

Alternatives to Nursing Homes

11/20/08 Audio Conference

Introduction:

- Upcoming audio conferences: 11/20 at 10:00 on Care Issues in Nursing Homes--Joani Latimer, the State Long Term Care Ombudsman will be the speaker; and 12/3 at 10:00 on Resident's Rights and Surrogate Decision Making--Joani Latimer and Kathy Pryor will be the speakers.
- Appreciate your help in getting the word out, particularly to caregivers, family members and older adults. These audio conferences are really designed for families and caregivers, but we also welcome professionals who work with elderly.
- Materials about the previous sessions on choosing a nursing home and admissions issues and on nursing home discharge rights are available on www.valegalaid.org under Elder Law. Materials from today's session will also be available at that site within a week.

Our topic today is Alternatives to Nursing Homes: Options for those who prefer to remain in their homes but need assistance to do so. I am Janet James, the legal services developer at the Virginia Department for the Aging. With me today is Kathy Pryor, elder law attorney with the Virginia Poverty Law Center.

I assume that many elderly or disabled persons would prefer to stay at home but are forced by their physical condition to move into a nursing home. What kinds of options are available for those who would prefer to remain at home or in the community?

There are several different types of options which we will talk about today. The first thing to look at is what the elderly or disabled person's limitations are and what kinds of supportive services he or she needs in order to continue to live independently in the community. Let me just list some general types of options which might be helpful and then we'll discuss each in some more detail in a minute.

- Services to enable someone to handle their finances
- Services to enable someone to continue to function independently in the home

- Family caregiver supports
- Accessible housing or physical modifications to existing housing
- Reasonable accommodations
- The right to age in place
- PACE and Home and community based waivers under Medicaid
- Assisted living facilities and continuing care retirement communities (for those who can no longer live at home but may not yet need nursing home care)
- Money Follows the Person (for those currently in a nursing home but who would like to try to return home or to the community to live if they had the necessary supportive services).

Before we get into the specific options, are there some general factors to consider in assessing available options for a loved one?

Yes. One basic thing to consider is what the capacity of the person is, the risks of the current or proposed living arrangement, and the availability of an adequate support system.

Sometimes family members disagree over the basic philosophical question of whether to maximize protection for the loved one or to maximize independence. We all accept a certain amount of risk in life. Every time we drive a car or step out of our house—or, if we're elderly or physically frail or unsteady on our feet, even when we move around within our homes—we assume a certain amount of risk. Sometimes one adult child will be anxious to protect Mom from risk by putting her in a nursing home where she will have people around all the time should she have a fall, for example, but another adult child will insist that Mom stay at home because that's what she's always wanted. Often there is no easy answer-- both children clearly love their mom and want what's best for her. Having an honest discussion within the family and including the elderly person in that discussion can be very helpful in determining what is most important to Mom and then trying to find the services necessary to limit the risk and support her as much as possible while still maximizing her independence.

Occasionally, family members are in so much conflict over what to do about Mom that a calm discussion seems impossible. In such cases, mediation services can be helpful to try to sort out feelings and to explore various options in a confidential setting and can enable families to reach more creative and mutually agreeable solutions.

It is also important to look at the specific limitation(s) the elderly loved one has and target the assistance to those specific limitations while allowing the person to retain independence in other ways where he or she is still functioning effectively. For example, if Dad isn't paying his bills on time, there are some services which might help him with that issue but still enable him to retain full independence in other realms.

Let's start with that problem or limitation of an elderly person who can no longer handle his own finances. What kinds of help or services are available options for someone who needs help in paying their bills or taking care of their finances?

- Durable Power of Attorney
- Representative Payee for federal benefits—Social Security, SSI, Veterans, Civil Service and Railroad Retirement.
 1. Authority of rep payee is limited to handling only the public benefit, not to managing any other accounts or assets.
 2. Is simple and inexpensive; does not require finding of incapacity and allows the person to continue to make decisions in other arenas.
 3. Some reporting requirements but limited oversight or safeguards so misuse may not be detected.
- Joint Bank Account—easy and inexpensive to establish and enables the joint account holder to manage the income of the incapacitated person. But risky since the joint owner could withdraw all the money and account could be subject to creditors of the co-owner.
- Direct Deposit of Benefits and Automatic Bill Payment
 1. Allows individual to have bills paid automatically on time every month on the date selected by the individual and avoid late or missed payments; reduced risk of termination of services.

2. Individual must authorize automatic transfer of payment from his account to the billing entity so may not be option for someone unable to do that.

