RESOURCES TO AGE IN PLACE: WAYS SENIORS CAN STAY IN THEIR EXISTING HOME AND NOT MOVE TO INSTITUTIONAL HOUSING

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Increasingly seniors, their family and all levels of government are seeking ways to allow seniors to stay in the community by residing in their existing home. Seniors have often lived in the same home for decades; they like the neighborhood and do not want to change their residence. Surveys have found that between eighty-five percent and ninety percent of seniors desire to stay in their home until their death.[1] In addition the cost of a senior residing in any kind of congregate housing will usually be much more than the cost of a senior staying in their home. Besides the financial benefits of aging in place there are psychological benefits to seniors staying in their home. The benefits of keeping seniors in their homes include financial, psychological and health maintenance benefits to seniors and helping the community by benefiting neighborhood security, lessening the demand on social support services and creating age-integrated communities.[2] Seniors can be close to support from friends and relatives. Informal networks of social supports assist seniors with their needs and thus seniors do not use government resources. Children of seniors or others helping seniors often desire to keep seniors in their current home because of the concerns of the stress of moving, the cost of moving, the large task of going through accumulated possessions with the senior and the time and money often needed to get a home ready for sale while transitioning the senior to the new facility. The cost to the federal government and states of paying for nursing home through Medicaid is spiraling out of control, even though Medicaid reimbursements to nursing homes have not increased measurably over the last nine years. Therefore the gap between the costs of nursing homes and the reimbursement to nursing homes continues to increase.[3] Thus Medicaid supported nursing homes continue to decrease in quality even as demand increases.

The "baby boomers" are just starting to retire and tap benefits from senior programs. Many question the ability of the United States to pay for the projected costs of providing nursing homes and senior services for baby boomers. Obviously there are circumstances when it is impossible for a senior to stay in the current housing because of safety concerns or the need to be in an environment with people of similar age and interests. However many seniors want to stay in their current home if they can overcome obstacles within and outside the home and pay for the expenses necessary to stay in their home.

According to one 1995 study eighty percent of households headed by a person 65 or older owned their home.[4] This percentage has increased in the last twenty years.[5] Out

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[1] See Patricia Salkin, Where Will the Baby Boomers Go? Planning and Zoning for an Aging Population, 32 Real Est. L.J. 181, 183 (2003), and Ada-Helen Bayer & Leon Harper, AARP Fixing to Stay: A National Survey on Housing and Home Modification Issues 4 (2000), available at http://reseaarch.aarp.org/ilhome_mod.pdf.

[2] Id.

[3] Eljay, LLC for the American Health Care Association, A report on the Shortfalls in Medicaid Funding for Nursing Home Care, October 2008, found at www.ahcancal.org/research_data.

[4] The State of the Nation's Housing 2009, Joint Center for Housing Studies of Harvard University, 2009

of those seniors who own their home, between seventy-two and eighty percent do not have a lien or mortgage against their home.[6] In addition as of the year 2000 home equity represents more than 75% of the net worth of people over age 65.[7]

I will assume for this paper that the senior is currently residing in a structure that is in the community and is owned by the senior. This could be a single family residence, duplex, condo, coop or any other housing that is in the community. There are services that are available to residents of certain communities. For example residents of Johnson County, Kansas can take advantage of a library service that delivers books, tapes and other materials to residents that cannot come to the libraries in Johnson County. In addition Olathe, Kansas, Jackson County, Missouri and Kansas City Missouri Library offer to bring books to or mail books to homebound customers who cannot go to the library because of health issues. I will list the services in the Appendix. The states of Kansas and Missouri both have grants from the Center for Medicare and Medicaid Services ("CMS") called "Money Follows the Person" that seek to provide services and resources to allow disabled people, including seniors, to move from care facility to a home in the community.[8] This paper will not cover this worthy program because most seniors reside in their home and want to continue to live in that home. In addition community action agencies in Missouri and Kansas work to alleviate poverty. These programs do not focus on seniors, although some of the programs help seniors. I will list these agencies in the Appendix.

This paper seeks to provide resources to seniors, their families or care providers, professionals assisting seniors and government representatives to help seniors stay in their home. The first section of the paper will focus on the services and products that the Area Agencies on Aging provide to help seniors stay in their home. The second section will discuss the other government programs that can provide benefits to assist seniors paying for necessary products and services. The third section of the paper will discuss resources available to seniors who own their home or own a life insurance policy. This paper will not discuss Social Security, Supplemental Security Income ("SSI"), pensions or other government and private programs that are not dependent on the senior residing in his or her home.

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[5] Hermanson, Sharon, Citro, Jeremy, Progress in the Housing of Older Americans (1999) found at http://assets.aarp.org/rgcenter/consume/d16953_housing.pdf.
[6] Supra N. 1.
[7] Net Worth and Asset Ownership of Households: 1998 and 2000, Household Economic Studies, Table F, USCENSUSBUREAU, Issued May 2003, found at www.census.gov./prod/2003pubs/p70-88.pdf.
[8] www.cms.hhs.gov/DeficitReductionAct/20_MFP.asp.

I. Area Agencies on Aging Resources

A. Basic Services, Assessment and Geriatric Care Management

The federal Older Americans Act ("OAA") operates through the Area Agencies on Aging ("AAA") and provides funds for information, services and some devices. The AAAs are charged with improving the lives of seniors.[9] The federal legislation creating AAAs recognized that the local governments could fashion AAAs to meet their local needs. Each AAA is different and funding levels vary widely between AAAs. The AAAs in the metropolitan Kansas City area are the best source of information for seniors seeking to stay in their home.[10] Many of the programs for seniors residing in their home are operated under AAAs or the AAAs contract with companies to provide those services. Cass, Clay Jackson, Platte and Ray counties in Missouri have banded together to have a central organization to administer AAA programs for their seniors. The Mid-American Regional Council ("MARC") operates all of the AAA programs for these five Missouri counties from one location in Kansas City Missouri. MARC operates twenty-one Senior Centers to provide services to the many seniors in the five counties. Johnson County Kansas operates its AAA through the county government. Thus the Johnson County AAA is a department of the county government and operates out to county and city facilities. The state of Kansas has designated Wyandotte and Leavenworth counties form one AAA. However as a practical matter Wyandotte and Leavenworth counties operate independent programs for seniors in their county. Therefore Wyandotte County and Leavenworth County will be discussed separately.

1. **Information Distribution.** AAAs stock many publications that provide valuable information and resources to seniors and their relatives and caregivers. In addition most AAAs have an information telephone line and web site that can provide resources to seniors. AAAs have access to programs operated by all levels of government and for-profit and not-for-profit organizations that focus on specific services or products that benefit seniors in their home. Examples of government agencies or offices that can assist seniors in their home are state Medicaid offices, departments of aging, Medicare offices, Veterans Administration and state revenue departments. The Appendix will list information on the local AAAs and the information they can provide to seniors seeking resources to stay in their home.

2. **Assessment** All of the AAAs in the metropolitan Kansas City area provide initial assessment of the needs of seniors living in their home. Assessment is critical to determining the services that can be provided by the AAAs and what services and products can be provided by other entities. This service is provided by a trained social worker who is either

[9] See www.aoa.gov/AoARoot/AoA_Programs/OAA/Aging_Network/Index.aspx.
[10] Id.

an employee of an AAA or a contractor of the AAA. This service determines the services that can be provided by the AAA, whether a nursing home assessment is necessary and whether to refer the senior to resources outside of the AAA. The AAAs contract with private providers to do the actual nursing home assessment, but the AAA can do an initial interview to see if screening for nursing home admittance is appropriate. The social worker doing the initial assessment also conducts an annual review to update the initial assessment to see if conditions have changed and to determine if any new resources in or outside of the AAA would help the senior.

3. Geriatric Care Management Geriatric Care Management ("GCM") is separate from the initial assessment provided by AAAs. GCM is conducted by a geriatric care manager ('Manager") trained to deal with seniors and their families in stressful situations, seniors needing many services to stay in their home and with transitions to different stages of need. Managers conduct a more in depth evaluation than the initial assessment conducted by or for the AAAs. The Manager may need to bring in a mental health professional to do a clinical evaluation of the senior to determine the mental condition of the senior and if the senior can mentally perform the necessary activities to continue to stay in his or her home. Often Managers have to coordinate care issues with a relative, friend or other caregiver to make sure the senior's support people have the resources to care for the senior. This can include providing information, making referrals to obtain services and products and arranging for respite care for caregivers. If the senior lives alone and does not have any relative, friend or caregiver to assist the senior then the Manager must assume a larger role in obtaining the necessary resources for the senior both in and outside of the AAA. The difference between initial assessment and GCM is that the Manager follows up on the recommendations and monitors the situation for changes to the senior that may necessitate changed services and products. Usually the Manager sees the senior at least every 90 days to determine how the services are being implemented and if any changes are necessary. The Johnson County AAA has Managers on staff that handle approximately fifty seniors at one time. Johnson County AAA charges seniors for the Manager's service on a sliding scale based on the income of the senior. If the senior's monthly income is above $2,315 for a couple or $2,004 for a single senior the pays the full cost of the Manager. The remainder of the metropolitan AAAs refer seniors to approved GCM providers. These AAAs do not provide GCM services as part of their senior benefits. Thus for these AAAs GCM is a service that must be contracted by or for the senior and paid by the senior.

B. Senior Centers and Nutrition Programs

For many seniors it is important to get out of their residence in order to socialize with other seniors. The negative impact of isolation can create mental and physical health problems. The AAAs coordinate with all levels of government, agencies, not-for-profit organizations and, sometimes, for profit organizations to provide meeting places for seniors to gather. In the metro Kansas City area these meeting places for seniors are often called "Senior Centers."[11] All of the Senior Centers operate Monday through Friday and provide activities, recreation and a noon meal and snacks. Often trips are planned for those with similar interests. Most of the Senior Centers assume that the senior can drive or be transported to the building holding the gathering, is continent and is mobile enough that he or she does not need assistance from another person to move within the building.[12] Funding for the Senior Centers comes from the OAA, state funding and contributions from seniors. Seniors are not required to pay for attending Senior Centers but contributions, especially for meals are strongly suggested. The Senior Centers can be found through the local AAA. Listings of the AAAs in the metro counties that provide information on Senior Centers are listed in the Appendix. Education and recreational services are conducted in the Leavenworth office of the Council on Aging within the city of Leavenworth and not at the nutrition sites.[13]

1. Social Benefits of Senior Centers. For those who can drive or can arrange transportation Senior Centers provide an opportunity to socialize with other seniors. Each senior center is operated separately to reflect the needs of the group of seniors that participate in the Center. In addition to Senior Centers can provide relief to caregivers providing assistance in the home.

MARC operates 21 senior centers within the Missouri counties of Cass, Clay, Jackson, Platte and Ray.[14] Johnson County Kansas operates eight Senior Centers that provide learning, recreation and noon meals.[15] The Senior Centers in Johnson county are conducted in facilities donated by the cities within the county. Johnson County has the same eligibility criteria as MARC programs. The combined governments of Wyandotte County and Kansas City Kansas ("WCKC") operate nine senior centers. Leavenworth County operates two Senior Centers.[16]

2. Meals at Senior Centers For some seniors it becomes difficult to obtain groceries and prepare healthy meals in their home. Obtaining consistent good nutrition is one reason some seniors seek to live in an

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[11] www.agingkansas.org/SeniorCenters/center.htm.
[12] www.marc.org/aging.htm.
[13] Telephone interview with on Julie Angelo, director of nutrition services of the County of Leavenworth Council on Aging conducted on October 2, 2009 and www.leavenworthcounty.org/coa/coa.asp.
[14] www.marc.org/aging/centers.htm.
[15] http://hsa.jocogov.org/aging/centers.shtml.
[16] Office conference with Allison Rousch of WCKC AAA on May 27, 2009 and phone conference with Lamonica Upton on October 9, 2009.

institution that serves meals. However the cost to the seniors and society is large if the only reason a person moves from their home is to get meals prepared for them. Both Kansas and Missouri have programs to assist seniors in obtaining nutritious meals.

AAAs in Kansas and Missouri serve meals to seniors at Senior Centers and in their home. The Senior Centers provide a noon meal Monday through Friday to those participating in the center's activities. People over age 60 and their spouse are eligible to eat at the Senior Centers. Those eating at the Senior Centers are encouraged to make contributions toward the cost of the meal, but payment is voluntary.

MARC served 200,254 meals through its 21 Senior Centers in 2008.[17] The donation requested by MARC in $2 per meal. Johnson County AAA has the same eligibility criteria as MARC programs; however there is a recommended $2.50 fee for meals served at its Senior Centers. WCKC through its nine senior centers provides hot noon meals to between 200 and 250 people Monday through Friday.[18] Leavenworth County operates four nutrition locations, separate from the Senior Centers that serve about 70 people weekly.[19] Leavenworth county and WCKC both have the same requirements as MARC including the same recommended contribution.

3. Meals Delivered to the Home. The more urgent need is to provide meals to those seniors who are unable to attend meals at the Senior Centers. Adult day care centers and adult day health centers provide noon meals to their participants. Most of these people are not able to transport themselves to a Senior Center. However with transportation these seniors can get a meal that is included in the cost of the care provided at the centers. Home and Community Based Services ("HCBS") operated through Medicaid can pay for the meals provided by these organizations for qualified seniors.[20] These programs will be discussed in more detail under Caregiver Support on page 12.

