

# Caregiving at Home: Options Other than Medicaid

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## Hospice Services

Hospice is a care option available to Medicare and some private insurance recipients who are *expected to live less than six months and who choose to receive palliative care and supportive services*. Hospice care is for illnesses such as cancer, heart disease, lung disease, stroke or even Alzheimer's and Parkinson's disease in its last stages. Hospice programs are recognized as the provider for relief of pain and end-of-life care. Hospice staff are knowledgeable about the special needs of end-of-life patients and seek creative and compassionate solutions for providing care.

This service can provide 24-hour nursing care during a crisis. Hospice physicians are specifically equipped to handle pain relief in a home environment and provide excellent counseling and family support. Most hospice service programs have fewer than 100 patients and provide personal and customized care.

## Caregiver's Resources

The following organizations provide education, support, advocacy and services to caregivers and their families:

**Administration on Aging (AOA)**—[www.aoa.gov](http://www.aoa.gov)  
Tel: (202) 401-4541—Works with a nationwide network of organizations to make support services available to older persons and their caregivers.

**The Caregivers Marketplace**—[www.caregiversmarketplace.com](http://www.caregiversmarketplace.com)  
Tel: (401) 364-9100—The nation's first free cash back and discount program specifically designed to offer savings to the caregiver.

**Eldercare Locator**—[www.eldercare.gov](http://www.eldercare.gov)  
Tel: (800) 677-1116—Provides access to listings of local community services, including respite services, home health care, and adult day care.

**Family Caregiver Alliance**—[www.caregiver.org](http://www.caregiver.org)  
Tel: (415) 434-3388—Offers programs at national, state and local levels to support and sustain caregivers.

**National Family Caregivers Association**—[www.nfcares.org](http://www.nfcares.org)  
Tel: (800) 896-3650—Supports, empowers, educates and speaks up for the more than 50 million caregivers in America.



# Current Issues in Elder Law

Medicare  
Part D Update

Courtesy of **FREEDMAN FISH & GRIMALDI LLP**  
Elder Law Attorneys

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## Things You Need to Know About the New Medicare Prescription Drug Benefit (Part D)

One of the many issues a caregiver needs to be aware of is the new Medicare drug benefit. By understanding the program, you can help beneficiaries evaluate, choose and enroll in a Medicare prescription drug plan that best meets their needs.

### What is Part D?

Part D is the new Medicare prescription drug benefit program resulting from the Medicare Modernization Act of 2003. The new Medicare drug benefit program will allow enrollees the option to add prescription drug coverage to their existing Medicare coverage by enrolling in one of the Medicare private drug plans. The program will begin on January 1, 2006 and will replace any drug coverage received through Medicaid as well as the Medicare-approved discount drug cards.

You must enroll in one of the plans during the Initial Enrollment Period (IEP), which is November 15, 2005 through May 15, 2006 or else you may have to pay a premium penalty. If you are currently enrolled in Medicaid, a Medicare Savings Program (MSP) or receive Supplemental Security Income (SSI), you will automatically be enrolled in a Medicare private drug plan (which may or may not be the best plan for your situation) if you do not choose one for yourself during the IEP.

### Costs

The basic government plan is outlined with the following out-of-pocket expenses:

- You pay your drug plan's premium, which is estimated at \$32.20 per month.

- You pay the first \$250 of your annual covered drug costs as your deductible.
- You pay 25% of your annual covered drug costs between \$251 and 2,250, or another \$500.
- You pay 100% of the annual covered drug costs between \$2,251 and \$5,100 (no coverage in this gap) in addition to your monthly premiums or another \$2,850.
- Catastrophic coverage begins after you have paid the above \$3,600 in annual out-of-pocket expenses. Then your costs are \$2 for generic drugs, \$5 for brand name drugs or 5% of the drug's cost, whichever is greater.

You should enroll in this program if you spend more than \$694/year or \$57/month in drug costs. This program serves as insurance that will result in some cash savings if your costs exceed this amount.

### Extra Help

There will be extra help offered which may assist you in paying for your premiums, deductible and co-payments. If you are currently enrolled in Medicaid, a Medicare Savings Program (MSP) or receive Supplemental Security Income (SSI), you automatically qualify for extra help and do not have to apply for it.

If you do not automatically qualify but think you will be unable to pay for this program, you should apply for this extra help. Our office is willing to assist anyone with this application. Otherwise you can apply online at [www.ssa.gov](http://www.ssa.gov) or call or visit your local Social Security or local Medicaid office.

## Freedman Fish & Grimaldi LLP News

We are proud as we celebrate **20 years of service**. We would like to give special thanks to our clients and their families, as well as our staff, colleagues and all who have helped us reach this milestone. We are grateful for your ongoing support and look forward to meeting the challenges of the future and remain committed to our motto "*In legal matters, People matter.*"

We are also pleased to announce the recent election of our founding member, Daniel G. Fish as Chair of the Elder Law Section of the New York State Bar Association.

