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New Jersey or Pennsylvania: Where Should My Loved One Be?

By Jerold E. Rothkoff, Esq.

Rothkoff Law Group has offices in both New Jersey and Pennsylvania. Five offices in Pennsylvania, and three in New Jersey.

Therefore, it is common for a family to consult with our office that has a parent residing in Pennsylvania, and a child in New Jersey, or vice versa. In many cases, the family is inquiring about what state they should look to for potential placement of their loved one in a long-term care setting. Our Elder Care Law firm's goal is to analyze their assets, income, medical needs, and the family's goals to recommend whether New Jersey or Pennsylvania is the better long-term care setting. Below, we have compiled a comparison of New Jersey and Pennsylvania Medicaid eligibility rules that should be taken into consideration when considering New Jersey vs. Pennsylvania long-term care placement.

1) Assisted Living – In Pennsylvania, there is no Medicaid eligibility in an assisted living or personal care community. However, in New Jersey, there is the potential for Medicaid eligibility. Most assisted living communities in New Jersey that accept Medicaid require at least two



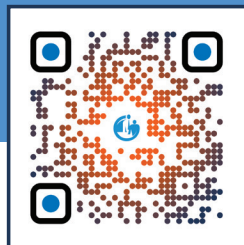
years of private payment prior to Medicaid eligibility. Therefore, if assets combined with income are relatively limited, typically we recommend that the family

consider placement in New Jersey in order to be in the position to remain in a less restricted assisted living setting after two years of private pay.

2) Healthy Spouse's Retirement Plan – In Pennsylvania, the non-Medicaid applicant spouse's qualified retirement plan is a non-countable asset in determining Medicaid eligibility for the ill spouse. A retirement plan may consist of an IRA, SIMPLE IRA, 401K, 403B, or Keogh plan. In contrast, in New Jersey, the healthy spouse's qualified retirement plan is countable for Medicaid eligibility. Therefore, if the healthy spouse has a sizable retirement plan, the family may want to consider nursing home placement in Pennsylvania so that the healthy spouse does not need to spend down the qualified retirement plan in order to qualify the other spouse for Medicaid eligibility.

3) Medicaid Income Cap – In Pennsylvania, if the Medicaid applicant has a fixed

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The One Big Beautiful Bill: Important Long-Term Care Update

NEWS ALERT: Scan the QR code or visit our website to learn how the One Big Beautiful Bill can affect you, caregivers, and those with disabilities.

<https://bit.ly/RLG-NEWS-ALERT-OBBB>

How to Legally Pay a Private Caregiver

Caring for a senior loved one often requires additional help, and hiring a private caregiver can provide the personalized support they need. However, the process of hiring and paying for care can be overwhelming. Understanding how to legally pay a private caregiver, and where you can obtain funds outside of your own pocketbook, will help to ensure compliance with state and federal regulations while safeguarding your loved one's financial and legal interests.

Establishing the Caregiver's Employment Status

One of the first steps in how to legally pay a private caregiver is determining their employment status. Are they considered an independent contractor or an employee? The answer has significant tax and legal implications. Generally, if you control when, where, and how the caregiver performs their duties, they are likely classified as an employee. This means you may be responsible for withholding and paying taxes such as Social Security, Medicare, and unemployment insurance.

If you are working through an agency, the agency often handles these responsibilities. However, for privately hired

caregivers, it is best to consult with an elder care attorney to ensure proper compliance with labor laws.

Exploring Medicaid, Medicare, and VA Benefits

Many families wonder whether programs like Medicaid, Medicare, or VA benefits can help cover the cost of a private caregiver. While Medicare typically does not pay for long-term caregiving services, Medicaid may offer assistance through specific programs, such as Home and Community-Based Services (HCBS) waivers. These waivers, available in states like Pennsylvania and New Jersey, can help eligible seniors access funds for in-home care, including private caregivers.

The VA's Aid and Attendance benefit can provide financial assistance to veterans to cover caregiving expenses. This program is available to qualifying veterans and their surviving spouses who require help with daily activities such as bathing, dressing, or meal preparation. Eligibility requirements and application processes can be confusing and complex, so it is highly recommended that veterans seek guidance from an elder care attorney.

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New Jersey or Pennsylvania *(Continued from front page)*

monthly income over \$2,901.00, the applicant is generally not eligible for home and community-based Medicaid services, including home care and/or adult medical daycare. There is an exception if the applicant is not more than \$500.00 over the income cap. In New Jersey, excess monthly income above \$2,901.00 is not a barrier to Medicaid eligibility. The excess income above the \$2,901.00 cap can be deposited into a Qualified Income Trust (QIT) in order to become eligible for Medicaid home and community-based programs.

4) Planning With Primary Residence

– In Pennsylvania, as long as a Medicaid applicant who owns a home expressed an intent to return to the primary residence, the primary residence remains an exempt asset for Medicaid eligibility. In New Jersey, however, generally, if there is no spouse residing in the home, the Medicaid applicant's home is treated as a countable asset for Medicaid eligibility. The home would need to be listed for sale to become eligible for Medicaid, and then the sale proceeds spent down.

