being paid.

The point here is that if money runs out and an LTC client owns assets, those assets must be sold to create funds to pay for the care.

Consider the following example.

Farmer Smith signed a contract with the nursing home facility he has been in for one year. He has used up his savings and other funds to pay for the first year of care. If Farmer Smith cannot pay for the cost of continuing his care, the facility can refuse further services and force him to leave the facility. Farmer Smith owns $200,000 of machinery and $1 million of land. He may have to sell his assets to pay for continued LTC care. If he decides to sell his machinery, the sale proceeds must be used to pay for his care as agreed to in the LTC contract. If he exhausts those funds and is still in the facility, he will likely have to sell his land to pay for his care.



2. Assistance from Government Programs

Government programs can provide financial assistance towards LTC costs. The two programs most commonly associated with LTC are Medicare and Medicaid. While the programs may sound similar in name, their impact on LTC costs is very different. The following explains each program and their effects and limitations on LTC.

Medicare and LTC

Medicare is federal health insurance for anyone age 65 and older, and for people under 65 with certain disabilities or conditions. Medicare may provide some short-term coverage of facility-based care costs. If the stay in a nursing home requires skilled services for a medical condition that is hospital-related, Medicare will pay 100% of the nursing home costs for the first 20 days and a portion of the costs for days 21 to 100. After 100 days, Medicare will not pay for LTC costs.

In general, Medicare will pay for short-term nursing home costs if the stay is related to recovering from a stay in a hospital. Medicare will not pay for LTC if the care is only for Activities of Daily Living, such as dressing, bathing, and using the bathroom. Medicare may be used by people receiving LTC services to pay for prescription drugs and physician services. Due to the limited amount of time that Medicare will pay for LTC services, Medicare should not be considered a viable strategy for LTC cost coverage.

Medicaid and LTC

Medicaid is a joint federal and state program that provides health coverage for people with limited income and resources. Medicaid offers benefits such as nursing home care, personal care services, and assistance paying for Medicare premiums and other costs. Funds for Medicaid come from both federal and state governments. The federal government sets certain minimum standards but gives the states flexibility on the services they provide. This is especially true for home care.

Federal law requires states to provide Medicaid coverage to low-income families, low-income pregnant women and children, adults over the age of 65, and people with disabilities. Each state has the option to expand Medicaid coverage to include other groups. For example, some states also cover low-income adults. It is important to know the specific eligibility requirements of the state in which the Medicaid application is made.

Medicaid covers many different types of medical needs for many different people. However, the remainder of this publication focuses on the application of Medicaid in relation to LTC costs.

Medicaid eligibility

Medicaid is available only to those who meet its eligibility criteria, explained below.

Residency. An applicant for Medicaid must be a United States citizen and a resident of the state in which application is made.

Age or disability. The applicant must be either 65 years old, blind, or disabled. People under age 65 who may qualify based on a disability include adults and children with disabilities they have had since birth and others who have disabling conditions acquired through illness, injury, or trauma. Medicaid beneficiaries enrolled through disability include those with physical conditions such as quadriplegia or traumatic brain injuries; intellectual or developmental disabilities such as cerebral palsy, autism, or Down syndrome; and serious behavioral disorders or mental illness such as schizophrenia or bipolar disorder. [7]

Income limits. Some people may be ineligible for Medicaid if their income is too high. Medicaid analysis includes all income sources for the applicant and some of a spouse's income. **Table 4** below lists monthly income limits for Medicaid eligibility in 2024.

Table 4. Pennsylvania monthly income limits for LTC Medicaid Eligibility

Marital Status	Limit ($)
Single	2,829
Married, one spouse applying	2,829
Married, both spouses applying	5,658

While Medicaid does have income limits, being over the limit has a solution. A person with income exceeding the limit can establish a

[7] Medicaid and CHIP Payment and Access Commission (MACPAC). https://www.macpac.gov.

Qualified Income Trust (QIT). If the individual transfers all gross income exceeding the limit into the QIT, the individual can be within the Medicaid income limit. The QIT income can be used to pay for small personal needs, Medicare premiums and medical costs not covered by Medicare. All remaining funds must be used to pay for LTC costs.

It is important to note that a QIT does not protect the excess income from LTC facility costs. The excess income will still need to be used to pay for LTC care costs. The QIT simply prevents the individual from needing to claim the income, thus allowing eligibility.

Consider the following example

Ellen is not married and receives $3,000 per month in income. Her monthly income exceeds the Medicaid limit. She establishes a QIT and transfers her $1,000 social security check to the QIT each month.

Ellen now has $2,000 per month in income and qualifies for Medicaid. She pays $175 per month for Medicare premiums and $45 for personal needs. The remaining $780 per month in the QIT goes to pay for Ellen's LTC costs.

Asset limits. Generally, a person may own only very limited assets if they are to qualify for Medicaid. The idea behind this is that if a person owns assets, they should use those assets to pay for the LTC rather than having Medicaid pay. The asset limitation is usually the biggest impediment to farmers qualifying for Medicaid. Due to the capital-intensive nature of farming, farmers often own too many assets to be eligible for Medicaid without aggressive planning.

Each state identifies the maximum value of *countable* assets that a person can own and qualify for Medicaid but note that some assets are not countable and are exempt from the Medicaid asset limits, explained in the next section.

Table 5 shows the asset limits for Pennsylvania in 2024.[8] A single person may not own more than $2,000 of countable assets to qualify Medicaid. A married couple can own no more $4,000 if they are both to be eligible for Medicaid. For a married couple with only one spouse attempting to be eligible for Medicaid, the applying spouse may own not more than $2,000 of countable assets and the non-applying spouse may own $154,140.[9]

Table 5. Pennsylvania asset limits for Medicaid Eligibility

Marital Status	Limit ($)
Single	2,000
Married, one spouse applying	2,000 applicant + 154,140 non-applicant
Married, both spouses applying	4,000

Due to the Medicaid asset limits, a single farmer must own almost no farm assets to be

[8] American Council on Aging, https://www.medicaidplanningassistance.org/medicaid-eligibility-ohio/.

