

# Long-Term Health Care Planning

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## Agricultural Business Management

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### Introduction:

Long-term health care has become a major issue for farm families who want to transition the farm business to the next generation. A long-term health care plan is essential as part of the estate plan to insure the business transitions as the family desires. Long-term care costs have skyrocketed. Without a plan, the farm business is facing a potentially huge financial risk due to the cost of long-term care.

This information sheet outlines what long-term care is, the statistics around the probability of needing long-term care, some of the terms involved, an explanation of the federal Medicare and Medicaid program qualification guidelines, methods of paying for long-term care and the long-term care partnership program.

Each individual has to decide how they will deal with long-term health care costs if the need arises. This is a personal choice and every individual has a different set of circumstances. ***The information in this document is not meant to imply one choice over another - that is, one should shelter their assets and go onto Medicaid if at all possible OR one should pay their own long-term care costs. The information contained herein is to simply outline the rules around how the various programs work, to dispel misconceptions about the various programs available, and to outline some ideas to help you think about long-term health care planning.***

### Long-Term Care Defined:

#### Insurance definition:

Long-term care designation for insurance purposes means an individual is certified chronically ill by a physician for a period of at least 90 days. Being chronically ill means requiring assistance with at least two of the six Activities of Daily Living (ADL). The ADL include bathing, dressing, eating, toileting, transfer (mobility), and continence, in that order.

#### Medicaid definite:

Medicaid (Medical Assistance or MA as it is referred to in MN) requires assistance with two of the six activities of daily living (new as of July 1, 2011) and needs 24 hour care.

Long-term care includes a wide range of care options. Those include care given in the home by a family member or home health care aid, congregate care and groups homes, assisted living and nursing home.

### Probability of Needing Long-Term Care:

Less than 15% of long-term care is in a nursing home. The actual risk for needing long-term care is greater than 50%. Including a spouse, overall risk of one partner needing long-term care is greater than 65%.

Currently 1 in 2 Americans, over the age of 65, will have an extended nursing home stay (does not include any type of home stay). Also, 1 in 10 Americans over the age of 65 will have a nursing home stay of more than 5 years. The average nursing home stay is 2 1/2 to 3 years. Of those folks currently receiving long-term care, 40% are under the age of 65.

Data for the length of time care is provided shows the following:

- 32% needing care → less than 1 year
- 26% needing care → 1-2 years
- 18% needing care → 3-7 years
- 24% needing care → 8+ years

For family members who delivered the care in their home, a total of 42% of the caregivers report the care recipient resided in the home for a period of 3 years or more.

For the caregiver who delivers care in their home, their immune systems ability to fight disease decreases 18%. The caregiver's life expectancy decreases by 3 - 4 years. The number one health care issue for caregivers is depression.

### Long-Term Care Terms:

Long-term Care: Includes a wide range of care from in-home care to the nursing home.

Medicare: Is the federal health insurance program

for people who are age 65 or older, disabled, blind, or have permanent kidney failure.

**Medicaid:** a federal program, known as Medical Assistance (MA) in Minnesota, which provides health care payments for needy people. The program is administered by each county human services department.

**Long-Term Care Spouse:** referred to as the nursing home (NH) spouse. This is the person who is married to a CS and resides in a long-term care facility. They may or may not be receiving MA-LTC payments.

**Community Spouse (CS):** person/spouse who does not reside in a long-term care facility or receive services through a waiver program and is married to a long-term care spouse.

**Medical Assistance – Long-Term Care (MA-LTC):** This is the Medicaid (MA) program that pays only for custodial/skilled long-term care stay costs.

**Elderly Waiver (MA-EW):** This is the Medicaid (MA) program that pays for assisted living, group residential and home care.

### **Long-Term Care Costs:**

Long-term care costs are based upon level of care and the care facility. Listed here are current annual cost ranges by facility and care level for Minnesota.

- Home Health Aide: \$38,000 to \$58,000
- Assisted Living: \$30,000 to \$55,000
- Nursing Home:
  - Semi-private: \$63,000 to \$80,000
  - Private room: \$66,000 to \$95,000

### **Medicare:**

Medicare is a federal health care program that Americans qualify for at age 65. It is not intended to pay for long-term custodial health care.

Medicare will pay for a portion of a nursing home stays **IF** the stay is for doctor ordered recuperative care - physical therapy, speech therapy, etc. To qualify, one must have a minimum of a three day "admitted" hospital stay before being discharged to the nursing home. Being in the hospital for "observation" does not qualify the patient for Medicare coverage if discharged to the nursing home.

