

U.S. Legal Forms, Inc.

Multi-state

Elder and Retirement Law Handbook

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A general guide to the rights, protections and benefits provided senior citizens by the
United States Government.

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Elder and Retirement Law Handbook

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INTRODUCTION

This is a general Handbook, containing summaries of the rights, programs, services and resources offered to senior citizens under Elder and Retirement Laws in the United States. Many sections and subsections of this Handbook will refer to state Area Agencies on Aging or State Units as they provide the assistance and resources offered under national laws. Keep in mind that the laws, programs and services outlined in this Handbook are being constantly revised and changed so this Handbook is only intended as a general overview. As a result, you should not rely on this Handbook to make legal decisions concerning your specific situation. Instead, you should only rely on this Handbook to alert you to the fact that someone may have violated one of your legal rights, that you may obtain assistance in protecting yourself from further violations and that you may be able to gain informational or financial assistance. The sections of this Handbook may be used as a starting place from which to discuss your situation with a state agency or local attorney.

Of note is that the Federal Government funds legal service providers in most if not all states that can assist you with Elder Law, Retirement and Healthcare issues at reduced costs or for free (on a pro bono basis). The Appendix of this Handbook contains contact information or web site links for legal service providers.

THIS Handbook IS NOT A LEGAL DOCUMENT, and is not intended as a substitute for seeking legal advice from an attorney or other qualified professional.

OVERVIEW

In 1965 the Federal Government enacted laws to meet the needs of and to protect older Americans. These laws are set forth in the Older Americans Act (OAA) and are usually grouped under the subject headings of Elder, Pension/Retirement and Healthcare law. The Older Americans Act established the U.S. Administration on Aging (AOA) which is the federal entity charged with providing and coordinating services, programs and protections for elders at the federal and state level. (See 42 U.S.C. Chapter 35, Subchapter II (as amended through 01/2001). AOA achieves its mission by functioning as part of a federal, state, tribal and local partnership called the National Network on Aging. There are 56 State Units on Aging; 655 Area Agencies on Aging; 236 Tribal and Native organizations; two organizations that serve Native Hawaiians and 29,000 service providers (including lawyers) available to assist you with your needs and to protect you.

The AOA Information and Assistance System assists elders in learning about and receiving referrals to programs and services offered by the Federal Government in each state and some additional state programs/services. All of the services/programs listed below can be accessed through the AOA Information and Assistance System. In addition, those services targeted to Native Americans, Alaskans and Hawaiians can be accessed through your state's Assistant Secretary's Office. (See 42 U.S.C. Public Health and Safety Chapter 35 section 3507). State Assistant Secretary Offices will be able to provide the name, address and phone number of the state/tribal organization(s) providing additional services targeted to Native American, Alaskans and Hawaiians.

I. ELDER LAW & RIGHTS

A. Age Discrimination

1. Employment

The Age Discrimination in Employment Act (ADEA) protects workers 40 and older from discrimination in for example hiring, changes in classification, testing, access to training, benefits, firing, layoffs, retirement and other employment practices. (29 U.S.C. Age Discrimination in Employment §623). This prohibition applies to federal, state and local governments (including school districts), employment agencies, labor organizations, and private employers with at least 20 employees. Of note is that the ADEA does not prevent employers from requiring highly compensated executives to retire when they reach a certain age or from placing an age limit on certain positions provided that age is a bona fide occupational qualification. (29 U.S.C. Age Discrimination in Employment §623).

If you believe you have or are experiencing age discrimination, you can file a charge of age discrimination with the Equal Employment Opportunity Commission (EEOC), which will investigate your charge and if it is actionable attempt to remedy your situation. You can file a charge by mail or in person at the nearest EEOC office. ***Please note that you MUST file your charge within 180 to 300 days of the date on which your right was violated.*** To obtain detailed information/instructions on how to file a charge as well the address of your local EEOC office you can refer to the blue pages of the telephone book or call 1-800-669-4000 (1-800-669-6820 (TTY)).

If the EEOC investigates your charge and finds it is not actionable or decides not to file a law suit on your behalf, you will have ninety (90) days after receiving notice from EEOC to file your own law suit. The EEOC does not often file lawsuits when charges are levied - they may attempt mediation or settlement instead.

Most states have Fair Employment Practices Agencies that enforce state anti-discrimination laws. However, if you file a charge with a state agency, and the federal anti-age discrimination law is the same, the EEOC will handle your charge. As a result, if you do not want the EEOC to handle your charge, you should contact a legal service provider or a private attorney. (See the Appendix for listings). By contacting a lawyer, the lawyer may be able to reach a settlement for you and resolve your situation without filing a law suit. ***Of note is that if you and/or you lawyer decide to file a law suit, you MUST first file a charge with EEOC.***

If you have an actionable charge of age discrimination, you may be able to obtain any of the following remedies or combination of remedies: monetary compensation (back pay, front pay and/or damages); employment; reinstatement; promotion; attorney fees; court costs; and expert witness fees.