[9] The amount of assets that may be owned by each spouse depends on which assets are owned by each spouse, how the assets are owned and the type of asset. This analysis can be complicated and is beyond the scope of this publication.

eligible for Medicaid. A married couple may be able to own a few acres of farmland but little else. These extremely low eligibility limits make it very difficult for farmers to qualify for Medicaid.

Assets exempt from Medicaid eligibility

Not all assets that a person owns is counted towards Medicaid eligibility. Some assets that are necessary to live or of a personal nature are exempt and not counted towards the $2,000/$4,000 asset limit. It is important to note, and as will be discussed later, that an exempt asset is still subject to Medicaid estate recovery. An exempt asset is temporarily exempt from being spent down but is still at risk to LTC costs. The following can be exempt assets.

Home. Generally, the home is not an exempt asset unless the person intends to return to their home after their LTC stay or if a spouse, dependent or sibling is living in the home under specific circumstances. Medicaid exempts homes in these circumstances so that a person who is only in LTC temporarily has a home to return to and to not cause spouses and dependents to lose their homes. If one of these circumstances is not met, the home is a countable asset and must be sold before gaining Medicaid eligibility. The home may not have equity of more than $713,000.[10]

Home includes structures, land, outbuildings, necessary to the operation of the home but may cause the home to exceed the equity limit.[11] For married couples, it is very important to consider transferring the home to the spouse who will continue living in the home. The benefits may include increased protections for heirs and protection from estate recovery. Be sure to seek advice from an attorney regarding ownership of the home among spouses.

Consider the following examples.

Example 1. Jane is not married and owns a home on a 50-acre parcel valued at $400,000. Jane enters a nursing home but fully intends to return to her home after a temporary stay in a nursing home. Jane signs an affidavit stating her intention to return to her home. The home and 50 acres will be an exempt asset and not counted towards Jane's $2,000 asset limit.

Example 2. Same facts as Example 1 except Jane has serious physical restrictions and will never return to her home. The home with 50 acres is a countable asset and must be sold and the proceeds used to pay Jane's LTC costs before she can be eligible for Medicaid.

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10 55 Pa. Code § 178.62a & Pennsylvania Department of Human Services, Long-Term Care Handbook, Chapter 468, Appendix A

11 55 Pa. Code § 178.64 & 178.65 "Home" for the purpose of this rule, means any property in which an individual has an ownership interest in and which serves as the individual's principal place of residence. Home includes the structures and land and related outbuildings necessary to the operation of the home.

Example 3. Jane is married to Joe. Jane goes to a nursing home and will not return to her home. Joe continues to live in their home. The home and 50 acres will be an exempt asset for as long as Joe is residing there. If the home is transferred to Joe, and Joe must sell the home later, Joe is able to retain 100% of the sale proceeds. Joe should also have his estate planning documents carefully reviewed if he dies before Jane. The value of the home will not be counted towards Jane's $2,000 nor Joe's $154,140 asset limit.

Example 4. Same facts as Example 3 except Joe will no longer live in the home. Because neither Jane nor Joe will live in the home, the home and 50 acres are countable assets and will have to be sold. However, Joe has three months to purchase a replacement home.[12]

Household goods. The Pennsylvania Administrative Code defines household goods as all personal effects to include furnishings & equipment which are commonly found in or near the home and used in connection with the maintenance, use and occupancy of the home. Such items include furniture, household appliances, carpets, dishes, cooking and eating utensils, televisions, and personal computers.[13]

Automobile. One automobile owned by individual and/or spouse may be exempt as long as it is used for transportation purposes.[14]

Cash value of life insurance. The cash surrender value of life insurance is exempt provided the face value of all policies on the individual's life is less than or equal to $1,500. If cash value exceeds $1,500, the policies must be cashed out and proceeds used to pay for LTC costs.[15]

Burial plot and prepaid funeral expenses. A burial plot for the individual and immediate family members are exempt assets.[16] Prepaid funeral expenses up to $1,500 are also an exempt asset.[17]

Retirement accounts. Some, but not all, retirement accounts are exempt assets.[18] The determination depends on the type of account, status of current payouts, requirements for taking payments and amount of the payments. There is no simple rule or formula to determine the exemption status of retirement accounts; there must be a thorough analysis by someone familiar with Medicaid rules for each account. Countable retirement accounts must be cashed out and the proceeds used to pay LTC costs. All income from exempt retirement accounts must be used to pay for the LTC costs. Pension funds or an IRA of the community spouse is exempt.

Property used in a trade or business. While someone receiving LTC is unlikely to be operating a farm, the spouse may continue farming. The land, machinery and livestock can be exempt as property used in a trade or business. Merely renting farmland is not

[12] 55 Pa. Code § 178.77
[13] 55 Pa. Code § 178.66
[14] 55 Pa. Code § 178.2
[15] 55 Pa. Code § 178.101
[16] 55 Pa. Code § 178.71
[17] 55 Pa. Code § 178.72 & 178.73
[18] 55 Pa. Code § 178.91 (e)

considered a trade or business. A Schedule F or similar tax filing must show earned income from the trade or business.

Consider the following example.

Jane is seeking eligibility for Medicaid. Her husband Joe owns 200 acres of land worth $2 million and $500,000 of farm machinery. Joe uses the land and machinery to conduct his farming operation.

The land and machinery would likely be considered exempt assets because they are used in the farm business. If Jane owns less than $2,000 of countable assets and Joe owns less than $154,140 of other countable assets, Jane can qualify for Medicaid.