The nursing home must be a Medicare approved nursing home. All nursing homes in Minnesota

qualify. However, if you winter in another state or retire in another state, that may not be the case. On average, 48% of nursing homes in other states are not Medicare approved.

In addition to the nursing home stay having to be for doctor ordered recuperative care, the patient must show improvement. If not, Medicare payment will stop and the patient will have to self-pay for any additional time in the nursing home. If the doctor ceases to order care, Medicare will stop paying.

For a Medicare approved stay in a nursing home, Medicare will pay toward the first 100 days of the stay. Medicare pays 100% of the cost up to the first 20 days if doctor ordered care continues and the patient shows improvement in condition. For days 21 through 100, Medicare pays all but daily co-pay (number changes frequently). This amount has to be paid for by the patient. For days 100 and beyond, Medicare pays nothing. Medicare will also stop paying if the doctor ceases ordered recuperative care or the patient fails to show any improvement in their condition. Bottom line, Medicare will not pay for an extended long-term custodial care facility stay.

### **Veterans Benefits:**

To qualify for VA benefits you must often meet specific asset and income requirements much like Medicaid. You must have wartime service of at least 90 days and 1 day of war time to qualify. Note: wartime service dates are determined by Congress, not by actual dates of a war. In addition, you must have a service connected (SC) disability to qualify.

To be placed in a VA Community Living Center (VA Nursing home) you would require nursing home care for a service connected disability and are rated as having a 60% SC disability and unemployable and requiring nursing home care for your disability **OR** you have a combined SC disability percentage of 70% or more and require nursing home care for the condition.

A second alternative would be placement in a contract nursing home based upon space and availability.

This is a very complex area and proper planning must be done to qualify. See an attorney versed in MA and long-term care issues as well as your county veteran services officer.

### **Medicaid:**

Medicaid or Medical Assistance (MA) as it is referred to in Minnesota, is a program that assists with health

care payments for the needy. MA-LTC pays for custodial/skilled long-term care stays in qualified facilities.

For MA eligibility there is a residency requirement. The applicant must be living in the state with the intent to remain permanently or for an indefinite period of time or living in the state with a job commitment or seeking employment whether or not currently employed. In addition, the person cannot be maintaining a home outside the state. Categorical eligibility states a qualified person must be over age 65, blind, or disabled.

For financial eligibility a person must also meet certain asset-resource requirements, asset transfer requirements, and an income test.

Regarding asset limitations, a person applying for MA-LTC in MN cannot own more than \$3,000 of assets to qualify for MA benefits. If the applicant has a spouse, the couple's assets will be assessed through a process referred to as Asset Assessment. This takes place the first date the spouse entered into long-term care or stayed for 30 continuous days. This stay may have been years ago or the date the person entered the care facility for the first time.

Assets are split 50/50 between spouses. The CS is allowed to keep a given amount of assets valued within a range of maximum/minimum - this amount changes each year.

Once assets have been assessed, they are deemed Countable, Unavailable, or Excluded from the asset limit of \$3,000 per person in MN.

Countable Assets are assets that are counted against the asset limit (\$3,000 per person in MN) when establishing eligibility. These assets are deemed available to pay for long-term care costs. Available assets include:

- All cash accounts regardless of ownership (does not matter if the account is in one spouse's name only and prenuptial agreements have no bearing on this) .
- Jointly owned cash accounts unless the contribution by the joint owner can be proven.
- Any investments accounts, stocks, bonds, CDs, etc.
- Life insurance in excess of \$1,500 cash value.
- Boats, motor-homes, camping trailers, other tilted vehicles except one vehicle of any value.

- Non-homestead real estate (non-contiguous farm land, cabin, timeshare, retail business, etc.).
- Pension that can be taken in a lump sum payment.
- Most trusts in which the MA-LTC applicant has an interest.
- Any personal property purchased for investment purposes (guns, coins, jewelry etc.).

Unavailable Assets are assets that are disregarded at the time of application unless there is no spouse, assets are sold, or converted. Unavailable assets include:

- Gifted assets that have survived the 60 month look-back period.
- Irrevocable pre-paid burials (if done correctly).
- Some jointly held assets if owned with someone other than spouse - lien will be filed on property when the applicant qualifies for MA-LTC.
- Life Estate if established **before** August 1, 2003.
- Some Irrevocable Trusts (IT) if established **prior to** July 1, 2005 and grantor has no access to IT.