For seniors unable to obtain transportation to a Senior Center or adult day care center or adult day health center or are physically unable to leave their home, AAAs can deliver meals to seniors in their home. In order to qualify for delivery of meals to their home a senior must obtain a statement from a physician certifying that the senior is housebound. The

[17] Office conference with Michelle Brown at MARC June 17, 2009 and phone conference on October 9, 2009.
[18] Telephone interview with Jennifer Long director of nutrition for the Wyandotte County Area Agency on Aging, conducted on October 2, 2009 and www.ycokck.org/dept.aspx?id=6354&menu_id=1036&banner=15284.
[19] Supra. N. 13.
[20] www.dhss.mo.gov/cacfp/adult_care.html.

MARC website contains a form for the physician to complete.[21] The cost of the meals delivered by AAAs is between $3 and $7. Seniors are not required to pay for the cost of the meals, but contributions are requested. Often the AAAs utilize volunteer drivers to deliver the meals. All AAAs have a great demand for volunteer drivers to maintain and expand the meal delivery programs.

MARC delivered about 410,747 meals in 2008 and it had demand for another 50,000 meals per year to eligible seniors who are housebound.[22] MARC contracts out the cooking and meal delivery system. MARC has had to prioritize seniors in the following order: seniors in protective services, those who cannot provide meals for themselves and have no friends, family or neighbors to help them, those seniors with only intermittent support, those who can provide meals for themselves on occasion but cannot attend a senior center on a regular basis and those for whom a delivered meal is an advantage.[23]

Johnson, WCKC and Leavenworth counties also have programs that deliver meals to seniors in their homes. The criteria and prioritization is the same as the programs administer by MARC. Johnson County's program is called Meals on Wheels and serves many citizens and requests a voluntary donation of $2.50 per meal.[24] WCKC distributes about 350 meals a day to homebound seniors. In addition WCKC distributes frozen meals for an entire week to about 250 seniors.[25] Leavenworth County operates its own programs for nutrition and other programs through the County of Leavenworth Council on Aging. The Council delivers approximately 200 hot meals to residents in the county.

In addition to the AAAs there are not-for-profit organizations that provide meals to seniors in their homes. One organization that operates in Jackson County and Johnson County is the Shepherd's Center which also provides meals to those not able to leave their home.[26]

C. Transportation Outside the Home

1. Demand for Transportation. Given the distances people in the United States have to travel to purchase necessities, visit doctors and socialize with others, seniors must have transportation to places outside of their home. In our culture the automobile is the preferred way for most people to travel to and from destinations. Most seniors continue to drive their private automobile. If a senior is unable to drive because of reasons

[21] Supra N. 14.
[22] Supra N. 17.
[23] Supra N. 14.
[24] Supra N. 18.
[25] Supra N. 15.
[26] www.sccentral.org.

that make them unable to drive himself or herself then the senior faces the daunting task of finding alternative means of transportation. Most nursing homes, assisted living facilities and other institutions provide transportation to and from doctors and shopping. However a senior living in their home does not have that readily available transportation. Often relatives of the senior are able to provide transportation to doctors, to shopping centers and other places they wish to go. But if relatives live far away seniors may not be able to obtain the transportation they need.

Seniors can take advantage of public transportation. However the biggest obstacle to using public transportation is the distance from the home to the place to board public transportation. Taxis can provide transportation from the home to the destination. However the cost of taxis may be out of the reach of some seniors to use on a regular basis. In addition a car may not accommodate wheelchairs, scooters and other devices the senior may require to move within a building. Therefore a senior may require transportation from the public or private providers. Many not-for-profit organizations and local government organizations operate limited services to their members or residents. This section of the thesis will explore transportation resources for seniors in the Kansas City area other than their own automobile.

As of 2005 there were 62 separate federal transportation programs. A review of the programs noted little uniformity, delivery or coordination among the programs.[27] There has been some progress in coordination and avoiding duplication. I will focus on the largest and most available transportation programs.

2. AAA Resources. The local AAAs provide transportation services and resources for transportation of seniors. All of the AAAs provide information on the public transportation serving their area. The Appendix lists the largest public transportation programs in the area. Each AAA provides different transportation services for the seniors in their area.

In Johnson County there are many different services that can assist seniors in meeting their transportation needs that are coordinated through the AAA.[28] Johnson County operates a service that provides curb to curb service to and from anywhere in the county for seniors unable to drive themselves. The program is called Johnson County Special Edition. The cost for the service is $4.50 each way unless a senior qualifies for reduced fare, and then the cost is $2.80 each way. An additional $1 is charged for

[27] Progress Report on the Implementation of Executive Order 13330 found at www.unitedweride.gov.UWRProgress_report_2005_20072_2_07.doc. (2007).
[28] Information provided by telephone conversation with Ed Shultz, director of AAA of Johnson County, Kansas and information provided at http://hsa.jocogov.org/aging/centers.shtml.

every 10 miles after the first 10 miles of the trip. Another program is the Catch-A-Ride program that matches volunteers using private cars with seniors needing transportation. The service is free but donations are requested. The public bus system, The JO, provides public transportation on specific routes with some discounts for low income people. The JO provides limited service for those in wheelchairs, scooters or other devices. There are many other programs specific to certain cities, locations, events, medical condition and membership in a specific group. The AAA representative in Johnson County states that for now the supply of drivers and vehicles in the county appears to meet the current demands of seniors in the county. However the representative stated that increasing demand in the future could not be met with current resources.[29]

The WCKC AAA operates a system of handicap accessible vehicles and cars that transport people from their home in WCKC to doctors in WCKC.[30] The senior is asked to pay $1 each way. The WCKC AAA is able to meet the demand for these medical trips. The Wyandotte County/Kansas City Kansas Unified Government ("UG") has a limited transportation service to destinations other than doctor appointments. Transportation for seniors in WCKC for the limited non-doctor transportation is on a first come first served basis with many referrals coming from UG agencies that assist low income seniors with their other needs. There is much more demand for transportation than there are funds available to the UG. No volunteer transportation program exists through the UG or WCKC AAA. If a senior in WCKC receives Medicaid the senior contacts Medicaid directly to arrange transportation.

MARC coordinates transportation services for seniors in the five counties in Missouri it serves. MARC contracts with a service provider to provide a specific amount of transportation dollars for the fiscal year of July 1 through June 30. Transportation is done on what MARC calls a demand response program. In this program people are required to call to the service provider at least 24 hours in advance of the requested ride. Medical appointments are given priority for transportation with those calling in earlier given first priority. The return trip from a medical appointment is also scheduled because the vehicle cannot wait at the doctor's office because of limited resources. The second priority for transportation is essential personal trips, such as transportation to a pharmacy. The provider tries to transport more than one person at a time to maximize the number of people transported. Doubling up is most important in the rural areas where distances are greatest.[31] MARC does not have any volunteer drivers to provide transportation in private vehicles such as operated in Johnson County. MARC does not have any

[29] Id.
[30] Telephone conversation with Lamonica Upton of the AAA of Wyandotte County on October 9, 2009.
[31] Supra. N. 14.

coordinated program with any mass transit organization to provide service to seniors. Errands run for seniors come from the people providing personal care and home maintenance through MARC and not through the MARC transportation system. In addition the Shepherd's Centers operating in Kansas City Missouri have a service that runs errands for seniors in Kansas City Missouri and Johnson County.

Leavenworth County AAA provides transportation to seniors under two separate programs: general public transportation and Senior Express. Both programs provide the same basic service: curb to curb transportation in cars or ADA compliant vehicles. The fees range from $2 per trip to $10 per trip. The general public transportation only operates within Leavenworth County and can be for any purpose. The Senior Express is limited to people 55 years old and older and for a medical purpose. Transportation to a pharmacy is considered a medical purpose. Senior Express goes outside of the county on trips three days a week with a maximum radius for the trip of between 50 and 60 miles from the pickup place. In both programs the senior must reserve a vehicle by at least noon the day before the trip. In addition Leavenworth County AAA offers an errand service that provides limited shopping services for seniors who are ill or homebound. The cost of this service is $4 per trip. All of the discussed programs are coordinated through the county. There are no volunteer drivers that service Leavenworth County.[32]

3. Medicaid Transportation Services. Medicare does not pay for transportation unless it is an ambulance or other emergency transportation caused by a medical condition.[33] Medicaid provides transportation for those people receiving aid for emergency transportation to a qualified facility and for medical appointments or medically-related appointments.[34] The services must be provided with reasonable promptness and by a qualified provider.[35] Because Medicaid is a payer of last resort and works on a set schedule that may cause the senior to wait long periods of time, friends and relatives should be utilized before Medicaid is used for transportation.[36] Nationally Medicaid paid about $1.75 billion for transportation of Medicaid patients.[37]

[32] Telephone conversations with Linda Willman and Laura Elkins at the Leavenworth County Council on Aging and www.leavenworthcounty.org/coa/coa.asp.
[33] See Medicare Coverage of Ambulance Services, Publication No. 11021, September 2008 www.medicare.gov/Publications/Pubs/pdf.11021.pdf.
[34] 42. C.F.R. § 431.53 (2009).
[35] 42 U.S.C. § 1396a(a) (2009).
[36] The Non-Emergency Transportation Technical Advisory Group cited in Medicaid Transportation Services at www.healthconsumer.org.
[37] Burkhardt, Jon E., Medical Transportation: Challenges of the Future, found at www.cta.org/webmodules/webarticles/webfiles/ct/summer06/Challenges_Future.pdf.

Prior to November 1, 2009 in Kansas the Medicaid recipient would arrange transportation for non-emergency medical visits and the program would pay for that cost. Starting on November 1, 2009 the Kansas Health Policy Authority contracts with a private provided to manage and coordinate all non-emergency medical transportation.[38] The contractor will then determine the appropriate manner of transportation and then transport the senior or make arrangements for the senior to be transported to the health care provider. Missouri has had a similar program in place for many years.[39] There have been issues with quality and the amount of payment in Missouri. But the program has been extended through the year 2013.

D. Caregiver Support and Respite Care

As seniors age they often need assistance to perform activities and functions they used to do by themselves. The usual measure of determining whether a senior needs assistance is whether they can perform the six activities of daily living ("ADLs"): be able to feed oneself, be able to dress and undress, be able to bathe oneself, not be incontinent, be able to transfer onto and off of a toilet and be able to get into and out of bed.[40] When a senior is unable to perform any of these ADLs then caregiving in some form in necessary. This caregiving service usually does not require the assistance of a skilled medical professional such as a nurse or therapist.

1. Growing Need. One study estimates that the number of family and friends that provide caregiving services for seniors, but do not receive pay, range from 20 million to 50 million people.[41] "According to a 2004 study by the National Alliance for Caregiving and the AARP, about one-fifth of the U.S. population, some 44 million people, have some caregiving responsibilities."[42] Twenty-five percent of caregivers live in the same home as a person needing assistance.[43] Census data shows the number of households with three or more generations living in one home increased 38 percent between 1990 and 2000.[44] More importantly "between 2000 and 2007 the number of parents living in homes with their adult children increased 67 percent."[45] One study predicts that the number of seniors needing care in the home will rise from 2.2 million in

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[38] Press Release from Kansas Health Policy Authority, August 10, 2009 found at www.khpa.ks.gov.
[39] www.auditor.mo.gov.press2005-73.htm. And www.accessmylibrary.com/article-1G1-13726289/logisticare-wins-missouri-contract.html.
[40] http://huningtondisease.taipod.com/activityofdailyliving.
[41] Thomas Day, About Caregiving, www.longtermcarelink.net/eldercare/cargiving.htm.
[42] Dana Schilling, Family Caregivers: The Legal System Responds, 198 Elder Law Advisory, 1, August 2007.
[43] Supra N. 40 at 1.
[44] Examining American Household Composition: 1990 and 2000, Aug. 2005, p. 27, U.S. Census Bureau at www.census/gov/prod/2005pubs/censr-24.pdf.
[45] Newsweek August 24, 2009, p. 64.

2000 to 5.3 million in 2040.[46] Thus the demand for unpaid care giving is large and is growing.

Usually the person who assists the senior is the spouse. Most couples assist each other as they age and do not need assistance from others until late in life. However when the couple is unable to take care of all of their needs a relative, usually the daughter or daughter-in-law, provides assistance to one or both of the couple. The typical caregiver is a daughter age 46 with a full time job that spends 18 hours a week helping her parents.[47] Providing care to a senior continuously can be very mentally and physically draining.[48] The concern of families and society is that providing caregiving will harm a caregiver's physical, mental and financial health. One study found that providing caregiving services to a spouse between the ages of 66 and 97 increased the risk of death by 63 percent compared to people of the same age who were not caregivers.[49] Another study found that 16% of caregivers report their health worsened after taking on the caregiver's role and half of caregivers who care for someone with Alzheimer's disease reported psychological distress.[50] Finally more than a third of caregivers surveyed said their financial health worsened after becoming caregivers because they used their funds for care for loved ones and they had to forego earnings opportunities.[51] Therefore caregivers need resources to cope with the stress of providing care and provide relief from providing care: "respite care." "Respite care is defined to include both planned and emergency services offering temporary relief for family caregivers."[52] This section examines some of the resources available to family and friends to help them in their caregiver role.

2. Information and Counseling for Caregivers. MetLife and the National Alliance for Caregiving, in cooperation with the National Association of Area Agencies on Aging have prepared "Resources for Caregivers 2007." [53] This booklet provides books and guides, internet sites and video and audio resources for caregivers as well as specific references to organizations dedicated to senior conditions such as stroke and Alzheimer's disease. In addition the Family Caregiver Alliance provides state and national programs that assist caregivers.[54] The Kansas Department on Aging has produced the Kansas Caregiver Guide that

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46 Supra N. 42 at 6.
47 Supra N. 41 at 7.
48 Id.
49 Family Caregiver Alliance, Effects of Caregiving on Health and Well Being at www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=847
50 Hanni Epp, Caregiver Health Issus, Caregiver Resource Network, at www.caregiverresource.net.family_resources.php?id=31
51 Supra N. 42.
52 Id.
53 www.maturemarketinstitute@metlife.com.
54 www.caregiver.org.

provides resources throughout the state and local AAAs.[55] Missouri does not publish a statewide resource but MARC provides local and national educational materials to caregivers. The Johnson County AAA provides counseling to caregivers to assist them in dealing with the strains on providing care to loved ones. The other AAAs provide informal counseling to caregivers on an as needed basis.