2. Credit/Finance

The Equal Credit Opportunity Act prohibits creditors from engaging in age discrimination against applicants, with respect to any aspect of a credit transaction --(i.e., mortgages, home equity/improvement loans, personal loans, consumer credit cards, etc.). A creditor has not engaged in age discrimination if she/he asks your age and has done so in order to determine the amount and probable continuance of your income levels, credit history, or other pertinent element of credit-worthiness. (See 15 U.S.C. Banks and Banking §1691(a)). If the creditor uses your age as a reason to deny or decrease credit when you otherwise qualify, the creditor is engaging age discrimination.

When applying for credit, the creditor as a general rule is required by law to notify you of the creditor's decision within thirty days of receiving your completed application. If the creditor denies your application, you have the right to receive (i)a statement from the creditor stating why your application was rejected or (ii) a letter informing you that you can within sixty days of being rejected request a written statement and who in the office you must request the statement from. (See 15 U.S.C. Banks and Banking §1691(a)). The Federal Trade Commission is charged with enforcing the Equal Credit Opportunity Act. If you believe a creditor has discriminated against you based on your age you can file a claim with the Department of Justice, consult with a legal service provider, or contact the creditor/banking institution yourself. ***To obtain a list of legal service providers versed in age discrimination laws, you can go to the following web site:*** <http://www.aoa.gov/NAIC/Notes/agesim.html>

B. Medicare Fraud

Medicare fraud includes but is not limited to billing for higher services/procedures than were performed, falsifying medical necessity documents to justify payments, billing separately for services that should be included in a single service fee, or billing at a higher service fee. You can go to the Health and Human Service's website to obtain more information on how to spot and report Medicare/Medicaid fraud: <http://www.medicare.gov/fraudabuse.html>. If you suspect that you have been over billed for services, or billed for services/treatments you did not receive, you should 1) call the Fiscal intermediary (for Part A bills) or the Medicare carrier (for Part B bills) that sent you the bill (their name address and phone number will appear on the bill, and/or 2) call the Inspector General's fraud hotline at 1-800-447-8477 and report the suspected fraud.

C. Elder Abuse, Neglect, and Exploitation

The Federal Government, as part of the Older Americans Act, has enacted laws to protect seniors against abuse, neglect and exploitation.

1. Elder Abuse and Neglect in Long-Term Care Facilities

If an older person who resides in a long-term care facility, nursing home, board and care home or other similar adult care home is being abused, neglected or exploited, then a

claim should be filed with the Ombudsman of the state where that individual resides. Complaints made can, among other things, concern the adequacy of long-term care facilities and services as well as the health, safety, welfare, or rights of the resident (including the welfare and rights of the resident with respect to the appointment and activities of guardians and representative payees).

Upon receiving a complaint, the state Ombudsman will identify the problem, investigate the allegations, and try to resolve the complaint(s) made by, or on behalf of the, resident. In addition, the state Ombudsmans are mandated to: assist residents in protecting their health, safety, welfare, and rights; inform residents about how to obtain services; and ensure that the residents have regular and timely access to the services provided through the Ombudsman Office. If a complaint requires that the resident go before a governmental agency or seek administrative, legal, and other remedies, the Ombudsman will do so on the behalf of the resident. (See 42 U.S.C. Public Health and Welfare Section 3058(f)-(h)).

2. Elder Abuse, Neglect, and Exploitation

For seniors not residing in long-term care facilities direct assistance and services are provided by state area agencies on aging, state adult protection service programs, state and local law enforcement systems, and state courts.

If you are being abused, neglected or exploited or if you know some one who is you can report the incidence(s) to your state's Area Agency on Aging or your local adult protection services agency. Under state law the identity of the person being abused, neglected or exploited will be kept confidential in order to protect the rights of the individual. Further, the person reporting the abuse (whether the victim or not) will receive immunity from prosecution arising out of such reporting, under any State or local law.

Upon receipt of a report, the state agency will promptly initiate an investigation to substantiate the accuracy of the report. If the agency determines that elder abuse, neglect, or exploitation has or is taking place, it will take steps, including appropriate referral, to resolve the situation/circumstances. Of note is that state agencies are required to permit the older individual to participate in decisions regarding his/her welfare and to make the least restrictive alternatives available to the individual who is abused, neglected, or exploited. (See 42 U.S.C. Public Health and Welfare Section 3058(i)).

D. Power of Attorney & Guardianship

Often older persons find themselves unable to conduct their own affairs due to a temporary illness, lack of transportation or general immobility. Power of attorney and guardianship are two methods by which a third party (a trusted friend or professional with a fiduciary duty towards you) can handle your property, financial, medical and/or legal affairs.