Excluded Assets are assets not counted against the asset limit when establishing eligibility. These assets can become available assets upon the death of the CS or CS enters the long-term care facility. Excluded assets include:

- Primary residence and all **contiguous acres**. The rules here are that the CS must have resided in residence on asset assessment date **or** certain family members reside in the home **or** there is a physician's statement verifying the person **will** eventually return to the residence. Land separated by a road or railroad right-of-way, a stream or river, drainage ditch, etc. are considered contiguous.
- One vehicle of any value.
- Personal property that has cultural or religious significance.

- Income producing assets to meet the CS allowance or business property.
- Life insurance with less than \$1,500 of cash value.

In the following example, John and Jane are still farming. John had a major health issue and is forced to enter the nursing home. Assets were evaluated and allocated based upon the asset assessment process. Following is the example results:

John's Assets	Jane's Assets
Farmland: not contiguous \$180,000	House \$200,000
John's IRA \$120,000	Contiguous Farm Land \$1,080,000
Jane's 401K \$81,000	Buildings \$275,000
Joint Savings \$20,320	Machinery \$450,000
John's Car \$8,000	Joint Checking \$3,600
	Joint Savings \$8,320
	Jane's Car \$24,000
	Cabin \$100,000
	John's Boat \$4,000
	Pre-paid Burial \$12,000
<b>\$409,320</b>	<b>\$2,156,920</b>

**NOTE:**

- 1) Typically assets such as joint accounts, a cabin, boat, etc. would be countable assets. The exception here is that they are on Jane's side of the ledger because she needs them to reach here resource allowance amount (number changes Jan. 1 each year).
- 2) The farm land acres that are an unavailable asset have to be contiguous to one another.
- 3) The farm land, buildings and machinery in this example are all excluded assets as well because Jane plans to continue farming. If she were to die before John dies or she enters the nursing home, all the assets on her side of the ledger will become available assets.

Lastly, for John to qualify for MA-LTC in MN, he would have to spend-down or liquidate the \$409,320 on his side of the ledger to no more than \$3,000. Owning more than \$3,000 of assets would make him ineligible for MA-LTC in MN.

Having to spend-down that amount of assets places the farm family and the farm business at huge financial risk. The result could mean the farm business can no longer continue.

**Resource Allowance Rules:**

If one spouse enters the nursing home, the CS is

allowed a given amount of assets calculated via the asset assessment process. The amount of additional assets above the 50/50 split is determined by federal Medicaid rules and is referred to as the Community Spouse Resource Allowance. This number changes each year on January 1. This asset value can be added to the CS amount in addition to the CS asset assessment assets. The assets are unavailable and can include items from the countable list outlined earlier in this document. They remain unavailable until the CS dies or enters the nursing home upon which the assets become countable assets for MA.

**Income Rules:**

The CS under current MA rules is allowed to keep all the income in their name. The CS is also allowed to keep an additional amount of the NH spouse's assets necessary to generate additional income at a given level for the CS. This qualified income level changes each year. Every couple or person's situation is different.

In the John and Jane example, the farm income would be divided equally between John and Jane because they file a joint tax return. If that income added to any other income Jane has such as investment income or Social Security, meets or exceeds the qualified income amount for Jane, she gets to keep the income. John's share of the income, minus a small monthly allowance, goes to pay for his long-term health care costs. If John's income falls short of his total long-term care costs **and** he qualifies for MA-LTC, the MA-LTC program would pay for the short fall. When John qualifies for MA, Department of Human Services (DHS) will file a lien on his assets and upon the death of both John and Jane, DHS will pursue the lien and garner assets equal to John's long-term care costs or the total value of the assets whichever is less. Again this can place a financial burden on the farm business.

A new MN law slated to take effect July 1, 2012 would require the CS to pay a percentage of her income toward her spouse's long-term care. This would occur if the CS's gross monthly income exceeded 250% of the Federal Poverty Guidelines (FPG). That number changes each year. This law has been put on hold for the time being but could be enacted at any point. Check with an elder law attorney for information specific to your situation.

**Gifting Assets:**

A huge misconception of many people is that if I give away all my assets before I have to go into the nursing home, the assets will be protected and I can go onto MA-LTC. That is not true in MN and many

other states as well. The Deficit Reduction Act of 2005 passed into law changes the rules for MA-LTC. One change was the look-back period for gifting when applying for MA-LTC.