Partner Robert M. Freedman was reappointed as Chair of the Committee on Continuing Legal Education for the New York State Bar Association. Partner Judith D. Grimaldi served on the planning committee of the National Academy of Elder Law Attorneys' annual training institute in San Francisco where Associate Pauline Yeung also gave a presentation on providing legal services to the Chinese community. Recent additions to the firm are Donna C. Curcio as Associate in our Brooklyn office—practicing in the areas of Trusts and Estates and Mary Beth Ritger as Of Counsel.

In order to provide in-depth legal services to our clients, we have added the following staff: Julian Stanisic as Marketing Manager; Keisha Wright as Assistant to Daniel G. Fish, and Tarayn Clark as Assistant to Judith D. Grimaldi.

Congratulations are also in order to our Associate Jennifer L. Miller on her passing of the New York State Bar exam and being admitted as an attorney. Darlene Dixon-Corbin and Natalie Babb both have new roles—handling client relations.

**20 YEARS**  
**FREEDMAN FISH & GRIMALDI LLP**  
IN LEGAL MATTERS  
PEOPLE MATTER

**FREEDMAN FISH & GRIMALDI LLP**

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## Our Partners



Robert M. Freedman practices in the areas of Elder Law and Trusts and Estates. He is a founder and Fellow of the National Academy of Elder Law Attorneys (NAELA). He regularly speaks and publishes articles concerning planning for disabled children.

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Daniel G. Fish is a certified Elder Law attorney and a founding member of NAELA. He is current Chair of the Elder Law Section of the NYSBA. A noted authority on Elder Law, he is widely published and has been quoted in *The New York Times*, *BusinessWeek*, and *Fortune*.

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Judith D. Grimaldi focuses on Medicare, Medicaid, and Health Law. She is a certified Elder Law attorney, a certified social worker, and former professor of Gerontology.

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Barry I. Lutzky practices in the areas of Trusts and Estates, Estate Administration, and Estate Planning and Taxation. He is experienced in estate planning for the disabled and for the parents of handicapped children.

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This newsletter is intended to provide general information about Freedman Fish & Grimaldi LLP and its areas of practice in Elder Law which may be of interest to our current and potential clientele. Our firm practices in New York, therefore none of the information contained herein should be deemed to apply in other states.

The newsletter content is not intended to give legal advice to anyone on any subject. Legal advice may only be rendered by attending a complete consultation with one of our Elder Law attorneys. Information obtained through the newsletter does not create an attorney-client relationship and the reader should not rely on same.

## Saluting Caregivers

Welcome to the latest edition of our newsletter. In this issue, we spotlight the essential—and often underappreciated—role that caregivers play. Caregivers provide emotional, financial, social, and many other services for family, partners and friends while giving up personal time.

We understand and thank caregivers for all the hard work, hardships, your sacrifices, and joy experienced in caring for the elderly and disabled.

Sincerely,  
*The partners and staff of  
Freedman Fish & Grimaldi LLP*

## Things You Need to Know About the New Medicare Prescription Drug Benefit (Part D)

### Factors to Consider

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There are several key factors to consider when choosing one of the Medicare private drug plans:

- **Cost:** While there is a basic plan that is outlined in the law, there is great flexibility for companies to design their own plan. Premiums can be higher or lower, depending on the coverage. Check each plan to see how they distribute the costs and fees.
- **Formulary:** Each Medicare private drug plan will have its own formulary or list of covered drugs. You must compare plans to find one that covers your prescription drugs. There is a procedure to get coverage for medically necessary prescription drugs not covered by your plan.
- **Pharmacy Network:** You must use pharmacies in your Medicare private drug plan's network, so choose a plan with a convenient pharmacy location.

- **Rules:** Since plans operate differently, it would be best to compare the rules and regulations of each plan and choose one that provides the flexibility you desire.
- **Special Needs:** Lastly, when choosing a Medicare private drug plan, look for one that will fulfill any special needs or services that you require in order to obtain the most coverage for your prescription drug needs.

Caregivers and beneficiaries should take this opportunity to review their long-term care plans which include important strategies such as powers of attorney, trusts, living wills, Medicaid and health care proxies.

## Your Elder Law Attorney—Planning for the Entire Family

Since 1985, Freedman Fish & Grimaldi LLP has dedicated its practice to serving the evolving needs and challenges of the elderly and their families. To many, the Elder Law attorney will help clients protect their assets, help them qualify for Medicaid, and create estate plans. This remains true, but elder law is no longer just about Medicaid—it's about planning for the entire family. There are many new areas in which Elder Law attorneys are especially qualified.

For example, an Elder Law attorney can assist couples who are considering remarriage to draft legal documents that meet the needs of blended families.