1. Power of Attorney

A power of attorney is a written document through which an individual (the maker) can give another individual (the holder) the right to handle the maker's property, financial, medical and/or legal affairs. The document itself is only valid for as long the maker is able to handle his/her own affairs. A durable power of attorney however continues after the maker becomes incapacitated. Before signing any power of attorney it is highly advisable to consult with an attorney and receive his/her opinion on the content of the power of attorney.

2. Guardianship

When a person is unable to care for themselves a legal guardian will often be appointed by the court. A legal guardian is a person who will take legal custody of the elder person and receive the legal right to handle the elder person's property, financial, medical and legal affairs. A limited guardianship gives the guardian the right to handle only some of the elder persons affairs.

The elder person for whom a guardian will be appointed will receive notice of the hearing date and will have the opportunity to prove to the court that s/he is capable of handling his/her own affairs. As this will be a legal proceeding with significant consequences, it is highly advisable to at least obtain the advice of a lawyer or at best retain legal representation for the trial. (See the Appendix for a listing of legal service providers). If you appear in court without counsel, the Court may appoint an attorney or guardian ad litem to represent you. You can obtain more information on guardianship and powers of attorney from your state Area Agency on Aging and other organizations listed in the Appendix of this Handbook.

II. RETIREMENT

The Federal Government provides retirement and pension benefits for seniors. The primary retirement benefits are: the social security insurance benefit program under the Social Security Act (42 U.S.C. 401 et seq.); railroad retirement annuities under the Railroad Retirement Act (45 U.S.C. 231 et seq.); veteran administration retirement benefits under the Veterans Benefits Act; private employer pension plans (such as 401ks, stock options, etc.); and federal civil service retirement annuities under the Federal Employees Retirement Act.

With respect to the above-noted programs, the Federal Government has mandated that State agencies or Area Agencies on Aging provide information, counseling, referral services and other assistance to persons regarding pensions, other retirement benefits, and their right to receive income after retiring. (See 42 U.S.C. Social Security Act et. Seq.).

A. Social Security

Pursuant to the Social Security Act, the Social Security Administration provides several benefits to older Americans including the following benefits: retirement insurance (also known as Social Security Insurance Benefits), survivor benefits, auxiliary benefits and supplemental security income programs.

1. Social Security Insurance Benefit/Retirement Insurance Benefit

The Social Security Administration provides retirement insurance benefits to workers who have reached the age of 62, have retired and are “insured workers.” Generally, you are considered an insured worker and are covered by social security if you have engaged in non-agricultural or agricultural work for at least 10 years and paid social security (FICA) taxes during that time. (This results in 20 credits being amassed over 40 quarter period- 4 quarters per year). As of 1951, self-employed individuals can attain insured worker status and receive retirement insurance benefits. It is advisable that you inquire into retirement insurance benefits a year before you plan to retire. However, this is only a recommendation. ***You will still be able to apply for retirement insurance benefits if you submit your application at least four months before you reach retirement age and no later than one month before monthly benefits would begin (i.e., retirement, disability, etc.).***

The family members of an insured work can receive a portion of his/her retirement benefits or all of his/her retirement benefit if the insured worker has passed away. The following family members are entitled to part or all of the insured workers retirement benefit.

- The spouse of a retired insured worker or a disabled insured worker who is (i) 62 or older or (ii) entitled to part of his/her spouse’s insurance benefit and cares for a child younger than 16 or a child 16 or older that is disabled;
- The ex-spouse of a retired insured worker or a disabled insured worker provided the

ex-spouse is 62 or older and was married for 10 years or more;

- The ex-spouse of a fully insured worker provided they: have not applied for benefits yet, were married for 10 years or more, and have been divorced from the insured worker for at least two consecutive years;
- The dependent, unmarried child of a retired insured worker, disabled insured worker or deceased insured worker provided they are: Under 18, Under 19 and a full-time elementary or secondary school student, or 18 years old or older and under a disability that began when they were younger than 22;
- The spouse or ex-spouse of a deceased insured worker provided they are 60 or older.
- The disabled spouse or disabled ex-spouse of a deceased insured worker provided they are 50-59 and became disabled no later than seven years after (i) the insured worker died, (ii) you were last entitled to your spouse's or ex-spouse's insurance benefits, or (iii) the date on which your widow(er) insurance benefits ended because the disability ended;
- The spouse or ex-spouse of a deceased insured worker (of any age), provided you are either caring for a child of the deceased who is under 16 or over 16 and under a disability that began when you were younger than 22; OR
- The dependent parent(s) of the deceased insured worker provided the insured worker was 62 or older at his/her death.

