

**UPDATED 2007**

*asset management*

**GRANDPARENT RIGHTS**

*medical long-term care*



# A Legal Guide for the Aging Family

**BANKRUPTCY**

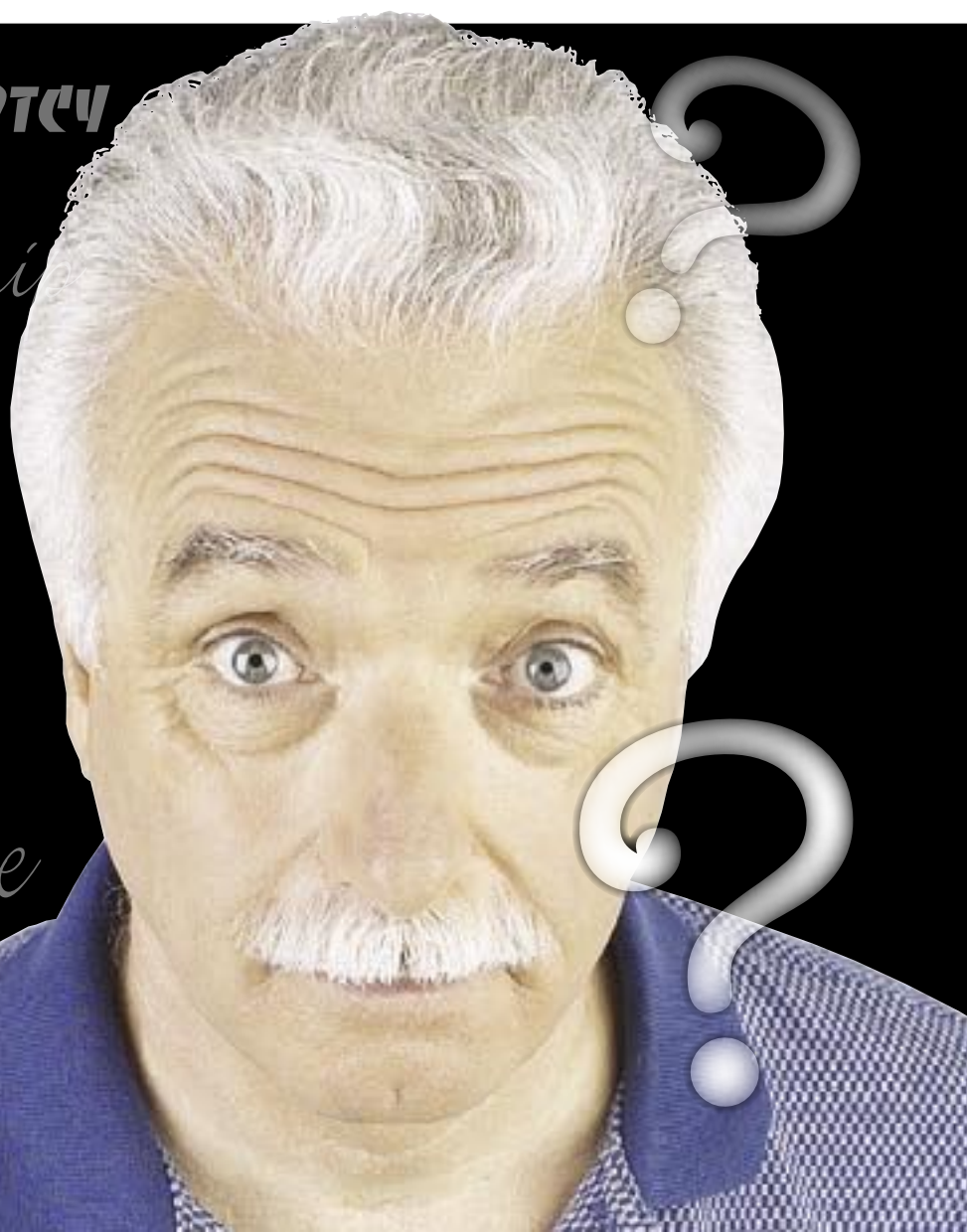
*guardianship*

*wills*

*mediation*

*tax issues*

*elder abuse*



# Message from the County Executive

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*Dear Fellow Citizens,*

It is my pleasure to inform you that the Baltimore County Department of Aging has produced this guide for those 65 years and older and their families pertaining to legal issues. This publication, *A Legal Guide for the Aging Family*, was written with the assistance of Mr. Jason Frank, Attorney. As Baby Boomers are reaching retirement age in record numbers, legal issues facing this cohort are unique. This guide includes useful information on such timely topics as *Grandparents Rights*, *Medical Decision Making* and *Age Discrimination in Employment*. These and many other relevant topics will be of special interest to older adults and their families.

We hope that this guide will be a handy reference to those with questions regarding legal matters. Be mindful that professional help may be needed and should be sought whenever necessary.

This booklet is part of a continuing series of consumer education booklets published by the Baltimore County Department of Aging. It is with pride that I present this booklet to our county's residents in an effort to promote better understanding of the legal rights of older adults.

Sincerely,



Jim Smith  
*Baltimore County Executive*



**BALTIMORE COUNTY**  
MARYLAND

James T. Smith, Jr.  
Baltimore County Executive  
and the Baltimore County Council



# Message from the Baltimore County Council

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*Greetings:*



Many questions often arise about legal issues, especially as more individuals reach the ranks of "older adults." This publication produced by the Baltimore County Department of Aging presents an overview of many legal issues facing older adults and their families.

Sincerely,  
*Baltimore County Council*

S.G. Samuel Moxley, *District 1*  
Kevin Kamenetz, *District 2*  
T. Bryan McIntire, *District 3*  
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Vincent J. Gardina, *District 5*  
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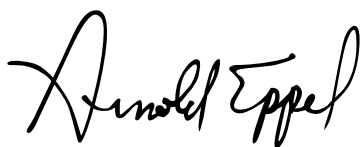
# Message from the Director of the Department of Aging

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*Dear Fellow Residents,*

The Baltimore County Department of Aging is proud to present *A Legal Guide for the Aging Family*, another in our continuing effort to better inform older consumers and their families. Older Adults are facing a new myriad of legal issues such as grandparents' rights and age discrimination in employment, while still dealing with common items such as wills and estate planning and advance directives. It is our hope that this guide will provide information and resources to assist in the search for answers to many legal questions they may have.

Sincerely,



Arnold Eppel  
Director



## THE BALTIMORE COUNTY COMMISSION ON AGING

Members: Cynthia D. Allen, *Chair*, Patricia P. Brannan, Lacy Flynn, Laurie S. Frank, Esq., Barbara Gradet, Ilka Linton, Eula Marshall, Mabel Murray, Ed.D., Anne Z. Perry, Stanley Roll, Margaret Ruppertsberger, Marlene B. Siegel, Catherine Ward

## Acknowledgements

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Thanks to Jason Frank, Esq. and his *Elder Law in Maryland, 3rd Edition*, Lexis, 2007, without whose help this booklet could not have been produced.

Thanks also to Robert J. Rhudy, Legal Counsel for Mediation and Consulting, Celestine Morgan, Executive Director for the Baltimore County Human Relations Commission and Michael Stelmack, JD for their contributions to this publication.

We gratefully thank the staff of the Department of Aging who contributed to the preparation of this book including Laura Riley for her coordination and Ethel Rasmussen and Rheka Bhawe for their direction and guidance. Thanks also to Norma Nash, Deputy Director for her ongoing support.

Arnold Eppel, Director of the Baltimore County Department of Aging, deserves special recognition for his strong ongoing commitment to the publication of consumer reference materials for seniors and their families. Without his vision and desire to educate Baby Boomers and the aging families of Baltimore County, this publication would not have been possible.

*A Legal Guide for the Aging Family* is published to provide an informative summary of current legal issues affecting older adults and their families. Anyone facing a legal issue discussed in this publication is advised to seek legal advice from a competent professional.

# “Living Well... Take Charge of your Health” Get the most out of life through a Self-Management Workshop

Baltimore County Department of Aging as part of a statewide grant with the Maryland Department of Aging is offering a series of workshops for people with chronic conditions modeled after the Chronic Disease Self-Management Workshop from Stanford University.

**What is a chronic condition?** It is a medical condition that may cause suffering and loss of physical abilities over many years. Examples of some chronic diseases are diabetes, heart disease, stroke, arthritis, and lung disease.

## **Why does a Self-Management Workshop help people with chronic conditions?**

The course helps people learn skills to manage their symptoms and get the most out of life. Although there are many chronic conditions, the problems and the symptoms associated with each one are often similar. Many people with chronic conditions experience:

- loss of energy
- breathing difficulties
- depression
- pain
- sleeping problems
- a concern for the future

## **Who is the Workshop for?**

The workshop is offered free of charge for any county resident who has one or more chronic conditions. A caregiver of a person with a chronic condition is welcome to attend.

## **What does the Workshop cover?**

In the “Living Well...Take Charge of your Health” Workshop people change by learning:

- how to manage symptoms
- how to lessen your frustration
- how to make daily tasks easier
- how to communicate effectively with doctors
- how to fight fatigue
- how to get more out of life!

## **How does the Workshop work?**

Baltimore County Department of Aging “Living Well...Take Charge of your Health” Workshops run for 2 1/2 hours, once a week. The course is led for 6 weeks by two trained lay leaders who live with a chronic condition. A seventh week has been added to each course for registration and orientation.

## **Are you interested in becoming a leader or participant?**

**CONTACT:** Contact Senior Information and Assistance at (410) 887-2594 to register to become a “Living Well...Take Charge of your Health” lay leader or participant.

*Workshops will be held at each of the county's 19 senior centers throughout the year.*



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There are four federally funded programs that can provide benefits to senior adults: **Social Security**, **Supplemental Security Income**, **Medicare** and **Veterans Benefits**. A brief summary of each follows. For more detailed information, contact your local Social Security Administration office or the Veterans Administration.

## **Social Security**

Social Security pays eligible persons when they retire or become disabled. The program is funded primarily through taxes (known as FICA) paid by employers, employees and the self-employed.

### **BENEFITS**

Social Security determines the amount a worker can receive at full retirement age using a formula that includes lifetime earnings, age and annual cost of living adjustments. The maximum Social Security benefit is adjusted annually. In 2007, the maximum monthly payment a person can receive at age 65 and 10 months is \$2,116. In calculating eligibility for Social Security, \$1,000 (in 2007) in earnings qualifies for one "credit." Up to 4 credits can be earned each year. The number of credits needed to qualify for benefits depends on the applicant's age and the type of benefit.

### **OBTAINING AN ESTIMATE OF YOUR BENEFITS PRIOR TO RETIREMENT**

A Personal Earnings and Benefits Statement lists your Social Security contributions by year and shows an estimate of prospective benefits. Because mistakes can happen, it is a good idea to request this form every few years. Individuals 60 and older can request a Benefits Statement by telephone (1-800-772-1213); others must complete a Request for Personal Earnings and Benefits Statement. Requests may also be made from the social security web site: [www.ssa.gov](http://www.ssa.gov).

### **APPLICATION FOR SOCIAL SECURITY**

Application is made at your local Social Security office. Call for an appointment and a list of documents required.

### **RETIREMENT AGE**

Individuals born in 1937 and prior years achieve full retirement at age 65. Individuals born between 1943 and 1954 are not eligible for full retirement until age 66, and those born in 1960 or later must reach age 67.

### **EARNINGS PENALTIES**

An earnings penalty applies to those who are below full retirement age and receiving Social Security. \$1 in benefits is deducted for every \$2 earned above \$12,960 in 2007. If you reach retirement age in 2006 social security will deduct \$1 for every \$3 earned above \$34,440 until the month you attain full retirement age. Thereafter, there are no earning penalties.

### **TAXATION**

Benefits are taxable if the beneficiary's "annual combined income" exceeds certain limits. If you have questions about this amount, consult the Internal Revenue Service, a CPA or a tax attorney.

# Federal Benefit Programs

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## **SOCIAL SECURITY SURVIVORS BENEFITS**

When an individual dies, certain family members may be eligible for survivors benefits based on that individual's earnings record if she or he earned enough credits while alive. Family members who can receive Social Security survivors benefits include:

- A widow or widower who is 62 or older
- A widow or widower who is 50 or older and disabled
- A widow or widower of any age, if he or she is caring for a child less than 16 or a disabled child who is receiving Social Security benefits
- Unmarried children under age 18, or under age 19 but in a secondary or elementary school full time, or age 18 or older and severely disabled
- Parents, if they were dependent on the deceased for at least half of their support

Survivors benefits are based on what the individual would have received had he or she lived.

