

# Chapter 10: Elder Issues

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**Please note.** Corrections for all of the chapters are available at [www.ace.uiuc.edu/taxschool](http://www.ace.uiuc.edu/taxschool). For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

## LOOMING CRISIS

In recent years, there has been much public debate and discussion about the “looming crisis” in elder care that is facing the country as the baby-boom generation reaches retirement age. The American media paints a grim future by focusing on staggering statistics detailing the needs generated by a disproportionately large segment of the population and the general lack of government and private resources to meet the increased burdens.

According to United States Census Bureau projections, by 2030 nearly 20% of the population will be over age 65.<sup>1</sup> Coupled with ever-increasing life expectancies, the nation will likely face a critical lack of care providers and facilities, and an insufficient tax base to provide care for this large population segment.<sup>2</sup> The federal government expects that by 2060 the number of nursing home residents will nearly triple compared to the number in 1999.<sup>3</sup> Individual long-term care costs are also expected to rise steeply. According to some reports, they are expected to rise at almost three times the inflation rate.<sup>4</sup>

The tax professional is often the first person the elder client asks for advice. Therefore, it is important that he understands the issues. It is also important that he not overstep his expertise in providing this advice.

This chapter highlights some of the issues associated with the elderly population that require advance planning. It also provides a broad overview of ways to help people plan for the retirement years in order to avoid many of the problems predicted in the looming elder-care crisis.

This chapter also discusses available options for long-term care, including alternative solutions to nursing home care. In addition, it covers some of the tools available to help defray the costs of long-term care and sheds light on the various available government benefits. Throughout the chapter, income tax issues are examined. Finally, this chapter provides a listing of various legal instruments, such as wills and powers of attorney that are essential in preparing for the retirement years.

<sup>1</sup> He, Wan, Sengupta, Velkoff, DeBarros, United States Census Bureau, Current Population Reports, P23-209, *65+ in the United States: 2005*, U.S. Government Printing Office, Washington, D.C. 2005

<sup>2</sup> Atkins, Dallas, “Ready Yourself Now for Crisis in Elder Care,” 93016, *The Faculty and Staff Newspaper of the University of California*, Santa Barbara, Vol. 12, No. 13, April 1, 2002

<sup>3</sup> Ibid

<sup>4</sup> Ibid

**Note.** This chapter is meant to be a basic discussion of elder law. Some information is given in a general format and programs may vary from state to state. Also, an estate plan and plan for long-term care are included at the end of Chapter 11, Estate and Trust.

## GENERAL TYPES OF LONG-TERM CARE

There is a wide range of housing options and varying levels of care available to suit various lifestyles. The following overview provides a brief description of the major types of long-term care and living options available to seniors today.

### CONTINUING CARE RETIREMENT COMMUNITIES

Continuing care retirement communities (CCRCs) give active seniors the opportunity to enjoy an independent lifestyle in a private-home setting with the flexibility to adjust for future medical needs. These communities offer several types of facilities all in one location, such as independent-living residences, assisted-living facilities, and nursing homes. Contracts with these facilities may require buy-in or an up-front annuity purchase followed by monthly payments to cover services, amenities, and needed medical. The buy-in may be fully, partially, or nonrefundable.

**Note.** Please refer to Chapter 14, “New Legislation,” for information on the TIPRA changes to imputed interest for CCRCs.

### ASSISTED-LIVING FACILITIES

Assisted-living facilities are generally for people who require help with **activities of daily living (ADL)** but who desire to live as independently as possible. ADL refers to a variety of routine activities. The inability to perform these activities identifies the need for various nursing-care services. ADL includes:

- Bathing
- Dressing
- Transferring (getting up from a bed to a chair)
- Toileting
- Eating
- Continence

Assisted-living facilities are especially suited to individuals who are not fully able to live by themselves, but who do not require constant and higher skilled nursing care as provided in a nursing home. Many assisted-living facilities also have centers for medical care, but generally, the care offered is not as intensive as the type of care offered at a nursing home. Assisted-living facilities provide an intermediate level of long-term care appropriate for many seniors.

### BOARD AND CARE HOMES

There are various types of residential arrangements that provide similar services to those offered at an assisted-living facility, but they are generally smaller and resemble a home-like setting. For example, in Pennsylvania, there are options for assisted-living care in residences known as **Personal Care Homes** and **Domiciliary Care Homes**.

### NURSING HOMES

Nursing homes provide 24-hour care to people who can no longer live independently and cannot be cared for at home or in the community. Medical professionals and staff provide a wide range of personal care and health services. For residents with severe illnesses or injuries, specialized medical care is provided on-site. Trained staff members assist with activities of daily living like dressing, bathing, using the bathroom, laundry, and housekeeping.

Many nursing homes specialize in acute nursing care, intermediate care, or long-term nursing care. It is important to note that Medicare does **not** pay for most nursing home care—a common misconception that could prove costly in planning for retirement. Medicare only pays for non-hospital skilled nursing care for a limited period of time and only under certain conditions. A more detailed discussion of Medicare benefits is provided later in the chapter.

## IN-HOME SERVICES

Depending on the needs of the individual, seniors may receive assistance with various activities within their own homes. Family members and friends often help with lower-level needs such as laundry, bathing, or cleaning. Volunteer agencies may also provide similar assistance.

**Home health agencies** often provide skilled nursing care and other health care services. Home health agencies are typically licensed and regulated by a state's health department or similar agency.

Less skilled care may also be given in the home by regulated providers such as **home health aides** or attendant caregivers. Agencies providing this type of care are usually regulated by the state's welfare or social services department.

## INCOME TAXATION DEDUCTION OF LONG-TERM CARE

**Planning Suggestion.** If a taxpayer has high medical deductions which generate negative taxable income and has assets in tax deferred accounts (i.e. annuities, IRAs, 401ks, and other pension plans), then she should consider withdrawing funds from these accounts rather than after-tax accounts (i.e. savings and checking).

She will want to withdraw enough to fully utilize her personal exemption and itemized deductions, so that these benefits are not lost. This also reduces the amount of taxable funds that will be passed on to her heirs after death.

In general, a taxpayer is allowed to deduct the amount of medical expense which exceeds 7.5% of adjusted gross income (AGI). The deduction also applies to the spouse and any dependent of the taxpayer. In addition, the taxpayer may also deduct medical expenses for a person who **would have qualified as a dependent except** that her gross income equaled or exceeded the amount for the exemption or she failed the joint return test.

## Medical Expenses

Medical expenses include payments for the diagnosis, cure, relief, treatment, or prevention of disease. Nursing home expenses in their entirety are **deductible** as medical expenses when the **primary purpose** for being in the nursing home is to receive **medical care**, including meals and lodging expense. If the individual is in the nursing home mainly for **personal reasons**, then only the cost of the **actual medical care is deductible** as a medical expense, and the cost of the meals and lodging is not deductible.

**Qualified Long-Term Care Services.** Expenses for other qualified long-term care services are also deductible medical expenses. These include any expenditures for medical or personal services that are:

1. Required by a chronically ill individual, and
2. Provided under a plan of care prescribed by a licensed health care practitioner.

To be deductible, **maintenance or personal care services** must have the primary purpose of providing a chronically ill individual with assistance needed because of the disabilities (including protection from threats to health and safety due to severe cognitive impairment).