In addition to monthly social security insurance benefits, the spouse or ex-spouse of a deceased insured worker may be eligible for a lump-sum payment payable upon the insured worker's death. (See SSH §§428-433.)

2. Amount of Benefits

When individuals who are fully covered retire at age 65, they receive the full retirement benefit. If individuals retire early at age 62, their benefit amount will be reduced by 20 percent. For fully insured workers who work past the age of 65 social security will increase their retirement benefit by a certain percentage for each year that they work past the age of 65.

3. Right to Receive Retirement Insurance Income While Working

Workers between 65 and 69 can choose to work past the age of 65 and receive retirement insurance benefits while still working. For workers between 65 and 69, their monthly benefit amount will be reduced if they make more than the earning limit. While the earning limit amount tends to be low (\$13,500), the limit changes each year so you should verify the earning limit with the social security administration office before you decide to continue working. For workers 70 and older who choose to continue working,

they can receive monthly retirement benefits while working and their benefit amount will not be subject to the earning limit. Of note is that should you work past the age of 65 and earn more per year after age 65 than you did before age 65, your monthly retirement insurance benefit amount can be increased (recalculated). If your earning increase after 65, you should ask the Social Security Administration Office to recalculate your benefit amount.

3. Supplemental Security Income (SSI)

In addition to social security retirement insurance benefits, the Social Security Administration provides additional cash payments to persons with limited financial resources who are either (i) at least 65 years old, or (ii) blind, or (iii) disabled (inclusive of individuals with chronic kidney failure or a kidney transplant requiring dialysis). (See SSH §§2100-2197). This additional cash payment program is called supplemental security income (SSI).

SSI payments are paid by the Federal Government. Some states offer their own supplemental cash payment program. The state programs are designed to be added to SSI payments so that an individual receiving SSI can receive more money per month and come closer to meeting their cost of living.

To qualify for the social security office's SSI program as well as state supplemental cash programs, you must be able to show that your income and assets are equal to or below the eligibility limit. Income limits vary from state to state but are generally low. Asset limits are \$2,000 or less for an individual and \$3,000 or less for a couple. Certain assets are not included when determining whether you fall under the limit. For example, social security does not include the value of your home or the land it sits on, life insurance if the face value is \$1,500 or less, the full value of your car if you need the car for work or medical reasons, and funds saved to cover burial costs (up to \$1,500 or \$3,000 for couples). Your local social security office can assist you in determining whether your state offers supplemental cash payments. Of note is that the government may reduce your SSI and/or state supplemental cash payment amount if you (i) begin to receive additional monthly unearned income such as Social Security payments, pension, and other earnings not received from working; (ii) begin to live with a friend or relative or (iii) you begin to live in a nursing home.

4. Auxiliary Benefits

In addition to and separate from Retirement Insurance and SSI benefits, the Social Security Administration Office offers what are called auxiliary benefits. You may still qualify for auxiliary benefit payments even if you are receiving disability insurance. Auxiliary benefits are made to individuals who meet income/asset requirements and are intended to help support spouses and/or dependent children. If you are taking care of a grandchild you can qualify for auxiliary benefits. (See SSH §500 et. all).

5. Survivor Benefits

When an insured worker passes away, the surviving widow, widower, child/children, mother/father or parents of the insured worker can collect benefit payments from Social Security. (See SSH §§401-427). Even if you divorced the insured worker prior to his/her death, you may still be entitled to receive survivor benefits if you and your spouse were married for at least 10 years and you currently meet other age and marital status requirements. Survivor benefits can be paid monthly or in a lump sum payment upon the insured worker's death. (See SSH §§428-433).

6. How to Apply for Benefits from Social Security

To gain access to the benefits listed above, you must as a general rule apply. Under the federal system, the application process is termed "filing a claim." The Social Security Administration provides an application form that you must complete, sign and submit. You can apply (or file a claim) over the internet, the telephone or in person with any social security office in your area (See SSH §2108 and §2310).. You can obtain the address and telephone number of your local social security office by calling 1-800-772-1213 or by looking in the blue pages of the phone book under the listing for "Social Security Administration". Of note is that when you apply in person, the social security office employees are supposed to provide you with the necessary application forms, assist you in filling out the forms and assist you in understanding what documents are needed to support your application as well as what organizations can help you obtain any support documents that you do not have on file at home.

If where you live makes it hard to reach the local social security office, there may be a "contact station" closer to where you live where you can apply for benefits. Also, if because of your age or because of an illness you cannot travel to the local office, you can ask a social security representative to meet with you at your home.

Following below are additional application requirements for specific benefits.

SSI and state supplemental cash payments. While most applications are filed with the local social security office, some states may require you to file an application with your local welfare office. You can call your local social security office or Area Agency on Aging to find out where you should apply for SSI and state supplemental cash payments.