## **DIVORCED WIDOW(ER)S**

If the deceased individual was divorced, even if he or she had remarried, the ex-spouse will be eligible for survivors benefits as long as the ex-spouse is:

- At least 60 years old (or 50 if disabled) and was married to the deceased for at least ten years and,
- Not eligible for an equal or higher benefit on his or her own earnings record and,
- Not currently married, unless a remarriage occurred after age 60 (or 50 for a disabled widow(er))

## **SOCIAL SECURITY DISABILITY BENEFITS (SSDI) AFTER AGE 50**

### **ELIGIBILITY**

Individuals between ages 50 and 65 who do not qualify for full Social Security retirement benefits, and who suffer from a diminished capacity for work due to health impairments, may be eligible for Social Security disability benefits. These disability benefits are often greater than the retirement benefit a beneficiary would receive if he or she retired before age 65.

Social Security disability benefits for those 50 and older are based on the inability to perform any work suitable to a claimant's skills and work history, and are subject to periodic review. Social Security disability only covers long-term disability, one that has lasted five months and is expected to last at least one year or end in death. An individual is no longer considered disabled if alcoholism or drug addiction is a primary contributing factor to the disability.

Social Security makes a distinction between disability applicants who are over age 50, designated as "closely approaching advanced age," and those over age 55, designated as being of "advanced age." At each successive step, as one progresses from age 50 to 55, a more lenient standard for determining disability is used.

An individual who has received Social Security Disability Income (SSDI) for 24 months automatically becomes eligible for Medicare coverage.

# Federal Benefit Programs

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## Supplemental Security Income (SSI)

Supplemental Security Income (SSI) provides cash payments to United States citizens and nationals who are disabled, blind or aged and have low incomes or who have been deemed unable to maintain a federally established minimum standard of living. The monthly benefit is the same in all states (currently \$623 for one person, \$934 for a couple). SSI benefits are not funded out of the Social Security taxes or trust fund, but out of general federal revenue. Application is made at the local Social Security office.

## Medicare

Medicare is a health insurance program for the disabled and the elderly administered by the Centers for Medicare and Medicaid Services (CMS) of the Department of Health and Human Services (HHS). Most Americans age 65 or older are eligible, as are younger disabled persons and those with end-stage renal disease. The Social Security Administration enrolls beneficiaries and collects premiums. Persons receiving Social Security or Railroad Retirement benefits who turn age 65 are automatically enrolled in Part A. All other individuals must apply for benefits.

Medicare has four parts. **Medicare Part A (Hospital Insurance)** covers care in hospitals and skilled nursing facilities as well as home health care and hospice care. **Medicare Part B (Medical Insurance)** covers physicians' services, outpatient hospital care and some other services not covered under Part A. **Medicare Part C (Medicare Advantage Plans)** is an option for those with Medicare A and B to join a plan that generally covers many of the same benefits that a supplemental policy would cover. The fourth and newest addition is **Medicare Part D (Medicare Prescription Drug Plans)**, which is a voluntary prescription plan that was added January 2006.

### MEDICARE PART A – Hospital Insurance

#### ELIGIBILITY AND ENROLLMENT

Generally Part A is available without a premium to individuals age 65 or over who receive Social Security or Railroad Retirement Disability benefits, and persons with end-stage renal disease. Some others may obtain Part A by paying a premium.

#### COVERAGE

Part A pays for **hospital services** that are reasonable and necessary. The patient pays an initial deductible (currently \$992) for each benefit period, after which the first 60 days of hospitalization are covered entirely by Medicare. If care is needed after the 60th consecutive day, the patient assumes a co-pay of \$248 per day for the next 30 days. If still in need of hospitalization after 90 consecutive days, the patient has a non-renewable lifetime reserve of 60 days, which have a higher co-pay. A benefit period begins when the person enters the hospital and ends when they have been discharged from a hospital or a skilled nursing facility for 30 consecutive days. When, and if, a new benefit period begins, the 90 days are again available, but any of the 60 lifetime reserve days that were used will never be available again.

Part A also pays for **skilled nursing facility (SNF)** care in a nursing home or in part of a hospital converted to use as a SNF. To be eligible, the patient must have been hospitalized for

# Federal Benefit Programs

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at least three consecutive days, be in need of SNF care, and begin to receive this care within 30 days of discharge from the hospital. SNF services are deemed “needed” if the recovery or safety of a Medicare beneficiary reasonably depends on a service being provided by a medical professional daily, seven days a week. Skilled rehabilitation services must be needed and provided at least five days a week.

Necessary post-hospital skilled nursing facility care is covered for up to 100 days in each benefit period. The first 20 days Medicare pays for all covered services; for the remaining 80 days a co-insurance amount (currently \$124 per day and adjusted annually) is paid by the beneficiary.

**Home health care services** provided in the individual’s home are covered if they are medically necessary and reasonable. To qualify for this benefit, the patient must:

- Require intermittent skilled nursing care, physical therapy, speech-language pathology or other covered services and,
- Be confined to his or her home and,
- Have a physician determine that he or she needs home health care and set up a plan for the care and,
- Select a Medicare participating home health agency.

**Hospice care** is covered for those diagnosed by a licensed physician as terminally ill and expected to die within six months. Comfort care, not curative care, must be provided. Most care is provided on an outpatient basis. Choosing hospice care constitutes a waiver of other services provided under Medicare Part A.

## **MEDICARE PART B – Medical Insurance**

### ELIGIBILITY AND ENROLLMENT

A person is automatically eligible for Medicare Part B if he or she is eligible for premium-free Part A coverage; or is over age 65, a United States resident and either a United States citizen or a legal resident alien who has resided in this country continuously for five years. All Part B beneficiaries pay a monthly premium determined by his or her income. For 2007 the premiums range from \$93.50 to \$162.10 Enrollment is voluntary. An individual can enroll when he or she first becomes eligible. If you do not enroll when first eligible, general enrollment occurs from January 1 through March 31 each year. The Part B premium increases by 10 percent for every 12 month period that an individual delays enrolling after he or she became eligible. If an individual who is still working does not enroll because he or she is covered through an employer’s group health plan, a special enrollment period extends throughout the time of employment and for eight additional months, and the premium is typically not increased.

### COVERAGE

Part B pays for many doctor services, medical supplies and procedures not covered by Part A. These may include ambulance services, x-rays, emergency room visits, outpatient care, physical and occupational therapy, and medical supplies. Part B has an annual deductible of \$131 and then pays 80% of the “reasonable and customary” charge to providers who accept Medicare.

# Federal Benefit Programs

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## STATE MEDICARE BUY-IN FOR QUALIFIED MEDICARE BENEFICIARIES AND SPECIAL LOW-INCOME MEDICARE BENEFICIARIES

### **QMB** (pronounced quim-be)

This program pays the Medicare Part B premiums, deductibles and co-payments of Medicare Part A beneficiaries whose countable income and resources exceed the Community Medical Assistance eligibility requirements but are at or below the QMB income and resources standard; up to \$4,000 per individual or \$6,000 per couple with combined incomes that do not go over 100 percent of the federal poverty level (\$10,212 for an individual and \$13,692 for a couple in 2007). Contact the Baltimore County Department of Aging's Senior Information and Assistance Program for further information at **410-887-2594**.

### **SLMB** (pronounced slim-be)

This program pays only the Medicare Part B premiums, not the deductibles or co-pay amounts. It is available to individuals who meet the QMB resource requirements but whose income exceeds the QMB standards by up to 20% (\$12,252 for an individual and \$16,428 for a couple in 2007). For further information call Senior Information and Assistance at **410-887-2594**.

### **MEDIGAP INSURANCE** (Medicare Supplemental Insurance)

Many private insurance companies sell Medigap insurance policies to cover services not covered by Medicare, as well as some or all of the deductibles and co-payments. This type of insurance is regulated by federal and state laws and must be clearly identified as Medicare supplemental insurance. Most states limit the number of different Medigap policies that can be sold to ten or fewer, and these are designated by the letters "A" through "J." Medigap companies must offer the basic plan, Plan A, in any state in which they sell Medigap policies. If Medicare determines that a service is covered under its program, then all companies must provide coverage for that service under their standard Medigap policy.

## **MEDICARE PART C – Medicare Advantage Plans**

Individuals who become newly entitled to Medicare can enroll during their initial enrollment period or during the annual coordinated election period from November 15 – December 31 each year. Medicare Advantage plans include Medicare managed care plans; Medicare Preferred provider Organization (PPO) plans; Medicare private fee-for-service plans; and Medicare Speciality plans.

With one of these plans, you do not need a Medigap Policy because Medicare Advantage plans generally cover many of the same benefits that a Medigap policy would cover, such as extra days in the hospital after you have used the number of days Medicare covers.

Those who elect to participate in a Medicare Advantage Plan might have to pay a monthly premium for the plan because of the extra benefits it offers.

# Federal Benefit Programs

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## **MEDICARE PART D – Prescription Drugs**

The Medicare Prescription Drug Improvement and Modernization Act of 2003 began providing Medicare recipients with a prescription drug benefit on January 1, 2006. An individual is eligible to enroll from three months prior to turning age 65 to three months after. If an individual does not enroll during this time, there will be a 1% per month cumulative penalty added to the premium. The basic premium is \$420 per year with a \$265 deductible; however this differs from plan to plan. The Medicare program will pay for 75% of the cost of prescription drugs on the plan's formulary list until an individual's expense reaches \$2,400. Once this occurs, an individual must pay a total of \$3,850 in out-of-pocket expenses and reach \$5,451 in payments for formulary drugs before the catastrophic coverage benefits begin. Once this threshold is met the beneficiary will pay \$2.15 for generic drugs and \$5.35 for nonpreferred drugs, or 5% of the cost of a drug, whichever is greater. If a prescription drug is not on the plan's formulary list, payment for that drug will not go towards the \$3,850 total of out-of-pocket expenses. The catastrophic coverage benefits cap may increase yearly.

## **EXTRA HELP**

The Medicare program provides additional drug benefit assistance to low-income qualifying Medicare beneficiaries. Those under 100% of the Federal poverty level (\$10,210 for an individual in 2007) will pay \$1.00 for generic medication and \$3.10 for brand name drugs on the formulary list. Also, the Medicare program provides full catastrophic coverage with no gap in prescription drug coverage. Those under 150% of the Federal poverty level (\$15,315 for an individual in 2007) and no more than \$10,000 in assets will pay a 15% coinsurance up to the catastrophic limit of \$5,451. There will be a premium with a \$53.00 deductible, and once the catastrophic limit is met, prescription drugs will be \$2.15 for generic medication and \$5.35 for brand name drugs. There is no penalty for giving away assets to qualify for the extra help, however this may trigger Medicaid long-term care transfer penalties. For more information about getting help with your prescription drug costs, call Social Security's toll free number at **1-800-772-1213** or visit the CMS website at **www.medicare.gov**. You can also apply online at Social Security's website **www.ssa.gov**.

## **STATE OF MARYLAND SENIOR PRESCRIPTION DRUG ASSISTANCE PROGRAM**

The State of Maryland Senior Prescription Drug Assistance (SPDAP) is a program that assists individuals enrolled in Medicare Part D in paying for his or her monthly premium. SPDAP pays up to \$25 per month toward the premium for the individuals chosen Medicare Part D prescription drug plan. To be eligible in 2007, an individual cannot earn more than \$2,450 per month (\$29,400 per year) and a couple cannot earn more than \$3,300 per month (\$39,600 per year). There is no asset test for eligibility.

# Federal Benefit Programs

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## Veterans Benefits

### ELIGIBILITY

Eligibility for benefits from the Department of Veterans Affairs (VA) is based upon discharge from active military service under other than dishonorable conditions. Active military service means full-time service as a member of the Army, Navy, Air Force, Marines, or Coast Guard; or as a Commissioned Officer of the Public Health Service, Environmental Services Administration or National Oceanic and Atmospheric Administration. Female as well as male veterans are covered. The first time a veteran seeks VA benefits, he or she must produce a DD-214 form which documents important details.

### BENEFITS

**Disability compensation** is available to veterans who are disabled by injury or whose disease was incurred or aggravated during military service. Compensation is paid monthly, varies by degree of disability, and is tax exempt.

**Pension Benefits** are available to low-income veterans who are permanently and totally disabled who served 90 days or more of military service, one day of which was during a period of war. Benefits are not available to those who have assets that can be used to provide “adequate” maintenance.

**Home Loan Guarantees** are made to service members, veterans, reservists and un-remarried surviving spouses for the purchase or refinancing of homes, condominiums and manufactured homes. The VA guarantees part of the total loan, permitting the purchaser to obtain a mortgage with a competitive interest rate, and little or no down payment or closing costs.

**Veterans Group Life Insurance** is available to those who had full-time coverage under the Service Members Group Life Insurance Plan during active duty. Service Disabled Veterans Life insurance is available to veterans with a service-connected disability but who are in otherwise good health.

**Burial Benefits** in a VA national cemetery include the grave-site, a headstone or marker, opening and closing of the grave, and perpetual care. Veterans, service members and dependents are eligible for burial in a VA national cemetery.

To receive **VA Health Care Benefits**, a veteran must enroll with the VA. If congressional funding requires limiting the number of veterans permitted to enroll, priorities will be followed based on the degree of disability.