3. Respite Care

a. Private Caregivers. Seniors or their caregivers can hire caregivers to provide care in their homes to assist them in performing ADLs and provide other services. There are many for profit and not-for-profit organizations that provide paid assistance to seniors. Caregiving is a large and growing industry. The drawbacks to hiring caregivers are the cost (ranging from $10 to $25 per hour), reliability, quality issues and fidelity of the workers. Hiring a caregiver or caregiving organization for a few hours a week can provide relief for the full time caregiver. However most families cannot or will not pay caregivers to provide continuous care for the senior. Resources to assist family and friends in hiring private caregivers are listed in the Appendix.

b. Adult Day and Health Centers. Adult day care centers ("ADC") provide socialization for seniors who need little assistance from others. Seniors attending ADCs must usually be mobile except for a cane or walker. ADCs are different from adult day health centers ("ADHC") that provide health and therapeutic services to seniors or provide social and health services to seniors with Alzheimer's. One resource described an ADC or ADHC as "a planned program of activities designed to promote well-being through social and health related services."[56] Eighty percent of ADCs are not-for-profit organizations, ten percent are for profit entities and ten percent are government funded programs.[57] Currently there are over 4000 ADCs in the United States.[58] ADHCs are less numerous because often the seniors needing the ADHC services are in an institution that provides twenty-four hour care for the debilitating condition.

The ADCs and ADHCs operate during normal business hours Monday through Friday in well lighted facilities that usually provide lunch and an afternoon snack. Activities include local outings, crafts, music, mental and physical stimulation programs.

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[55] www.agingkansas.org./Publications/Caregivers/Caregiver_Guide/2009.pdf.
[56] www.helpguide.org/elder/adult_day_dare_centers.htm
[57] Id.
[58] Id.

Seniors attend ADCs and ADHCs from a few hours a day to eight hours a day. Fees for ADCs range from $25 per cay to $80 per day, depending on the location, services and whether transportation is provided.[59] The fees for ADHCs are much higher. Many ADCs provide services on a sliding fee schedule based on the income of the senior. In addition some ADCs provide scholarships for some seniors. Usually seniors that attend an ADC or ADHC have a caregiver that manages the senior's care and provides assistance for the senior in the senior's home. Seniors benefit from ADCs and ADHCs because they can enjoy entertainment, stimulating activities, increase their socialization, reduce feelings of isolation and provide structure for their day. While seniors benefit from attending ADCs and ADHCs, their caregivers benefit from a respite from their care giving duties, take care of household responsibilities and possible work outside the home.[60]

Usually seniors must provide their own transportation from their home to an ADC or ADHC and back home. Some ADCs and ADHCs provide transportation to and from the center. Transportation to and from the ADC or ADHC is usually an additional cost to the senior. Most ADCs have and all ADHCs have full time nursing services on site. Finally Medicaid can pay the cost of attending ADCs and ADHCs through the HCBS waivers.[61] The ADC or ADHC must do an assessment of the senior before admission to determine if the senior can benefit from the program. The senior or his or her caregiver should do research and inspections similar to that employed by seniors before entering an assisted living or skilled nursing facility.[62] Resources that can assist the senior and his or her caregiver include the National Adult Day Services Association, local AAA organization, Eldercare Locator and ARCH National Respite Network and Resource Center. ADC and ADHC resources are included in the Appendix.

c. AAA Resources Johnson County AAA provides respite relief for caregivers by providing a trained person to stay with the senior for four hours a week in their home while the caregiver is able to do shopping, household duties or rest from the strain of caregiving. MARC and the Wyandotte-Leavenworth AAAs also offer respite programs to caregivers. These programs refer seniors to approved contractors that can provide respite care. The amount of respite care provided depends on the needs of the senior and caregiver and the funds allocated on a yearly basis for

[59] www.archrespite.org/archfs54.htm.
[60] Id.
[61] Id.
[62] Id.

such programs. Both the MARC and Wyandotte-Leavenworth AAAs programs for caregiver relief were under funded and so cannot serve all of the caregivers needing help.

d. HCBS and other Federal Programs. The largest federal government programs supporting caregivers are the National Family Caregiver Support Program ("NFCSP"), the Lifespan Respite Care Act of 2006 ("LRCA") and the HCBS program through Medicaid. NFCSP funds are allocated by the federal government based on each state's share of the nationwide population over 70 years old.[63] For fiscal year 2003 the federal government allocated $155 million for the NFCSP.[64] The amount of state funds spent on the program is uncertain. The program provides: information about available services, assistance in gaining access to supportive services, individual counseling, organization of support groups, caregiver training, respite care and limited supplemental services such as transportation and home modifications.[65] In Kansas a non-profit organization called the Kansas City Partnership for Caregivers advocates on behalf of caregivers and provides the educational materials. [66] Missouri does not appear to have a similar program.

LRCA provides a coordinated system of community-based respite care services.[67] These services include in-home paid caregivers, adult day care services, and overnight stay in facilities or weekend camps for caregivers.[68] However the funding for the program began at modest amounts: $30 million for fiscal year 2007 and $40 million for fiscal year 2008. The amount of state funds spent on respite care is uncertain because of the many programs including HCBS.

The HCBS provides caregiver support through services comparable to those provided through NFCSP. HCBS is a partnership between the federal government and all states provided some funds for caregiver support. Since 2002 the funds for HCBS has increased greatly.[69] However the amount of funds spent on

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[63] Supra N. 42.
[64] Friss Feinberg, Newman and Fox-Grange, Family Caregiver Support Services: Sustaining Unpaid Family and Friends in a Time of Public Fiscal Constraint, (Apr. 2005), available at http://assets.aarp.org/rgcenter/il/fs112_hcbs.pdf.
[65] Id.
[66] www.caregiver.org/caregiver/jsp/fen_content_node.jsp?nodeid=2093.
[67] Id.
[68] Supra N. 42.
[69] Ng, Terence, Harrington, Charlene, Medicaid Home and Community-Based Service Programs: Data Update, Kaiser Commission on Medicaid and the Uninsured, December 2008 found at www.kff.org/medicaid/7720.cfm.

caregiver support across the nation and in Kansas and Missouri under HCBS is hard to determine.

E. Household Assistance Services As seniors age they may be able to do most of the ADLs to stay in their home. The seniors may need some assistance to stay in their house. However the ability to care for one's self does not mean that the seniors are able to keep up with the cleaning and maintenance of their home, make their own meals or manage their medication. Seniors with enough resources and income can pay for home cleaning, chores, meal preparation and all other services they need to aid them as they age in their home. For those unable to pay for all of the necessary services to stay in their home government, for-profit and not-for-profit organizations can step in and provide needed services. Options seniors can utilize to meet their needs in the home will be referred to as Household Assistive Services ("HAS").

1. AAA Services. AAAs divide HAS into three components: attendant care, homemaker services and medication management. Attendant care is the service that helps the senior with grooming, washing and showering and personal hygiene. Homemaker services aid the senior by providing light house cleaning services such as dusting, vacuuming and bathroom and kitchen cleaning, limited meal preparation and sometimes running errands. Medication management is the task of a registered nurse setting out medications for the senior to take daily or usually over a week's period.[70]

The AAAs in the metropolitan Kansas City area provide HAS in varying degrees based on the amount of funding they receive from the federal, state and local governments and any funds and grants received from other entities. The AAAs cannot discriminate in providing services based on the income of the senior. Instead the AAAs must determine need based on the condition of the senior and the support available to the senior from relatives, friends and other people.[71] Because of the limitations of funding none of the local AAAs can provide all needed HAS to all deserving seniors.

MARC operates two separate programs: homemaker service and attendant care service.[72] Both programs are separately contracted out to companies that are required to provide a set number of hours of service under each program. For most areas in the counties served the same entity provides both services. The contractors are required to do evaluations of the senior at least twice a year to determine what services are necessary to enable the senior to stay in his or her home with the assistance that MARC

[70] www.jocogov.org/aging.
[71] Supra. N. 17 and 18.
[72] www.marc.org/aging and interview with Michelle Brown, administrator on senior services conducted on June 17, 2009 and October 12, 2009.

can provide. The senior can need temporary assistance such as when the senior is spending down to become Medicaid eligible or is recovering from a medical condition that will soon become better. In these instances the MARC contractor can devote more resources to meet the specific need of the senior.[73] For long term assistance the senior can receive no more than 20 hours a month for homemaker service or attendant care services. Often the same person provides both services and so this can increase the hours served. About fifty percent of the clients need no more than 10 hours a month in services.[74] The MARC contractor attempts to meet the most pressing needs by prioritizing seniors who have the most difficulty performing tasks, those for whom assistance will allow the senior to stay in their home and those that have the least support from local family and friends. In addition to providing assistance in the home the person providing the service can run short errands for the senior. There is no charge for the service but donations are accepted. There are many more seniors that could be helped by this service if funding was increased. [75]

The Johnson County AAA provides more limited HAS compared to the MARC program. There are limits to the number of hours that the Johnson County AAA can provide for homemaker and attendant care services. Housekeeping is limited to a maximum of two hours per week, with many limited to two hours every two weeks.[76] In addition the AAA provides four hours per year of heavy household chores. Attendant care is limited to two hours per week with a maximum of three times visiting per week.[77] Johnson County AAA is the only AAA in the Kansas City metropolitan area that provides medication management.[78] Medication management is provided in conjunction with the other services. With these limitations the Johnson County AAA is able to provide for almost all of the people currently requesting HAS in the county.

WCKC AAA also provides HAS to seniors needing assistance. In house employees administer the limited funds available for these services. Since there are limited funds the agency limits the amount of assistance to any one individual. Although any senior over age 59 can participate in the program, WCKC AAA prioritizes the recipients based on need and any support system they have with relatives and friends.[79] If the senior can afford to pay for the service fees are charged based on a sliding scale of the senior's income. The WCKC representative stated that most seniors in

[73] Id.
[74] Id.
[75] Id.
[76] Telephone interview with Ed Shulte, director of Johnson County AAA on October 8, 2009.
[77] Id.
[78] http://hsa.jocogov.org/aging/aging.shtml.
[79] Telephone interview with Lamonica Upton, an administrator for the Wyandotte County AAA on October 9, 2009.

Wyandotte County receive homemaker and attendant care services through the HCBS program and not through the AAA.[80]

Leavenworth County AAA provides limited HAS services to its senior population. This AAA provides a total of 2000 hours per year to provide homemaker services to county residents.[81] The Leavenworth AAA does not provide any attendant care services. The four employees that perform this service do dusting, vacuuming, other light housekeeping services, wash dishes and change linens. No food preparation or laundry is done by the employees. Most of the people served are not housebound but need assistance because arthritis, back problems or health issues that temporarily prevent them from performing homemaker services.[82]

2. Medicare and Medicaid. Medicare does not pay for any HAS that assist seniors in attentive care or performing ADLs unless it is in conjunction with providing certain therapies and pursuant to a plan of care.[83] Medicare does not pay for routine homemaker services. However Medicare can pay for light home cleaning, preparation of meals and shopping errands can be covered is they are "incidental" to the home health aide visit and must be performed in order to maintain the beneficiary's health.[84] If all of the requirements are satisfied then Medicare can pay for personal care services, such as help with dressing, bathing, grooming and feeding that is not done on a regular basis.[85] In addition Medicare can pay for dressing changes, help with medication and help that is "supportive of skilled therapy," such as routine maintenance exercises and repetitive speech routines.[86] "There is no limit on the duration or frequency of the home health agency visits that will be paid as long as the patient is receiving medical or therapy services, the patient needs such services and the services are provided by a Medicare-certified home-health agency."[87] In addition a physician must certify that the senior is confined to his or her home. This requirement is met if the senior needs "considerable and taxing effort" to leave the home. To meet this requirement usually requires that a person must assist the senior to and from the home and vehicle and that trips outside of the home are usually for a medical purpose.[88] Finally the services rendered must be "part-time

[80] Id.
[81] Interview with Linda Willmeth, director of the Leavenworth County Council on Aging program on social services on October 13, 2009.
[82] Id.
[83] Medicare Intermediary Manual (MIM) § 3117.2 (2008).
[84] Dayton, A. Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, §22:22 (2009).
[85] Frolik, Lawrence A., Residence Options for Older and Disabled Clients, Chapter 10, p. 275 (2008).
[86] Supra N. 84.
[87] Supra N. 85 at p. 267.
[88] Id.

or intermittent" care: less than eight hours a day and less than twenty-eight hours a week.[89]

States have the option to provide HAS to those qualified to receive Medicaid. Missouri provides assistance to Medicaid recipients similar to those provided by Medicare.[90] However Medicaid does not have the requirement of a specific number of days in a hospital and specific number of days of treatment under an approved physician plan. Kansas provides limited HAS to those receiving medical treatment. However in both states more and more people are being covered by HCBS program.[91] The medical and related benefits of HCBS in Kansas and Missouri are a minor part of the Medicaid dollars. HCBS will focus on a comprehensive program to assist seniors as they progress and not just recover from a condition that caused hospitalization.