Survivor Benefits. If you are the wife/husband of the deceased worker and you were entitled to receive a portion of his/her benefit payment, you do not need to file an application to receive your survivor benefit as a lump sum payment. However, if you are the insured worker's child or you are *not* entitled to the payment as the wife/husband of the insured worker, you must file an application. As a general rule you must file the application no later than two years after the insured worker's death. (See SSH §433). In some instances, you can file an application after two years. If you have already missed the two year date, you should call the SSA to find out if your situation allows you to file an application none-the-less. (See SSH §§ 1517-1519).

7. Post Application Process and Appeals

Once your application is processed, the social security office will send you a written letter/notice letting you know if your claim was approved or rejected. If your claim is approved the letter will state the amount of the benefit you will receive and if you applied for health/hospital insurance, the office will mail you an insurance card. (See SSH §§2000-2019). If your monthly social security payment does not arrive on time, you can contact the Social Security Administration Office and request an expedited payment. If you contact the Office no later than 15 days after your payment was due, the Office will send your missed payment to you within 15 days.

If your application for benefits is rejected you or if you disagree with amount, you can file a request for reconsideration. If requesting reconsideration does not bring satisfaction, you can appeal the decision. Your appeal will be heard and decided by an Administrative Law Judge in your home state. If you disagree with the Administrative Law Judge's decision, you can appeal his/her decision to the Social Security Appeals Council. (See SSH §§2000-2019). Throughout this process you can have a person of your choice represent you. This person can be a lawyer, a family member, trusted friend, whomever. When and how you file your request for reconsideration and/or appeal is very important as the government sets time limits on how long you have to file a request for reconsideration or an appeal. As a result, you should contact your local social security office, local Area Agency on Aging or Legal Aid office for information on timing and assistance with your request for reconsideration or appeal.

8. Tax Consequences

Social Security Insurance Benefits can be taxed at the end of the year IF you receive a substantial amount of income from other sources. For example if your income from other sources and one-half of your social security insurance received exceeds \$25,000 and you are single, then you will have to pay taxes on a portion of the benefits received. At the beginning of each calendar year the office will send you a Form 1099 showing the amount of benefits you received the year before and a worksheet so you can determine if your benefits are subject to Federal Income Tax.

B. Railroad Retirement Annuities

Pursuant to the Railroad Retirement Act, the Railroad Retirement Board provides monthly benefit payments (annuities) to railroad employees and employees of companies connected to the railroad industry when they retire. (See 45 U.S.C. Retirement of Railroad Employees §231). Generally, employees who have completed ten years of service, have reached retirement age and have filed application for annuities are eligible for railroad retirement annuities provided that individual is no longer working and has not retained the option to return to work. While Railroad Retirement annuities are, as a general rule provided to workers who have reached retirement age, younger individual are also eligible if: the employee is 60 and has completed thirty years of service or the employee is sixty-two and

has completed less than thirty years of service (these individuals will receive a reduced annuity). Of note is that you can apply for and receive both Railroad and Social Security benefits but your railroad annuities will be reduced by the amount of other benefit/pension amounts that you receive. (See 45 U.S.C. Retirement of Railroad Employees §231).

An application must be filed in order to receive Railroad Retirement Annuities. Application forms and assistance in applying can be obtained from the Railroad Retirement Board. You can obtain the address and phone number to the national or local eligibility office from the telephone book or local post office.

C. Veterans Benefits Administration

The Veterans Benefits Administration, which is part of the Department of Veterans Affairs, offers pension benefits to war period veterans. Senior citizens who were members of a U.S. military branch at the time of death or honorably discharged from the military are eligible for veteran pension benefits. (See 38 U.S.C. Veterans Benefits §1521). The amount of the benefit is based on a combination of factors such as the veteran's net worth, family size and members and whether or not the veteran has any disabilities. (See 38 U.S.C. Veterans Benefits et seq.). Benefits can be paid to the veteran or to the veteran's widow/widower or minor children. Pension benefits may be terminated if the veteran's income surpasses a certain level. However the termination of pension benefits does not necessarily terminate other benefits such as health care, services, etc. (See 38 U.S.C. Veteran's Benefits §1525).

The Veteran's Benefit Administration gives veterans 65 and older priority and coordinates the provision of services and benefits with state and local agencies. (See 38 U.S.C. Veteran's Benefits §523). You can ask your local Area Agency on Aging for contact information to your regional or local veteran's benefit administration office.

D Private Employee Pension Plans

Private employee Pension plans are an important way to augment other retirement benefits such as social security, and/or veterans benefits. Generally, private pension plans are the deferment of compensation that would normally have been paid during the course of employment until the employee retires. Private pension plans are either defined benefit plans and defined contribution plans. Defined benefit plans pay out to the retired employee a fixed benefit amount which amount is stated in the plan materials. Defined contribution plans involve the employee and at times the employer paying into the employee's pension fund a specified dollar amount each year which the employee can withdraw upon becoming fully vested or retiring. Defined contribution plans are increasingly being used and include 401k plans, profit-sharing plans, and employee stock ownership plans.