➤ Money Management or Bill Paying Services

1. Help paying bills, balancing checkbook, etc. through an individual or organization.
2. Need to be sure provider has system of cash controls to avoid mismanagement and is bonded and insured to protect client from theft or loss.
3. Useful for those without a POA and without sufficient assets to warrant a trust; individual remains in control and no determination of incapacity.
4. Disadvantages: lack of oversight, potential for abuse; not available in all communities; person must have sufficient capacity to direct the provider.

➤ Third Party Notification

1. By Utilities—allowing customer to designate a third party to be notified if bills are not paid on time.
2. By Landlord: Va. Code 55-248.9:1.B allows a tenant to designate a third party to receive duplicate copies of summons and written notices from the landlord and requires the landlord to send such notices to the designated third party at the same time as they are sent to the tenant. The hope is that the designated third party could intervene—to make sure the rent is paid or to help resolve other problems—before an unlawful detainer is issued and the tenant is faced with possible eviction.

What other kinds of services are available to enable someone who isn't functioning well in other ways to remain in their home?

There may be some assessments and relatively quick fixes to some problems. For example, if an elderly person is having falls at home, there

may be medical or physical reasons for those falls. A doctor's assessment might identify a treatable condition or medication side effects which can be corrected to eliminate or reduce the fall risk. A fall assessment can also be done to evaluate the home environment to see whether changes in lighting or physical changes in the home such as getting rid of throw rugs or changing the placement of furniture can be made which will reduce the risk of future falls. A PERS unit or personal emergency response system, an electronic device to call for help should the person fall or have a medical emergency can also greatly reduce the anxiety of family members and of the elderly person about living alone.

Someone who is not taking medications properly may just need to have their medications set out clearly a week at a time or need some other form of medication management.

A person who can no longer fix his own meals might benefit from a congregate meal program or Meals-on-Wheels.

A person who has medical or psychological problems which restrict her ability to keep her apartment clean might benefit from companion or chore services and those services might make the difference in her ability to remain at home.

If you or your loved one would like to explore what services are available in your locality, you can contact your local area agency on aging [to find the area agency on aging for your locality, click on this link:

<http://www.vda.virginia.gov/aaalist.asp>.] or the local department of social services [click on this link for the Virginia Department of Social Services: <http://www.dss.virginia.gov/family/as/> and, for a listing of the local departments, click on <http://www.dss.virginia.gov/localagency/>.]

What do you mean by family caregiver supports?

Sometimes a family could care for their elderly loved one at home if the family just had some support.

- Respite care (to care for the loved one while the primary caregiver is at work or to enable the caregiver to get away for a vacation or break) is one form of caregiver support.
- There are also many adult day care programs which provide activities, meals, and socialization during the day for the

elderly person while the caregiver works (or to reduce the isolation of an elderly person living alone).

- Virginia also has a Caregivers Grant Program which pays up to \$500 per year for financially eligible caregivers who have provided un-reimbursed care for a person who is aged, disabled or infirm.

Of course some of the other services mentioned earlier could also help supplement the support a family member can provide and could enable the family member to care for their loved one in their own home or to support the elderly person who is continuing to live in her own home.

Let's talk about someone who becomes physically disabled, requiring him to use a wheelchair or to need a living unit which has wider doors, a wheelchair ramp, etc. Is there assistance which could enable such a person to remain in the community and avoid nursing home care?

- **Accessible and Affordable Housing.** Whether someone is able to remain in the community may depend on the availability of accessible housing which is also affordable. Public Housing Authorities are required to encourage participation in the housing choice voucher program of those owners who have accessible units, and some PHA's give preferences to persons with disabilities. There are some special purpose vouchers designed specifically for disabled persons or families. If you are interested in looking into these special purpose vouchers for disabled persons, contact your local public housing authority.
- In addition, if you would like to find out about accessible housing in your locality, there is a state online housing registry at www.accessva.org. A national database of accessible apartments in more than 155 major metropolitan areas, developed by the National Accessible Apartment Clearinghouse, can be accessed free of charge at www.accessibleapartments.org.
- **Physical Modifications.** Certain federally assisted housing facilities which are subject to § 504 of the Rehabilitation Act of 1973 must provide mandated modifications, at the landlord's expense, if the modification is necessary for the disabled tenant to make effective use of the program. Other private owners participating in the housing choice voucher program or other tenant-based programs may not be

subject to the more stringent Rehabilitation Act requirements, but are subject to the Fair Housing Act, which requires a landlord to allow a disabled tenant to make reasonable modifications to the rental unit, at the tenant's expense. The tenant may be required to restore the unit to its original condition if the modification would interfere with the next resident's full enjoyment of the unit (but many alterations would not interfere with the next resident's full enjoyment of the unit and would not require restoration of the unit). Grants to modify rental units or homes to make them accessible for persons with disabilities may be available through the Virginia Housing Development Authority (VHDA) or through the Department of Housing and Community Development (DHCD). For more information about VHDA, click on this link:

http://www.vhda.com/vhda_com/front_page/default.asp

and for more information about DHCD, click on this link:

<http://www.dhcd.virginia.gov/>.

What if a disabled person simply needs an exception to a landlord rule or an adjustment in policy in order to remain in her apartment? Is there anything that can be done?

Yes, sometimes something called a “**reasonable accommodation**”— an exception or adjustment to a rule or policy imposed on tenants by the landlord-- is all that is needed for a disabled person to remain in the community in independent living. Under the Fair Housing Act, landlords are required to make reasonable accommodations in rules, policies or services when such an accommodation is necessary to allow the person with the disability equal opportunity to use and enjoy the dwelling. The tenant must request an accommodation, establish the existence of a disability, and show that the accommodation is necessary to afford the tenant equal opportunity to use and enjoy the unit. Once the tenant does this, the landlord must agree to the accommodation unless the landlord can show that granting the accommodation would impose an undue burden or would fundamentally alter the nature of the landlord's operations. For example, if a tenant with a mobility impairment asked the landlord to take him to the grocery store and help with his grocery shopping and the landlord did not provide any transportation or shopping services for his other tenants, this request might be deemed a fundamental alteration of the landlord's operations such that it would not be a ‘reasonable’ accommodation.

On the other hand, some types of accommodations which have been found to be reasonable include: an assigned **accessible parking space** for a resident with a mobility impairment; allowing a deaf tenant to have an **assistance animal** despite the normal ‘no pets’ policy; a transfer to a **first floor accessible unit** for someone with a degenerative spinal disease making it difficult for her to climb steps; allowing **exception rent** (a higher payment standard) so that the disabled tenant can obtain a unit that meets her particular needs; allowing a **live-in aide** if one is essential to the care and well-being of the disabled family member and the aide is not obligated to support the disabled person and would not be living in the unit except to provide supportive services; allowing the disabled person to rent a **unit owned by a relative** as an exception to the normal prohibition of approving a unit for a voucher if the owner is a close relative, etc.

What assistance is available for people who need help with activities of daily living (e.g., eating, bathing, dressing, toileting, etc.) but who still want to live at home?

- Some parts of the state have a **PACE (“Program for All-Inclusive Care for the Elderly”)** program for people over 55 who meet nursing home admission criteria but who prefer to live at home. PACE involves an interdisciplinary team that determines the services the individual needs and provides all the necessary services along with case management services. The PACE program has enabled many seniors to age in place in their homes. PACE is already active in the Tidewater area and is beginning in the Lynchburg, Hampton Roads, Southwest Virginia, and Richmond metropolitan areas. If you’d like to know more about the national PACE program, click on this link: http://www.cms.hhs.gov/QualityInitiativesGenInfo/10_PACE.asp or for more information about Virginia’s PACE program, click on <http://www.dmas.virginia.gov/ltc-PACE.htm>.
- **Home and Community-Based Waivers under Medicaid.** There are a number of home and community-based waiver programs, covered by Medicaid, which are available to those who qualify financially and who meet nursing home admission criteria (that is, they have medical nursing needs and they have functional limitations in several activities of daily living (‘ADLs’), such as eating, bathing, dressing, toileting,

etc.). Waivers can enable a person to have an aide come into their home daily to provide personal care services to help with the ADLs, or can enable a person to go to adult day care during the day, or to receive respite care when the primary caregiver is away. Other services are available under some of the waivers. The person must be eligible for Medicaid, but the income criteria are significantly different for waivers than for 'regular' Medicaid. An applicant must be screened to see if he or she meets the nursing home admission criteria. To apply and be screened, you should contact the local Department of Social Services. If eligible, a certain portion of the disabled person's monthly income may have to be used to pay for the in-home care and then Medicaid will pay the difference. This amount varies depending on the specific waiver program, but for the elderly and disabled waiver, as of January 2008, a disabled person can keep \$1051 of her own income each month for other expenses (called the 'personal maintenance allowance'). Income over this amount must normally be applied to the cost of care. The personal maintenance allowance is adjusted annually and, for the elderly and disabled waiver, is calculated at 165% of the SSI level. Community-based waivers are an important tool for disabled persons who want to remain in their homes. For more information about these community-based waivers covered by Medicaid, click on the DMAS website: <http://www.dmas.virginia.gov/ltc-home.htm>.