Medicaid estate recovery

Assets that are exempt from being counted for Medicaid eligibility are not necessarily safe from LTC costs, as discussed above. After a person on Medicaid dies, exempt assets become subject to Medicaid payments. This process is called estate recovery. Essentially, Medicaid agrees to allow some assets to be exempt while a person is alive and receiving LTC. However, once the person dies, Medicaid rules expect the exempt assets to be used to reimburse for LTC costs paid.

Medicaid will delay estate recovery if either a spouse or child under 21 years old survives the deceased. However, Medicaid may recover the assets upon the death of the surviving spouse or the child reaching 21 years old.[19] Medicaid monitors those who are receiving benefits and upon learning of a recipient's death will take steps to ensure that estate recovery occurs.

Consider the following example.

Jane has been in the nursing home for two years and Medicaid has paid $100,000 for her care. Husband Joe has lived in their jointly owned home while Jane has been in the nursing home. After Jane's death, Joe continues to live in the home.

Upon Joe's death, Medicaid can take a lien on Jane's one-half share of the house, up to $100,000. Medicaid must receive $100,000 from sale proceeds from the house or the person receiving the home must pay the estate recovery. If the home was owned solely by Joe prior to Jane's death, Medicaid estate recovery would not apply.

Improper transfers and the five-year look-back period

A person may own only a limited amount of assets to qualify for Medicaid. The logical next thought is for the Medicaid applicant to simply divest themselves of their assets to attain Medicaid eligibility. However, Medicaid rules do not allow a Medicaid applicant to give away their assets one day and become eligible for Medicaid the next day. Becoming eligible for Medicaid by giving away assets is not an easy nor quick process.

In the application process, Medicaid looks back five years for any improper transfers. The five years is measured from the baseline date,

[19] 55 Pa. Code § 258.7

which is the first date the individual applies for Medicaid and is institutionalized.[20] All transfers during the "look-back period" are analyzed to determine if any transfers were improper. Any transfers prior to the look-back period do not affect Medicaid eligibility.

An improper transfer is a transfer of an asset for less than fair market value during the look-back period[21]. Fair market value means, unless otherwise stated, the going price, at the time of the transfer or contract of sale, for which real or personal property can reasonably be expected to sell on the open market in the relevant geographic area. The appraised value of real property determined by the county auditor multiplied by the common level ratio for the township and may be used to establish fair market value of real estate.[22]

There are a limited number of exemptions for improper transfers. These include a transfer of a residence to a spouse, a child under the age of 21, a child who is blind or disabled,[23] to an adult child who has resided in the residence for at least two years and is providing care to the parent, a sibling with an equity interest in the home and who resides there for one year immediately before date of transfer to nursing home.[24]

Upon determining that an improper transfer occurred during the look-back period, Medicaid calculates the penalty period and the applicant is ineligible for Medicaid payments during that period. The penalty period is based on the value of the improper transfer divided by the Average Private Pay Rate (APPR), $11,548 in 2024.[25] This number, rounded to the next full number, is the number of months the person is ineligible for Medicaid payments. The penalty period technically has no limit. However, if the application for Medicaid is not made until the look-back period has expired, the penalty period is essentially capped at the 60-month look-back period.

Consider the following examples.

Example 1. Arthur makes an improper transfer of $100,000 to his children. The $100,000 gift divided by the APPR of $11,548 equals 8.7, and Arthur will be ineligible for Medicaid coverage for 9 months.

Example 2. Arthur makes an improper transfer of $1 million to his children. The $1 million gift divided by the APPR of $11,548 equals 86.6. This gift would make Arthur ineligible for Medicaid payments for 87 months. However, Arthur waits 60 months after the gift to apply for Medicaid. Because the five-year look-back period has passed, the $1 million gift is no longer an improper transfer and does not cause a penalty for Arthur.

The examples show that as long as a person waits to apply for Medicaid after the look-back period ends, the look-back acts as a 60-month cap on the improper transfer penalty period. This makes LTC planning very difficult, as it must occur five years in advance. No one knows what their physical condition will be in five years. Therefore, LTC planning often involves best guesses and risk management rather than certainties and qualitative decisions.

[20] 55 Pa. Code § 178.104 (c) & 178.104a

[21] 55 Pa. Code § 178.2

[22] 55 Pa. Code § 178.63

[23] 55 Pa. Code § 178.104 (e)

[24] 55 Pa. Code § 178.104 (e) (iii) (iv)

[25] Pennsylvania Department of Human Services, Long-Term Care Handbook, Chapter 468, Appendix A

Improper transfers and no money to pay for LTC

What happens if a person gifts away their assets to qualify for Medicaid but then goes into a facility such as a nursing home before the look-back penalty period has lapsed? If the gifts are returned to that person, the penalty period will be withdrawn and the returned assets would have to be spent down or used for payment of the LTC costs. After the assets have been exhausted, the person can be eligible for Medicaid. Another option is for a person who received a gift to retain the gift and pay for the LTC costs until the look-back penalty period has lapsed.

Undue hardship exemptions

It is possible to request an undue hardship exemption. An undue hardship can occur if the imposition of the penalty period deprives an individual of:

1. Medical care, such that the health or life of an institutionalized individual would be endangered, or
2. Food, clothing, shelter, or other necessities of life.[26]

There are several requirements for obtaining an undue hardship exemption:[27]

1. An undue hardship exists;
2. The institutionalized individual currently has no alternative income or resources available to provide the medical care or food, clothing, shelter, or other life necessities the individual would be deprived of due to the imposition of the penalty period; and
3. A good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset was made, or documentation shows that the cost of any such effort would exceed the gross value of the assets subject to recovery. These good faith efforts may include:
   a. Seeking the advice of an attorney and pursuing legal or equitable remedies such as asset freezing, assignment, or injunction; or seeking modification, avoidance, or nullification of a court order, financial instrument, promissory note, loan, mortgage or other property agreement, or other similar transfer agreement;
   b. Cooperating with any attempt to recover the transferred asset or the fair market value of the transferred asset.