While US law does not require that private employers provide pension plans, the Employee Retirement Income Security Act (ERISA) does dictate how the employers with pension plans administer them, the information employees receive regarding their pension plans, and how the employer invests and distributes the pension funds. Some of the fundamental rights and protections mandated by ERISA are:

Eligibility: As a general rule, an employee is eligible to participate in the private employers pension plan if he or she is at least 21 years old and has been employed for one year or billed 1,000 hours (See 29 U.S.C. ERISA §1051).

Information: ERISA laws dictate the scope and frequency of information the employer must give its employee regarding the pension plan. Part of these requirements are that the employee receive a Summary Plan Description setting forth the pension plan rules and requirements and a Personal Benefit Account Statement detailing the amount of pension benefits and what portion is vested. (See 29 U.S.C. ERISA §1021, 1022 and 1025).

Unjustified Discharge/Firing: ERISA prohibits employers from firing employees in order to prevent their pension plan funds from becoming fully vested. In order to charge your employer with improperly firing you under this law, you must be able to prove that your employer's primary purpose in firing you was to avoid having to pay you your pension benefits. If you have been fired for this reason you can bring a civil action against your employer and receive lost wages, lost benefits and attorney fees.

Joint and Survivor Annuities: Most pension plans permit employees who will retire after January 1, 1976 to elect to receive a small benefit amount from a defined benefit plan so that the employee or the employee's spouse can continue to receive pension benefits for as long as s/he lives. Of note is that upon the employee's death, the benefit amount paid to the spouse can be reduced by as much as 50%. (See 29 U.S.C. ERISA §1055).

Management of Pension Funds. Under ERISA, the employer or employer's representative has a fiduciary duty to manage pension funds solely in the interest of the employees, to act skillfully, prudently, and diligently in administering the plan, to diversify the fund investments to avoid large losses, and to operate the pension plan in accordance with the plan rules. These fiduciary requirements serve to protect employees from losing pension benefits. However, these protections are fact specific and therefore may not protect employees from all losses. (See 29 U.S.C. ERISA §§1101-1114).

If you believe that your employer has or is violating your rights as a pension beneficiary or the prohibitions set forth under ERISA, you can bring your allegation to the Secretary Of Labor. The Secretary will investigate the allegation to determine whether your employer or your employer's representative has violated or is about to violate any provision of ERISA. (See 29 U.S.C. ERISA §1134). Upon conducting an investigation, if the Secretary determines that a violation has occurred, he will refer the case to federal or state prosecutors who will file civil and/or criminal actions. (See 29 U.S.C. ERISA §1136). The Secretary of Labor will also work in conjunction with state agencies and may well delegate the investigation to a state agency. You can locate the address and telephone number of the Secretary of Labor in the blue pages of the phone book. You can contact your local Area Agency on Aging or access the Administration On Aging's Information and Assistance System for further assistance/contact information.

If an employer denies a retiree's claim for benefits, the employer must provide a written

statement to the employee setting forth the specific reasons why the employee's claim was denied. Upon receipt of the statement, the employee can request that the fiduciary conduct a full and fair review of the decision of denial. (See 29 U.S.C. ERISA §1133). When communicating with your employer, employer's representatives or the plan administrator about your denied claim, you should conduct all correspondence in writing sent by registered certified mail. This will create documentation that you can later present on appeal or in a civil action if you choose to do so. If you are not satisfied with the fiduciaries review, you can appeal his/her findings. At this point you should seek legal advice or representation to determine whether an appeal is the proper course of action to pursue.

E. Federal Employee Pension

Retirement programs and benefits are offered to government employees by the Civil Service Retirement System. (See generally 5 U.S.C. Federal Employees Retirement §§8331-8351). Generally, federal employees are entitled retirement annuities if s/he:

- (i) is 55 years of age and completed 30 years of service;
- (ii) is 60 years of age and completed 20 years of service;
- (iii) is over 50 years of age and completed 20 years of service as a law enforcement officer, firefighter, or nuclear materials courier, or any combination of such service;
- (iv) is at least 62 years of age and completed 5 years of service;
- (v) is at least 62 years of age and completed 5 years of civilian service;
- (vi) is at least 60 years of age and completed 10 years of Member service; OR
- (vii) is between 55 and 60 years of age and has completed 30 years of Member service. (See 5 U.S.C. Federal Employees Retirement §8336).