II. Non AAA Government Programs to Help Seniors Age in Place

A. Medicare

Medicare is the medical program for seniors age 65 and older. Medicare has different parts: Part A for hospital and emergency care, Part B for physicians and Part D for prescriptions. Part B is the voluntary insurance program designed to cover physician services. Parts B and D require monthly premium payments. Since Medicare is for all seniors there is no income test to determine who can get service. Instead the determination of what services or products a senior can receive in his or her home is based on whether a service or product is medically necessary and can adequately be provided in the home. If there is not a medical condition that can be remedied or made better Medicare will not pay any benefits to the senior living in her home.[92]

In order for Medicare Part A to provide services in the home the senior must have been in a hospital with a medical condition for at least three days.[93] The patient must need one of the following services to qualify for Medicare payments: physician's services, physical therapy, occupational therapy, speech therapy, respiratory therapy, prosthetic or orthotic device services, social services, psychological services or nursing care services.[94] Medicare will not pay for

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[89] 42 U.S.C. § 1395x (m) (2008).
[90] www.dss.mo.gov/fsd/msmed.htm.
[91] www.khpa.ks.gov/healthwave/default.htm. and www.dss.mo.gov/fsd/homecb.htm.
[92] I have relied on the following sources for references and discussion of the topics in this section: Chiplin, Alfred J., Meliso, Pamela A., Plebani, Brad S., Medicare Appeals: New Rules and Practice—Experiences and Lessons Learned, 2006 NAELA Symposium 9-1 (April 2006), Berthelot, Mary T., Gottlich, Vicki and Hart, Sally, Getting Medicare to Pay for Care at Home, 2005 NAELA Institute 12-1 (December 2005), and Dayton, A. Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, Chapter 22, §§ 22:19 through 22:31 (2009).
[93] 42 U.S.C. § 1395(i) (2009).
[94] 42 U.S.C. § 410.100 (a) through (j) (2009).

services that it would not pay as part of an inpatient hospital service or is not reasonable or necessary for the diagnosis or treatment of the illness or injury.[95] Treatment can include up to 100 visits during each "home health spell of illness," which is sixty consecutive days starting when the senior first received services.[96] Like all Medicare payments the service or product used must be "reasonably necessary" to treat the illness or injury and meet the patient's particular needs.[97]

A senior must meet five requirements to have Medicare home health care benefits:

1. Be confined to home;
2. Be under the care of a physician who establishes a care plan the includes home health care;
3. Have services furnished by a Medicare-certified home health agency;
4. Be in need of the services listed above; and
5. Commence services listed above within fourteen days of release from the hospital or skilled nursing facility.[98]

A physician must certify that the senior is confined to his or her home. This requirement is met if the senior needs "considerable and taxing effort" to leave the home. To meet this requirement a person needs to assist the senior to and from the home and vehicle and that trips outside of the home are usually for a medical purpose.[99] The services rendered must be "part-time or intermittent" care: the care must be made less than eight hours and day and less than twenty-eight hours a week.[100]

Medical social services including counseling services and assessment of financial resources and community resources can be provided if they are necessary to resolve social or emotional problems that impact the senior's recovery. These services must be done by a qualified medical social worker and under the direction of a physician.[101] Medicare will pay for medical supplies related to care, but not the cost of drugs, unless under covered under Part D.[102] Services required to establish a safe and effective therapy service will be paid by Medicare.[103] Medicare Part B will pay for hospice services in the home.

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[95] 42 U.S.C. § 410.102 (2009).
[96] 42 U.S.C. § 1395x(tt)(2) (2009).
[97] 42 U.S.C. § 1395y(a)(1)(A) (2009).
[98] 42 U.S.C. § 1395x (2009).
[99] 42 U.S.C. § 1395f(a)(8), 1395n(a); 42 C.F.R. § 409.42(a).
[100] 42 U.S.C. § 1395x(m), 1395f(a)(2)(C). (2008).
[101] 42 C.F.R. § 409/40(c); Medicare Home Health Agency Manual § 206.3 at http://www.cms.hhs.gov/Manuals/PBM/list.asp.
[102] 42 U.S.C. § 1395x (m) (5); 42 C.F.R. § 409.40(e); Medicare Home Health Agency Manual § 206.4(A), (C), http://www.cms.hhs.gov/Manuals/PBM/list.asp.
[103] 42 C.F.R. § 410.100(b)(2); Medicare Home Health Agency Manual § 205.2(A)(5)(c) at http://www.cms.hhs.gov/Manuals/PBM/list.asp.

Medicare Part B will cover hospice services outside of a facility while Part A covers hospice in a facility.[104]

B. Medicaid

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Medicaid is the program designed to assist those with limited income and resources pay for medical assistance and nursing home care. In addition Medicaid pays for some expenses of the senior in his or her home. The first part of this section will discuss the in home benefits Medicaid will pay for related to an illness or condition. The second portion of this section will discuss the growing portion of Medicaid: HCBS and the products and services it provides.

1. Basic Coverage Medicaid programs in Missouri and Kansas are required to provide basic benefits that include nursing services, home health aide services and medical supplies, equipment and appliances suitable for home use.[105] In order to qualify for Medicaid a person must be "categorically needy" or "medically needy". These terms will be discussed later in this section. Because Medicaid is a partnership between the states and federal government, Kansas and Missouri can establish their own criteria on what and when to pay for services in the senior's home. Medicaid requires that the home care, like hospital and physician care, be "medically necessary" and must be on an intermittent or part time basis.[106] There is no statutory definition in the Medicaid statute for the term medically necessary.[107] Instead the statutes and regulations require the relevant agency to consider what is appropriate for the situation of the patient. There is no prior hospitalization requirement like Medicare to provide services, but the services can only be provided under a written plan from a physician, that must be reviewed every 60 days. Medical supplies, equipment and appliances must be reviewed at least annually. In addition the statute requires that plans of care be in "the best interests of the recipients."[108] Providers of services and products that have been approved to serve Medicare clients are automatically eligible to provide those services to Medicaid patients, although the providers are not required to provide services to Medicaid patients.[109] Kansas and Missouri are free to include other services and products in addition to the basic services required under Medicaid. Services that are beyond the basic services that Kansas and Missouri provide include physical, occupational,

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[104] www.hospicenet.org/htm/medicare.html.

[105] 42 C.F.R. § 440.70(b) (2009), and Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, § 22:45 Basic Coverage, (2009).

[106] Sindelar, Tim, The "Medical Necessity Requirement" in Medicaid, Disability Law Center, (2002), found at http://www.nls.org/conf2002/medicaidand medicalnecessity.htm.

[107] Id.

[108] Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, at § 30:85 Home health services. and 42 C.F.R. § 440.70(a)(2) (2009)

[109] Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, at § 22:14 Medicaid certification and 42 C.F.R. § 440.70(a) (2) (2009).

speech and other therapies in house. Private duty nursing can be provided in the home for periods allowed by the state. The personal care option allows states to provide care with less cost than requiring a nurse to provide services, although the service must be supervised by a nurse.[110]

The Medicaid statutes require Medicaid pay medical assistance to certain "categorically needy" seniors that meet the state requirements for income, resources and other criteria.[111] There are two subcategories of categorically needy. The first are mandatory categorically needy who must be covered by the states in order to receive any federal funds for Medicaid. These are the seniors that qualify for Medicaid and receive the basic services discussed above. The second categorically needy provisions are optional categorically needy. States can extend benefits to groups of people that fit into specific criteria.[112] In addition states cover services and products for seniors as part of the optional categorically needy if seniors receive government benefits, other than SSI, that disqualify them from receiving Medicaid, but would qualify for Medicaid if those government benefits were excluded.[113] Some groups of seniors are grandfathered so they continue to receive Medicaid services that they otherwise would be unable to receive because of changing requirements.[114] In addition states have the option or treating seniors as categorically needy seniors receiving HCBS if they would have been eligible for Medicaid if they were institutionalized.[115] Medicaid originally focused on providing services to disabled seniors through nursing homes.

The "medically needy" category of benefits makes some people eligible for services that would not otherwise be eligible. Thirty-five states, including Kansas, operate medically needy programs. Missouri does not have a medically needy program.[116] A state does not have to establish a medically needy program in the state. People can qualify for

[110] 42 U.S.C. § 1396d (a) (22) (2009) and Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, at §22:34 Optional coverage (2009).
[111] 42 U.S.C. § 1396a (a) (10) (A) (2009) and Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, at § 29:11 Mandatory categorically needy groups (2009).
[112] 42 U.S.C. § 1396(a) (10) (A) (ii) (2009) and 42 C.F.R. §§ 435.200 et seq. and Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client at § 29:18 Optional categorically needy groups.
[113] Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, at § 29:18 Optional categorically needy groups, 29:22 Optional categorically needy groups-Individuals receiving only optional state supplements and 29:23 Optional categorically needy groups—Poor aged or disabled (2009), and 42 C.F.R. § 435.232(a).
[114] Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, at § 29:17 Grandfathered groups (2009).
[115] 42 U.S.C. § 1396a (a) (10) (A) (ii) (VI) and 1396n(c) 42 C.F.R. § 435.217(b) and Part 441 (2009) and Dayton, Kimberly, Guare, Timothy H., and Wood, Molly M., Advising the Elderly Client, at § 29:21 Optional categorically needy groups-Recipients of home- and community-based services (2009).
[116] www.srskansas.org/services/medical_spenddown.thm.

medically needy if a state establishes an income higher limit than the categorically needy standard. In this situation there is no need for a spenddown of income. In addition if the senior has more income or resources than the standards to qualify for Medicaid under the categorically needy category the senior can qualify under the medically needy program if the senior has such high medical costs that the senior is in the process of spending his or her assets on the medical costs to qualify for Medicaid.[117] Existing medical bills are spread over one to six months to determine if after deducting medical bills from income the resulting figure is less than the eligible income requirement. The rules require that the maximum income to qualify is 133% of the old Aid to Families with Dependent Children household income standards.[118] In the year 2000 Kansas covered almost 7,000 people as medically needy at a cost of $24.5 million. Kansas provides the same benefits package for the medically needy as it provided for the categorically needy beneficiaries.[119]

2. **Home and Community Based Services** Traditionally when a senior qualified for Medicaid the federal and state program paid for care in a nursing home or similar facility. However seniors, their families or caregivers, legislatures and administrators have realized that it is usually better for the senior and more cost efficient to provide services to the senior in his or her own home instead of an institution. In order to provide services and resources on a flexible basis the states have requested so called "waivers" from the Department of Health and Human Services ("HHS") and CMS to provide services outside of an institution.[120] The statutes require that the states seeking waivers must assure that the services provided meet the standards of a nursing home that would provide the services to the senior if the waiver was not in place.[121] Both Kansas and Missouri have been approved by the HHS and CMS to have waivers from the normal rules.[122] The waivers allow the states to offer many services to seniors in their residence.

The goals of HCBS in both Kansas and Missouri are the same: provide products and services to meet the needs of Medicaid eligible seniors while at the same time spend less money than would be spent if the senior was in a nursing home. In fact normally the expenditures for an individual under HCBS are required to be less than the statewide cost of a

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[117] Crowley, Jeff, Medicaid and the Uninsured, Medicaid Medically Needy Programs: An Important Source of Medicaid Coverage, January 2003, found at www.kff.org.
[118] Id.
[119] Id.
[120] 42 U.S.C. § 1396n(d) (1) and (2) (2009) and see Dayton, A. Kimberly, Guare, Timothy H. and Wood, Molly M., Advising the Elderly Client, at § 30:100 Generally (2009).
[121] 42 U.S.C. § 1396n(c)(2)(A) and 42 C.F.R. § 441.302(a) (2009).
[122] See www.agingkansas.org/Publications/Other/hcbsfe.htm. and www.gcd.oa.mo.gov/PIC/ServicesPamphlet/index.shtml.

nursing home facility.[123] The reasons for the push to serve more and more seniors through HCBS are three: the seniors desire to stay in their home; the Supreme Court and the legislatures have philosophically mandated that the elderly and disabled be part of the community to the extent possible and the states and federal government seek to save money by not paying for nursing home costs.[124] States are limited by resources and eligibility criteria from offering HCBS to all seniors who qualify for Medicaid and need assistance.[125] Unfortunately the way Medicaid is structured only a certain amount of funds are set aside under HCBS each year. When those funds are used up then the remaining people who would qualify for HCBS have to be placed on a waiting list and they must either pay for their own services in some manner or be admitted to a nursing home where the state is required to pay. Kansas and Missouri have a high percentage of Medicaid funds spent through the HCBS.[126] In fact 34% of Medicaid long term care spending in Kansas is spent on the HCBS program and Missouri spends 31% of its Medicaid dollars through the HCBS program.[127] Therefore in this time of great economic downturn it is more important than ever to develop innovative ways to provide quality services and save money.

While many of the services and criteria for eligibility for HCBS services are the same in Kansas and Missouri, there are significant differences that could impact whether the services will meet the needs of a senior. While the AAAs could provide the services that the HCBS does not provide, the more products and services that HCBS provides the less dependent the senior will be on trying to get services from many different providers.