When applying for MA-LTC, not only do you have to do an asset assessment and comply with income rules, there are asset transfer rules as well. Those rules state that when applying for MA-LTC, you need to disclose any and all gifts given within 60 months of the date of application. A gift includes the obvious outright gift or a sale of assets for less than fair market value (FMV) - this is referred to as an uncompensated transfer. The difference between the FMV and the sale price constitutes the amount of the gift.

Let's assume John had made a gift 38 months before going into the nursing home and applying for MA-LTC. John would have to disclose the gift. The DHS case worker would divide the amount of the gift by what is referred to as the Statewide Average Payment to Skilled Nursing Facility (SAPSNF). This is MN's estimate of the average cost of a one month stay in the nursing home. The number changes every year on July 1. The result of that calculation would be the number of months John would be ineligible for the federal MA-LTC.

In addition to this change, the Deficit Reduction Act of 2005 also changed the point in time when the penalty period begins. Under the old rules, you may have had a penalty but it started the minute you entered the nursing home. If you had sufficient assets, you could pay your own way in the nursing home until the penalty ran out and you had spent-down your assets to no more than \$3,000 in MN. At that time you would qualify for MA-LTC. Under the new rules, if you have a penalty and you entered the nursing home, you would have to spend-down your assets to no more than \$3,000 and then the penalty period begins. Once the penalty period ends, you can apply for MA-LTC. The problem with the new rule is you are facing a penalty period where you have to pay your own long-term care costs but you have spent-down your assets to no more than \$3,000 in MN.

Bottom line is that doing no planning and relying on MA-LTC for your long-term health care costs will not work unless you plan to spend-down your assets. This could mean liquidating the farm business you wish to transition to the next generation.

### **Financing Long-Term Health Care:**

As described, Medicare does not pay for extended long-term health care costs. To qualify for MA-LTC,

you have to spend-down a considerable amount of assets in addition to abiding by income and asset transfer rules. Your medical insurance and disability insurance will not pay for you long-term health care costs. There are, however, other options for financing your long-term health care costs. Those choices include family care, self-insure, self-pay or long-term care insurance.

### **Family care:**

Earlier in this document are discussed the issues and challenges of family care. In addition to the toll on the caregiver's health and the costs to family finances, there are fewer children residing near those needing long-term care. There are more women in the workforce and they have tended to be the caregiver in the past. Divorce is a huge issue making it difficult to care for parents. Lastly, people are living longer so care is required for a greater length of time. All these issues make family care a less than desirable option for many families.

### **Self-Insure:**

To self-insure means to set aside enough money to pay for your long-term health care if needed. There are at least three issues here. One, where is the money going to come from? It no doubt means liquidating assets. Two, how much money am I going to need? The average stay in a nursing home is 2½ to 3 years. However, there is on record a person in MN spending 29 years in the nursing home due to Alzheimer's disease. Three, what is my backup plan if I run out of money?

### **Self-Pay:**

To self-pay means paying your own expenses for long-term health care. Unless you have substantial assets other than the farm assets, to self-pay is to place your farm business at risk. In addition, this method can place strain on family relationships and finances as well.

### **Long-Term Care Insurance (LTCI):**

Purchasing long-term care insurance (LTCI) is a method of paying any long-term care costs. There are two basic types of LTCI - standard and hybrid policies. Standard LTCI pays strictly for long-term care costs. Hybrid LTCI is a new product that combines life insurance with long-term care insurance.

When purchasing LTCI you will need to make some decisions regarding the type of coverage. Items include the number of years of coverage, the length

of the elimination period or the time before the insurance starts to pay, inflation protection, the facilities you want covered in the policy, the payoff period, etc. This should be done in consultation with your insurance agent.

If you plan to pursue checking into LTCI, there are a number of items you need to gather before going to meet with your insurance agent. Those items include:

- Date of birth.
- Any and all health conditions in the past 10 years.
- Any hospital stays in the past 10 years and if so, for what reason.
- Medications: drug name and dosage (amount and frequency).
- Current height and weight.
- Current/past tobacco use.

It will take two or three visits with your insurance agent before you are ready to sign the insurance agreement. It may be in your best interest to evaluate several insurance company insurance offerings. Many times this can be done through a single insurance agent. The key is to ask lots of questions before you make a decision. Be sure you know what you are buying and that you understand all aspects of the insurance policy.

#### Long-Term Care Partnership Program:

As part of the Deficit Reduction Act of 2005 signed into law on Feb. 8, 2006, a program referred to as the Long-Term Care Partnership Program was authorized. MN as well as several other states have enacted the program as well.