In addition to immediate retirement annuities, the federal government offers its employees deferred retirement annuities, cost of living adjustments to annuities, survivor annuities, the option to receive annuities in a lump sum payment; and the option to increase annuities by making additional contributions toward their pension. (See 5 U.S.C. Federal Employees Retirement §§8338, 8339 and 8341-43).

The Office of Personal Management pays out retirement annuities and handles all claims for annuities and makes all decisions concerning annuity eligibility, reduction, discontinuance, etc. You can obtain assistance in understanding your pension plan and applying for the benefits listed above by contacting the Office of Personal Management. Should you disagree with the Office's determination, you may appeal to the Merit Systems Protection Board under procedures prescribed by the Board. It is highly advised that you seek the advice of legal counsel or your local Area Agency on Aging prior to commencing an appeal as the process can be complicated and may contain firm time restrictions.

III. HEALTH INSURANCE/HEALTH CARE

Congress, through the Older Americans Act, had charged the Administration on Aging and its National Network on Aging with ensuring that senior citizens maintain the best possible physical and mental health which science can make available without regard to economic status. To advance this purpose, the Federal Governments provides senior citizens with: Hospital and Medical Insurance (Medicare); National Family Caregiver Support Program; Native American Caregiver Support Program; Home Health Care; Elderly nutrition services; and Respite and other supports to assist in caring for a person with Alzheimer's. In addition, AOA as part of its pension counseling assists you in making make informed insurance and health care choices by providing information and referrals.

A. Hospital and Medical Insurance (commonly known as Medicare)

The Social Security Administration in conjunction with the Health Care Financing Administration provides hospitalization (Part A) and medical (Part B) insurance coverage to elder citizens. This insurance is comprehensive and is offered at low to no cost. (See SSH §§2400-2454.) In thirty-eight states, you do not need to apply for Medicare if you are eligible for social security insurance and are at least 65 years old. Social Security Administration automatically enrolls you in Medicare. If you are eligible for social security insurance, you can apply just for Medicare if you do not want to receive monthly benefits. If you are not eligible for social security insurance, you can apply for and receive Medicare; provided you pay the monthly premium yourself. (See SSHA §1500). Persons with kidney failure or transplant can qualify for Medicare coverage, both part A (hospital insurance) and part B (medical insurance). The extent of coverage however depends on whether dialysis and other treatments are given in the patient's home or in a hospital.

B. Long-term Care

The AOA provides full restoration services for those who require institutional care, and a comprehensive array of community-based, long-term care services adequate to appropriately sustain older people in their communities and in their homes. As part of these services, AOA and its state agencies provide support to family members and other persons providing voluntary care to older individuals needing long-term care services. You can call The Eldercare Locator at (1-800-677-1116) for assistance in finding necessary, convenient services and resources in your own community or throughout the country.

The Veteran's Health Administration, which is part of the Department of Veteran's Affairs, offers Hospital, Nursing Home, Or Domiciliary Care And Medical Treatment programs. (See 38 U.S.C. Veterans Benefits §§1710-1720). If you are a military veteran, you should contact the Veterans Health Administration to ask about your entitlement to their health care services and benefits. The Veteran's Administration gives veterans 65 and older priority and coordinates the provision of services and benefits with state and local agencies. (See 38 U.S.C. Veteran's Benefits §523). You can ask your local Area Agency on Aging for contact information to your regional or local veteran's health administration office.

C. National Family Caregiver Support Program and Native American Caregiver Support Program

The Older Americans Act provides support programs to family members who care for their elders. The programs are administered by the Administration on Aging in conjunction with state area agencies on aging. The services are intended to assist family caregivers of older adults and individuals 60 years of age or more who are caring for children under 18 years of age. Grandparents who are caring for grandchildren are also eligible to obtain assistance. The services and assistance provided under the Caregiver Support programs include, individual counseling and training to caregivers, respite care that provides temporary breaks for caregivers from their care giving responsibilities, and supplemental services which caregivers can use to augment the care giving they provide.

In addition to respite care, AOA is developing additional services and programs for individuals who care for an elder person suffering from Alzheimer. Projects under development include home health care, personal care, day care, companion services, improved access to home and community based long term care services as well as referrals about sources of assistance to help pay for such services, including entitlement programs.

You can obtain information about and referral to services available to caregivers by accessing the Administration on Aging's Information and Assistance System or by contacting your local Area Agency on Aging. Please note that the Caregiver program services offered by the State are the same as those offered by the Native American and other tribal organizations.

IV. OTHER SERVICES

The Administration on Aging through its National Network on Aging provides a host of community based services and direct assistance to senior citizens who are at least 60 years of age. The following provides an overview of the range of support services available to older residents in their communities. For further information on the services listed you can contact your local Area Agency on Aging or utilize the Eldercare Locator by visiting www.eldercare.gov or by calling 1-800-677-1116.