**Aid & Attendance** is available to a veteran, dependent spouse, or surviving spouse, who is entitled to VA pension or VA compensation and who is a patient in a licensed nursing home because of mental or physical incapacity or otherwise determined to be in need of the regular aid and attendance of another person. Recipients may be entitled to higher income limitations or additional benefits, depending on the type of benefit received. A single veteran is eligible to receive up to \$1,519 per month in benefits. The surviving spouse is eligible to

# Federal Benefit Programs

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receive up to \$976 per month and a couple is eligible to receive up to \$1,801 per month. To meet financial eligibility the applicant must have less than \$80,000 in assets. Vehicles and the home are excluded when calculating the assets.

*Nursing Home Care* will be provided in VA or certain community nursing homes with which the VA contracts for those qualified veterans who are not acutely ill and not in need of hospital care. If the individual's disability is not service connected, the VA will normally only pay for 32 days of private nursing home care. Veterans who require nursing home care for a disability that is at least 70% service connected typically remain in VA facilities.

The Maryland Veterans Home Commission provides a home for veterans who are state residents at Charlotte Hall Veterans Home in St. Mary's County. It is subsidized by VA but it is not a VA facility.

**Additional information can be obtained from the Baltimore County's Veterans Support Website "Homefront: Our Turn to Serve" at [www.bcpl.info/veterans](http://www.bcpl.info/veterans).**

## CHAPTER 2

## Services Under the Older American Act

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The Federal Older Americans Act (OAA) was passed in 1965 to encourage the development of aging programs by creating a network of services and providing funding to states for these services. It is the primary vehicle for organizing and delivering social and nutritional services to the elderly. One need only be 60 years of age or above to receive services. The act requires, however, that funds be targeted to those in greatest social and economic need. In Maryland these services are provided by the Maryland Department of Aging and local Area Agencies on Aging (in Baltimore County by the Baltimore County Department of Aging).

### **Services Funded under the Older Americans Act**

**SUPPORT SERVICES** – These help older adults avoid declines in physical, psychological, and social well-being.

**NUTRITIONAL SERVICES** – (congregate meals and in-home delivery) - These help to assure that older adults are receiving at least one meal a day that provides 1/3, or more, of the daily recommended dietary allowance.

**SENIOR CENTERS** – These are a focal point for service delivery, and in Maryland provide nutrition programs, senior information and assistance, senior health insurance counseling, continuing education, travel, volunteer opportunities, education and health screenings, physical/recreational activities, transportation, leadership and mandated

## Services Under the Older American Act

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services. There are 19 senior centers located throughout Baltimore County. Membership is free to all senior adult county residents.

**PREVENTIVE HEALTH SERVICES** – These include education, screening and physical fitness programs.

**ACCESS SERVICES** – These include services to inform seniors about, and encourage them to use, existing services: transportation; outreach; information and assistance; and case management.

**IN-HOME SERVICES** – These include homemaker and home health aides, visiting and telephone reassurance, chore maintenance, and supportive services for families of persons with Alzheimer's disease.

**LEGAL SERVICES** – This program provides legal advice and representation to assist individuals with economic or social needs. Priority is given to issues involving income maintenance/disability benefits, health care, protective services (abuse, institutionalization, guardianship), nutrition, and housing/utilities. Staff will assist in defending a senior in a lawsuit where there is a substantial risk to the client's person, property or civil rights. In Baltimore County this service is provided by Legal Services for Senior Citizens, call them at **410-951-7750** or **800-896-4213**.

**LONG-TERM CARE OMBUDSMAN/ELDER ABUSE PREVENTION** – These programs serve to protect and enhance the health, safety, and rights of residents of long-term care residential facilities, by investigating possible violations or abuses that may adversely affect their quality of life or care.

**SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM (SHIP)** – This program offers face-to-face or telephone assistance and counseling about problems seniors encounter regarding health insurance.

**SENIOR MEDICARE PATROL (SMP)** – This program trains volunteers to educate and counsel older health care consumers about fraud, waste, and abuse.

**PUBLIC GUARDIANSHIP** – Maryland law permits the Director of the State or local Department of Aging to be appointed by the court as the guardian of person for adults age 65 or older for whom no other suitable guardian is available. Public Guardianship Review Boards in each jurisdiction evaluate these guardianships regularly.

**SENIOR CARE** – This is a Maryland state-funded program, available to seniors who meet income eligibility guidelines. Program staff provides a comprehensive assessment of the client's needs and a case manager to coordinate community-based in-home services for seniors with disabilities who are at risk of institutionalization.

**SENIOR EMPLOYMENT SERVICES** – These programs exist in Maryland to help provide part-time employment and job training for unemployed low-income older adults who are 55 years of age or older.

# Services Under the Older American Act

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**SENIOR INFORMATION AND ASSISTANCE** – This program provides one-stop shopping for information and assistance concerning benefits for persons age 60 and over both face-to-face and by telephone.

For information about any of the services, call the Baltimore County Department of Aging Senior Information and Assistance Program at **410-887-2594**.

## CHAPTER 3 Elder Abuse

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No one knows the true extent of elder abuse in domestic settings because it is often a closely guarded family secret. The National Center on Elder Abuse reports that more than 500,000 cases of abuse or neglect are reported annually, but the actual number is thought to be higher. In nearly 90% of cases of abuse and neglect in which the abuser was identified, *the abuser was a family member*. Victims may be afraid to report the abuse or neglect because they may fear embarrassing the family, suffering further harm at the hands of the abuser or being abandoned by the abuser who has been their “caregiver.”

### What is Elder Abuse?

Elder abuse is the physical, psychological, sexual or financial abuse or neglect of elderly persons by relatives or caregivers. It also includes self-neglect. The legal definition is found in state law(s), and the definition may vary from statute to statute within the state’s laws. Abuse may be reported by the victim or by another person. There are many kinds of abuse and the symptoms may be very subtle. The forms that abuse may take include:

**Physical Abuse** – The use of physical force that could result in bodily injury, physical pain, or impairment.

**Sexual Abuse** – Non-consensual sexual contact of any kind.

**Emotional Abuse** – Inflicting mental pain, anguish, or distress through verbal or nonverbal acts.

**Exploitation** – Illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder.

**Neglect** – Refusal or failure of a caretaker or a person with duties to the elder to provide the care and services necessary to maintain the elder’s physical, mental, or emotional health.

**Abandonment** – The desertion of an elderly person by anyone who has assumed the responsibility for care or custody of that person.

# Elder Abuse

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## Reporting Abuse and/or Neglect

If you know of, or suspect, elder abuse and/or neglect, report it immediately.

### **DOMESTIC ELDER ABUSE AND/OR NEGLECT**

- Baltimore County Police – 911
- Adult Protective Services, Baltimore County Department of Social Services – **410-853-3000**

### **INSTITUTIONAL ELDER ABUSE AND/OR NEGLECT**

- Office of Health Care Quality, Maryland Department of Health and Mental Hygiene – **410-402-8201**
- Baltimore County Long Term Care Ombudsman Program – **410-887-4200**

## Legal Strategies to Protect Against Abuse

### **PROTECTIVE ORDER (OR RESTRAINING ORDER)**

Most often used by spouses in domestic abuse, a protective order issued by the court can also be used for domestic elder abuse. The court may order protective measures for the victim, for example: prohibiting the abuser from continuing to abuse or threatening to abuse the senior; prohibiting the abuser from contacting the victim; or ordering the abuser to leave the home of the victim.

### **ADULT PROTECTIVE SERVICES**

The law requires mandatory reporting of suspected abuse by health practitioners, police officers, or human services workers. Other individuals may report suspected abuse. Reports must be investigated by the local Department of Social Services, and the report sent to the State's Attorney.

### **PROTECTION FROM FINANCIAL OR MATERIAL EXPLOITATION**

The Circuit Court may appoint a Guardian of Property for persons judged by the court to be mentally incompetent to handle their own funds. In lieu of guardianship, individuals facing disability may appoint a family member or other individual to be their designated trustee through a living trust. Under a living trust, the trustee is empowered to manage the elderly person's trust assets and may be removed for cause. Both guardian and trustee take title to the assets. A less expensive alternative is a durable Power of Attorney. In this case, a competent person designates another person to handle his or her finances in certain circumstances. It remains valid if the person becomes mentally incompetent. The agent does not take title to the assets. The Power of Attorney is legally obligated to act in the person's best interest. Careful selection of the trustee or agent is essential. Monitoring provisions may be included in the creating document to guard against possible abuse.

# Elder Abuse

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## FINANCIAL EXPLOITATION IN BANKING INSTITUTIONS

An initiative to prevent and prosecute financial exploitation in banking institutions has been implemented in Maryland (PROJECT SAFE). A significant part involves training to raise bank employees' awareness of financial exploitation, increase their ability to recognize signs of exploitation and encourage the employees to report cases of suspected financial exploitation.

## PREDATORY LENDING

Predatory lenders seek to take advantage of many seniors' cash poor, equity rich situation by offering home equity loans or lines of credit with high interest rates, inflated fees, balloon payments, and other exploitative terms. Many of these scams revolve around using home equity to pay for home improvements. Usually the work is shoddy, overpriced, and often unfinished. The AARP and the Federal Trade Commission maintain excellent resources for learning about predatory lending:

American Association of Retired Persons (AARP)  
Consumer Affairs Division  
601 E. Street, N.W.  
Washington, D.C. 20410  
(202) 434-6044 or [www.aarp.org](http://www.aarp.org)

Federal Trade Commission  
Office of Consumer/Business Education  
7373 147th St. N.W.  
Washington, D.C. 20580  
[www.ftc.gov/bcp/menu-lending.htm](http://www.ftc.gov/bcp/menu-lending.htm)

## SCAMS & FRAUD

Consumer Action, a consumer-advocacy group, estimates that even though people 60 and older make up only 15% of the U.S. population they account for about 30% of fraud victims. This group is particularly vulnerable because a scam can wipe out their entire retirement savings, with little chance to get back on their feet. Scams can take many forms, whether they are schemes to liquidate the elder's savings to invest in a dubious investment, or Medicare and Medicaid fraud. Compounding the problem, many seniors do not report their victimization out of shame, or fear that they will be institutionalized. Keep in mind these important tips:

- Immediately report any scams or fraud to the police, the Maryland Attorney General's Office, and any involving securities to the Federal Trade Commission.
- Only a licensed attorney can prepare a will, trust, or estate planning document for you. Contact the Maryland State Bar Association if you have any questions about your attorney's standing, or whether any complaints have been filed against him or her.
- An experienced estate planning attorney or financial advisor will only recommend a course of action after thoroughly evaluating your individual needs. No investment solution fits everyone, and anyone selling such a product without first analyzing your situation is unlikely to be worthy of your trust.

There are many different kinds of trusts that can be used for estate planning and asset management. Some of those that may be of particular interest to senior adults are discussed in this chapter. A Power of Attorney, which may be an important asset management tool, is also described.

## Trusts

A trust is an agreement between one person (the Grantor, Settlor, or Trustor) and another person or institution (the Trustee) to manage property belonging to the Grantor for the benefit of a beneficiary. The beneficiary can be the Grantor or any other person, depending on the type of trust being used. Some types of trusts are discussed in this chapter.

### REVOCABLE LIVING TRUSTS

In recent years, a certain kind of trust, called a revocable living trust, has become widely publicized as a tool for everyone to use to avoid probate and manage one's affairs. One should use such a tool only after careful consideration of all the other asset management tools and consultation with one's attorney. This is a trust that is created during one's lifetime, and is revocable and amendable by the Grantor at any time. The Grantor can serve as the initial Trustee and be the beneficiary of this trust. The primary purpose for such a trust is to have an arrangement in place for a successor Trustee to step in upon the Grantor's disability so that the assets can continue to be managed for the benefit of the Grantor in accordance with the terms of the trust agreement. Note that these trusts are not effective tools to use to avoid paying inheritance taxes or to protect assets for Medical Assistance planning purposes. Upon the death of the Grantor, the trust can serve as a "will substitute" in that the property in the trust can be distributed to the Grantor's heirs without having that property go through probate.

### TESTAMENTARY TRUSTS

These are trusts, usually included within wills or revocable living trusts, which come into effect upon the death of the Grantor. This means that they are irrevocable by their very nature. Such trusts are very useful to accomplish a wide range of goals. Such trusts can be used to benefit minor children or disabled heirs, and, in certain cases, they can be used to reduce the impact of Federal Estate Taxes on larger estates (those over \$2,000,000). In addition to an exemption from federal gift and estate taxes on \$2,000,000 (from 2006 to 2008) during one's lifetime or at death, each person can also make an unlimited number of gifts of \$12,000 per person per year during their lifetime to reduce their federal taxable estates. Note that there is a Maryland estate tax applied to estates larger than \$1,000,000.