If a person is in a LTC facility, there are two additional conditions for successfully making an undue hardship claim:

1. The care facility has planned to discharge the institutionalized individual as a result of the imposition of the penalty period; and
2. The institutionalized individual has exhausted all administrative remedies to challenge the planned discharge.

Medicaid typically closely scrutinizes hardships. Gifts should never be made in anticipation of later receiving an undue hardship. The persons receiving the gifts should be aware of the improper transfer rules

[26] 55 Pa. Code § 178.104 € (4) and 178.2

[27] 55 Pa. Code § 178.2

and the implications of the five-year lookback period.

Rental and care agreements

A rental or care agreement is a legitimate way to transfer money from a parent to a child for Medicaid purposes. Because rent and care payments are for a service, they are not considered an improper transfer of a gift. This means that a parent who lives with a child may pay the child rent and it will not be considered a gift.

A written rental agreement and/or care agreement can specify the details of the arrangement, such as the rental amount, the care to be provided, and the compensation for that care. The rent must be reasonable, based on the housing expenses of the child or the fair market rent for a similar residence. Likewise, the parent can compensate the child a reasonable amount for providing care to the parent. Payments for rent or care can expedite Medicaid qualification by transferring wealth away from the parent.

3. Strategies to Mitigate LTC Risk and Protect Farm Assets

There are strategies that can mitigate LTC risks to farm assets and help secure the farm for future generations. However, it is probably impossible to find a perfect strategy that completely protects all farm assets from LTC needs. Choosing and implementing a strategy can be technical, legal, and complicated, and will require the assistance of an attorney and other professional advisors. Acting without the advice of legal counsel could make an already challenging LTC situation even worse.

The following strategies can have significant risks or disadvantages. Carefully weighing the disadvantages against the advantages can help identify a strategy that will work best for an individual farm situation.

Do-nothing

When we hear of a "do-nothing" strategy, we might consider it the same as failing to have a strategy. However, with LTC, a do-nothing strategy might be the best strategy. It is most appropriate for those who have sufficient income for LTC and are willing to use that income to pay for LTC costs. No planning is necessary. Provided adequate income is available to cover even an outlier scenario, farm assets will not be at risk of being sold for LTC costs. When income is adequate, perhaps the best strategy is to do nothing other than pay the LTC costs and retain farm assets.

Consider the following example.

Tom and Sara have retired from farming. Between retirement accounts, investments, land rent, and payments for the sale of their machinery, they expect to have $300,000 of annual income available for the rest of their lives. They don't plan for LTC costs since their income should meet their needs.

Even if both Tom and Sara go into a nursing home for several years, which would be an outlier event, they should have enough income to cover all potential LTC costs. The risk that they will need to sell their remaining assets to pay for LTC costs is very low. Thus, a legitimate strategy for them is to keep their assets and rely on their income for LTC costs.

When considering the do-nothing strategy, be sure to take into consideration future increases in LTC costs which go up approximately 3-6% each year. Income that is adequate to pay for LTC today may not be adequate in the future.

Gifting assets

Gifting assets is a preferred LTC strategy for many people. The strategy is to give away assets and wait for the Medicaid improper transfer penalty period to lapse so that the gifted assets are safe from LTC costs. A gift must be a true gift and not illusory. That is, the gift must be made free of payment and conditions. The person making the gift cannot keep ownership and control of the asset.

There are several disadvantages of the gifting strategy. The first is potential ineligibility for Medicaid due to an improper transfer. As discussed previously, each $11,548 of value of a gift causes one month of ineligibility of Medicaid, up to the five-year maximum look-back period. To protect assets from LTC costs, the assets must be gifted five years before an application for Medicaid is filed.

A second disadvantage of gifting assets is losing the income from those assets. One does not receive income from assets they do not own. The same goes for assets they have gifted. The person who gifted the assets no longer owns them and should not expect to receive income from them.

A third disadvantage is the loss in stepped-up tax basis at death. A person who inherits assets receives the deceased person's stepped-up basis for the assets. The stepped-up basis allows a sale of the assets for no or little gain in basis or capital gains tax liability. All things being equal, it is much better to inherit assets with a stepped-up tax basis than to receive assets by gift with no stepped-up basis. Also, inherited business assets can be re-depreciated.

A final disadvantage is that gifts can use up the federal estate tax exemption. Gifts exceeding the $18,000[28] annual gifting exclusion will either cause a gift tax or a reduction in the unified credit for the federal estate tax exemption. It is usually more beneficial to choose to reduce the estate tax exemption than to pay gift tax. For example, a

28 Annual gift exclusion for 2024 is $18,000. The annual gift exclusion is indexed and is increased by $1,000 every few years.

$1.0 million gift will reduce the donor's federal estate tax exemption from $13.61 million to $12.61 million. See our law bulletin on *Gifting Assets Prior to Death* at farmoffice.osu.edu for a thorough discussion on the implications of gifting.

Consider the following example.

Janet owns 200 acres of land. She is concerned that if she goes into a nursing facility, she will have to sell the land to pay for her care. She purchased the land in 1980 for $1,000/acre. It is now worth $10,000/acre. Janet decides to gift the land to her son, Joe.

In this example, Janet gifted land valued at $2 million. To protect the gift, she must allow the five-year look-back period to expire before applying for Medicaid. Joe received the land with a $1,000/acre tax basis and will pay tax on the $9,000/acre gain if he sells the land. Also, Janet's unified credit will reduce from $13.61 million to $11.61 million.

