

# SHEEHAN PHINNEY

## Elder Law

Our attorneys and paralegals work closely with you and your family to develop a plan that is tailored to the particulars of your needs. We're proud to provide our legal support and expertise to families in Greater Manchester and throughout New Hampshire to resolve issues concerning long term care planning, Medicaid eligibility and guardianship.

- Long Term Care
- Medicaid
- Guardianship

## Long-Term Care

Seniors tend to be particularly concerned about the likelihood that they will require nursing home placement at some time in the future. Medical care or personal assistance provided by a caretaker or a facility for an extended period of time is known as "long-term care." One's ability to perform Activities of Daily Living (ADLs) is a common standard for judging whether long-term care is required. If an individual retains the ability to perform most or all ADLs (like bathing, cooking, walking, eating and dressing) without assistance, then long-term care probably is not required.

Care provided by family members on an informal basis and often without compensation potentially accounts for the largest share of long-term care being provided in our country. A significant percentage of formal long-term care arrangements offered in the home, or an institution, are paid for through a combination of federal and state assistance programs, social and charitable organizations, insurance and personal wealth. In addition, insurance coverage of long-term care benefits is becoming more widely available and increasing in popularity as the cost of care rises.

## Medicaid

There are five ways to pay for nursing home stays: private pay, long-term care insurance, Medicare, Veteran's benefits and Medicaid. Only a small percentage of Americans have long-term care insurance. Many individuals are medically uninsurable, and others cannot afford the premiums for insurance. At best, Medicare pays for up to 100 days of institutionalized care, and then only for rehabilitative stays following a qualifying hospitalization, and only a very small percentage of nursing home residents are eligible for Veteran's benefits. The most common alternative to private pay and long-term care insurance is Medicaid. By carefully designing a long-term care plan, financial security may be ensured for the spouse residing in the community, and a legacy may be preserved for children.

The rules for Medicaid eligibility are strict. The applicant must be a U.S. citizen or a resident alien of the state in which he or she applies, and must meet state income and asset limits. In New Hampshire, a Medicaid applicant

## Members

- Judith L. Bomster
- Ann N. Butenhof
- Alisha E.A. Cahall

is allowed to retain only \$2,500 worth of countable assets. Qualifying for Medicaid involves not only financial criteria but also medical eligibility requirements. The Medicaid application itself is several pages long and the answers to each question must be substantiated by legal or financial documentation. These supporting documents may include: social security card, Medicare card, health insurance cards, birth certificate, marriage certificate, life insurance policies, deeds, car registrations, household expense bills, funeral contracts, income statements, and financial statements, all of which typically must date back one to five years prior to the time the Medicaid application is filed.

Given the complexity of the Medicaid application and its importance to financing long-term care, it is crucial for an applicant to receive accurate legal advice. Our professionals help guide our clients through the Medicaid application process by informing them of all planning alternatives, advising on all necessary steps and procedures, aiding in the compilation of the application, and making sure that they are aware of various options that might otherwise go unrecognized.

## **Guardianship**

A guardianship is a protective arrangement established by order of the Probate Court. Guardianship is needed when an individual has lost the mental capacity to make necessary decisions and previously failed to designate an agent under an advance directive, or had appointed an agent but now disagrees with the individual's decisions. There are two types of guardianship. The first is guardianship over the person, which grants and individual – the “guardian” – authority to make personal and medical decisions for the person who is incapacitated – the “ward.” The second is guardianship over the estate, which gives the guardian authority to make decisions concerning the ward's finances. It is possible for more than one person to serve as an individual's guardian, and for different people to serve as guardian over the person and guardian over the estate. Guardianship appointment requires a petition to be filed with the Probate Court located in the county where the mentally incapacitated individual is domiciled.