In approaching a second marriage, the couple will want to coordinate their financial matters while preserving their individual assets for the benefit of their own heirs. These are complex issues—involving personal, tax, and estate planning concerns.

Freedman Fish & Grimaldi LLP can also provide families and caregivers with the following important services:

- Advice on purchasing long-term care insurance—contract review and benefits.
- Advice on transferring a home or co-op, including the tax implications.
- Developing trusts for disabled or dependent children who may need government benefits now or in the future.

## Caregiving at Home: Options Other than Medicaid

Caregivers, family members and health care providers agree that “care at home” is the preferred choice selected by those caring for the elderly and disabled. Most care is provided informally by family members. If the family needs help, they can turn to community-based sources of care. These in-home services may often be a precursor to more extensive services provided by Medicaid's community-based program, which include 24-hour-per-day homecare. The following services are available as non-Medicaid options:

### Services through Informal Caregiving Networks

A primary source of care at home is the private personal care aide who will assist the elderly or disabled adult with activities of daily living (ADLs). He or she is usually paid an hourly wage or on a per-diem basis.

Private personal care aides may not be certified or formally trained. They work in your home, usually at hours you set. This type of service can be flexible regarding the scope of the service and the schedule. Many aides will find their own substitute if unable to work.

When this system works—and it often works very well—it provides a great deal of independence to the patient. It is cost-effective caregiving—especially when the individual or the family can afford to pay for these services.

Referral sources for this type of aide can include local churches and synagogues, community contacts, social services organizations, community bulletin boards, newspaper ads, friends and family.

### Employment Agencies that Specialize in Personal Care Services

There are home care employment agencies which are not placement services or registries. They are not licensed or certified home health care agencies. The administrator may be a nurse, but the agency does not provide nursing assessments or nursing services.

The assignment of the care aide is often completed by a telephone interview. The aide is paid directly by the caregiver for service rendered. The employment agency sets hourly and/or weekly rates, as well as flat fees for live-in services, and is usually paid a fee for the placement.

The level of expertise and training of this type of personal care aide is inconsistent. It is essential that the agency and the aide be interviewed beforehand and monitored carefully by the family thereafter.

### Home Care Services from Licensed Agencies

Home care services can also be secured through licensed home care agencies. These are often agencies with contracts with Medicaid's home attendant programs or Medicare's certified home health agencies (CHHA). Fees for home care services range from \$13 to \$25 per hour. Families may be able to maintain services from this agency when converting to Medicaid. Thus, there can be a continuum of care from the licensed agency using the same aides.

### Home Care through the Local Area Aging Agency

The New York City Department for the Aging (<http://www.nyc.gov/html/dfta>) is the local agency that administers and contracts out most non-Medicaid public in-home services in New York City. The program is called EISEP (Expanded In-Home Services for the Elderly Program). In other areas of the State, the County Department of Aging or Social Services may be the source. This source provides only limited home care services—specifically for non-Medicaid eligible elders who are aged 60 and over—through a network of community-based case management services.

These services include personal care, chore services, shopping assistance, friendly visiting, housekeeping, transportation and home-delivered meals. Fees are on a sliding scale basis.

**Warning: You should consult with your accountant regarding reporting and withholding requirements for these employees, as well as possible medical deductions on the income tax return of the elder or disabled person or caregiver.**

### Adult Day Care

Adult day care is a community-based option for disabled elders. Participants receive supervision, social interaction and some assistance with personal care. Most programs are small and personalized, serving an average of 50 individuals daily. New York State licenses two types of day programs:

**The Social Day Care Model** was created for socially isolated/homebound individuals. Activities are similar to those of traditional senior centers, but scaled down to allow frail or cognitively-impaired individuals to participate. Individuals have stable medical conditions; some need partial assistance or have hearing, sight or mobility impairment.

There are little or no medical services available on site, although the staff is allowed to administer medications during the day. This model focuses on recreational activities, art, music, exercise and structured outings, with transportation and meals provided. The programs operate five days a week and participants may attend as they are able and willing. Some individuals use these programs to enhance the care they receive at home while others use it as a respite for caregivers. Some social day care programs are partially funded through state and local funds. These programs are often administered by community-based non-profits and are private pay only, and may not be covered by Medicaid.

**The Medical Day Care Model** is New York State licensed. It provides medical care including physical, occupational and speech therapies as needed. Medical professionals are on staff at all times. The focus of this model is care and rehabilitation. These programs are affiliated with a medical institution or certified health care provider. Many nursing homes have these programs on site and are covered by Medicare, Medicaid or private insurance. The daily cost of this type of program is approximately \$150 and may or may not cover transportation. This is the model of choice for individuals with serious medical conditions and who are eligible for Medicaid. You should consult with your accountant to see if the cost of the program may qualify as a medical deduction.

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