If Janet had kept the land and Joe inherited the land at her death, he would receive the stepped-up $10,000/acre tax basis. If Joe sells the land for $10,000/acre, he will not pay tax on the sale because there is no gain.

When gifting assets, the advantage of protecting the assets must be weighed against losing the stepped-up basis at death. Losing the stepped-up basis can be a significant loss to the potential heir. It is quite possible that the risk of LTC costs to the assets will be outweighed by the stepped-up tax basis. For example, if the risk to the assets is relatively low and the financial gain of a stepped-up tax basis is high, it may be better to accept the risk of LTC costs to achieve the stepped-up basis gain at death.

Irrevocable trusts

Many people have the misperception that if they have a trust, their assets are protected from LTC costs. However, revocable trusts do not provide asset protection and are not an effective strategy for guarding assets from LTC costs. Most trusts are revocable trusts that can be changed or revoked at any time. The grantor or creator of the trust can transfer assets to and from the trust at any time. Just as the grantor can take assets out of a revocable trust, so can a creditor like an LTC facility.

However, an irrevocable trust can protect assets from LTC costs. This type of trust does not allow a grantor to withdraw assets once the trust is established and assets are transferred into it. The grantor cannot revoke the trust or regain control of the assets, one of the disadvantages of a revocable trust. The trustee appointed for the trust, who cannot be the grantor, has the sole authority to manage the trust assets. Because the grantor no longer owns or has control of the assets, the grantor's creditors, like an LTC facility, has no rights to the assets.

An irrevocable trust has an advantage over a gifting strategy because a grantor can still establish terms and conditions for what happens to the assets in a trust. For example, a grantor can put restrictions on selling farmland or require assets to be held in the trust for several generations.

An irrevocable trust can also be set up so that the grantor can retain some income from the trust, another advantage an irrevocable trust has over a gift. However, the income from the trust is not protected from LTC costs. A grantor must decide whether to keep income from an irrevocable trust when establishing the trust, as the income cannot later be "turned on" and "turned off" by the grantor as needed.

One disadvantage of an irrevocable trust is that for Medicaid purposes, a transfer of assets to the trust triggers the improper transfer penalty. Therefore, the grantor will not be eligible for Medicaid until the five-year look- back period passes.

Cost is also a disadvantage of an irrevocable trust. These trusts are complicated instruments that must be established by an attorney familiar with LTC and asset protection. Thus, legal fees can be significant with costs sometimes exceeding $10,000.

Another disadvantage of an irrevocable trust is the ongoing management requirements. An irrevocable trust that does not reserve the income to the grantor must file an annual income tax return, have its own bank account, and essentially operate like a business entity. Failure to operate the irrevocable trust properly can jeopardize the assets in the trust.

A final consideration for an irrevocable trust is the effect on the tax basis of the assets in the trust. Generally, assets in an irrevocable trust receive a stepped-up tax basis at death if the grantor retains income from the assets while living. If the grantor does not retain income rights, the assets do not receive a stepped-up basis at the grantor's death.

Consider the following example.

Bill owns 500 acres of farmland that he wants to protect from LTC costs. He has other sources of income and does need the income from the farmland. He establishes an irrevocable trust and transfers the 500 acres to the irrevocable trust. Bill names his daughter, Susan, as trustee of the trust. The trust states that the land shall be held in trust for Bill's life. may not be sold, and the trust income is to be distributed to his two children. Upon Bill's death, the land is to go to his two children. If a child predeceases Bill, the child's share will be distributed to their children provided they are 25 years old.

Bill's transfer of the land to the irrevocable trust will cause him to be ineligible for Medicaid for five years. After that time, the transfer is no longer an improper transfer and does not cause Medicaid ineligibility. Also, after the look-back period has passed, the land will be protected from LTC costs because Bill no longer owns the land.

Susan, as the trustee, must manage the trust and collect income from the land, pay all expenses, distribute net income to herself and her sibling, and file an annual income tax return. She must follow the conditions of the trust and cannot sell the land. Bill is assured that while he is alive, the land cannot be sold.

At Bill's death, the land will be distributed to his two children. Because Bill did not retain any income from the land, the children do not receive a stepped-up tax basis on the land.

Wait-and-see

Many farmers adopt a wait-and-see approach for LTC costs. The idea is to wait to see when and if LTC care is needed. At that point, if necessary, assets to be protected are gifted or transferred to an irrevocable trust. This strategy requires enough resources to cover LTC costs until the five-year look-back period ends, then all assets transferred at the beginning of the look-back period will be safe.

Consider the following example.

Joe has $50,000 of annual income and $400,000 of savings. His only other asset is his farmland. Joe is reluctant to gift his land to his children in case they have financial difficulties and are forced to sell the land. He is also reluctant to transfer his land to an irrevocable trust because he does not want to give up ownership and control of the land and incur the costs of a trust.

Joe decides to take the wait-and-see approach. If his health declines and he must go into a nursing facility, he has enough income and savings to cover the five-year look-back period. Prior to going into a facility, he will gift or transfer his land to an irrevocable trust and use his income and savings to pay LTC costs for five years. After five years, the land will be protected from LTC costs.

The advantage to this plan is that Joe maintains flexibility. If he never incurs LTC costs, or incurs a relatively small amount, he can retain ownership of the land for the rest of his life. His income and savings provide him the ability to wait-and-see what the best strategy will be to protect his land. This keeps Joe from gifting his land to protect from LTC costs if he never actually incurs any LTC costs. The disadvantage to a wait-and-see strategy is that significant assets must be available to pay for five years of LTC care. For people who do not have the resources to cover five years of LTC costs, this strategy may not work. For people who want to protect all of their assets, including savings, this is not the best plan. But it may be a good strategy for those willing to allow some assets, like savings, to be at risk to LTC costs in exchange for keeping ownership and control of their most important asset, land.