### IRREVOCABLE LIVING TRUSTS

These trusts come in many varieties and can be used to accomplish a diversity of goals. Some such trusts are very useful for minimizing the payment of Federal Estate Taxes. Others can be used for financial planning associated with maintaining eligibility for various governmental benefit programs. Some particular kinds of trusts that are useful in planning for one's own disability or the disability of one's loved ones include:

# Asset Management

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## SPECIAL NEEDS TRUST (Pay-back Trusts)

In this type of trust, the applicant or recipient (A/R) of federal means-tested benefit programs is not only the grantor but also the sole beneficiary of the trust. An example of a “pay-back” trust permitted under Maryland’s Medical Assistance regulations is the “(d)(4)(A)” trust. It is exempt from consideration as an available asset for the purposes of federal means-tested benefit programs. This money is then available to the A/R to use for items not covered by federal means-tested benefits programs. In the case of Medical Assistance long-term care, these needs might include a personal telephone, non-covered transportation (such as for a visit home for a holiday) or recreation.

The (d) (4) (A) trust is created:

- With the applicant’s or recipient’s (A/R’s) funds (income, non-income resources or both)
- By a parent, grandparent, legal guardian, or a court (but not by the A/R or anyone acting under a power of attorney from the A/R)
- For the sole benefit of the A/R, who must be less than 65 years of age and disabled at the time of the trust’s creation.

The trust document must contain a provision stating that, upon the A/R’s death, the state will receive all amounts remaining in the trust, up to an amount equal to the total amount Medical Assistance paid on behalf of the person. In addition, the language of the trust must be submitted to, and approved in writing by, the Office of the Attorney General before the trust is established, and the trust must be irrevocable.

Another type of pay-back trust is the (d)(4)(C) trust.

The (d)(4)(C) trust is created:

- With the applicant’s or recipient’s (A/R’s) funds (income, non-income resources or both)
- By the A/R, a parent, grandparent, legal guardian, or a court
- For the sole benefit for the A/R who must be disabled at the time of creation (in Maryland there is no age restriction)

The trust document must contain a provision stating that, upon the A/R’s death, the State will receive all amounts remaining in the trust up to an amount equal to the total amount Medical Assistance paid on behalf of the person. The (d)(4)(C) trust is different than (d)(4)(A) trust in that it is handled by a non-profit association which pools the account for purposes of management and investment. These types of trusts have been accepted for Medical Assistance purposes elsewhere but approval in Maryland is still pending. *First Nat’l Bank v. Department of Health & Mental Hygiene*.

## THIRD-PARTY TRUSTS

In this type of trust, the beneficiary is a third party and not the grantor or the grantor’s spouse. There are two types of third-party trusts.

The (c)(2)(B)(iii) trust is created:

- By the applicant or recipient (A/R) or the A/R’s spouse

# Asset Management

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- With the A/R's funds (or those of the A/R's spouse)
- For the sole benefit of the A/R's son or daughter who is blind or disabled.

The (c)(2)(B)(iv) trust is created:

- By the applicant or recipient (A/R) or the A/R's spouse
- With the A/R's funds (or those of the A/R's spouse)
- For the sole benefit of a disabled individual less than 65 years of age.

The applicant or recipient (A/R) might choose to establish a trust rather than make an outright gift to provide for the disabled third party because of certain benefits to the disabled third party. If the beneficiary is a minor, unable to manage his or her finances, already receiving means-tested benefits or likely to need them in the future, an outright gift would be considered immediately available to the beneficiary and would thus jeopardize the beneficiary's eligibility for those benefits. A trust, if properly drafted, can avoid such a result.

## **THE IMPACT OF A TRUST WHEN THE BENEFICIARY IS AN APPLICANT FOR, OR RECIPIENT OF, MEANS-TESTED BENEFITS**

### **PAY-BACK TRUSTS**

So long as the trust meets the specific requirements described above (see Pay Back Trusts) the beneficiary's eligibility should not be affected.

### **THIRD-PARTY TRUSTS (THE TRUST BENEFICIARY IS NOT ALSO THE TRUST GRANTOR)**

As long as a trust (including (c)(2)(B)(iii) and (c)(2)(B)(iv) trusts discussed above) is in the form of a discretionary trust, the trust principal and payments are exempt from consideration as an available resource for a beneficiary applying for a means-tested program.

## **Life Estates in Real Property**

A life estate is a grant or reservation of real property for the lifetime of a "life tenant." After the death of the life tenant, the property passes to a designated recipient. The life estate may restrict or eliminate the right of the life tenant to sell, give, or mortgage the property. Therefore, a life estate may preserve real property for heirs while providing security to the life tenant. Life estates are created through a deed and are relatively inexpensive. Eligibility for the homeowners' tax credit for low income seniors is not affected.

- Life estate with reserved powers - provides that the life tenant can sell, give or mortgage the property. This type of life estate is not currently exempt for Medical Assistance long term care eligibility requirements, unless the A/R's spouse, dependent or disabled child is living in the property.
- Life estate without reserved powers - provides the life tenant the right to occupy the property for his or her lifetime, but not the right to sell, give or mortgage the property. While this type of life estate is not considered a countable resource for Medical Assistance long term care applicants, Medical Assistance will include the creation of a life estate in its five-year "look-back" period. If the life estate was created during that time it will be

# Asset Management

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considered a transfer of assets based on the value of the vested heir's interest at the time the life estate is created and will be penalized at one month of ineligibility for each \$4,300 (adjusted annually) of value transferred.

## **Power of Attorney**

A Power of Attorney is a written delegation by one person (the principal) of the authority to act on his or her behalf to another person (the attorney-in-fact or the agent). The powers of an attorney-in-fact are not defined in law and must be specifically stated in the creating document. An agent can act only if and when he or she possesses the physical document creating the power of attorney. When considering a power of attorney for a senior adult, a durable power of attorney is valuable because it allows the powers granted to continue if the principal becomes disabled.

Power of attorney is used as a management tool to invest another party with specific powers over one's assets. Absence from the country, poor management skills, personal time considerations, disability or impending disability can all motivate the creation of a power of attorney.

A power of attorney, unlike guardianship, is inexpensive and uncomplicated to create and maintain and does not entail mandatory court oversight. It is also less complicated than a trust. Unless it is of very limited scope, however, it gives the principal little in the way of protection against abuse by the attorney-in-fact. This is a relationship based on trust and careful consideration must be given when choosing the person to appoint as attorney-in-fact. There are also circumstances in which a person or institution may be reluctant to work with a power of attorney especially if the principal is now disabled.

A power of attorney is automatically terminated when the principal dies. A competent principal may revoke, suspend or terminate a power of attorney completely or in part. If a guardian is appointed, his or her powers supersede those of a power of attorney.

Guardianship is a method for the state's court system to assume ultimate care and custody of persons judged by the court to be mentally or physically incompetent of caring adequately for themselves. Persons 18 and over are presumed to be competent under the law; therefore, incompetence must be proven in court. Guardianship is established by the Circuit Court and may be established over person, over property, or over both. A person under guardianship is called a ward. Though an individual or institution is named as guardian, their power is derived from the court's delegation of its authority.

### Guardianship of Property

To establish a guardianship of property, the Circuit Court must determine that:

- the individual has property or assets or is entitled to benefits that need management and,
- the individual is unable to handle decisions related to their management and,
- there is no less restrictive alternative available.

The person appointed guardian of property has the same power over the property as the ward would have and must act in the best interests of the ward. The guardian of property appointed for the ward assumes primacy over a durable power of attorney if one exists. The guardian of property is entitled to compensation and reimbursement for expenses. Appointment of a guardian of property is not a finding of legal incompetence and therefore does not affect any other rights the person has.

Persons entitled to be appointed as guardian of property are, in descending order of entitlement:

- A person or corporation nominated by the disabled person while of sound mind
- Spouse
- Parents
- A person or corporation nominated by the will of a deceased parent
- Adult children
- Adults who would be the disabled person's heirs were the person to die

The court may, however, for good cause, designate as guardian a person of lower priority in preference to a person of higher priority. The overriding consideration for the court is the best interest of the disabled person.

Following appointment, the guardian must submit a list of the ward's assets and their value within 60 days and annually thereafter. The guardian may, without permission of the court, buy, sell or borrow as long as he or she is acting in the best interests of the ward. The guardian may not make a gift of the ward's property without court approval. This is relevant if the assets of the disabled elderly person are being spent down prior to an application for Maryland Medical Assistance.

The guardian of property can be removed by the court for cause.

#### ALTERNATIVES TO GUARDIANSHIP OF PROPERTY

The court may authorize a specific transaction on behalf of a person instead of appointing a

# Guardianship

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guardian of property. If the individual's income consists mainly of government benefits such as Social Security or Veteran's benefits and he or she has little or no assets to manage, these federal agencies can appoint a Representative Payee to receive and handle the individual's benefits.

## OTHER ALTERNATIVES TO GUARDIANSHIP OF PROPERTY INCLUDE:

- Banking services, through a bank Power of Attorney or joint ownership
- Establishing joint ownership of home and assets
- Durable power of attorney (general) for finances
- Trustees of revocable living trusts

## Guardianship of Person

Guardianship of person may only be granted if the court *finds clear and convincing evidence* that the individual lacks the understanding or capacity necessary to make or communicate responsible decisions concerning his or her person, including decisions concerning health care, food, clothing, or shelter. The determination of what is a "responsible" decision is value-laden. The court must also find that a less restrictive arrangement to provide for the needs of the disabled person does not exist. Guardianship may only be established by a jury trial unless that right has been waived by the alleged disabled person or the attorney representing the alleged disabled person. If a guardian is appointed, he or she has only the rights stated in the court order; the ward continues to have all rights not specifically granted to the guardian.

Persons entitled to be appointed as guardian of person are the same as for guardian of property with the following additions:

- A health care agent appointed by the disabled person in accordance with the Maryland Health Care Decisions Act
- For adults 65 or older, the court may appoint the director of the State Department of Aging or of the local Area Agency on Aging. The local Department of Social Services may be appointed for those age 18-64.

The guardian of person has the same rights and powers over the ward that a parent has over a minor child. The guardian has a duty to provide care and comfort for the ward, including looking after social, recreational and friendship needs. In conjunction with the guardian of property, he or she must spend money needed for the ward's care.

The guardian does not have the right to admit the ward to a mental hospital; if needed, this is usually done by petitioning the court for an emergency evaluation of the person. In addition, the guardian may not provide or withdraw the provision of a medical procedure or course of treatment that may pose a risk to the life of the ward without court approval.

Guardianship laws permit the circuit court to use "substituted judgment" (a decision based on the ward's wishes) to determine whether to permit or withhold life-sustaining treatment. The court is also permitted to make such decisions using a "best interest" standard if a basis for substituted judgment cannot be established.

# Guardianship

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## ALTERNATIVES TO GUARDIANSHIP OF PERSON

Guardianship of person cannot be granted if there are other less restrictive alternatives which could achieve the same goals. Alternatives include:

- Case management services
- Medical Advanced Directive that appoints agents
- Living will
- Surrogate decision making
- Adult day care, alternative housing options or assisted living

## Establishing Guardianship

### THE PETITION

Any interested person may file a petition seeking guardianship of person or property of an alleged disabled person. The law defines the items that are required in the petition. For example, it must include an explanation of why guardianship is being requested and a description of attempts to use less restrictive alternatives. It must be accompanied by certificates from two licensed physicians, at least one of whom has examined the person within 21 days of the filing, stating the cause, nature, extent and probable duration of the disability. If the alleged disabled person does not have an attorney, the court will appoint one for him or her. The attorney's task is to advocate on behalf of the client.

### LEAST RESTRICTIVE ALTERNATIVE

Guardianship of person and/or property cannot be granted if there are other, less restrictive alternatives which could achieve the same goal.

### THE HEARING

The guardianship hearing is an adversarial proceeding in which each side presents an argument. The presiding judge then makes a decision based on clear and convincing evidence that the person lacks sufficient understanding or capacity to make or communicate responsible decisions, and that no less restrictive form of intervention is available.

### TERMINATION OF GUARDIANSHIP

Guardianship shall be terminated if the person dies, if the medical cause of the need for guardianship ceases or if there is good cause as determined by the court. If the guardian fails to perform the duties of the office appropriately, the court may remove or sanction him or her. The guardian may resign only with the permission of the court.

## Emergency Protective Services

If a police officer or other person, on the basis of personal observation, believes that an adult: is in immediate peril of serious injury or death unless institutionalized, is incapable of giving consent, and circumstances will not accommodate a formal guardianship proceeding, then a police officer must move the adult to a health care facility. Within 24 hours the facility must petition the court to provide protective services to the adult.

The Maryland Health Care Decisions Act (HCDA) defines the laws regarding health care decision making in Maryland. The HCDA has four parts, three of which are of particular interest to seniors - advance directives and designating a health care agent, surrogate decision making, and guardianship.