In both Kansas and Missouri the first criteria for becoming eligible for HCBS is that the person or couple must meet the income, resource and other criteria to be eligible for Medicaid. Then the person or couple must reside in a home, apartment, duplex or other housing unit, and not be in a nursing home. Next the person must be blind, disabled or over a certain age. In Missouri the minimum age is 63, while in Kansas the minimum age is 65. In addition the person or couple must be in frail health as defined by each state. Both states have developed forms that must be

[123] 42 U.S.C. § 1396n(c) (4) (A) (2009).
[124] Dayton, A. Kimberly, Guare, Timothy H. and Wood, Molly M., Advising the Elderly Client, at § 30:97 Generally (2009).
[125] See Barrett, Cynthia L, Ford, John J., Lewendone, Whitney M., Lindberg, Brian W. and Sabatino, Charles P. Medicaid Developments, Trends and How We Respond, 2003 NAELA Inst. 21-1 (November 2003).
[126] Kassner, Enid, Reinhard, Susan, Fox-Grage, Wendy, Houser, Ari, Accius, Jean, A Balancing Act: State Long-Term Care Reform, AARP Public Policy Institute, Washington D.C. July 2008, found at http://assets.aarp.org/rgcenter.il/2008_10_ltc.pdf. .
[127] Providing More Long-term Support and Services at Home: Why It's Critical for Health Reform, at www.aarp.org/research.ppi/ltc.hcbs/articles/fs_hcbs_hcr.html?print=1.

completed by the person seeking the services or their legally designated proxy. Each state then grades the forms and does an investigation. If the person is so disabled that he or she requires the constant services provided by a nursing home then the application for HCBS cannot be approved.[128]

If a person or couple qualifies for HCBS services the agency first has one of its social workers do an assessment of the products and services needed to meet the senior's needs. This is called a "Plan of Care" ("POC.")[129] The services can begin within a week after the creation of a POC. The easiest items to start immediately are assistive devices to help the person with one of the ADLs. The next easiest service to arrange is for the senior to go to an ADC or ADHC during the day to provide meals, activities and socialization as well as respite to the caregiver. HCBS can also provide a respite for the caregiver that provides most of the assistance to the senior. While the HCBS will pay for attending an ADC or ADHC, neither state provides transportation to and from the facility as part of the HCBS benefit.[130] Therefore a caregiver, friend or relative must provide the transportation or an AAA could arrange transportation.

Both states also provide as a part of the GCM the coordination of services. With the many needs of seniors and the many government, for profit and not-for-profit entities that can provide assistance to seniors this coordination will often enable the senior to access sources originally unknown or not eligible. This can include transportation, Meals on Wheels or other services. In addition both states have some limited funds for home modification to assist the senior's mobility in the home through HCBS.[131] Because of the large costs to doing extensive modifications very few seniors qualify for this benefit.

One of the most beneficial programs under HCBS in both states is attendant care provided in and out of the home. Under this benefit a person comes to the home and assists the senior in performing ADLs, paying bills, home cleaning, medication management including reminders, grooming, health maintenance activities after an initial registered nurse visit or accompanying the senior out of the home to obtain medical services. Because of the costs of providing this service attendant care cannot be done every day. Both states contract with companies to provide these services and both states have regulations on the providers of such services.[132]

[128] See www.srskansas.org/services/hcbs_frail-elderly.htm and www.dss.mo.gov/fsd/homecb.htm.
[129] 42 U.S.C. § 1396n(g)(2) and 1396a(a) (2009).
[130] Supra N. 128.
[131] 42 U.S.C. § 1396n (g) (2) (2009) and Dayton, A. Kimberly, Guare, Timothy H. and Wood, Molly M., Advising the Elderly Client, at §30:101 Included services (2009).
[132] http://aspe.hhs.gov/daltcp/reports/2007/gaugingfr-appendA.htm.

The Kansas HCBS is administered by the Department of Aging. Since the program was initiated the program has increased every year since the year 2000.[133] There are HCBS programs to cover physically and mentally disabled people under age 65. For those over age 65 the program is called the HCBS Waiver for the Frail and Elderly. In order to be eligible for the HCBS program the senior must complete a Uniform Assessment Instrument and then meet the following standards: qualify for Medicaid under both income and resource requirements, be 65 years old or older and the senior must be assessed to need long-term care services.[134]

The Missouri HCBS is administered by the Division of Senior & Disability Services. Since the start of the program HCBS has also shown large increases in its program. Missouri statistics group the adult disabled and the senior participants in nursing home populations and HCBS populations. In Missouri the costs of paid to nursing facilities have gone up dramatically, while the HCBS costs have gone up modestly.[135]

After the basic services provided under HCBS, Kansas and Missouri differ on what other services are provided. In addition to the services previously described Kansas can also provide the following services: comprehensive support, that evaluates and advises the senior and their caregiver on how to meet health and welfare needs; nursing evaluation, that advises the attendant or caregiver on fulfilling health care needs, oral health services, personal emergency response (24 hour on call support), sleep cycle support and wellness monitoring.[136] Services that Missouri provides that Kansas does not provide are as follows: employment support services, home delivered meals, respite care and transportation to and from Medicaid facilities and to receive services and/or medical care.[137] Thus it is important for caregivers and advisors to understand what are the needs of the Medicaid qualified senior and what HCBS could provide to allow the senior to continue to reside in his or her home.

C. Veteran's Benefits

There are three little known benefit programs administered by the Veteran's Administration ("VA") that can provide income to senior veterans. In order to qualify for any VA benefit the service member must have been discharged other than dishonorable.[138] The first program is known as "Pension"

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[133] Kansas Department of Aging at www.agingkansas.org/Choices/Programs/progdescriptions.htm#HCBS.
[134] www.agingkansas.org/Publications/Other/hcbsfe.htm.
[135] Missouri State Plan on Aging, Dated September 27, 2007, found at www.dhss.mo.gov.
[136] Id.
[137] Id.
[138] National Academy of Elder Law Attorneys, General Overview of Obtaining Veterans' Benefits for Individuals, 2002 NAELA Symposium, 19-1. (2002).

or sometimes "Improved Pension."[139] The veteran must have served at least 90 days of active military service, one day of which was during a war time period. However if active duty started after September 7, 1980 the person has to serve at least 24 months of service.[140] Pension covers veterans with disabilities not connected with active-duty service and veterans over age 65 with low family income, as determined by Congress every year, based on the number of dependents in the veteran's family.[141] For example the current maximum income amount for a veteran with one dependent is $15,493. Generally all income from whatever source is included in income. However public welfare benefits are not included in the calculations of income.[142] In determining the family income the veteran can deduct unreimbursed medical expenses from income to qualify for Pension.[143] The veteran can also deduct the cost of paying persons, including family members, to care for the veteran.[144] The amounts paid to licensed caregivers are easier to qualify for the deduction from income than non-licensed caregivers (that are usually family members.) The veteran will need more proof of what services were provided for payment to non-licensed caregivers. Caregiver payment deductions from income are limited to the amount that exceeds 5% of the maximum annual Pension rate for a family of the veteran's size.[145] In addition the veteran cannot have "excessive" net worth as determined on a case by case basis.[146] However a rule of thumb is that net worth cannot be more than $80,000 excluding home, car and household belongings.[147] Veterans can gift away assets to qualify for Pension. Unfortunately these gifts could disqualify the veteran from receiving Medicaid in the future. The net income after deduction of unreimbursed medical expenses must be less than the allowable Pension rate. The net amount of the veteran's income less than the Pension rate is divided by 12 and that is the monthly benefit paid to the veteran.[148] The benefits under this Pension program and the other two programs discussed in this section are not reported as income on federal income tax returns.[149]

Another category of benefit is called "Compensation."[150] A veteran under this program can receive either "Housebound Benefits," discussed in this paragraph, or "Aid and Attendance," discussed in the following paragraph.[151] These two benefits can be received in addition to the Pension in the above

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139 VA Pension Benefits stated at www.vba.gov/bln/21/pension/vetpen.htm
140 Id.
141 Id.
142 www.veteransaidbenefit.org.
143 Id.
144 www.longtermcarelink.net/article-2009-3-17.htm.
145 Supra N. 138.
146 Id.
147 Bartley, Meg, Carpenter, Kenneth M., Collier, Victoria L., and Pasculli, Felicia, Veteran's Services Available for the Elder or Disabled Client/ Obtaining Income Through the VA to Help Pay for Long-Term Care Expense, National Academy of Elder Law Attorneys, Inc. 2006 NAELA Symposium, 7-1 (2006).
148 Supra N. 139.
149 Supra N. 138.
150 Supra N. 147
151 Supra N. 142 .

paragraph. Most veterans that receive Compensation also were awarded a benefit based on percentage disability soon after they left the service.[152] To be eligible for Household Benefits the veteran must be over age 65, be rated as 100% permanently disabled and confined to his or her dwelling,[153] or have a 100% disability with another 60% disability.[154] In addition the veteran must have household income of less than a specific amount as set by Congress the same as Pension. Like the Pension benefit the veteran is allowed to deduct the amount over 5% of the unreimbursed medical and caregiver expenses. The benefit is the amount of payment that will bring the veteran up to the Pension amount.[155] Because of the lower income limits of the Housebound program compared to the Aid and Attendance program if a veteran qualifies for both programs the veteran will choose the Aid and Attendance program.

The third benefit program that can benefit veterans living in their home is called "Aid and Attendance."[156] This benefit is awarded if the veteran is blind, is bedridden, requires another person to perform ADLs, is incontinent or has a physical or mental incapacity that requires assistance on a regular basis to protect the veteran from daily environmental hazards.[157] There are income limits that are higher than the Housebound Benefit and thus the amount that can be paid is greater.[158] Just like the other two benefits veterans applying for Aid and Attendance can deduct the amount over 5% of the unreimbursed medical and caregiver expenses. The home care costs and recurring medical costs can be allowed prospectively to determine the amount of payment.[159] Benefits paid are the amount necessary to bring the veteran up to the designated amount. The allowable income depends on the physical condition of the veteran, the status of a spouse or dependent and if the veteran also receives Aid and Attendance. This is the benefit most sought after and the most scrutinized by the VA because of the higher payments made.

The process of application for all three benefits is difficult and time consuming. Veterans may obtain free help with filling out the application from accredited veteran services organizations.[160] Often veteran's are initially turned down. An attorney or consultant can be hired to assist the veteran in making the application.

D. Railroad Worker Benefits

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[152] Id.
[153] 38 U.S.C. § 1521(e) (2009).
[154] 38 U.S.C. § 1501(c) (2009).
[155] Supra N. 147.
[156] Supra N. 144.
[157] Supra N. 147.
[158] Supra N. 138.
[159] Surpa N. 147.
[160] Id.

Railroad retirement benefits impact a small percentage of the senior population. This benefit is included in this thesis so that the senior and his or her relatives take advantage of the available funds if he or she worked for a railroad.

During the 1930's railroad workers through their union were able to establish a Railroad Retirement system to cover workers instead of the Social Security system. This program provides benefits to retired and disabled railroad workers and their dependents and survivors. In 1939 the system covered 1.2 million employees. By the end of 2009 there are expected to be 234,000 current workers covered by Railroad Retirement Benefits.[161] As of 2007 there were 568,500 beneficiaries receiving some or all of the benefits under the Railroad Retirement system. [162]

Railroad Retirement Benefits come in different tiers. The Tier 1 benefits are designed to take the place of Social Security and therefore the benefits are very similar to Social Security. [163] The similarities include the dates of retirement, the amount of benefit and other conditions. The disability and spousal benefits are similar to Social Security. The significant difference is that Tier II benefits are comparable to a private defined benefit pension.[164] Tier II benefits are determined by taking the average monthly earnings (up to a maximum of $79,200 in 2009)[165] "of an employee's 60 months of highest earnings." That figure is then multiplied by seven-tenths of 1 percent, and then again by the number of years spent in railroad employment. Tier II benefits have cost of living adjustments.[166] Again a surviving spouse will receive a reduced amount from the amount received by the retiree. [167] A retiree will lose benefits if he or she returns to work for a covered railroad company.[168]

E. Tax and Utility Relief

1. Real Estate Tax Relief

Kansas and Missouri have programs that assist seniors in paying real estate taxes. There are many financial and public policy issues with granting seniors real estate tax relief.[169] There are conflicting opinions on the wisdom of allowing only seniors to have relief from real estate taxes. One view is that by allowing seniors to not pay their full burden of real estate taxes it places an unfair burden on the other homeowners and thus hurts the ability of some to purchase

[161] www.ssa.gov/policy/docs/porgdesc/sspus/railroad.pdf
[162] www.cbo.gov.budget/factsheets/2007/railroad.pdf
[163] An Overview of the Railroad Retirement Program, U.S. Social Security Administration Office of Retirement and Disability Policy, Social Security Bulletin, vol. 68, No. 2, 2008
[164] Id.
[165] U.S. Railroad Retirement Board Benefit Information at www.rrb.gov/col.asp#taxable_earnings
[166] Supra. N. 163.
[167] Supra. N. 165.
[168] Id.
[169] Robert C. Christopherson, Missing the Forest for the Trees: The Illusory Half-Policy of Senior Citizen Property Tax Relief, 13 Elder L.J. 195 (2005).

homes. Some assert real estate tax relief for seniors benefits white taxpayers disproportionately and benefits more affluent seniors.[170] With more people living past age 65 and becoming eligible for property tax relief the impact will become larger. One author advocates the use of reverse mortgages to allow seniors to tap their increasing equity to stay in their home.[171] The other view is that without relief from real estate taxes many seniors will not be able to stay in their homes.[172] As stated in the introduction there are many benefits for seniors and the community to aging in place. Since senior real estate tax relief programs have broad support and are utilized by many seniors, property tax relief appears firmly entrenched in both Kansas and Missouri. Thus it is unlikely that the property tax relief will be eliminated any time soon.[173]

a. Kansas Homestead Relief Kansas has two programs that provide seniors with relief for real estate taxes they pay directly or that is paid as part of the rent they pay. A senior can get relief under only one of the programs. The "Homestead Refund" program provides relief for home owners and renters whose income is less than $29,700 and whose age is 55 years or older.[174] Rent refunded is 15% of annual rent up to a maximum of $700.[175] The relief to the homeowner also has a maximum of $700 per year. The amount of refund is based on the income of the renter or the homeowner.[176] In addition there is a limitation that the homestead cannot be valued for property tax purposes more than $350,000.[177] Since the amount or the refund is based on income the application must be part of the state income tax return that must be filed by April 15 of the year after the real estate tax or rent is paid.[178]