LLCs

LLCs and other business entities can be incorporated into LTC plans. Simply transferring assets to an LLC does little for LTC planning but an LLC may help implement some of the strategies identified above. For example, instead of landowners gifting land to their children, perhaps they put the land in an LLC and gift the LLC to the children. Holding the jointly owned land in an LLC protects against partition and helps keep the land in the family. See our publication on *Keeping Farmland in the Family* on farmoffice.osu.edu for a thorough discussion of using LLCs to protect family farmland.

An LLC is also a good way to gift assets but maintain some control over them. For example, a parent could transfer land to an LLC and gift 99% of the ownership to the children, while keeping 1% ownership. The LLC could be designed so that unanimous consent is required to sell any land. The parent could therefore prevent a sale of land with their 1% ownership. If the parent incurs LTC costs and seeks to qualify for Medicaid, the LLC could require the children to buy the parent's 1% interest. This strategy allows 99% of the value of the land to be gifted but allows the parent to prevent from being sold without their consent.

LLCs are also a good way to consolidate assets prior to gifting. It may be easier to transfer all assets into an LLC and then gift LLC ownership. This may be especially useful for farming operations with equipment and livestock. Also, LLCs provide the opportunity to gift ownership a little at a time although this advantage may not work well for LTC planning due to the improper transfer penalty period.

Self-insure

Another strategy is to self-insure against the possibility of LTC by setting aside specific assets to use for LTC costs. Typical assets would be cash or financial investments but could also include any type of asset, such as land. As LTC costs arise, the designated assets are used to pay the costs.

Consider the following example.

Mike and Nadine own five farms. One farm, the Smith Farm, is farther away than the others, is a less productive farm, and only recently purchased. Mike and Nadine decide that if they need LTC and do not have the income or savings to cover the cost, they will sell the Smith Farm to pay for their care. Mike and Nadine let their family know of their plan so that everyone is aware that the Smith Farm is the LTC insurance plan.

Self-insuring can be an excellent LTC plan because the owners retain full control of their assets as well as full flexibility to change the plan at any time. It does not require legal fees, premium payments, or other administrative costs, unlike other strategies with fees or administrative costs.

A disadvantage of the self-insure strategy is the unknown of how much will be needed to cover LTC costs and what value of assets to designate for the costs. If enough is not set aside and the money or assets are exhausted, all other assets will be at risk for LTC costs.

A second disadvantage of self-insuring is that the strategy can create an "impoverished spouse" dilemma when a married couple has decided to self-insure. Due to not knowing how long LTC costs may last for a spouse that goes into LTC care, the spouse not in need of care may be reluctant to spend anything on themselves other than bare necessities. The spouse at home may choose to live an impoverished lifestyle for fear that the self-insurance assets won't be enough for the LTC care needed.

Consider the following example.

Mike and Nadine decide to self-insure and manage to set aside $300,000 of savings for LTC. Mike's health begins to fail and he is admitted to an LTC facility. Their annual income only covers $40,000 of the $150,000 nursing home bill so they begin to use their savings to cover the balance. Odds are that the $300,000 savings will be enough for the costs but Nadine is afraid they will run out of money. Nadine no longer spends money for travel, entertainment, or quality of life expenses for herself.

LTC insurance

LTC insurance policies cover some LTC costs for an individual. LTC insurance policies, in many ways, provide the most flexible LTC plan. If a policy can be obtained to cover all LTC costs or at least cover the deficiency that income does not cover, farm assets can be protected. Therefore, a person can keep their assets and continue to enjoy and use them for the remainder of their lives.

It should be worthwhile to at least explore incorporating a LTC insurance policy into a LTC plan before assuming that assets must be gifted or transferred to protect them. Many insurance agents and financial advisors can provide free estimates for policies without too much difficulty. They can also help with a risk assessment to determine what policy may be needed for an individual's given circumstance. Depending on the type of policy and robustness of coverage, LTC policies can be expensive. Not everyone will be able to fit LTC policy premiums into their budget. Also, not everyone is insurable. People with significant pre-existing health care issues may not be able to obtain a LTC policy.

There are many different types of policies and coverages available. For example, some coverages start soon after LTC is needed while some do not begin to pay right away, sometimes starting to pay as long as one year after LTC begins. Also, some policies are combined with a death benefit so the policy holder receives at least some benefit from the policy if it is not used for LTC. The following are some, but not all, of the terms and conditions to consider when exploring a LTC insurance policy.

Duration of benefits. Most policies cover at least one year and may cover up to five. Policies that cover more than five years are no longer available. Obviously, a longer-term policy is preferable but that must be balanced against the higher premiums.

Benefit triggers. The LTC policy pays out when certain triggers, or conditions, exist. Before paying out, most policies require the policy holder to need assistance with at least two of the following activities: bathing, dressing, toileting, eating, transferring and continence. Be sure to understand what conditions are required for payout to be triggered.

Waiting period. Policies include a waiting period before the insurance benefits will begin. The waiting period may be a few days or as long as one year. The policy holder must cover LTC costs until the waiting period ends. The longer the waiting period, the lower the policy premiums.

Daily benefit amount. A LTC policy states a daily benefit amount it will pay for LTC care. Some policies may pay 100% of the daily LTC costs. Other policies may only cover 50% of the LTC costs. The policy can be used to cover only that portion of LTC costs that income does not cover.

Inflation protection. Like any cost, LTC costs will increase over time. Some policies have inflation adjustment built in and automatically increase over time. Other policies offer the holder the ability to increase the coverage to keep up with inflation but this will also increase the premium. It is important to know what type of inflation adjustment provision is in a policy.

