

How to deduct assisted living costs

The average cost of a nursing home in Michigan is approximately \$6,000 per month or \$72,000 per year. The average cost of a stay in assisted living is much more difficult to determine since the cost varies according to the services needed.

The cost of assisted living begins with the base price of the living unit (usually a studio or one bedroom) with additional services billed ala carte. The greater the needs of the resident, the greater the cost.

Assisted living residents vary in their needs and abilities. Some need no services of any kind; they cook, clean, and even drive, while others require the entire menu of service, including assistance with eating, bathing, toileting, and medicine administration.

Medicaid covers the cost of nursing home care for residents who meet the functional and financial eligibility requirements. In contrast, assisted living is not covered by Medicaid or any other governmental or private insurance program.

Although cheaper and more aesthetically pleasing than even the best nursing homes, the higher out-of-pocket cost of assisted living creates a dilemma for families looking for the best care. For example, assisted living is much more appropriate for physically healthy individuals with memory and cognitive loss. Yet such families are pushed to nursing homes where the entire cost of an extended stay is covered by Medicaid.

The key is to find ways of defraying the cost of assisted living. If the resident or the resident's spouse was a veteran, he or she may apply for aid and attendance benefits through the Veteran's Administration (see "Top Secret Military Benefits," Gazette July 2007). Another way, and the focus of this article, is to defray the cost by deducting the cost of assisted living care for state and federal income tax purposes.

It is well established that nursing home costs, including the portion allocated to room and board, are fully deductible as a medical expense. By contrast, the rules pertaining to the de-

ductibility of assisted living costs have been murky at best. The problem stems from the broad spectrum and needs of assisted living residents: some resemble mere apartment dwellers while others receive services similar to nursing home residents.

Certainly, living in what amounts to a senior apartment should not be deductible while an assisted living resident receiving the full panoply of services should be able to deduct the full cost. Historically, the problem has been where to draw the line between the two extremes.

Since the degree of chronic illness is somewhat subjective, it would seem that anyone receiving assistance with two or more ADLs or who is in a protective environment for their memory or cognitive issues would qualify for the deduction.

The problem was clarified by sponsoring Senators Ted Kennedy and Kassebaum in the now famous Health Insurance Portability and Accountability Act, or "HIPAA," with further guidance provided in IRS Publication 502 issued in 2007. In a nutshell, the full cost of assisted living is deductible for chronically ill residents who are receiving maintenance and personal care services pursuant to a plan of care prescribed by a licensed health care practitioner.

A person is deemed to be chronically ill if, within the previous twelve months, a licensed health care practitioner (defined as a physician, registered nurse, or licensed social worker) certifies that the individual has been unable to perform at least two activities of daily living (ADLs), such as eating, toileting, transferring, bathing, dressing, and continence without substantial assistance for at least ninety days, or requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

To be considered severe, an individual's cognitive impairment must involve deterioration or loss in intellectual capacity or short or long term memory, orientation to people, place or time, and deductive or abstract reasoning. This definition describes virtually any dementia patient who has progressed to a point where they require a protected environment to ensure their safety.

Since the degree of chronic illness is somewhat subjective, it would seem that anyone receiving assistance with two or more ADLs or who is in a protective environment for their memory or cognitive issues would qualify for the deduction. Really, who would pay for such expensive ala carte services if they truly didn't need them?

By the way, the IRS has made it clear that no matter how many services are provided in one's home, the cost of living at home is never deductible as a medical expense.

Once a licensed health care practitioner creates a plan of care and certifies that the resident is chronically ill, all diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, and maintenance care services, including room and board, on behalf of the resident are deductible for state and federal income tax purposes.

Assisted living is often a place of transition. Residents enter with higher function, contracting fewer services, and over time transition to a level of service and cost that resembles nursing home care.

At some point along the way, the resident can begin to deduct the full cost of their stay including room and board. That point is ninety days after they are either unable to perform two of their ADLs or experience severe cognitive impairment.

More specifically, it is ninety days after they begin paying for such services. At such time, the assisted living facility must complete paperwork to allow the resident to deduct the costs.

To assist both assisted living facilities and their residents we have developed an



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"Assisted Living Tax Deductibility" form which is available at no cost by contacting our office or by visiting www.elderlawmi.com. The form is a single page and easy to complete.

As with all medical expenses, assisted living costs are only deductible to the extent that they collectively exceed seven and one-half percent of adjusted gross income. Your actual tax benefit will differ based on a number of factors including application of the alternative minimum tax. Generally, the higher one's income the greater the tax benefits of the deduction.

In summary, to be deductible, assisted living costs must meet the following requirements:

One, resident must be chronically ill (can't perform two ADLs or has severe cognitive impairment); and

Two, a doctor, nurse, or social worker certifies that the resident is chronically ill and prescribes appropriate services pursuant to a plan of care.

The information contained herein should not be considered individual tax advice. You should consult with your accountant or attorney to determine the applications of the rules to your personal situation.

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Contact attorney Mark Accettura at (248) 848-9409 or visit his Web site at www.elderlawmi.com.