The second Kansas program is "Kansas Property Tax Relief for Low Income Seniors" or "SAFE SENIOR" for short. This new law was effective starting in 2008.[179] The requirements for this program are stricter than the Homestead Refund. The senior must meet all of the following requirements: the senior must be a Kansas resident for all of the tax year, own a home for all of the tax year, must have been born before January 1, 1943 and household income must be $16,800 or less in the tax year (120% of

[170] Id.
[171] Id.
[172] Id.
[173] Matthew J. Meyer, The Hidden Benefits of Property Tax Relief for the Elderly, 12 Elder L.J. 417 (2004).
[174] Kan.Stat.Ann. §79-4502 through 79-4530 (2009).
[175] Kan.Stat.Ann. §79-4509 (2009).
[176] Id.
[177] Kan.Stat.Ann. §79-4522 (2009).
[178] Kan.Stat.Ann. § 79-4505 (2009).
[179] Kan.Stat.Ann. § 79-32,263 (2009).

the federal poverty level for two persons). For tax years 2008, 2009 and 2010 the tax credit is 45% of the tax paid. For tax years 2011 the refund is scheduled to be 75% of the amount of real estate taxes paid. There is no limit on the amount of the refund. It is possible to apply to have a portion of the anticipated refund pay part of the first half of the real estate taxes. The household income includes Social Security benefits, Social Security Disability payments, SSI payments, Railroad Disability payments and Veteran's Disability payments.

b. Missouri Homestead Relief Missouri also provides relief to seniors from real estate taxes. Like Kansas, Missouri has two programs that can benefit seniors. Also like Kansas, Missourians can only receive credit from only one of the two programs in a year. For both programs the credit is only available for a home that is occupied as a personal residence by the applicant. The credits can apply to a residence and up to five acres of land surrounding the residence. So long as one owner or renter resides in the house for the year the credits can be awarded despite the fact that one owner dies in a year or resides in a nursing home or assisted living facility. If people other than a spouse reside in the house and pay household expenses, including real estate taxes, the senior will not qualify for either program of property tax relief.[180]

The first and most limited program is the Homestead Preservation Credit.[181] This program is a credit against real estate taxes or personal property taxes on a mobile home that increase more than 2.5% in non-reassessment years and increase more than 5% in reassessment years.[182] Renters do not get any relief under this program. Eligibility for this program requires that a single owner be 65 years of age as of January 1 of the year of application, one spouse owner of the property must be over age 65 on January 1 of the year of application and the other spouse must be at least 60 years old or the owner or spouse must be 100 percent disabled.[183] In addition the owner, whether married or single must have Federal Adjusted Gross Income on the prior year's return of $77,254 or less. [184] The legislature must appropriate funds for this program each year. If no funds are allocated or only partially funded the credit is paid the appropriate percentage of the eligible

[180] www.dor.mo.gov/tax/personal/faq/homestead/.
[181] Rev.Stat.MO. § 137.106 (2008).
[182] Rev.Stat.MO. § 137.106 10 (2008), and 12 CSR 10-405,100 (2008).
[183] Rev.Stat.MO § 137.106 2. (4) (2009).
[184] Rev.Stat.MO § 137.106 2. (7) (2009).

amount.[185]Because of the high income limitation this program impacts many more people than the Property Tax Credit Claim. However the amount of money distributed to each person is relatively small. The application requires receipts for the real estate and/or personal property tax receipts for a mobile home for the three prior years.[186] Thus there is in effect a three year residency requirement. The form applying for the credit and the documentation to submit with the application are available through the Department of Revenue. [187]

The Property Tax Credit provides assistance to low income home owners and to renters.[188] There are two ways to qualify. First a part year owner or renter must have income of $27,500 or less, a couple must have income of $29,500 or less or a person must be 100% disabled as a result of military service. The second way to qualify is if persons occupying a home the entire year have income of less than $30,000 for a single person or $34,000 for a couple. A 100% disabled veteran does not include VA payments.[189] The definition of income for the either way to qualify for the credit is very broad and includes all public benefits as well as private sources of income.[190] If those standards are met then to qualify the owner or renter or if a married couple one of the couple must be over age 65, one of the owners or renters is a veteran and 100% disabled as a result of service in the military, be 100% disabled or age 60 years of age and receiving Social Security surviving spouse benefits.[191] There is a formula for determining the amount of the credit depending on the amount of income and real estate taxes or rent paid. The credit ranges from a low of $1 to a maximum amount of $750.00 for renters and $1,100.00 for home owners.[192] The documentation submitted with the form is extensive and must be submitted by April 15 following the year when the tax is assessed. Again the Department of Revenue has provided guidance on applying for the credit in written form as well as available through the internet.

2. Sales Tax Refunds, Exemptions and Income Tax Deductions

Missouri does not have a sales tax refund program. Kansas provides a refund for sales tax on food for all Kansas residents that are over age 65

[185] Rev.Stat.MO. § 137.106 12 -14 (2009), and 12 CSR 10-405,100 (2008).
[186] 12 CSR 10-405.105 (2008).
[187] 12 CSR 10-405.205 (2008).
[188] Rev.Stat.MO. § 135.010 through .030 (2009).
[189] Rev.Stat.MO. § 135.010 (2009).
[190] Rev.Stat.MO. § 135.010 (5) (2008).
[191] Id.
[192] Rev.Stat.MO. § 135.030 (2009).

with income of $30,300 or less.[193] The senior must complete the Individual Income Tax and/or Food Sales Tax Refund (K-40). This form must be completed even if the senior is not required to file an income tax return. The refund is based on the amount of income and the number of dependents claimed on the income tax return. If income is $15,150 or less the food sales tax refund is $80 per dependent. If income is more than $15,150 the refund is $39 per dependent.[194] Kansas exempts from sales tax food delivered to the elderly in their home and prosthetic devices and mobility enhancing equipment purchased by a person that is proscribed by a physician or other specific medical professionals. [195] In addition Kansas provides an income tax credit for the costs of removing existing architectural barriers in a living residence for a disabled person up to a maximum of $9,000.[196] The credit is a percentage of the amount of expenditures and based on the adjusted gross income of the homeowner.

Missouri exempts the following items from sales tax that can benefit seniors: prosthetic and orthopedic devices, prescriptions, medical oxygen, hospital beds, ambulatory aids such as manual and powered wheelchairs and stairway lifts, scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities and tax on the sales of over-the-counter or nonprescription drugs to individuals with disabilities.[197] Finally the state limits the amount the state will charge in sales tax on food.[198] Missouri provides a tax deduction for up to 50% of the non-reimbursed amounts paid by individuals for qualified long-term care insurance premiums.[199]

3. Utility Payment Relief Seniors face rising energy costs. Often seniors live in energy inefficient homes so utility bills become major problems with the sever temperatures in this area of the county. Missouri does not charge sales tax on the following utilities: water, electricity, natural, artificial or propane gas and home heating oil.[200]Help with utility costs comes in two forms: relief from utility payments and weatherization to reduce future utility bills.

Each utility in Kansas and Missouri has its own procedures for helping low income and elderly customers pay their bills. In addition

[193] Kan.Stat.Ann. § 79-3632 through 3639 (2009), Kansas Department of Revenue, Form K-40, 2008 Instructions.
[194] Id.
[195] Kan.Stat.Ann. § 79-3606(r) and (v)(2009).
[196] Kan.Stat.Ann. § 79-32,175 (2009).
[197] Rev.Stat.MO. § 144.030.2(18) (2009).
[198] Rev.Stat.MO. § 144.014 (2009).
[199] Rev.Stat.MO. § 135.096 (2009).
[200] Rev.Stat.MO. § 144.030.2(23) (2009).

local governments (for example Independence Missouri) and many not-for-profit organizations provide assistance to low income people to help them pay utility bills. Community action agencies also have utility assistance programs. Some of the largest local programs are listed in the Appendix. I will focus on the programs of state governments that assist low income home owners and renters, including seniors, in making their utility payments and weatherizing their home.

Kansas and Missouri administer a federally funded program called Low Income Energy Assistance Program ("LIEAP"). LIEAP provides assistance to low income households by making a one time payment per year to pay heating or cooling costs.[201] To be eligible for payments the income of all persons living in the home may not exceed 130% of the federal poverty level based on the number of people living in the home. About half of the funds go to help people pay a portion of their heating or cooling bills and a little less than half goes to pay utilities enough to keep a utility from being turned off or to pay an amount to a utility to have the service restarted. [202] Both Kansas and Missouri LIEAP programs are administered through local community action agencies or AAAs.

4. Weatherization Kansas and Missouri administer a program called the Weatherization Assistance Program ("WAP") as part of the LIEAP program.[203] The largest provider of funds has been the federal government. Over the past 32 year the Department of Energy has provided funds to weatherize the homes of 6.2 million income households.[204] In order to be eligible for the weatherization funds the income of the household must be less than 200% of the poverty level income based on the number of people in the household. Additionally the household must not have received similar weatherization funds since September 1994.[205] After being qualified a household contacts an approved subcontractor who determines the best use of resources to weatherize their house. The most common use of funds is to install insulation, repair or replace doors and windows, reduce air leakage through cracks, install compact fluorescent light bulbs and the repair or replacement of hot water tanks, furnaces and/or air conditioners. [206] The maximum expenditure is $6,500.[207] Local administration of the WAP programs allow local organizations to prioritize clients by the amount of

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201 Kan.Stat.Ann. § 75-37,125 (2009), www.srskansas.org/ISD/ees/lieap.htm; Rev.Stat.MO §§660.100 through .136 (2009), www.dss.mo.gov/fsd/liheap.htm.
202 Id.
203 www.kshousingcorp.org/programs/wap.shtml. and www.dnr.mo.gov/transform/energizemissourihomes.htm.
204 www.appsl.eere.energy.gov/weatherization.
205 Id. and Supra N. 203.
206 Id.
207 Id.

benefit that can be achieved and by demographic criteria that gives the elderly, handicapped and children priority to receive the services.

The federal, state and local governments all contribute funds to the WAP program. Seniors are one of the target groups of the program. The state administers federal and any state funds providing by allocating dollars to public or private non-for-profit agencies that have programs to weatherize homes. In 2008 Kansas weatherized 1,284 homes, 520 of those were elderly households.[208] Missouri has weatherized 155,000 homes since 1977.[209] With the severe economic downturn the sources for weatherization from local and state governments have evaporated. However as a part of the American Recovery and Reinvestment Act of 2009 $5 billion has been allocated to the WAP.[210] In addition other funds have been provided for Energy Efficiency and Conservation Block Grants that help weatherize needed homes. Some of these funds provide incentives for state and local governments to match some federal distributions. It is possible for the entities obtaining the grants to leverage these funds with funds from charitable and other government agencies. The funds are disbursed through state and local entities charged with providing the weatherization including community action agencies.

F. Assistive Devices

More and more devices are coming to market that can assist seniors. Some of these devices are necessary because of a medical condition. Others are designed to assist the senior to do things he or she used to do without assistance. These devices include lifts to different levels of a home, seat raising chairs, devices that dispense medications at specific times, home cleaning devices, food reminders, wheelchairs, scooters or devices to allow mobility within and outside of the home. Obviously seniors can purchase products out of their own funds to help them manage their life in their current home. However seniors with limited funds may not be able to purchase helpful devices because they are too expensive to purchase without assistance. This section reviews government programs that provide assistance to seniors to enable them to take advantage of helpful technology.

Medicare provides funds to purchase certain equipment that is necessary to remedy a medical condition that otherwise would be paid for in an institutional setting. "Durable Medical Equipment, Prosthetics, Orthotics, and/or Supplies ("DMEPOS") are covered benefit under Medicare Part B, the supplemental insurance plan that requires payment of a monthly premium. In order to obtain a DMEPOS a doctor must determine that a device meets the definition of a DMEPOS, must be "medically necessary" for the treatment of a patient's illness

208 www.kshousingcorp.org/programs/wap.shtml.
209 www.dnr.mo.gov/energy/weatherization/wx.htm#wxprogramfacts.
210 Id.

or injury or must improve the functioning of his malformed body member and be used in the patient's home.[211] The determination of whether a device will be paid by Medicare is determined by the laws, implementing rules and regulations. DMEPOS is defined as being able to withstand repeated use; is primarily and customarily used to serve a medical purpose; is not useful to a person in the absence of an illness or injury; and is appropriate for use in the home.[212] The patient usually must pay a twenty percent co-payment of the reasonable cost of the DMEPOS.[213] A device that is for self-help, convenience, and comfort or for hygiene would not qualify for Medicare payment. Therefore Medicare usually will not pay for devices to assist people with chronic conditions.

