

# O'DONNELL & ASSOCIATES



ATTORNEYS AT LAW  
1190 CHESTNUT STREET MENLO PARK CA 94025  
650/853-7183 WWW.ESTATEANDTRUSTPLANNING.COM

## ESTATE PLANNING FOR LONG TERM CARE



*Matthew O'Donnell, Esq.  
is certified by the State Bar  
of California Board of  
Legal Specialization as  
a Specialist in Estate  
Planning, Trust and  
Probate law.*



*All of us here at  
O'Donnell & Associates  
are committed to giving  
our clients peace of mind by  
providing comprehensive  
estate planning solutions  
and services.*



*We are happy to answer  
your questions and address  
your estate concerns.  
Call us at 650/853-7183*

Peggy Smith (80) is recently widowed and has one adult child, Catherine. Peggy lives comfortably on Social Security benefits and her life savings of \$150,000. She owns a home valued at \$500,000 and an automobile worth \$5,000. Recently, Peggy was hospitalized after suffering a stroke and is about to be discharged into a nursing home on her doctor's recommendation. Peggy has asked Catherine to assist with financial and medical management during her convalescence.



The following questions and answers illustrate possible solutions to the many complex and bewildering legal and estate planning issues confronting Peggy and her family.

### ***What resources are available to assist Catherine in finding a suitable nursing home for her mother?***

California Advocates for Nursing Home Reform (415-474-5171) maintains information regarding Medi-Cal certification and standing of skilled nursing facilities. Catherine should also consult with her mother's family physician, social worker and County Ombudsman for recommendations.

### ***What is the current cost of a skilled nursing facility?***

Average monthly charges can range from \$5,000 to \$7,500, depending on services provided.

### ***What benefits are available to help defray the cost of Peggy's nursing home care?***



### **Private Insurance:**

Catherine should review Peggy's medical insurance policies to determine coverage. Medical insurance policies usually pay for physician and hospital care, but seldom cover the cost of long-term care unless purchased specifically for that purpose.



## Medicare:

Medicare is a federal insurance program that provides limited medical care benefits to recipients of Social Security and Railroad Retirement. Medicare insurance may also be purchased by those not receiving Social Security.

Although Peggy may be successful in obtaining limited benefits for her hospital and physician expenses, Medicare often denies coverage for nursing home care, paying for an average of only twenty-two days.

## Medi-Cal:

Medi-Cal is a Federal and State funded health benefits program that pays the full cost of skilled nursing home care for low income persons who receive either Supplemental Security Income, Aid to Families with Dependent Children benefits, or who are aged, blind, or disabled with limited assets of less than \$2,000 for a single person.

The following exempt resources are not considered assets: The patient's home; personal effects; automobile; limited life and term insurance; retirement benefits, particular annuities; prepaid burial plans; funds and plots and other real property of minimal value and income. All other assets are non-exempt and counted in determining eligibility.

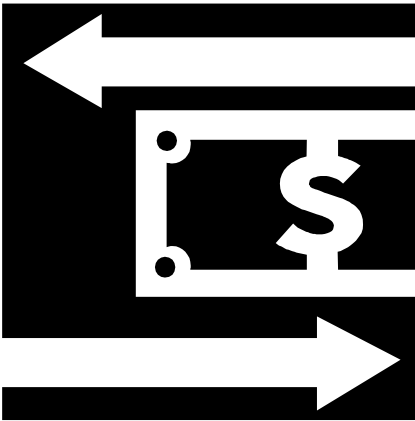
***Since Peggy's non-exempt resources (\$150,000) exceed the Medi-Cal resource limits, how can she eventually qualify for Medi-Cal benefits without exhausting all her savings on nursing home expenses?***

## Spend-Down:

Peggy may reduce her non-exempt assets exceeding a value of \$2,000 by paying off any mortgages on her home, making home repairs, or purchasing other exempt assets (personal property, automobile, burial plot or burial plan, life insurance, annuity).







## Transfer of Assets:

Transfers of exempt assets (including the family residence) are permissible. A person who transfers non-exempt assets for less than fair market value to persons other than his/her spouse will be subject to a period of ineligibility for Medi-Cal benefits. This period of ineligibility can be shortened with proper planning.

## *Does the Medi-Cal Program require co-payments?*

Peggy will be required to pay her retirement and interest income to the nursing home as a share of cost.

## *What if Peggy's assets grow after her qualification for Medi-Cal?*

Exempt assets may be acquired or may grow without disqualifying Peggy from future Medi-cal benefits. Peggy may possess no more than \$2,000 in non-exempt assets while on Medi-Cal.

## *What other issues should Peggy consider before applying for public benefits?*

Economic issues will certainly dominate Peggy's decision to apply for public benefits, but issues of control and the quality of care must not be ignored. Nursing homes are prohibited from evicting a private pay patient who transfers to Medi-Cal status, but may discriminate on admission, making the timing of Peggy's eligibility of critical concern.



## *Can the state place a claim on the family residence to recover Medi-Cal benefits paid for Peggy's care?*

Under certain circumstances, the State may place a claim or lien on the family residence to recover Medi-Cal benefits paid for Peggy's care. Peggy should consider transferring title of the exempt family residence into Catherine's sole name to avoid future Medi-Cal claims after careful examination of the strategies available to avoid future capital gains sales tax consequences.

## *How can legal planning documents be signed if Peggy is mentally incapacitated?*

### Conservatorship:

A Conservatorship is a court proceeding in which a Judge appoints a person to take charge of the property and/or person of an incapacitated individual. If Peggy becomes incapacitated, Catherine can be appointed Peggy's Conservator with the power to sign documents, manage property and/or make health care decisions on her behalf.





## Durable Power of Attorney:

A Durable Power of Attorney is a document in which a competent person gives another trusted individual (designated as the agent) the power to manage his or her property and/or make health care decisions on his/her behalf. A durable power remains in full force even after the maker becomes incapacitated. However, an agent is prohibited from making gifts unless the Durable Power of Attorney provides express authorization.

A Living Trust is a document wherein title to property is transferred to a trustee for management and distribution according to the wishes and instructions of the trustmaker (called the "trustor" or "settler"). The trustmaker can also be the trustee.



## Should Peggy consider making a Living Trust?

A Living Trust is an excellent vehicle for providing estate management and probate avoidance. However, a Living Trust will not help Peggy qualify for Medi-Cal benefits and will not protect her property from Medi-Cal estate claims or liens.

## If Peggy dies leaving her estate to Catherine, will Catherine owe estate tax?

If Peggy's estate is below \$5,000,000 at her death, Catherine will owe no estate tax. The repeal will expire at the end of 2012, returning the exemption to \$1,000,000 under the old law.



**CONCLUSION:** *If you are considering setting up an Estate Plan that includes Long-Term Care provisions, we can help with all phases of planning and implementation. Please call our office at 650/853-7183 or check our website at [www.estateandtrustplanning.com](http://www.estateandtrustplanning.com). We are here to help you!*

*This is a general discussion of some of the most critical legal and estate planning issues. Due to periodic changes in the law and the complexities and peculiarities of each situation, no action should be taken without first consulting a lawyer.*

*Decisions on the signing of documents, transfer of property, and application for public benefits must be viewed in the context of respecting the wishes of the persons involved. No document should ever be signed without court approval unless the maker is competent and fully understands and approves the contents and effect of the document.*

*To comply with the U.S. Treasury regulations, we must inform you that any U.S. federal tax advice contained in this article was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.*