### **Advance Directives/Designating a Health Care Agent**

An advance directive enables a person to provide for medical situations by setting forth health care decisions before these situations arise. These decisions may include whether to withhold or withdraw life-sustaining treatment and who should make the health care decisions if that person is rendered incapable of doing so. Without an advance directive, someone who is unaware of the person's health care preferences may be given the power to make medical decisions for him or her.

The Maryland Health Care Decisions Act (HCDA) contains two sample advance directives. The first is a living will, which allows an individual to direct that life-sustaining procedures be withheld or withdrawn if he or she is in a terminal condition or in a persistent vegetative state. The second form has two parts. Part A allows an individual to appoint a health care agent who is given the authority to make health care decisions, obtain and consent to the disclosure of medical information, employ or discharge health care providers, authorize admission to or discharge from health care facilities, and consent to the provision, withholding, or withdrawal of health care, including life-sustaining procedures. It can also direct organ donation. The document also allows the individual to limit the authority of the agent and to specify when the directive becomes effective. If a particular circumstance is not covered specifically, and the person's wishes are not known or are unclear, the document directs the agent to make decisions based on what is in the person's best interests. Part B is a living will directing the withholding or withdrawal of life-sustaining treatment if he or she is in a terminal condition, an end-stage condition or a persistent vegetative state. Both forms allow the person to direct that he or she be given all available medical treatment in accordance with generally accepted health care standards.

These sample forms provided in the HCDA are only suggestions; many attorneys add to or expand upon the information contained in them when developing advance directives for an individual's unique situation. In addition, these samples only address a terminal condition, a persistent vegetative state and end-stage conditions. An advance medical directive may be written to apply in all medical situations, including decisions regarding life-sustaining treatment, when the agent is given decision-making authority for all circumstances.

An advance directive may become effective upon certification by the person's attending physician and a second physician that the person is incapable of making an informed decision, or it may become effective upon the document's execution. A health care agent must make a decision based on the wishes of the patient. If these are not known, then the agent must use the patient's "best interest" in making decisions.

A competent person may revoke an advance directive at any time.

# Medical Decision Making

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## **Surrogate Decision Making**

A family member or close friend, in a hierarchy defined in the law, may make health care decisions for an individual who is incapable of making an informed decision about the provision, withholding, or withdrawal of a specific medical treatment, if the individual has not already designated a health care agent and if a guardian has not been appointed by the court. Two physicians must certify that the individual is incapable of making an informed decision regarding treatment. Additional requirements must be met if the surrogate is seeking to withhold or withdraw life-sustaining treatment. The law provides a hierarchy of eligible individuals in order of their priority to serve as surrogate: an appointed guardian, the patient's spouse, an adult child, a patient's parent, an adult brother or sister. A close friend or relative may also assume the duties of a surrogate if they demonstrate that they have maintained regular contact with the patient and are familiar with the patient's health and beliefs. A surrogate is held to the same standard as a health care agent to act according to the patient's wishes and, lacking knowledge of these, in the best interest of the patient.

## **Guardianship**

If the court has appointed a guardian of person, this person must obtain court approval to withdraw or withhold life-sustaining treatment. In this case, the court, using standards outlined in the HCDA, uses "substituted judgment," meaning that it determines on clear and convincing evidence what the person would have decided, if competent. If the court is unable to determine this, then it may make its decision based on the best interest of the patient.

## **Emergency Medical Services**

In Maryland, a standardized procedure has been developed under the HCDA that allows emergency medical services personnel to identify and promptly follow the expressed health care decisions of a individual to receive palliative, comfort care in the event of a cardiac or respiratory arrest. A physician's order, written on an approved Maryland Institute of Emergency Medicine Services System (MIEMSS) form is required and the original copy must be presented to the emergency personnel. A bracelet from MIEMSS, worn by the individual, will also be honored.

There are a number of housing opportunities available to older Americans which are not available to younger persons. Many of these options will be discussed this chapter.

### **Congregate Senior Assisted Housing**

This program provides services to older adults living in senior apartment buildings. Adults 62 and over can live independently in their apartments and the program will provide three nutritionally balanced meals a day, housekeeping and light personal care. The program may also provide other services. State subsidies are available to eligible participants only if sufficient state funds are available for that year. The Maryland Department of Aging also contracts with managers to provide services to a specific number of frail seniors in a given location. Eligible individuals must be 62 or older, require assistance with one or more activities of daily living and meet financial eligibility requirements. Services include three meals daily, general housekeeping services weekly and regular personal services such as help with dressing, bathing and laundry. Cost varies by location. Contact the Maryland Department of Aging at 410-767-1118 for further information.

### **Continuing Care Retirement Communities (CCRCs)**

An attractive alternative for middle-income and upper-income individuals and couples, Continuing Care Retirement Communities (CCRCs) provide older adults a continuum of care ranging from independent living to nursing home care. At a CCRC almost all of the resident's health care needs can be met within the facility or arranged for by the facility. The variety and scope of prepaid services differ among CCRCs. They generally charge a refundable or non-refundable entry fee ranging from \$60,000 to \$600,000, with monthly fees from \$900 to over \$5,500. While facilities may provide a broad range of services, Maryland law defines "continuing care," thus a CCRC is a facility that offers the services defined in the law. They are certified by the Maryland Department of Aging, but this certification is not an endorsement or guarantee of the CCRC. Most CCRCs require that individuals enter at the independent living level, though recent changes in Maryland law now allow for entry directly to the nursing home.

Generally three types of contracts are available to prospective residents. The "extensive" contract usually includes shelter, residential services and amenities and long term nursing care. This contract usually provides the most comprehensive coverage and has the highest monthly fee as well as entrance fee, because it pre-funds the long-term care nursing services. A "modified" contract usually includes shelter, residential services and amenities and a limited amount of long term nursing care. Once the limited nursing care is exhausted, the resident pays out-of-pocket for that care at the prevailing or a discounted rate. "Fee for service" contracts usually only cover shelter, residential services and some amenities. The resident pays for any assisted living or long term care nursing services needed. This contract usually has the lowest entrance fee and monthly fee, because the resident assumes the financial risk for any long-term care needed. It may be required to spend down the entrance fee and assets reported at admission before applying for medical assistance.

# Housing

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Maryland law prescribes the content of the continuing care contract, commonly known as a continuing care agreement. Those CCRCs certified by the state have contracts that meet these guidelines. Be sure to review any contract carefully and consider issues including: What is the policy on fee increases? (Communities generally raise the monthly fees at least once a year.) Under what terms will the entrance deposit be refunded?

There are, of course, risks inherent in the decision to move to a CCRC. Not only is the prospective resident usually under stress related to declining health, but the contract is complex and will have lasting consequences. Substantial money will be used to pay the entrance fee, and future money is obligated to pay the monthly fees. It is essential to assure that the CCRC will be able to provide the promised services for the period of time stated in the contract. Because of problems with this in the past, Maryland now requires that a CCRC set aside operating reserves. Another state law gives CCRC residents legal standing as creditors if the CCRC files for bankruptcy or is placed in receivership.

It is important that a prospective resident and his or her attorney carefully review the annual disclosure statement a CCRC must provide before signing a contract or paying any part of the entrance fee. This document covers issues related to subscribers' fees and the financial situation of the facility and its owner(s).

Consumer packets on Maryland's CCRCs are available from the Maryland Department of Aging by calling **1-800-AGELINE (1-800-243-3425)** or **410-767-1100**.

## Assisted Living

Assisted living programs are residential facilities which provide housing and supportive services, personalized assistance, health-related services or a combination of these, for individuals who are unable to perform, or who need assistance in performing, activities of daily living. These programs vary in size from one to one hundred or more residents. They may be profit or nonprofit. They are licensed, certified and monitored by the Maryland Department of Health and Mental Hygiene (DHMH). Certain monitoring responsibilities have been delegated to the Maryland Departments of Aging and of Human Resources. The purpose of the regulations governing these programs is to establish minimum licensing requirements and to "maximize independence, and promote the principles of individuality, personal dignity, freedom of choice, and fairness for all individuals residing in assisted living programs."

There are three levels of care ranging from Level 1 (minimum care) to Level 3 (maximum care) that a home may be licensed to provide. A facility must provide not only the services of the level(s) of care for which it is licensed, but any services appropriate to a lower level of care.

An assisted living facility may not admit or provide services to individuals who at the time of initial admission would require any one of the following:

- More than intermittent care
- Treatment of stage three or stage four skin ulcers
- Ventilator services

# Housing

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- Skilled monitoring, testing and aggressive adjustment of medications and treatments where there is the presence of, or risk for, a fluctuating acute condition
- Monitoring of a chronic medical condition that is not controllable through readily available medications and treatments
- Treatment for an active reportable communicable disease
- Treatment for a disease or condition which requires more than contact isolation

Before admitting a resident, the assisted living manager or designee must perform a pre-admission assessment using a form provided by DHMH. The assessment will provide a formula in order to ascertain the appropriate level of care required so that the facility can determine if the resident's needs exceed the maximum level of care it offers.

Resident-specific waivers may be issued by DHMH if the facility applies to continue to provide services to a resident whose needs have changed and who requires a higher level of care than the facility is licensed to provide. This allows the resident to "age in place." A facility may request and receive waivers for up to 50% of its licensed capacity. A facility may also receive waivers limited to 20% of capacity for continuation of services to residents whose needs exceed the maximum (Level 3) care.

## Senior Assisted Living Group Home Subsidy Program

The Maryland Department of Aging provides subsidies to elderly residents of licensed assisted living group homes that are monitored by the local Department of Aging. Eligible residents must be **both** financially and functionally eligible for the program. Neither the statute nor the regulations require a look-back period or penalties for the transfer of assets to become eligible for the program. Eligibility is determined by having the local Department of Aging look at the applicant's most recent financial statements. Check with your local Department of Aging, however, as some may also employ a look-back period. Local Departments of Aging are responsible for administering the subsidy. The current maximum award is \$650/month. Application is made to the local Area Agency on Aging; in Baltimore County call the Baltimore County Department of Aging at **410-887-4632**.

## Medical Assistance Waiver for Older Adults

This program provides Medical Assistance coverage for eligible residents of participating Assisted Living facilities certified by the Department of Aging for Level 2 and Level 3 care only. (See Chapter 9 — Financing Long-term Care — for a detailed discussion of the waiver program.)

Senior homeowners may be entitled to special tax benefits that are reviewed in this chapter. Also reviewed are reverse mortgages, a way for senior adults who wish to remain at home to use the equity in their home to secure a loan to produce income without selling the home.

## Reverse Mortgages and Other Home Equity Conversion Programs

Some seniors find that the cost of remaining in their own home, counting taxes, upkeep, repairs, electricity, fuel, insurance, etc., is greater than their monthly income. Even if the mortgage is paid off, the house-related expenses plus daily living expenses and health care costs may exceed income and deplete savings. A reverse mortgage is a way to increase your current income by taking a loan against the equity in your home.

In a reverse mortgage, the senior homeowner finances the equity in the home and receives a monthly payment from the bank and/or access to a pool of money. The equity secures the loan which must be repaid, with interest, at the end of the term. The end of the term is when the owner sells, permanently moves or dies or it is on a fixed repayment date. The rate can be either fixed or adjustable. The homeowner continues to retain title to the home and thus is responsible for taxes, repairs and upkeep.

It is called a reverse mortgage because *the balance due increases during the term of the loan*, unlike a standard home loan where the balance is paid down over time. This is different from a standard home equity loan or forward mortgage which provides a lump sum at the outset, but requires monthly payments.

A reverse mortgage may not be a good idea if the senior has not built up enough equity or plans to move in the near future, because this type of loan has high up-front costs which may exceed the benefits received.

### TYPES OF REVERSE MORTGAGES

There are several types of reverse mortgages: lender-insured mortgages, reverse annuity mortgages, uninsured reverse mortgages and various publicly sponsored mortgage programs. Lender-insured mortgages generally provide larger advances, but the total costs are often higher and the equity in the home is used up more quickly.

Reverse annuity mortgages allow the homeowner to remain in the home and receive either an immediate annuity, or a combination of a monthly loan payment and an annuity that starts at a specific time (such as after they vacate the home). A charitable reverse mortgage allows a taxpayer to transfer their remainder interest in a property to a charity in exchange for the charity's promise of an annuity.

Other public programs include an uninsured reverse mortgage, but this is not available in Maryland. There are, however, state-funded home repair loans for persons with limited income, and property tax credit programs based on the homeowner's income.

# Homeowners' Equity and Tax Issues

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## HECM REVERSE MORTGAGES

The federal Home Equity Conversion Mortgage provides lenders with insurance for reverse mortgages issued by Housing and Urban Development (HUD) approved lenders. To be eligible for one of these insured loans, the homeowner must be 62 or older and have a very low outstanding mortgage or own their home outright. The property must be the homeowner's principal residence but it can be a single-family or multi-family (1-4 families) home, a mobile home, or a unit in a FHA-approved condominium. The homeowner must pay off any existing liens or mortgages with the initial HECM advance.