LTC insurance Partnership Policies

Most states, including Ohio, have a Partnership for Long-Term Care Insurance program. This program provides asset coverage equal to the benefits paid by a LTC insurance policy. For example, if $100,000 of LTC was paid by insurance, the insured is eligible to retain an additional $100,000 above the asset limits provided in Table 4. If available, a Partnership Policy could affect the decision to obtain LTC insurance and could be an important part of an LTC plan.

Combining LTC strategies

The strategies discussed above are not exclusive. One or more strategies may need to be combined to serve the needs of a farm family. For example, perhaps some assets are gifted as one strategy and a second strategy of an LTC insurance policy is obtained to cover the five-year look-back period and protect the gifted assets. Or another approach could use an LLC in combination with an irrevocable trust. All strategies should be considered for an LTC plan, as well as the possibility of using a combination of strategies in the plan.

4. The LTC Risk Assessment

Now that LTC risk, costs, and mitigation strategies have been discussed, it is worthwhile to have a more comprehensive discussion on assessing individual LTC risks. Until a risk assessment is performed for an individual situation, it is nearly impossible to determine the best course of action for LTC management strategies.

The risk assessment looks at the potential costs of LTC and the ability of the farm to pay those costs. Paying for LTC is a function of available income, LTC insurance, and assets that can be liquidated to pay for LTC costs not covered by income. Generally, the assumption is that farmers will first use savings to pay LTC costs not covered by income and insurance, then non-real estate farm assets, and then finally, real estate. That is, the land is the last asset a farmer will typically want to use to pay for LTC costs.

The assessment process

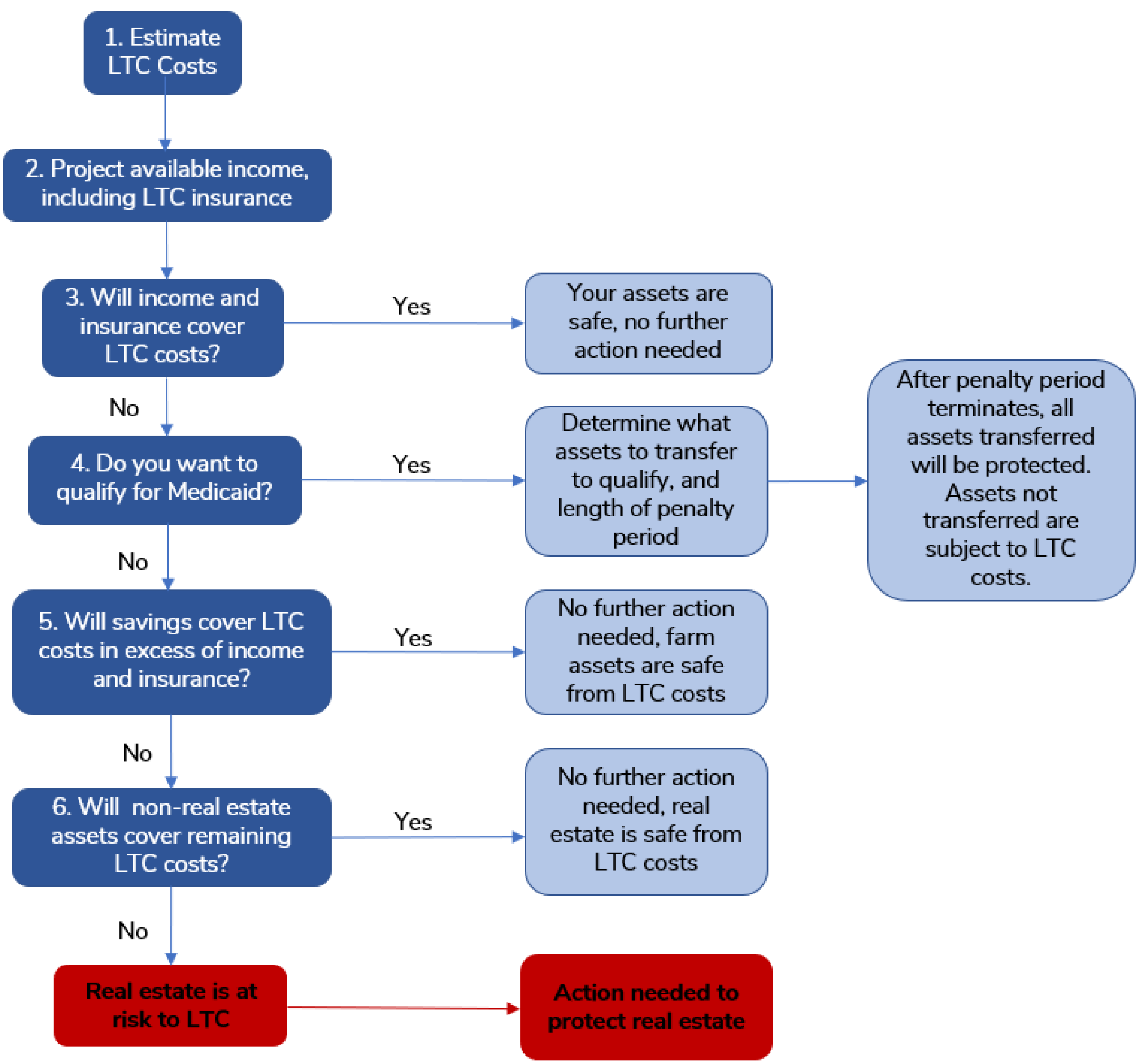
A step-by-step process can help an individual work through the LTC risk assessment. The steps below provide a guideline, as illustrated in **Figure 1** below.

1. Estimate LTC costs. To start an individual LTC assessment, make an estimation of what LTC costs might be. As discussed earlier, on average about 69% of people will need LTC and the median costs will be around $217,000. Also, recall that approximately 20% of people will be outliers and need LTC for more than five years, which could easily equate to $700,000 or more of LTC costs. There is no way to know exactly how much any one person will need for LTC costs but it is possible for an individual to decide whether to base planning on average LTC costs or an outlier scenario. As presented in Section 1, the

Genworth Financial Cost of Care Survey[29] is a good source for predicting current LTC costs.