Medicaid provides funds to purchase products that will assist people under two categories: regular benefits and the HCBS program. The regular Medicaid program only pays for assistive devices as a part of health care.[214] In all states those people deemed "categorically needy" receive benefits because of their status and in Kansas those that are "medically needy"[215] Under the regular Medicaid program "medical equipment is a mandatory component of the home health benefit, and this benefit is mandatory under each state's Medicaid plan for individual who are entitled to nursing facility services. Medicaid also differs from Medicare regarding the concept of medical necessity, in that this is not defined in the basic Medicaid law. Each state can define medical necessity for itself."[216] For example Kansas and Missouri provide eyeglasses, hearing aids and prosthetics or orthotics.[217] However Kansas only covers other items that prevent or reduce hospitalization, while Missouri pays Medicaid beneficiaries for mobility, communication and personal assistive devices to help perform an activity of daily living. [218]

Under the HCBS program a different standard applies to whether devices will be paid for. While each state is different, the goal of each state's HCBS program is to meet hospital, nursing facility or intermediate care level of care within the home of the beneficiary.[219] CMS has stated: "Those adaptive aids that are not covered under a State Plan, as well as communication devices, can often

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[211] Medicare Carriers Manual, Part 3, Chapter II, Coverage and Limitations, Section 2100, available at http://www.cms.hhs.gov/manuals/14_car/3b2000.asp.
[212] Id.
[213] 42 C.F.R. § 409.50: Medicare Home Health Agency Manual § 206.4(D), www.cms.hhs.gov/Manuals?PBM/list.asp.
[214] Tim Sindelar, The "Medical Necessity Requirement" in Medicaid, Disability Law Center, 2002 found at www.nls.org/conf2002/medicaidandmedicalnecessity.htm.
[215] Marc P. Freiman, William C. Mann, Jessica Johnson, Shin-yi Lin, and Catherine Locklear, *Public Funding and Support of Assistive Technologies for Persons with Disabilities*, AARP Public Policy Institute, January, 2006, and U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, State Medicaid Director Letters SMDL #03-006, July 14, 2003: SMDL #01-011, January 19, 2001.
[216] Id. at 13-14.
[217] Id. at 15-16.
[218] Id.
[219] Id. at 18.

be covered under Medicaid section 1915(c) waivers, other waivers or demonstrations."[220] Examples of items that can be covered under HCBS are emergency response systems, home modifications such as grab bars, ramps and modifications to bathrooms, devices that enable seniors to increase their ability to perform ADLs and durable and nondurable medical equipment not covered under the Medicaid state plan.[221] Kansas pays for emergency response system and assistive technology, while Missouri does not provide either type of assistance.[222] Thus the extent of assistance through devices seniors can receive from Medicaid depends on the funding for waivers, the state regulations and the specific circumstances of the senior.

G. Home Repairs and Modifications for Livability

As seniors age the home that met their needs in the past can present barriers to continuing to stay in their home. There are two ways that a home can create problems that could force a senior to move out of their home: home repairs cannot be made because of finances or ability to make the repairs or the older structure does not meet the needs of the senior because of the physical and/or mental deterioration of the senior. This section will provide resources that assist seniors in overcoming these obstacles to staying in their home.

1. Home Repairs Home repairs represent a very difficult need to fund from not-for-profit entities and public resources because of the high cost of many of the repairs needed. Local cities and counties award grants to local residents to make some home repairs. The federal government provides some funds for home repairs through Community and Development Block Grants ("CDBG") granted by the department of Housing and Urban Development ("HUD") to cities and counties.[223] In addition local AAAs and 32 other participating governments participate in the Home Remodeling Loan Program that provides low interest loans to homeowners to make repairs to their home. The program is targeted at low income families needing extensive work to keep the home habitable.[224] As Medicaid programs seek to adapt to individual situations to keep seniors out nursing homes some money should be available for home repairs. However for the vast majority of seniors they will need to tap the investments, equity in their home or life insurance policy to get the necessary funds to make home repairs.

There are several programs in Kansas and Missouri to assist seniors in making home repairs. However the number of homes repaired

[220] U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, State Medicaid Director Letter SMDL#03-006, July 14, 2003.
[221] Supra N 215.
[222] Id.
[223] http://www.hud.gov/local/ks/community/cdbg/index.cfm and http://www.hud.gov/local/mo/community/cdbg/index.cfm.
[224] www.marc.org/loanprogram/.

has been very small. In Kansas the Home-Owner Rehabilitation Program allocates funds from the federal HOME Investment Partnership Program ("HOMEIPP") to help repair and rehabilitate owner-occupied homes. The homeowner must reside in the home and have no more than 80 percent of the area median gross annual income. In fiscal year 2009, 77 Kansas homes were rehabilitated at a cost of $1,925,000 through the HOMEIPP.[225]

In addition Kansas administers the Emergency Repair Program that "provides financial assistance to income eligible homeowners to make emergency repairs to their homes that are necessary to ensure the occupants' continued safety."[226] Homeowners must have income less than 60% of the area median income and must have repairs such as an inoperable furnace, leaky roof, hazardous structural conditions or unsafe electrical and plumbing conditions. The homeowner is allowed a one time award of up to $7500; otherwise all of the costs must be covered by a promissory note that is secured by a mortgage. The debt is forgiven if the homeowner stays in the home for a minimum of three years. For fiscal year 2008, 101 Kansas homes were made safe under this program, with most being roof repairs.[227]

Missouri and Kansas repair programs include the USDA 504 Home Repair Loans and Grants program. This program is aimed at rural communities to pay and loan people funds whose income is less than fifty percent of the county median income.[228] This program includes rural areas of the metropolitan Kansas City area. The program makes grants and loans to remove health and safety hazards such as leaky roofs and heating, electrical and plumbing hazards.[229] Loans can be up to $20,000 and grants can be up to $7,500. In Missouri this program received $5 million in 2008.

Another Missouri repair program is the Home Repair Opportunity Program administered through the Housing Development Commission.[230] Homeowners whose income does not exceed 80 percent of the area median income are eligible to receive cash assistance up to $20,000 (that has to be repaid if the homeowner moves within three years of the repairs.[231] The funds can be used for rehabilitation, weatherization and accessibility repairs. Like other programs this program is grossly under funded. Often the senior needs home repairs in conjunction with weatherization or home modification programs. Missouri provides tax

[225] 24 CFR Part 92 and see www.kshousingcorp.org/programs/hr.shtml.
[226] www.kshousingcorp.org.programs/erp/shtml.
[227] Id.
[228] http:///www.rurdev.usda.gov/mo/fact504.htm.
[229] Id.
[230] www.mhdc.com/homes/hero.htm.
[231] Id.

credits for repairs and modifications of homes in distressed communities for 25% of the cost between $10,000 and $25,000.[232]

2. Modification for Accessibility There is much more government funding for modifying homes to meet accessibility issues than repair of homes because of age or use. Modifying homes to allow mobility within homes can help seniors stay in their homes despite decreased mobility. Many modifications, including adding handrails near bathrooms, wheelchair ramps, widening doors, repairing concrete steps and adding stools to showers, are not very expensive. AAAs and local governments, through CDBG and state funds, have some funds to pay for barrier removals within homes.[233]

One program in Kansas is the Kansas Accessibility Modification Program that serves homeowners whose household income is 80% of median income for the county of residence. Modifications that are paid under this program include grab-bars, wheelchair ramps, widening doorways and moving the utility room from the basement to the first floor.[234] In Missouri the Show Me Loan program provides low interest rate loans to Missourians with a disability to make home modifications as well as vehicle access modifications. The term of the loan depends on the amount borrowed.[235]

One of the largest government programs that helps pay for repairs that adapt the home to meet the needs of a disabled person is the Veteran's Administration Specially Adapted Housing program that provides grants to build or remodel a home to meet the physical needs of disabled veterans.[236] HCBS programs in Kansas and Missouri provide some funds for home modification to allow recipients to live in their home.[237] As the costs of nursing home care continue to escalate and the number of seniors continues to grow the resources to pay for modifications and some home repairs should increase.

Nationally the NeighborWorks America provides a coordinating resource to assist seniors in the repair and modification of homes of

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[232] The Neighborhood Preservation Act, Rev.Stat.MO §§ 135.475 to 135.487, 135.530 (2009), http://ded.mo./bcs/topnavpages/Research%20ToolboxBCS%20Programs/Neighborhood%20Preservation%20Act.html.

[233] Wyandotte and Johnson Counties have limited funds to assist residents in barrier removal. Kansas City, Missouri recently stopped its program for lack of funds.

[234] www.kshousingcorp.org/programs/kamp.shtml.

[235] www.at.mo.gov/loans/smloans.html.

[236] 38 U.S.C.A. chapter 21, see http://www.homeloans.va.gov.sah.html.

[237] Moore, Terry and O'Connell, Beth, Compendium of Home Modification and Assistive Technology Policy and Practice Across the States, U.S. Department of Health and Human Services, October 2006, found at http://aspe.hhs.gov/daltcp/reports/2006/HM-ATI.htm.

seniors.[238] Because funding sources are so diverse from the many government programs and charitable organizations, the local organizations under the NeighborWorks umbrella are able to help seniors sort through the various programs and help seniors apply for assistance in making modifications to their home for mobility.

H. Hospice

Hospice is a program that provides services, materials and equipment to patients in a terminal condition and their families. Hospice provides comfort to the dying person and does not seek to cure the condition that is causing the death of the hospice patient. In order to qualify for hospice care the patient's doctor and the medical director of the hospice agency must certify that the person is terminally ill and has less than six months to live. In addition the patient must sign a statement choosing hospice care instead of routine medical benefits for the terminal condition.[239] Hospice can provide the means to help seniors stay in their home instead of dying in an institution by providing needed equipment and services. Thus hospice care provides the ultimate way to assist a person to control where he or she lives.

Hospice care can be paid by public agencies, insurance companies or both. As of 2002 Medicare paid 78.5 percent of all hospice care provided in the United States while Medicaid paid 4.8 percent of hospice care. Private insurance paid 12.8 percent of hospice care, self pay paid 1.4 percent and the others category, including charity cases, paid 2.5 percent of all hospice care provided.[240] The National Hospice and Palliative Care Organization counted 3,200 operating hospice programs in the United States as of March 2003.[241] One search of Kansas City area reported 171 different organizations that provided some type of hospice care.[242] In 1982 hospice was incorporated into Medicare as a benefit provided to all participants in Medicare.[243] Hospice has provided high quality care for those near death and has saved money for Medicare, under both Parts A and B.

States were given the option to provide hospice care to Medicaid recipients. Medicaid pays so little for hospice care because Medicare pays for hospice services if the person is over age 65. Thus Medicaid pays for hospice only if the person is under age 65 and qualifies for Medicaid services.[244] Few seniors living in their home will qualify for hospice under Medicaid. Kansas and

[238] www.nw.org/network/home.asp.
[239] www.hospicenet.org/htm/concept.html.
[240] Medicaid and Hospice Care, March 2003, National Hospice and Palliative Care Organization, found at www.nhpco.org/files/public/MedicaidIssueBrief.pdf.
[241] Id.
[242] Google search July 3, 2009
[243] Supra. N. 240.
[244] Id.

Missouri have both elected to provide the hospice benefit through Medicaid that is modeled after the Medicare hospice benefit, but not through the HCBS waiver.[245]

Hospice services are provided through an interdisciplinary team composed of physicians, nurses, home health aides, social workers, clergy, volunteers and therapists. The level of care provided depends on the desires of the patient, the physical and mental condition of the patient, the extent of care giver services being provided to the patient and the physical condition of the place where the patient resides. The physical items provided by hospice can include medications and supplies related to the terminal illness, medical equipment such as oxygen and beds, and additional medications or devices that are required for comfort of the patient.[246] Services are provided at four different levels of care: routine home care, respite, general inpatient care and continuous care. [247] If the goal of the patient is to stay in her or his home, then the services will be modified to the extent possible to manage the physical surroundings and care level required. If a senior can be cared for in his or her own home this can save the provider significant expense.

Payment for hospice services can be very complicated. A senior residing in his or her home usually receives hospice services through private insurance and/or Medicare Part B. If a senior has private insurance that insurance is usually the payer of first resort. The hospice organization will review any health insurance policy and contact the insurance company to determine the hospice benefit the policy will pay and any limitations or deductibles that may impact the senior. Then hospice will usually contact Medicare to determine the services, supplies and equipment Medicare will pay and how it will coordinate with private insurance. Usually hospice is paid out of Medicare Part B. However for those not purchasing part B, Medicare Part A can pay for much of a senior's hospice care if the services are rendered in a hospital or a hospice run facility that is considered part of hospitalization.[248]

I. Legal Services

There are many legal issues that arise for seniors that threaten their ability to continue to reside in their home. Besides meeting their estate planning needs, seniors can face obstacles in obtaining public benefits, defending evictions and foreclosures, creating guardianships and conservatorships and asserting their consumer rights. If possible a senior should hire a lawyer in private practice that focuses on the relevant area of law. However many seniors have limited income and cannot afford to hire an attorney in private practice. Fortunately there are resources available in the Kansas City metro area to aid seniors in facing legal

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[245] KHPA 2008 Medicaid Transformation, Chapter 6, January 2009 found at www.khpa.ks.gov/medicaid_transformation/default.htm. and www.mohospice.org.
[246] www.hospicenet.org/htm/team.html.
[247] Supra. N. 240.
[248] www.hospicenet.org/htm/medicare.html.

issues that threaten their ability to stay in their home. Both Kansas and Missouri provide legal assistance to seniors on numerous, but not all, matters critical to seniors.

1. Missouri Legal Aid of Western Missouri ("Legal Aid") provides legal advice for free to seniors over 59 years old. Legal Aid covers the western part of the state of Missouri and includes the five counties served by MARC. A grant from MARC to Legal Aid allows Legal Aid to provide legal assistance to seniors regardless of their income in the five counties in and around Kansas City.[249] Legal Aid also solicits grants and donations to be able to serve low income people, including seniors because state allocations from MARC and other programs do not provide enough funds to cover all people qualified for services. Because of budget limitations Legal Aid cannot provide assistance for all legal matters faced by seniors. The greatest number of cases handled by Legal Aid for seniors relate to obtaining public benefits. For seniors this means obtaining benefits under Medicare, Medicaid, Social Security, SSI, Veteran's Benefits, Railroad Worker's Benefits and aid to the blind.[250] Other legal services Legal Aid performs that impact seniors include consumer protection law, guardianships and conservatorships of seniors and for their grandchildren that are unable to stay with their parents. Legal Aid is a HUD counselor that can assist seniors with reverse mortgages, foreclosures, subsidized housing, landlord-tenant law and other housing issues. Finally Legal Aid handles elder abuse, some estate planning documents, including powers of attorney and titling of assets, and municipal court defense.[251] Legal Aid can provide assistance to many seniors who face threats to their continued residence in their home.