There are also other factors to consider. These additional factors include the ability of a spouse to visit their loved one in another state as well as the location of other caregivers. It is important to consider both the financial situation as well as family dynamics in determining whether New Jersey or Pennsylvania is a suitable state of placement. Our Elder Care Law office assists our clients in determining the proper housing in either New Jersey or Pennsylvania, and then designing the financial long-term care plan based upon the applicable state laws.

Rothkoff Law Group Symposium Caregiver Award: Nominate a Professional Caregiver

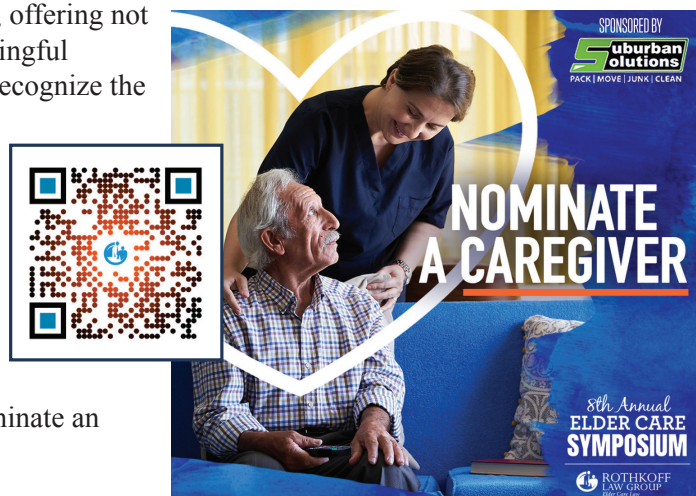
Professional caregivers are an invaluable part of our society, offering not only essential care and support but also compassion and meaningful human connection. At Rothkoff Law Group, we are proud to recognize the dedication and kindness of these remarkable individuals.

We invite you to nominate a full-time professional working in the senior care industry who consistently goes above and beyond in providing exceptional care.

The recipient of this special honor, sponsored by Suburban Solutions, will be announced at our 8th Annual Elder Care Symposium, taking place on Thursday, October 9, 2025 at Live! Casino and Hotel Philadelphia.

Join us in celebrating the heroes of senior care. You can nominate an outstanding professional caregiver today at:

https://bit.ly/SYMPOSIUM_CAREGIVER_AWARD



How to Legally Pay a Private Caregiver *(Continued from page 2)*

Setting Up a Caregiver Agreement

To legally pay a private caregiver, start with a written caregiver agreement. This document outlines the scope of services, hours of work, rate of pay, and other important terms. A properly executed agreement protects both the caregiver and the family from misunderstandings or

disputes down the road. In addition, having a formal agreement in place can be beneficial if Medicaid or other programs require proof of care-related expenses. This ensures that payments to the caregiver are considered legitimate and won't jeopardize your loved one's eligibility for benefits.

Tax Considerations and Reporting

If the caregiver is classified as an employee, you'll need to obtain an Employer Identification Number (EIN), withhold taxes, and issue a W-2 form at the end of the year. For independent contractors, a 1099 form may be required if their earnings exceed the reporting threshold. Many families find it helpful to work with a payroll service that specializes in household employees. These services can handle tax filings, paycheck processing, and compliance, saving you time and ensuring accuracy.

Understanding how to legally pay a private caregiver requires careful planning and attention to detail. Consulting with an elder care attorney can provide valuable guidance and peace of mind through the process. With the right preparation, you can ensure your loved one receives the care they need while adhering to legal and financial best practices for everyone.



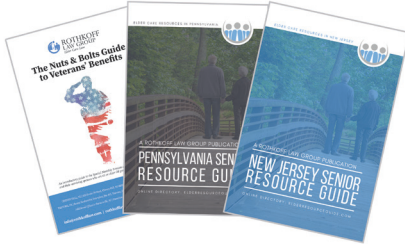
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The success of our firm is a direct reflection of our clients and the referral sources who have supported us. Therefore, we actively welcome your referrals as well as your input regarding the contents of this newsletter. We also welcome comments on the quality of legal services our offices provide.



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Rothkoff Law Group Recognitions

Well-deserved congratulations to **Bryan J. Adler, Esq., CELA** and **Jerold E. Rothkoff, Esq.** on being selected for *Super Lawyers* 2025. This honor is a testament to the passionate work Bryan and Jerry puts in every day at Rothkoff Law Group.

Congratulations also to **Ryan A. Krockner, Esq.** on being named to the *Super Lawyers* 2025 Rising Stars list. This recognition highlights emerging attorneys who show exceptional promise in their field. We are proud to have Ryan on our team.



All information presented in the Rothkoff Quarterly newsletter is general and does not constitute legal advice. Please do not act upon this information without consulting an attorney. Anyone facing a legal issue discussed in this publication is advised to seek legal advice from a competent professional.