2. Project available income. Forecasting a realistic income projection is next. It is important to keep in mind that if someone is receiving LTC there is a good chance they will not be able to operate a farm. So, income should probably be based more on potential retirement income from an operating farm or wages. All available sources

Figure 1. Long-Term Care Strategy Analysis



[29] https://www.genworth.com/aging-and-you/finances/cost-of-care.html

of income should be included, such as retirement accounts, investments, land rents, and the sale of operating assets. The income forecast needs to be based on after-tax income. Also, factor in any LTC insurance benefits that may be available. LTC insurance payments can essentially be added to the income to help pay LTC costs.

3. Compare costs to income. The next step is to compare the income forecast, including LTC insurance, to potential LTC costs. If there is adequate income and insurance to pay for LTC costs, other assets are not at risk. Additionally, no further LTC planning likely needs done. Assets are only at risk to LTC when income is inadequate to cover the costs.

4. Consider Medicaid. If income and insurance will not cover the projected LTC costs, then a decision needs to be made regarding Medicaid. Is it a goal to qualify for Medicaid? If yes, what actions would need to be taken to qualify and what impact does the five-year penalty period have on the plan?Deciding if there will be reliance on Medicaid will dictate which of the LTC strategies are available and appropriate.

5. Assess savings. If Medicaid eligibility is not desired, then the next step is to determine how long savings will cover the deficiency. By dividing the available savings by the income deficiency, we can determine how many years of LTC will be covered by savings. If the savings will cover average LTC costs and outlier scenarios, then all remaining assets are likely protected.

Consider the following example.

Joe is an unmarried farmer with children. He has no LTC insurance. He forecasts his annual retirement income to be $50,000 after taxes. He has $500,000 in savings and investments, $500,000 in machinery and equipment and $2 million in land. He assumes that a nursing home will cost $150,000/year. His income is $100,000 short of covering the annual nursing home bill. If he uses his savings to cover the deficiency, he can pay for five years of nursing home costs before his savings are depleted.

The average male will require about 2.2 years of LTC. Joe can pay for five years, with his income and savings. Joe's risk analysis shows that if he is willing to use his savings, his farm assets are at moderate risk of being consumed for LTC costs because he may need more than five years of LTC.

6. Assess non-real estate assets. Many farms do not have much savings or investments because it is common for all money to be put back into the farm. In these situations, the question is whether and how much operating assets need to be liquidated to pay for LTC. Like the income forecast, available operating assets should be valued as after-tax.

Consider the following example.

Same example as above but Joe only has $50,000 in savings. In this scenario, his savings will pay for less than one year of LTC. After that, he may need to sell machinery and land.

In this risk analysis, Joe's savings machinery and possibly land are at risk to LTC costs. If Joe requires more than five years of nursing home care. But Joe may decide he is not willing to risk his machinery and instead transfer it to an irrevocable trust or elect another strategy to protect it from LTC costs. If he protects his machinery, he will also need to do the same for his land.

7. Address risk to land. If income, savings and operating assets are insufficient to cover LTC costs, then land is at risk. As stated above, this is almost always the asset most important to farmers and the asset requiring the most protection. If the risk analysis shows that the land is likely at risk to LTC costs, a farmer may need a strategy to protect the land, such as gifting to heirs or transferring to an irrevocable trust.

Consider the following example.

In Joe's example above, assume Joe had quit farming and does not own any machinery. Using his savings, he can only pay for nine months of LTC before his land is at risk. Joe decides to gift his land to his children to avoid having to spend it down for LTC. Joe decided upon an aggressive LTC plan due to his land being exposed to significant risk from LTC.

Married couples require additional analysis. The examples above use a relatively simple scenario for a single person. For married couples, the assessment is more complicated due to the possibility of two people with LTC costs. Additionally, not all income can be allocated to LTC if one spouse remains at home with continuing needs. The risk assessment is more complex with marriage. Until a risk assessment is performed, it is difficult to know what strategy to implement. When income and savings are adequate to cover many years of LTC, there may not be a need for aggressive LTC planning. If income and savings will only cover LTC for a short period of time, aggressive planning may be necessary to protect assets.

Finding legal and professional assistance

An attorney familiar with LTC issues can be helpful with conducting a risk assessment. Before transferring assets or implementing the plan, an attorney should be consulted. LTC planning can be complicated and technical. Implementing the wrong plan can make things even worse. A small investment in legal fees is worthwhile to be sure your LTC plan is the correct plan for your farm.

Farmers can find attorneys familiar with LTC in a number of ways. Often the best way is through referrals from friends and family. If a referral is not available, a simple internet search can be effective. Searches for "Elder Law Attorney," "Medicaid Attorney," and "Long-Term Care Attorney" will often result in attorneys that may be able to assist in LTC matters. Another way to find an attorney is to contact the local or state bar association and ask for a list of attorneys who practice in LTC matters. Whatever the method, be sure the attorney you select is familiar with and has experience in LTC matters. In addition to finding an attorney who understands LTC, farmers should use an attorney who is also familiar with farm issues. The farm attorney might also have the LTC expertise or may collaborate with the LTC attorney. Family farms have unique issues that an attorney not familiar with farming may not understand or be aware of. For example, transferring an operating farm into an irrevocable trust may not a good strategy for a farm. To find attorneys familiar with farm issues, referrals from fellow farmers can be a good place to start. Also, a local Extension educator or farm organization representative often know attorneys who work with farmers.

LINKING FARMERS TO THE FUTURE

For farm succession planning resources, the learning academy, educational events, consultations and further information contact PA Farm Link staff.

https://pafarmlink.org

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