Assisted Living Tax Deductibility Form

Name of person receiving care services	Social Security Number
Name of care provider and contact person	Address and phone number of care provider

A. To be deductible as a medical expense the person receiving care must be "chronically ill" within the previous twelve months.

1. A person is deemed chronically ill if he/she has over the last 12 months (1) been unable to perform at least two of the Activities of Daily Living for 90 days; OR (2) has sufficient severe cognitive impairment. Please Check the following that apply to the resident:

	Y/N	Date Began		Y/N	Date Began
Person needs help dressing			Person needs help with incontinence		
Person needs help bathing			Person needs help with eating		
Person needs help with toileting			Person needs help with transferring		

2. Please check any of the following that relate to cognitive impairment:

Person needs a protective environment		Person needs supervision to prevent person from harming self	
Person needs supervision to prevent wandering		Person needs supervision to prevent person from harming others	

3. If the resident has been diagnosed with any form of severe cognitive impairment or dementia please attach such diagnosis.

B. Plan of Care. Please attach the plan of care developed for the long-term care services of the resident.

C. This form must be signed by a licensed health care practitioner: defined as a physician, registered professional nurse, or a licensed social worker.

Date _____ Title of person signing _____

Printed name _____

Signature _____

Top Secret Military Benefits

Aid and attendance benefits are one of this country's best kept military secrets.

Available through the Veteran's Administration, aid and attendance covers home care, assisted living, and nursing home care for veterans and their spouses who meet the program's eligibility requirements.

To qualify, a veteran must have 90 consecutive days of active duty with at least one day during war-time, must have received a discharge that wasn't dishonorable, must meet the income and asset tests, and must be disabled.

Although these eligibility requirements may seem onerous, they are easily met and worth the effort. The monthly A and A benefit is \$1,801 for a married veteran, \$1,470 for a single veteran, and \$976 for a veteran's spouse.

By some estimates, as much as thirty percent of the US population over the age of sixty-five would qualify for A and A benefits if they required in-home or institutional care. Yet only one in four eligible veterans and only one in seven surviving spouses are currently taking advantage of them.

So why the big secret?

Some say it's because the government doesn't advertise its programs. Others argue that the recent interest in A and A benefits, which have been around for decades, is the result of the current astronomical cost of long-term care.

To qualify, you don't need to be wounded in battle or have a service-related disability. The disability requirement is automatically met for applicants over the age of sixty-five.

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To meet the one-day of war-time service requirement, the veteran must have been in the military (even if it was peeling potatoes in North Carolina) during a time of war. For World War II the relevant dates are December 7, 1941 to December 31, 1946; for the Korean Conflict, June 6, 1950 to January 31, 1955; the Vietnam War February 28, 1961 to May 7, 1975; and the Persian Gulf War from August 2, 1990 to present.

Incredibly, using the VA administration's own definition, we have been at war for roughly 41 of the last 66 years, which explains how thirty percent of our population could potentially become eligible for A and A benefits.

The number of Vietnam-era veterans 65 and older alone is projected to increase six-fold, to 5.2 million, over the next decade, according to the Congressional Research Service of the Library of Congress.

To meet the asset and income test, the veteran must have household assets of less than \$80,000 and countable income of less than \$21,615 for a couple and \$18,234 for a single. Although these limits may seem prohibitively low, for reasons explained below, they are easily met by virtually anyone who needs assisted living or nursing home care.

As with Medicaid, the applicant's home and car are

not counted toward the \$80,000 asset limit. Unlike Medicaid, which has a five-year look-back period, the A and A program has no look-back period or penalty for divestment. In other words, assets may be gifted to a loved one (other than the veteran's spouse) at any time prior to application in order to reduce assets to below \$80,000.

Before divesting, however, be aware that VA divestment could disqualify you for Medicaid benefits. You should consult with an elder law attorney to determine which federal program is most beneficial to you given your unique circumstances.

For purposes of eligibility, the law permits a deduction from income for the cost of a number of un-reimbursed medical items including the full cost of assisted living or long term care.

The extremely high cost of assisted living and nursing home care allow all but the wealthy to meet the VA income requirement. For example, a couple earning \$75,000 per year with only one spouse in a nursing home paying \$72,000 annually for care (which is the average annual cost in Michigan) would have only \$3,000 of countable income, and would therefore easily meet the income requirement.



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A number of documents must be included with the A and A application, including discharge papers, marriage certificates, and documentation of all income and assets. Applications submitted without proper documentation delay the already long two-to-eight-month application process.

To avoid rejection, it is extremely important that you satisfy the income and asset requirements at the time of filing. The good news is that benefits are awarded retroactively to the first day of the month following the date of initial application.

Except for those with the foresight to have purchased long-term care insurance, A and A benefits may be the only source of funds to allow a veteran or a veteran's spouse to receive in-home care.

To learn more about VA benefits, you can contact the VA at 1-800-827-1000, go to www.mich.gov/mva, www.va.gov, www.macvc.net, www.nvlsp.org, or contact a qualified elder law attorney in your area.

Contact attorney Mark Accettura at (248) 848-9409.