There is no minimum or maximum income limit, nor is there a limit on assets. All title holders must meet the program's eligibility requirements, and if the property is held in trust, all trust beneficiaries must be eligible. The home must also meet FHA minimum property standards. The loan amount depends on the type of plan, value of the property, age of the youngest borrower and interest rate. There is no restriction on the way that the loan is spent. The following types of loans are available:

- **Term** - Borrower receives monthly payments for a selected number of years
- **Tenure** - Borrower receives monthly payments for as long as at least one borrower remains in the home
- **Line of Credit** - Borrower draws against a predetermined maximum sum, whenever and in whatever amounts the borrower chooses
- **Modified Term** - Adds a separate line of credit to the term plan
- **Modified Tenure** - Adds a separate line of credit to the tenure plan

Counseling is a prerequisite to obtaining a reverse mortgage from the HECM; it is free and is only available from HUD-approved public or nonprofit agencies. Topics include the financial implications of the loan and other available options. HUD has a reverse mortgage web page at [www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm](http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm) and a page specifically designed for seniors at [www.hud.gov/groups/seniors.cfm](http://www.hud.gov/groups/seniors.cfm).

## TAX CONSEQUENCES OF A REVERSE MORTGAGE

Before applying for a reverse mortgage, the homeowner and his or her attorney should consider: the real estate and contractual issues inherent in an equity conversion; the myriad home equity conversion programs available; and community alternatives to equity conversion, including housing programs, government income and health benefits, and community-supported services. It is also advisable to review:

- Your rights and responsibilities under the agreement
- The income tax consequences
- The effect on the capital gains exclusion of \$250,000 per person for the sale of a principal residence
- The effect on eligibility for means-tested governmental benefits
- The advisability of establishing a financial durable power of attorney that covers real property and gifts and includes the authority to obtain or deal with or handle a reverse mortgage
- Plans established for the homeowner's incapacity
- The impact on the homeowner's estate

# Homeowners' Equity and Tax Issues

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## **CONSUMER CONCERNS ABOUT REVERSE MORTGAGES**

Lending by private institutions that charge hidden fees, surcharges and use questionable practices has been an area of major concern for consumers, because it could reduce or negate the advantages of a reverse mortgage. Read the agreement carefully before signing.

## **Maryland Property Tax Breaks**

Maryland law exempts the dwelling house of a blind individual and the dwelling house of a blind individual's spouse from property tax to the first \$6,000 of the value of the property. The state tax exemption for the dwelling house of a disabled veteran and the dwelling house of a disabled veteran's surviving spouse applies to the full value of the property. There are also statewide mandatory tax credits for elderly or disabled homeowners or renters which are calculated according to income. The credit is deducted from the property tax bill. Tax credits are also available to homeowners and home purchasers of all ages who meet certain income qualifications.

## **Other Tax Issues/ Parents as Dependents/ Medical Expense Dependents**

If considering housing options other than a reverse mortgage, such as in-home care, assisted living, a continuing care retirement community or a nursing home, there may be federal tax considerations as well. Certain elderly family members may qualify as a dependent for income tax purposes, if the taxpayer provides over one-half of the support of the elderly person. The individual does not need to reside with the taxpayer. An unrelated elderly person can also be treated as a dependent if his or her principal residence is the taxpayer's home, he or she is considered a member of the taxpayer's family, and receives more than one-half of his or her support from the taxpayer.

Expenses for medical care of a taxpayer, a spouse or a dependent are deductible from income taxes to the extent that they exceed the current 7.5% of adjusted gross income. The only types of medications that may be included are prescription drugs. Other items that may be deductible are items incidental to medical treatment, such as a special mattress, home improvements to accommodate a disabled person, and nursing home expenses if the primary purpose for admission is a medical reason.

The child of an elderly person may claim a tax credit for expenses (such as adult day care) the child incurs in caring for a dependent parent who lives in the child's home.

An elderly and disabled credit is available for low-income persons who have reached age 65 or who have retired on disability because they are permanently and totally disabled.

Some of the services you might need to remain in your house or apartment may be partially covered by Medicare or Medical Assistance, but most are not (review the Medicare and Medical Assistance chapters for further information). An expansion of the Medicaid Waiver Program has helped some eligible applicants by adding coverage for in-home care. If the services you want and/or need are not covered by these programs, you may purchase them directly from the provider or consider purchasing long-term care insurance to assist you in paying for in-home services.

## Long-Term Care Insurance

Long-term care insurance is defined in Maryland as any group or individual policy that provides coverage for not less than 24 consecutive months for each covered person for one or more necessary services in a setting other than an acute hospital. Long-term care insurance can provide coverage for individuals with chronic illnesses or disabilities who need assistance with activities of daily living. Policies can provide coverage for a wide range of in-home and institutional services including adult day care, assisted living, and nursing homes, including those in continuing care retirement communities. In assessing your need for long-term care insurance it is important to remember that 95% of nursing home care is custodial and therefore not covered by Medicare.

The average cost for nursing home care is currently about \$200 per day. Home health services can range from \$8 to \$15 per hour and could cost more than \$25,000 a year. Approximately 51% of all long-term care is paid for by individual savings or private health insurance. On average, Medicare pays for less than 2% of long-term care expenses. Medical Assistance provides long-term care coverage, but applicants must spend down almost all of their assets to qualify for this means-tested program.

Long-term care insurance can be a good investment, but premiums can range from \$1,000 to \$8,000 per year depending on your age, medical condition and level of benefits desired. Therefore, it is important to evaluate whether long-term care insurance is right for you. Because the function of long-term care insurance is to protect assets, the U.S. Senior Health Cooperative suggests that a single person should have at least \$40,000 in eligible assets (excluding the primary residence) and a couple should have at least \$100,000 (excluding the primary residence) before considering the purchase of long-term care insurance. If you have less than these amounts in assets, long-term care insurance could cost more money than there are assets to protect. It can be valuable to married couples if only one is institutionalized because it may help the community spouse preserve assets.

The following features of a long-term care policy are important to review before purchasing or when comparing policies:

- Age at purchase, because premiums increase with the age at purchase.
- The medical circumstances that result in coverage becoming effective (the trigger). Most current policies (tax qualified) have coverage available based on the need for assistance with two activities of daily living or the existence of cognitive impairment for more than 90 days. Be sure to understand what triggers your policy into action.

# Financing Long-Term Care

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- Any elimination period, like an insurance deductible, which decreases your premiums by holding off the start of coverage until you have paid out-of-pocket for a specified number of days.
- How the coverage is paid. The policy may pay a specific amount for each day of service, it may reimburse for the actual expenses, or it may require a co-pay. Be sure it will cover the full cost of needed care.
- The period of time for which the policy will cover care.  
A minimum of three to four years may be a good idea.
- Assurances that guarantee that the policy covers community-based services as well as institutional long-term care.
- Waiver of premiums if the insured is receiving benefits.
- Cost-of-living adjustments are an important feature since the coverage may not be needed until years after it was purchased.
- Guaranteed insurability allows the insured to purchase additional coverage later at the same rates that were in existence at the date the policy was purchased.

## Medical Assistance Home/Community Based Services

The Medicaid Waiver for Older Adults allows services which are only typically covered by Medical Assistance in a long term facility to be provided to eligible persons in their own homes or assisted living facilities. Services include home delivered meals, environmental accessibility adaptations, personal emergency response systems, assistive devices, assisted living services, personal care services, respite care services, behavioral counseling, dietician/nutritionist services, Senior Center Plus, environmental assessments and family and consumer training. To be placed on the registry for services, call **1-866-417-3480**.

## Medicaid Personal Care

This program provides coverage for personal care services to Medical Assistance recipients determined to be in need of this type of assistance. The services provided include: assistance with activities of daily living, household services, accompanying the recipient to doctors' appointments, food shopping, personal hygiene and grooming. For information or an application, call the Baltimore County Department of Health at **410-887-3485**.

## Services in the Community

If you consider remaining at home, review the resources that are available in the community to help you remain at home. For further information contact the Baltimore County Department of Aging's Senior Information and Assistance Program at **410-887-2594**.

## MEAL SERVICES

Home-delivered meals are available through the Meals on Wheels Program (**410-558-0827**) on a sliding fee scale. Meals are also available at every Baltimore County senior center daily through the Eating Together Program. An anonymous donation is requested for these meals.

# Financing Long-Term Care

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## **PERSONAL CARE SERVICES**

These are non-medical personal support services such as help with bathing, dressing and basic hygiene, and are usually provided by family, friends or home health aides. If staff is hired to perform these services, some subsidies may be available for eligible Medical Assistance recipients or through the Baltimore County Department of Aging's Senior Care Program.

## **CHORE SERVICES**

These services provide assistance with light housekeeping, bill payment, errands and other light chores. There may be some state assistance for these services for income-eligible and medically eligible persons. Some volunteer agencies may provide them at no cost.

## **TRANSPORTATION**

Low-cost transportation for seniors in Baltimore County is provided by the Baltimore County Department of Aging's CountyRide program. Medical appointments are given top priority, so trips for other purposes may not be available. Call CountyRide at **410-887-2080**. Local taxicab and car services are available for a fee in most areas. CountyRide also provides a limited taxi voucher program to eligible individuals; call for further information. For information on transportation services in other jurisdictions, contact Senior Information and Assistance at the local Area Agency on Aging.

## **SENIOR CENTERS**

The Baltimore County Department of Aging has nineteen senior centers located throughout the county that provide recreation, education, exercise and social programs to senior adults. Each center provides at least one meal daily and has staff that can help seniors and their families access other programs and services of the Department. To find the locations of senior centers in other jurisdictions, contact the local Area Agency on Aging.

## **CENTER CONNECTION**

The Center Connection program is a service for those seniors who need support connecting to the activities and services provided by the senior center. The Center Connection Specialist works with each enrollee to develop a schedule taking into account the individual's abilities, interests and needs.

## **ADULT MEDICAL DAY CARE**

These programs provide a supervised environment for seniors during the day. This helps seniors remain in the community by allowing their caregivers to continue working or take time during the day to shop, run errands or take time for themselves. Under certain circumstances Medical Assistance will cover the cost for adult day care services.

## **HOME HEALTH CARE**

Home Health Care services are those intended to promote, maintain or restore a person's health or to minimize the effects of illness or disability. These services can range from skilled intravenous therapy to unskilled and home support services. Skilled care services are prescribed by a physician and provided by a licensed professional and may be covered,

# Financing Long-Term Care

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to a limited extent, by Medicare and Medical Assistance. Some long-term care insurance policies may also cover the cost of these services. Home support services, such as personal care (bathing, dressing, assistance with eating), homemaker services, light housekeeping and laundry are not covered by Medicare or Medical Assistance.

## **RESIDENTIAL SERVICE AGENCIES (RSA)**

Licensed by the Maryland Department of Health and Mental Hygiene, these agencies provide services to people in their own homes. They differ from home health care agencies in that they provide services which generally require less skilled providers.

## **RESPIRE CARE**

In order to give the family caring for a chronically dependent person some time off, respite care service is available for a day, a weekend or even a week. It may be available from the Alzheimer's Association, volunteer organizations or fee-for-service home care agencies. Beds may also be available in nursing homes or assisted living facilities for short-term respite. If possible, it is a good idea to plan ahead for respite care because some facilities limit the number of beds they use for respite care.

## **SENIOR CARE**

This program, administered by the Maryland Department of Aging, coordinates community-based in-home services for frail seniors who are at risk of nursing home care. In Baltimore County, this service is provided jointly by the Departments of Aging, Health and Social Services. It provides a comprehensive screening and assessment of the applicant's needs, and a case manager to develop a plan of care and to coordinate services.

Eligible applicants must be: 65 years of age or older, a resident of the county from which the services are to be received, at risk of entering a nursing home within the next six months because of a medical condition or functional disability, and in need of assistance with at least one activity of daily living. If gap-filling funds are requested, the individual must be financially eligible. Each county maintains a waiting list for services that is based on need.

## **LEGAL SERVICES**

This program is a contracted service through grant funds provided in Baltimore County. It offers free legal assistance, consultation and/or representation to seniors who are 60 years of age or older on issues related to health care (Medicare, Medicaid, nursing homes), income maintenance (Social Security, Supplemental Security Income, retirement income), nutrition (food stamps), housing (evictions and foreclosures), utilities, unemployment benefits and adult protective services.

Legal Services for Senior Citizens will also assist in defending a senior in a lawsuit when there is a substantial risk to the client's person, property or civil rights.

Medical Assistance (Medicaid or MA) is a state and federally funded program that pays the health care costs of the needy. Eligibility is based on financial need, medical need, and “technical eligibility.” Two types of Medical Assistance - Institutional Medical Assistance and Community Medical Assistance - each have different eligibility criteria. The Maryland Department of Health and Mental Hygiene determines program policy and the Department of Social Services in each county accepts applications and coordinates the eligibility determination process.