Adult day care. These programs are intended for elders who do not require institutionalization or round the clock care but cannot stay alone during the day. Adult care centers provide counseling, physical, occupational and speech therapy, medical and health care monitoring, recreational activities, medication administration as well as meals and roundtrip transportation.

Home repair and modification. Briefly, this program assists seniors in obtaining for example low/lower cost carpentry, minor electrical and plumbing repairs, and insulation.

Homemaker/chore services. Under the homemaker program individuals will do laundry, do light cleaning, do shopping, prepare meals and assist with limited personal care. Under the chore services program individuals will do heavy cleaning, minor repair or yard work. This type of assistance is given to elders who are physically unable to perform the work, cannot afford to pay for the services and do not have anyone else who can do it for them.

Low Income Home Energy Assistance Program. The Low Income Home Energy Assistance Program (LIHEAP) helps seniors to pay home heating and cooling services, repairs or emergencies.

Legal assistance. The Federal Government has provided funding to over 1,000 legal service providers so that they can assist elders with legal issues. The federal government has mandated that the providers give priority to issue relating to income, health care, long-term care, nutrition, housing, utilities, consumer protection, defense of guardianship, abuse, neglect, and age discrimination. The National Center for Social Gerontology provides a listing of state agencies that either provide legal services to older persons or maintain a list of federally funded state agencies that provide legal services. The web site address is <http://www.tcsg.org/links.htm>. For individuals who are at least 60 years old, state legal hotlines can answer general questions and can refer you to a private or bar association lawyer. Telephone numbers for a legal hotline in your state can be found at: http://aoa.gov/eldfam/Elder_Rights/Legal_Assistance/Legal_Hotline.asp

Rental Assistance. For seniors who meet the income eligibility requirements, the government will pay part of the senior's rent. As a result, the senior pays 30 percent of his or her monthly income as rent.

Transportation services. AOA offers means by which seniors can obtain door to door transportation for doctor visits, shopping, banking and other business errands, as well as senior activities.

APPENDIX

ALZHEIMER

AREA AGENCIES ON AGING and STATE UNITS

Eldercare Locator (provides name, address and telephone numbers)

1- (800) 677-1116

<http://www.eldercare.gov>

Alzheimer's Association

919 North Michigan Avenue

Suite 1000

Chicago, IL 60611-1676

24-hour Toll-Free Nationwide Hotline: 1-800-272-3900

Web Site: <http://www.alz.org>

National Institute on Aging

Alzheimer's Disease Education and Referral Center

Phone: 1-800-438-4380 Web Site: <http://www.alzheimers.org>

HEALTH CARE

American Hospital Association

One North Franklin

Chicago, IL 60606

(312) 422-3000

Department of Health and Human Services

Health Care Financing Administration (HCFA)

7500 Security Boulevard

Baltimore, MD 21244

(410) 786-3151

Medicare

1-800-638-6833

LEGAL INFORMATION

American Bar Association

Commission on Legal Problems of the Elderly

740 15th Street NW

Washington, DC 20005-1009

(202) 662-8690

Legal Counsel for the Elderly

601 E Street NW

Washington, DC 20049

(202) 434-2120

The National Center for Social Gerontology
(provides a listing of state agencies that either provide legal services to older persons or maintain a list of federally funded state agencies that provide legal services).

<http://www.tcsg.org/lslinks.htm>

National Senior Citizens Law Center
Suite 700
1815 H Street NW
Washington, DC 20006
(202) 887-5280

State Legal Hotlines

(will answer general questions and can refer you to a private or bar association lawyer. Telephone numbers for a legal hotline in your state can be found at website. Callers must be 60 years old or more)

http://aoa.gov/eldfam/Elder_Rights/Legal_Assistance/Legal_Hotline.asp

LONG TERM CARE

American Health Care Association
1201 L Street, NW
Washington, DC 20005
(202) 842-4444

American Association of Homes and Services for the Aging
901 E Street NW, Suite 500
Washington, DC 20004-2037
(202) 783-2242

RETIREMENT

Social Security Administration
1-800-772-1213

Department of Labor
Pension and Welfare Benefits
Administration Room N 5619
200 Constitution, NW
Washington, DC 20210
(202) 219-8776

Pension Rights Center
918 16th Street, NW Suite 704
Washington, DC 20006
(202) 296-3776

OTHER HELPFUL CONTACTS

American Association of Retired People (AARP)

601 E Street NW
Washington, DC 20049
(202) 939-3910

American Society on Aging
833 Market Street, Suite 512
San Francisco, CA 94103
(415) 882-2910

Bureau of Consumer Protection
Federal Trade Commission
Washington, DC 20580
(202) 326-2222

National Meals on Wheels Foundation
2675 44th Street, SW, Suite 305
Grand Rapids, MI 49509
(800) 999-6262