If an elderly woman and her family decide that she can no longer live at home but she does not yet need nursing home care, what options are available?

- **Assisted Living Facilities.** An assisted living facility is a primarily residential setting which offers varying degrees of supportive services for people who are able to live fairly independently but need some assistance with medications, ADLs, or meals. An assisted living facility is not primarily medical (it may or may not employ professional nursing staff) and it provides less intensive nursing and medical supportive services than a nursing home. It may be a good option for someone who may not be safe or comfortable living alone in the community, even with in-home services, but who does not yet need nursing home care.

- **Continuing Care Retirement Communities**—these are facilities which include independent living, assisted living and nursing home components and provide board, lodging and nursing services. A person coming into a CCRC signs an admissions agreement and pays a usually substantial entrance fee (and will pay a monthly fee) which then assures the person that he will be cared for in this facility for the duration of his life, regardless of the level of care he requires.

- **The Right to Age in Place.** There have been a number of lawsuits to enforce the Fair Housing Act and specifically to challenge restrictions some retirement communities have placed upon the use of assistive devices such as wheelchairs or motorized carts, and to challenge ‘independent living requirements’ imposed by some providers or forced transfers of residents from one part of the facility to another with a higher level of care because of the resident’s perceived inability to live independently. Most of these challenges have been successful, interpreting the Fair Housing Act’s ban on handicap discrimination to prohibit housing providers from imposing a requirement that tenants must be capable of independent living and must move to a higher level of care whenever the facility determines that the resident is no longer able to live independently. In one case, an 80 year old resident of a continuing care retirement community (“CCRC”) who had ALS or Lou Gehrig’s Disease sued when the retirement community tried to force her to move to the nursing home level of care, based on the CCRC’s policy which prohibited the long-term use of personal care attendants in its apartments and which gave the management unilateral authority to determine where residents should be placed. The resident had hired personal care assistants at her own expense and had never asked the CCRC to provide her any additional services. Although the case settled without a court decision, the facility did agree to allow residents in the future to use personal care assistants and assistive devices. Other cases have struck down “ability to live independently” eligibility requirements as violating federal law. The court in one case concluded that, as long as an applicant can meet the objective requirements of tenancy, he should not be denied housing simply because he receives medical assistance or other aid which enables him to satisfy those objective requirements of tenancy.

What if your loved one is already living in a nursing home, but would prefer to live at home. Are there any options for him?

There is a new program under Medicaid called **Money Follows the Person** which is designed to enable people to move from nursing homes and other institutional settings back into the community. Virginia's Money Follows the Person program, which began July 1st of this year, hopes to move more than 1000 people out of nursing homes and other facilities over the 4-year demonstration period.

To be eligible for the MFP program a person must

- have lived for more than 6 months in a nursing home, ICF/MR or long-stay hospital;
- be a resident of Virginia;
- be Medicaid eligible for at least one month at time of discharge;
- qualify for one of five waiver programs (Elderly or Disabled with Consumer Direction Waiver; HIV/Aids Waiver, Mental Retardation Waiver, Technology Assisted Waiver, or Individual and Family Developmental Disabilities Support Waiver); and
- be moving to a qualified residence (a home that the individual or his family owns; an apartment with an individual lease; or a residence in a community-based residential setting in which no more than 4 unrelated individuals reside).

Individuals participating in Virginia's MFP program will have either a transition coordinator or a case manager to assist with all the details of making the transition. The transitioning person can qualify for services including

- Up to \$5000 in environmental modifications with the possibility of supplemental modifications if needed;
- Lifetime financial assistance of up to \$5000 for up-front essential household expenses at time of transition;
- Assistive technology (up to \$5000 annual limit);
- Personal Emergency Response System and Personal Emergency Response System medication monitoring;
- Use of 2-1-1 Virginia as the third tier of their emergency back-up system;
- Personal care (consumer and/or agency directed);
- Respite care (consumer and/or agency directed).

Anyone interested in finding out more about the Money Follows the Person program can consult the MFP website at <http://www.olmsteadva.com/mfp> or contact Jason Rachel at mfp@dmass.virginia.gov or call him at (804) 225-4222.