## Institutional Medical Assistance

Institutional Medical Assistance acts like insurance to provide financial coverage for long-term care to individuals who meet eligibility criteria established by state and federal law.

### BENEFITS

Medical Assistance provides comprehensive medical insurance for long-term care, including skilled nursing care, rehabilitation services, and health-related services; equivalent services provided by any institution; and services provided under the home and community-based waiver.

### APPLICATION

Submit a completed application form to an eligibility worker at the Department of Social Services (DSS) in the county in which the applicant lives. Application for either the current or expanded Medicaid Waiver is made by having your request recorded at the Registry by contacting 1-866-417-3480. Registrants will be notified when space is available to then complete the application process.

### REQUESTING A HEARING

If found ineligible, an applicant has 90 days from the date the notice was mailed to request a hearing. Benefits will continue pending the hearing decision if the hearing request is filed within ten days of the denial notice. A hearing decision can be appealed to the Board of Review and the Board of Review decision can be appealed to the Circuit Court.

## Eligibility

### TECHNICAL ELIGIBILITY

**Citizenship** - The applicant must be a U.S. citizen or meet specific requirements covering non-citizens.

**Residency** - The applicant must be a resident of Maryland. A person who enters Maryland for other than a temporary purpose becomes a resident of the state as of the date of entry.

### MEDICAL ELIGIBILITY

The applicant must require, at a minimum, health-related services above the level of room and board. Maryland interpretation of the federal guidelines means that the applicant must meet these five criteria:

- Need skilled nursing care and related services, rehabilitation services, or health-related services above the level of room and board; *and*

# Medical Assistance

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- Need these services on a daily basis; *and*
- Need these services provided on an inpatient basis; *and*
- Receive these services in a facility certified for participation in Medicaid; *and*
- Have the services ordered by, and provided under the direction of, a physician.

Medical eligibility and level of care are determined by the KePro, based on information provided by the applicant's physician on Form 3871B (nursing home level of care assessment). If medical eligibility is not clear, it may be helpful to obtain an advisory opinion from KePro (\$30 fee) before proceeding with placement plans.

## FINANCIAL ELIGIBILITY

Financial eligibility for an institutionalized person is determined based on the individual's income and resources. In the case of a married applicant, resource eligibility is determined by combining the couple's resources. Income eligibility is determined by looking at the institutionalized spouse's income.

**Income Eligibility** - All earned and unearned income is considered in calculating the applicant's gross income. This includes wages, salaries, tips and profits from self-employment. Unearned income includes Social Security, pensions, alimony, trusts, IRAs, interest, rental income, lump-sum or other one-time-only income. Available income is determined by subtracting allowable deductions from the gross income. Allowable deductions may include a personal needs allowance and payment of health insurance premiums. If the community spouse's income falls below a certain level, a monthly spousal income allowance may be allowed as a deduction as well. A community spouse with special needs may request a hearing to obtain additional income from the institutionalized spouse.

**Resource Eligibility** - This is the individual's accumulated wealth over which he or she has the power of disposition.

**Cash** - This can be cash, or anything that can be converted to cash, such as bank accounts, certificates of deposit, money market funds, stocks, bonds, real estate and personal property. An individual may retain up to \$2,500 and still be eligible for Medical Assistance. A couple sharing a room in a facility may retain up to \$3,000; if they are in separate rooms each can retain up to \$2,500.

**Home Property** - A home is a shelter in which the individual has an ownership interest and which he or she used as a principal place of residence immediately prior to institutionalization. The home may be an excluded resource under certain circumstances.

**Life Insurance** - Whole life policies are excludable if the total face and cash values of all policies is \$1,500 or less. If the face value is more than \$1,500, the entire cash value is countable. Term policies have no cash value and are excluded.

**Burial Funds** - Irrevocable pre-need funeral trusts are excludable regardless of the amount. Burial funds up to \$1,500 are excludable if they are specifically set aside for burial of the applicant or spouse.

# Medical Assistance

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*Jointly Owned Bank Accounts* - Funds in a joint bank or similar account that are titled in the name of the applicant and another person(s), are presumed to be owned solely by the applicant. If the joint owner(s) can demonstrate that he or she made regular and proportionate contributions to the account, he or she may be entitled to a pro-rata share of the account.

## Hearings

If the rules regarding asset and income division are demonstratively inadequate, a hearing before an administrative law judge can be requested.

## Calculation of Resources of Married Individuals

### ONE SPOUSE INSTITUTIONALIZED

All countable resources owned by either spouse, jointly or separately, are usually counted in determining how the resources are to be divided between the spouses.

MA allows the spouse remaining in the community to retain a “community spouse resource allowance” (CSRA) consisting of the applicant’s home, one car and one-half of the countable resources as of the first of the month of institutionalization, subject to a minimum of \$20,328 and a maximum of \$101,640 (in 2007). An applicant is eligible for MA when the resources have been “spent down” so that the applicant has \$2,500 or less and the community spouse has only the CSRA. The funds used for spend down can be expended on the institutionalized spouse’s medical bills, other debts of either spouse, home repairs, appliances, a car for the community spouse, or certain kinds of annuities or other items for the benefit of the community spouse. Gifts will be examined under the transfer rules and penalized accordingly.

### BOTH SPOUSES INSTITUTIONALIZED

If they share a room in an institution, they file a joint MA application and may retain up to \$3,000 in assets. After the sixth month of institutionalization, or if they do not share a room, their resources are considered separately and each is entitled to retain up to \$2,500.

## Transfer of Assets

If an applicant or spouse makes a gift or other transfer of assets (either income or resources) for less than fair market value, the act is considered a disposal of assets. Under federal law, a person is penalized for transferring assets for less than fair market value by being deemed ineligible for institutional MA.

As of February 8, 2006, the penalty start date for transfers occurs when the person is already in a nursing home, meets the medical eligibility requirement, and is deemed eligible “but for the application of the penalty period.” All transfers within the look-back period (5 years as of 2/8/06) are combined and a penalty is imposed when the individual applies for benefits and is deemed eligible but for the gift. To calculate the penalty period, divide the sum of transferred assets by \$4,300. Transfers include charitable gifts, wedding presents, and

# Medical Assistance

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political donations. Additionally, a transfer of \$141 will result in a one day penalty.

A penalty period will be negated or reduced if all or part of the assets transferred, or the equivalent value, is returned to the applicant. Payment of nursing home or other expenses out of transferred funds is not considered a return of assets. Since the actual cost of care may exceed the \$4,300 used by the state, using transferred assets to pay for care may reduce the assets *before* the penalty period expires. Therefore, it is not advisable for the applicant to divest all assets and for the transferee to pay privately from the transferred funds.

If an applicant's income is used for his or her cost of care while he or she is spending down assets, a formula can often be used to further reduce payments to the nursing home and to accelerate spend down and Medical Assistance eligibility. For specific information about planning for this, consult with an elder law attorney.

## EXEMPT TRANSFERS

Certain transfers are exempt and therefore not subject to a penalty. These include:

- Transfers from the applicant to the spouse or to another for the sole benefit of the applicant's spouse
- Transfers from the applicant's spouse to another for the sole benefit of the spouse
- Transfers from the applicant or spouse to the applicant's blind or disabled child or to a trust established for the sole benefit of the child
- Transfers from the applicant or spouse to a trust established for the sole benefit of a disabled individual under the age of 65

## Community Medical Assistance

This type of MA is available to individuals living in the community rather than in institutional settings. While some of the requirements are the same as those for institutional MA, some are different, especially those related to income and transfer of assets.

### INCOME

Community MA applicants must meet income eligibility requirements, presently not more than \$350 per month in countable income.

### RESOURCES

The applicant may not have resources greater than \$2,000.

### TRANSFER OF ASSETS

The transfer penalties imposed on institutional applicants are not applicable to community MA applicants, though pending federal legislation may change this.

### LEVEL OF CARE

This is only required for applicants seeking coverage for adult day care and personal care. If needed, the medical eligibility standard is the same as for institutional MA.

A Will is a document indicating your wishes regarding disposition of your assets after your death. Review, and if necessary, revise your Will regularly to be sure it accurately reflects your wishes. Any transfers of property made in a Will become effective only upon your death. If you die without completing a Will, your property will be divided according to the laws of the state.

### **Property That Will Pass INDEPENDENTLY of a Will**

Regardless of whether or not you have a Will, some property will automatically pass to others upon your death, including any assets which list a beneficiary and any property jointly owned with the right of survivorship. Examples include:

- Life insurance and pension benefits - These will pass to the named beneficiary.
- IRA and 401K assets - These will automatically pass to the named beneficiary.
- Accounts titled as joint tenants with the right of survivorship.
- Life Estates in real property
- Payable on death (bank accounts)
- Transfers on death (brokerage accounts)

### **Property That Will Pass ACCORDING to a Will**

Probate property is property that will pass according to the instructions in your Will, such as bank accounts titled in your name only without a beneficiary designated, property in your name only, stocks, bonds, etc. You may also specify that such things as furniture, jewelry, cars, etc. will be given to specific individuals or institutions.

### **Components of a Will**

These vary greatly based on the wishes and circumstances of the person creating the Will and the amount of property and assets involved. They may include:

- Identification of a personal representative to administer the estate.
- Designation of a guardian for any minor child or children.
- Authorization for the personal representative to pay debts, taxes and funeral expenses out of the estate.
- Bequests of personal property.
- Provisions for the disposition of the rest of the estate (including the naming of alternatives in case of the death of all of the named beneficiaries).
- Authorization of a person to dispose of property of the deceased (Power of Appointment).  
A Special Power of Appointment allows the person appointed the right to dispose of the property to a limited group of persons (for example, a charity) but not to himself or herself. A General Power of Appointment allows the person appointed to give the property to anyone, including himself or herself.
- Provisions that can save estate taxes. Currently each individual, both husband and wife, can each pass up to \$2,000,000 free of gift or estate taxes.
- Provisions to protect minor or disabled beneficiaries (i.e., Spendthrift Clause, Minors Trust, Uniform Transfers to Minors, etc.).
- Provisions for circumstances including a previous spouse(s), children from several marriages, or stepchildren.

# Wills

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## Signing Your Will

In Maryland, you and two witnesses must sign your Will. It is not necessary to have a notary public. States vary in their requirements in this area, so check local state laws.

## Length of Time a Will is Valid

Your Will remains valid for an unlimited period of time, unless it is revoked. It may be revoked in several ways: by cancellation, destruction, or by making a new Will. Also marriage and divorce affect disposition of assets by Will.

## Revising a Will

You may revise an existing Will in one of two ways:

- Preparing a codicil, which is an amendment to a Will. This is best if you are making only minor changes. A codicil must be prepared, signed and witnessed in the same manner as a Will. Make sure that you make the changes clear so there is no misunderstanding.
- Preparing a new Will, which will automatically revoke prior Wills and codicils. It is advised that you either destroy the prior Will or write “revoked” on it so that it is not confused with your more recent Will.

## Disposition of Property in the Absence of a Will

If you die without a Will (intestate), your estate will be divided according to Maryland law. Briefly, this provides that a surviving spouse takes one-half of the estate if there is a minor surviving child; \$15,000 and one-half of the remainder if there is no minor child; the whole estate if there is no surviving child or parent. The entire estate (in excess of the spouse’s share if there is a surviving spouse) is distributed as follows:

- To surviving children equally
- If no surviving children, then to the deceased’s surviving parents equally or if only one, to that one
- If no surviving children or parents, then to the living descendants of the parents of the deceased
- If none of the above, to paternal and maternal grandparents, but if none then to the living descendants of both sets of grandparents of the deceased
- If none of the above, to great-grandparents, but if none then to the living descendants of all great-grandparents of the deceased
- If none of the above, to living step children equally if born to a non-divorced legal spouse

If the deceased left no surviving spouse or relations entitled to the estate, the entire estate is paid to the local Board of Education, or, if the deceased was a recipient of long-term care benefits under Maryland Medical Assistance at the time of death, to the Department of Health and Mental Hygiene.

Maryland inheritance tax of 10% applies only to collateral heirs (those other than a spouse, children, parents, siblings, grandchildren, stepchildren).

Persons in Maryland and across the country are increasingly using mediation to resolve conflicts with neighbors, landlords, businesses, agencies, service providers, and family members rather than going to courts or using other formal legal approaches. The Maryland Department of Aging has been working with the Baltimore County Department of Aging, senior organizations, courts, mediators, attorneys, and others to help expand the understanding and use of mediation by seniors and their families.

Mediation is a process in which people meet in a safe, private, confidential setting to work out a solution to their problem with the help of a neutral person (the mediator). The mediator does not decide who is right or wrong and does not force the parties to settle their conflict or to accept particular terms in an agreement. Instead, the mediator helps the parties to explain the problem and concerns as they see them and to present their ideas on how the matter can be resolved. Mediation is generally less expensive and can provide a faster resolution than litigation. If the parties do not come to an agreement, they are entitled to take whatever other legal action they desire.