If you purchase a long-term care insurance policy that qualifies for the Long-Term Care Partnership Program, the insurance will pay for your long-term care costs while protecting an equal amount of assets from MA-LTC, in the event you have to apply.

Example: Helen is currently 58. She purchases a qualified Long-Term Care Partnership program policy with 5 years coverage worth \$922,337 pay-out in 20 years. Helen enters the nursing home in 20 years and starts using the LTCI and eventually uses up the pay-out amount. Her daughter goes to DHS and applies for MA-LTC. The case worker notes that Helen had a qualified Long-Term Care Partnership

Program policy worth the \$922,337. Helen's only asset is farm land worth \$1.95 million. Because Helen purchased the qualified LTCI policy, \$922,337 of the farm land value is protected from the MA-LTC spend-down requirements. Helen can spend-down to the \$3,000 on the lesser amount to qualify and the rest of the farm land is not subject to the MA-LTC rules.

To qualify for the Long-Term Care Partnership Program, a policy must meet several requirements. They are:

- Coverage must be for a MN resident.
- The insurance agent selling the policy must be certified to sell Long-Term Care Partnership Program policies (8 hours initial certification training, 4 hours of training every other year thereafter to remain certified).
- Issue age: certain issue ages require a given level of inflation protection. They are: under age 61 - compound inflation protection; age 61 to 75 - some level of inflation protection (simple or compound); and over age 76 - no inflation protection required.

Note: Standard LTCI will qualify for the Long-Term Care Partnership Program. Hybrid LTCI will not.

One additional point about LTHI is that of portability or applicability in another state if initially purchased in MN. If you purchase a policy in MN but then move and retire in say Arizona, you will need to check and see if the policy will be accepted in Arizona.

#### Irrevocable Pre-paid Burial:

One strategy for making funds unavailable regarding the \$3,000 asset limit for MA-LTC in MN is to establish an irrevocable pre-paid burial. You set aside funds to pay for funeral expenses.

This process has to be done correctly, adhering to a strict set of rules. It is best to work with a funeral home and certified burial planner. They will establish an irrevocable trust agreement utilizing either life insurance or annuity contract. They will make "any funeral home in which my interest may appear" the beneficiary of the trust. If done correctly, qualified costs include funeral expenses, cemetery space, urn, vault, crypt, casket, headstone, opening & closing of the grave site, and perpetual care. In MN the contract can include up to \$20,000 of funds. If done incorrectly, only \$2,000 can be made unavailable for the \$3,000 MA-LTC asset limit in MN.

If you apply for MA-LTC in MN and there are any funds remaining in your pre-paid burial fund, those funds go to DHS.

You can establish a pre-paid burial account for the following individuals: your spouse, your parents, your children and their spouses, your siblings and their spouses, step-children and their spouses, and persons related to you by adoption.

#### **Additional Resources:**

There are many resources available to help you in getting background information on the topic of long-term health care planning. A few are listed here:

- [www.minnesotahelp.info](http://www.minnesotahelp.info)
- [www.completelongtermcare.com](http://www.completelongtermcare.com)
- [www.longtermcare.gov](http://www.longtermcare.gov)
- [www.financinglongtermcare.umn.edu](http://www.financinglongtermcare.umn.edu)
- [www.genworth.com](http://www.genworth.com)
- [www.johnhancockltc.com](http://www.johnhancockltc.com)

**This is only a very short list and not meant as an endorsement of any specific company.** You can simply search the Internet for long-term care and find many helpful items.

If you are looking for information on MA make sure the information you locate is specific to the state in question. Each state's rules are a bit different.

#### **Summary:**

Individual long-term health care planning must be based upon a solid personal estate and business transition plan. This is particularly true when you have a business involved that you may want to pass to the next generation. Components of your estate and business transition plan must include a Will or revocable living trust, power-of-attorney, health care directive, HIPPA authorization (listing of folks you grant access to your medical records) proper asset ownership, all associated contracts and agreements, and a business transition plan. All these things together with your personal long-term health care plan will enable you to achieve your goals for the future.

This information sheet is a simplistic overview of long-term health care planning. As you can tell, the topic is extremely complicated. When you begin to plan for this area of your life, seek the help of an elder law attorney. That is someone who focuses their law practice on the area of long-term care issues and MA-LTC.

Finally, once your plan is complete including the personal estate plan and business transition plan, share your plans with your family. Doing so will inform them of your intentions and your wishes. This action may prevent a family feud upon your death. It also allows them to do planning for the future.

**Caution:** This publication is offered as educational information. It does not offer legal advice. If you have questions on this information, contact an attorney.