In some instances, parties in court in Baltimore County may be referred to mediation before their suit will be heard. The court may do so in family disputes involving child custody and visitation (including grandparent requests), in contested adult guardianship matters, and other issues. The court does not require the parties to come to an agreement in mediation - but to try mediation before requiring the court to settle the dispute. Mediation may also be recommended in small claims and other issues. Such services are ordinarily provided without charge by court mediators.

Persons may also decide to use mediation services in resolving disputes or making difficult decisions such as how to provide care for a family member with health problems or special needs. Mediation services are available without charge or at a sliding fee (based on income) by volunteer mediators of the Mediation and Dispute Resolution Center of Baltimore County, who will schedule mediations at convenient times and locations throughout the county; and by private mediators at rates that may be divided between parties.

The Mediation and Dispute Resolution Center of Baltimore County is at 2926 Lakebrook Circle, Baltimore, MD 21218, **410-242-0388**, **[www.mediateinbaltimorecounty.org](http://www.mediateinbaltimorecounty.org)**. A “Consumer’s Guide to Mediation Services” and such information as how to find a mediator can be obtained from the Maryland Mediation and Conflict Resolution Office, 900 Commerce Road, Annapolis, MD 21401, **410-841-2260**, and from **[www.courts.state.md.us](http://www.courts.state.md.us)**. (click “mediation/adr.”)

## Kinship Care

Many grandparents are faced with the tough job of raising grandchildren. Often these seniors are providing what is known as “informal kinship care,” providing for the child’s needs without a formal guardianship arrangement. Recent Maryland law has made it possible for these grandparents to sign affidavit forms provided at the county board of education and health department that allow them to enroll the children in school, consent to health care decisions, and apply for medical and public assistance entitlements. The law specifically provides that the child may be enrolled in a school in the district where the caregiver lives.

## Standby Guardianship

In Maryland a parent can file a petition for judicial appointment of a standby guardian of a child. The guardianship goes into effect when the parent becomes incapacitated or upon their death. The standby guardianship allows for an uninterrupted transfer of parental rights in situations such as when a parent is facing a terminal illness or may be called away for military service.

## Grandparent Visitation Rights

Divorce can be an emotional time for families. Sometimes, grandparent visitation is overlooked or not considered at all in custody arrangements by the parents. Grandparents can petition the court to allow them visitation rights to the child. The courts use a “best interest of the child” standard to determine whether visitation is allowed. The Maryland Court of Appeals in *Koshko V. Haining* recently upheld a grandparent’s visitation rights schedule.

## Resources

The Kinship Care Resource Center of Maryland  
2553 W. North Avenue, Baltimore, MD 21216-3698  
Phone: 410-951- 4177

The Maryland Department of Aging Grandparents Resource Directory  
[www.mdoa.state.md.us/gpintro.html](http://www.mdoa.state.md.us/gpintro.html)

Maryland’s Kinship Care Program  
[www.dhr.state.md.us/how/chldprnt/kinship.htm](http://www.dhr.state.md.us/how/chldprnt/kinship.htm)  
Phone: 410-767-7521

## Age Discrimination in Employment

The most serious areas of discrimination for seniors are in employment and housing. Federal law protects those over 40 from employment discrimination based on age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. If you believe that you have been a victim of age discrimination it is usually mandatory to file a complaint with a local, state, or federal agency that handles equal opportunity matters before filing suit. It is important to note that discrimination law is very strict regarding the time that you have to file a complaint after learning of the discriminatory incident, in some cases less than 180 days. The following agencies handle complaints of discrimination based on age:

EQUAL EMPLOYMENT  
OPPORTUNITY  
COMMISSION  
10 South Howard Street  
– Third Floor  
Baltimore, MD 21201  
**410-962-3932**

MARYLAND COMMISSION  
ON HUMAN RELATIONS  
Williams Donald Schaeffer Tower  
6 St. Paul Street  
Baltimore, MD 21201  
**410-767-8600**

BALTIMORE COUNTY  
HUMAN RELATIONS  
COMMISSION  
400 Washington Avenue  
– Room 106  
Baltimore, MD 21204  
**410-887-5917**

## Changes in Bankruptcy Law

Changes to the federal bankruptcy laws in 2005 make it more difficult to file for bankruptcy. Before filing one must complete credit counseling with a federally approved counseling agency. If the agency recommends a payment plan this must be submitted to the court along with certificate showing that you completed the counseling. An income and means test is then applied to determine whether a payment plan is feasible. After the court orders the payment plan or discharge of debt the filer must then return to credit counseling to learn personal financial management. Consultation with an experienced bankruptcy lawyer is recommended.

## Same Sex Couples

Same-Sex couples, especially as seniors, must think seriously about arranging medical and financial matters. Without the same rights as married couples to hospital visitation and to make health care decisions for their partners, having well-crafted advanced directives is imperative. Additionally, Same-sex couples, as unrelated individuals, must pay a 10% inheritance tax on all property passed upon death, even jointly-held property such as a home. Same-sex couples face many other legal challenges, and consultation with an experienced estate planning attorney is a must.

# Baltimore County Department of Aging Services

Below are listed the major programs and services of the Baltimore County Department of Aging. All can be accessed by calling Senior Information and Assistance at **410-887-2594** or visit **[www.baltimorecountyonline.info](http://www.baltimorecountyonline.info)**.

## **Baltimore County Senior Information and Assistance**

One phone number (410-887-2594) provides telephone assistance regarding services and benefits available to seniors, their families, caregivers and professionals. Three nationally certified information and referral specialists give information and guidance, and make referrals to link the caller to appropriate resources.

## **Baltimore County Volunteers**

Housed in the Department of Aging, this county organization coordinates the volunteer needs of residents, nonprofits and government agencies.

## **Caregivers Program**

Information, support and stipends are offered to people caring for elderly relatives, as well as grandparents caring for minor children. There are workshops and seminars, individual consultations and a free bimonthly newsletter, "Caregiver Connection."

## **Center Connection**

The Center Connection program, operating in eight senior centers, is a service for Baltimore County seniors age 60 and over who need support connecting to the activities and services provided by the senior center. A Center Connection Specialist provides assistance in developing an activity schedule, participating in the Eating Together lunch program, connecting with center members and providing information and referrals to other services.

## **Community Outreach**

This program provides casework services, including short-term assistance and long-term case management. Staff members make home visits and meet seniors in senior centers to assist them and their families in accessing programs and services.

## **Congregate Meals (Eating Together)**

Forty-four nutrition sites, located in senior centers, senior apartments and other locations, provide at least one hot meal weekly for seniors. Participants make anonymous contributions toward the cost of the meals.

## **CountyRide**

Low-cost, door-to-door transportation is provided for county residents 60 years of age and older, disabled clients between the ages of 21 and 59, and rural county residents of all ages. Preregistration is required.

## **Elder Abuse Prevention Program**

The Department of Aging provides education and training, and conducts an active campaign to help identify and prevent the abuse, neglect and exploitation of vulnerable elders.

## **Emergency Meals**

Shelf-stable meals are made available to seniors in Baltimore County for use in times of crisis.

## **Employment Services**

The Department of Aging manages a federally funded senior employment program that provides on-the-job training for eligible seniors. Free year-round employment services are provided to businesses with employment opportunities for adult workers.

## **Fitness Centers**

Five of our regional senior centers, Ateaze, Bykota, Catonsville, Cockeysville, Liberty, Parkville, and Pikesville have senior-friendly fitness centers that are operated in partnership with Towson University's College of Health Professions. Each one has state-of-the-art equipment designed to improve cardiovascular endurance, flexibility, strength and muscular endurance of older adults. All senior fitness center participants receive an individualized exercise prescription and a thorough orientation following medical clearance by their physician.

## **Guardianship**

The Director of the Department of Aging is appointed by the court as Guardian of Person for Baltimore County seniors who are unable to make decisions for themselves and who have no one else to take responsibility for them.

## **HealthScope**

Through partnerships within the community, HealthScope provides a variety of health promotion classes and screenings for the county's older adults.

## **Home-Delivered Meals**

Through a contract with Meals on Wheels of Central Maryland, subsidized home delivered meals are provided to eligible clients in Baltimore County.

## **Home Team**

Volunteers, age 18 and older, provide in-home (non-medical) services to eligible people age 60+ who need assistance to maintain independence in their own homes.

## **Language Interpreting Services**

The Department of Aging provides access to interpreter services as needed in order to determine eligibility, provide services or arrange rides on CountyRide to seniors with limited ability to speak English.

## **Legal Services for Senior Citizens**

Free legal assistance, consultation and/or representation provided to seniors age 60 and above regarding health care issues, income maintenance, nutrition, housing and utilities, protective services and unemployment benefits. Referrals to legal resources for issues not listed above. Call 410-951-7750 or 1-800-896-4213.

## **Loan Closet**

Baltimore County seniors and their families may borrow medical equipment such as walkers, commodes, bath chairs, canes and wheelchairs, free of charge.

### **Medicaid Waiver for Older Adults**

This statewide program provides services in the community to low-income adults, age 50 and over, who would otherwise require nursing home placement. This program provides individuals with the opportunity to obtain needed services in their home or an assisted living facility.

### **Ombudsman Program**

This is an advocacy program that investigates and acts upon problems and concerns of nursing home and assisted living residents and their families.

### **Operation TRIAD**

The Telephone Reassurance Information Auto Dial program allows preregistered seniors to receive a recorded telephone message from the Police Department alerting them to crimes against the elderly in their neighborhood.

### **Orange Card**

Emergency contact information and medical information can be listed on this card, designed for a wallet and also to be posted on the refrigerator, for easy access by emergency medical personnel.

### **Project DOCS (Doctors Offering Caregiver Support)**

This program provides information to caregivers through participating doctors and local hospitals. Participating physicians also distribute the Family Caregiver Health Guide, a handy tool that helps organize one's medical history.

### **Publications**

The Department of Aging publishes books, directories and pamphlets providing information on topics such as preventing fraud and scams, good nutrition, housing options, choosing a nursing home and caregiving. Latest publications include books on hearing and vision, an interactive CD ROM called "Taking Care of Mom and Dad," and a "Family Caregiver Health Guide."

### **Retired and Senior Volunteer Program (RSVP)**

This program matches individuals 55 years and older with rewarding volunteer positions in nonprofit and governmental organizations in Baltimore County.

### **Senior Assisted Living Facilities**

The Department of Aging provides quarterly monitoring of Baltimore County assisted living facilities with five to 15 residents.

### **Senior Box Office**

This volunteer program coordinates the distribution of donated tickets for theaters, museums, sports and special events to registered senior members who have paid a nominal fee to join.

### **Senior Centers**

There are 19 senior centers located throughout Baltimore County that serve as community focal points. Most centers are accredited by the National Institute of Senior Centers (NISC). Health promotion screenings, lifelong learning creative arts, fitness, nutrition and health education, special events, community and intergenerational projects, and volunteerism are major service elements in senior centers.

**Senior Craft Gallery** items crafted by seniors are accepted for sale on consignment. Call 410-887-2594 for more information.

### **Senior Digest**

This low-cost newspaper, mailed to subscribers' homes eight times a year, has useful and interesting information on issues affecting seniors.

### **Senior Expo/ Baby Boomer Expo**

This is an exciting annual two-day information and resource exposition for seniors, their families, professionals and business owners, held every October at Timonium Fairgrounds. This event now features over 200 exhibits, health screenings and flu shots, a job fair, a volunteer fair and continuous entertainment. All proceeds provide emergency assistance for Baltimore County seniors in need.

### **Senior Health Insurance Assistance Program (S.H.I.P.)**

Volunteers are trained to provide seniors with confidential health insurance counseling. Counselors help clients to understand Medicare and Medigap supplemental policies, prescription drug discount programs, long-term care insurance and private health insurance, as well as the new Medicare Prescription Drug Program for medications which began in 2006. Speakers are available by calling 410-887-2059.

### **Senior Medication Protection (SMP)**

This program teaches seniors how to identify possible billing fraud or abuse by medical providers. Also, CAMM assists beneficiaries who believe they have been the victims of Medicare/Medicaid fraud or abuse.

### **Senior Resources**

Annual publication of resources available for seniors throughout the county as well as potential partnership/sponsorship opportunities.

### **"Senior Solutions" Television Show**

Six television shows are produced each year on Comcast Channel 25 to showcase the latest information on programs and services for seniors, their families and caregivers in Baltimore County. This 30-minute show airs five times weekly: Monday at 9am, Wednesday at 11:30am and 9pm, and Friday at 7pm and 10:30pm.

# Elder Abuse is a Crying Shame



BALTIMORE COUNTY  
\*\*\*\*\*  
County Executive Jim Smith  
and the Baltimore County Council

To Report 410-853-3000 • For Information 410-887-2594