In addition some private practice attorneys volunteer their time to help in many different areas of law for no compensation through the Volunteer Attorney Project ("VAP") that is administered by Legal Aid. [252] The VAP attorney volunteers to handle the matter in their area of expertise from start to finish without receiving any legal fees. VAP supplements Legal Aid and allows more people to be served.

2. Kansas Kansas Legal Services ("KLS") is the umbrella organization that assists local agencies in providing legal assistance to seniors over age 60 in Kansas. The local branch of KLS provides legal services to seniors in Wyandotte, Leavenworth and Johnson counties (as well as many other counties). The local KLS office is located in Wyandotte County. While KLS provides guidance and helps local

[249] The funding of this service is based on the funding priorities of MARC. If the priorities of MARC change then the funding for the legal services for seniors could be cut back or eliminated.
[250] www.lawmo.org/cases.htm.
[251] Id.
[252] www.lawmo.org/vap1.htm.

offices, each county's AAA and state funding sources provide the money to provide legal services to seniors. KLS provides free legal services to seniors over the age of 60 for certain legal matters. Like Legal Aid, KLS had no income limitations on providing legal services for people over age 60 for certain legal matters.[253] However the ability to provide legal services to a county's seniors depends on funding for those services. As of July 30, 2009 the local KLS office stated that they could not provide services to seniors from Leavenworth and Johnson counties through September 30, 2009 because there were not enough funds from those counties to serve their senior populations. In addition the funding for WCKC residents would soon be exhausted. Funding for the new fiscal year has started and the local KLS office can provide services to seniors in all three counties. But there is no guaranty that the funds will not be exhausted before the end of the current fiscal year.

The local KLS office focuses its resources for seniors on preparing wills, powers of attorney, advance directives and payable on death directives. Other legal services for seniors, such as involving issues on divorce, abuse, consumer protection, bankruptcy, foreclosure and landlord tenant actions, are subject to income limitations applicable to all other KLS clients for the services. The local KLS office is not a HUD counselor or advocate for seniors in obtaining public benefits. In addition there are no resources to advise seniors on reverse mortgages, public housing or related maters. KLS refers all guardianship and conservatorship issues to private attorneys.

In Kansas private practice attorneys volunteer for the Elder Law Hotline ("Hotline") that assists people over age 60 evaluate legal problems and recommends resources. The Hotline is administered through KLS but supported by the Kansas Bar Association and the Kansas Bar Association Foundation. Attorneys volunteering for the Hotline provide advice and referrals to most types of legal matters for seniors calling the Hotline. Since this service involves only one phone call the Hotline cannot cure problems facing seniors. However the attorneys on the Hotline can help determine the legal issues facing a senior and refer him or her to KLS or a private attorney experienced in the area of law at issue.

III. Private Resources

A. Reverse Mortgages

1. History and Current HECM Loans. As stated before most seniors own their own home and most do not have any liens on their home. However many seniors have incurred credit card debt and other debt to finance medical expenses, expenses necessary to allow them

[253] www.kansaslegalservices.org.

to stay in their home (such as real estate taxes or home modifications). These debts or living expenses cannot be paid from the senior's limited income.

In these situations a "reverse mortgage" may be appropriate. The purpose of a reverse mortgage ("RM") is to allow a senior homeowner to borrow money, secured by the home, which does not require any payments to the lender until the senior leaves his or her home. RMs are intended to help the seniors obtain funds to pay expenses or debt that could not otherwise be paid. When income is very limited a RM can mean the difference between meeting expenses and staying in the home instead of selling the home because they could not afford to stay in the home. However RMs are expensive loans and should not be used unless necessary for the senior to stay in the home.

The concept of RMs has been in existence for over thirty years. Initially most RM loans were "shared appreciation" loans where a lender receives an interest rate of return and receives a percentage of the increase in the value of the home from the time of making the loan until when the loan is paid off.[254] In 1989 Congress created a RM insurance program to increase the market for reverse mortgages and protect lenders and borrowers from risks of shared appreciation loans.[255] The program created under HUD is known as the Home Equity Conversion Mortgage or "HECM."[256] HECMs are administered through the Federal Housing Administration, a division of HUD. Almost all HECMs are not shared appreciation loans. Approximately ninety percent of the RMs loans made from 2003 to 2007 were HECMs. The number HECM loans have grown from 18,084 loans made in 2003 to over 100,000 loans in 2006. Therefore this paper will assume the RM is a HECM loan unless otherwise stated.

The typical person utilizing a RM is single, usually female, between seventy and eighty years old, with income of less than $30,000 and having less than $25,000 in financial assets (excluding the home equity).[257] In sixty-seven percent (67%) of HECM loans the owner had than $100,000 in assets excluding the home equity.[258] One RM counselor estimates that the majority of seniors applying for RMs have only Social Security income to meet living expenses.[259] Surveys of borrowers and the comments of mortgage counselors state that most RM borrowers use the

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[254] www.aarp.org/money/revmort/revmort_choices/a2003-03-26-costlypvtloans.html.
[255] 12 U.S.C. § 1715z-20(a) (1) (2009).
[256] www.hud.gov/offices/hsg/sfh/hecm/hecmhome.ctm.
[257] Redfoot, Donald L., Scholen, Ken and Brown, S. Kathi, Reverse Mortgages: Niche or Mainstream Solution? Report on the 2006 AARP National Survey of Reverse Mortgage Shoppers, December 200, found at http://assets.aarp.org/rgcenter/consume/2007_22_rgcenter/revmortgage.pdf.
[258] Id.
[259] Telephone conversation with Joanna Kollmeyer at Consumer Credit counseling in Columbia, Missouri on August 7, 2008.

proceeds for necessities. Lenders and counselors report that most seniors applying for a reverse mortgages have an immediate need for funds.[260]

A RM, by itself, will not disqualify a senior from being eligible for supplemental income through Medicaid, SSI or other government programs. However owning certain assets, other than a home, may disqualify a person from receiving government benefits. Thus keeping the proceeds from the RM in a bank account could disqualify a senior from receiving government benefits.[261]

2. Differences Between a Reverse Mortgage and a Conventional Home Loan. Prior to determining if a RM is appropriate for a senior, he or she must understand the differences between a conventional home loan and a RM loan. A conventional loan can be for a specific amount paid off over a set term or a "line of credit" loan where the borrower is able to have the amount of the loan fluctuate and the payment fluctuate, but there is a date certain when the entire loan must be paid. Under a conventional home loan the home owner pays the lender a monthly payment of interest and usually principal. A RM loan accrues interest at either a fixed rate or an adjustable rate that is usually tied to the one year Treasury Note rate that is adjusted monthly or yearly. In a RM the borrower is not required to make any periodic payments. The RM lender can only require repayment if one of the following events occurs: the or all of the homeowner(s) dies; the or all of the homeowner(s) cease to live in the home; the home is transferred to another person; or the homeowner fails to pay real estate taxes, homeowner's insurance or the homeowner fails to maintain the home up to required standards.[262] Since interest accrues until it is paid, the homeowner does not get to deduct interest on his or her federal income tax unless the homeowner makes an interest payment.

Under a RM the homeowner does not need to meet any credit standards. The loan is "nonrecourse" so the senior or his heirs owe the lesser of the value of the home when the loan is required to be repaid or the accumulated principal and interest on the loan. Thus there can be no deficiency owed by the homeowner or his or her heirs if the home value is less than the amount owed under the RM. Seniors can receive the entire loan amount at closing, an amount at closing and then receive advances when requested, monthly payments over their estimated life or for a set number of years or no funds at closing and receive advances (like a line of credit loan).[263]

[260] Supra. N. 257.
[261] Reverse Mortgage Loans, Borrowing Against Your Home, AARP Foundation, found at www.aarp.org/revmort. (2008).
[262] www.reverse.org/Basic%20Q&A.html.
[263] www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm.

The cost of the RM is high. The expenses and fees can be up to six percent of the loan amount. An origination fee is the greater of $2,000 or 1% of the "maximum claim amount" that is usually the value of the home. In addition a HUD mortgage insurance fee that is the greater of $2,000 or 1% of the maximum loan amount. Third party fees of title insurance, credit report, appraisal, document preparation, recording fees, escrow fee, termite inspection, flood zone certification and fees that are required by the state and/or county or are customary for loan closings in the area are also paid at closing. Fees to third party providers can be as much as 2% of the value of the home. In addition the mortgage insurance premium is ½% of the loan balance per year and $30.00 per month servicing fee. An AARP survey found that sixty three percent (63%) of people who went through the RM counseling that decided not to close on a RM cited high cost as the reason for not obtaining the reverse mortgage.[264]

If the senior has enough investments, other than the equity of the home, to pay off debt, pay for necessary repairs to the home or meet current and future needs, the senior is usually better off not obtaining a RM. Studies have shown that it is unwise to use RMs to purchase annuities, investments, or long term care insurance.[265] The front end fees of RMs limit any return on the purchase of these investments. If the homeowner will soon have to sell the home to move into an assisted living facility or nursing home the RM will greatly reduce the proceeds from the sale of the home. If, after obtaining a RM, the senior desires to transfer the home to a relative in consideration for services to the senior or as an estate planning step, the relative will have to immediately pay off the RM or face foreclosure. Thus a senior can benefit most from a RM when there is an immediate and long term need for funds and the senior intends to stay in the home for at least three to five years.

3. Requirements for a Reverse Mortgage RMs require all of the following:

a. All of the owners of a home must be over age 62. If one of the owners is less than 62 years old the homeowners must wait until all owners are over age 62 or the person under age 62 must transfer all ownership in the home to the person over age 62;

b. The owners of the home must reside in the home at the time of application;

[264] Supra N. 257 at 74.
[265] Id. at 69.

c. The RM loan must be sufficient to pay all closing costs and pay off any existing mortgage;

d. The home must be a single family house or one of up to four unit structure in which the owner(s) occupy one of the units;

e. The value of the home that can qualify for a HECM is now $417,000. In some high housing price areas the limit is slightly over $600,000;

f. The home can be a stand alone detached house, a townhouse, a condominium, or a planned unit development. A cooperative unit is not eligible for a RM; and

g. The home must meet certain HUD standards for value, structural integrity and maintenance.[266]

4. Step by Step Process to Obtain a Reverse Mortgage Loan

Once the homeowner chooses to obtain a RM the loan process can take between sixty and ninety days to complete. The steps to obtain a RM are as follows:

a. The homeowner must contact an authorized HECM lender. HUD and the National Reverse Mortgage Loan Association "NRMLA" list approved lenders.

b. A detailed loan application must be completed.

c. The homeowner must complete a counseling session on RMs. A HUD approved counselor conducts a session, either in person or over the phone, to review all of the senior's assets, liabilities and income, determine the homeowner's need, how the loan will impact the senior and explore alternatives a RM. Alternatives could include sale and lease back, deferred payment loans, government programs to make repairs and programs to reduce property tax on the home and pay for utilities. The homeowner and/or designated surrogate must attend the session. However any person helping the senior, a relative, friend or caregiver can attend the session. Since most HECM loans are made to widows in their 70's, who have usually had their husbands handle the finances for the household, the counseling is extremely important for the homeowner and all of the people helping the homeowner understand all aspects of the RM loan. The counselor must

[266] www.hud.gov/offices/hsg/sfh/hecm/hecmabou.cfm.

state that the proposed borrower fully understands the concept of the RM and how it will impact him or her.

d. The lender orders a credit report only to determine if there are any liens that would attach to the real estate ahead of the RM. The lender orders a HUD approved appraisal to determine the fair market value of the home and what, if any, conditions in the home need to be remedied to bring the home up to HUD's Minimum Property Standards. If repairs are needed the appraiser or homeowner must obtain estimates of the cost of making the required repairs. The repairs must be made prior to closing or funds must be escrowed to make the repairs. If funds are escrowed for repairs the lender can charge the greater of 1 ½% of the escrowed funds or $50. The funds escrowed have to be 150% of the amount of the repairs if the repairs are over 15% of the value of the residence.

e. The homeowner or designated surrogate signs the necessary documents at closing. The closing statement shows the pay off of any current debt, the funds to the distributed to the borrower, payment of closing costs and fees and escrow funds for any required home repairs. A HECM loan requires that the borrower sign two sets of documents, one for the private lender and one for HUD. The HUD documents become effective if the amount loaned and accumulated interest equals 98% of the home value. When the outstanding balance reaches the 98% of home value threshold HUD pays off the private lender and HUD becomes the lender under the secondary documents.

f. A borrower has a three day right to rescind the loan after closing.

g. Loan proceeds are distributed as provided in the closing statement on the fourth day after the closing.[267]

B. Home Sale and Leaseback, Retain Life Interest and Sharing

If a home is often a senior's largest source of wealth and a RM is not the best alternative, are there other ways to tap the equity in a home? The answer is yes, there are arrangements to turn home equity into money.

1. Sale and Leaseback. One alternative is for the senior to sell his or her home to someone, usually a relative, and then lease the home or retain

[267] Id.

a life interest in the home.[268] The sale and leaseback arrangement is the most straightforward arrangement. The senior can sell all of his or her interest in the home for the market price or an agreed upon price. The senior receives a lump sum that can be used immediately and invested for future returns. The lease of the home to the senior should be at a rate that will compensate the buyer for the investment but not overburden the senior. In addition the lease should be structured so the purchaser takes care of the maintenance of the home, thus relieving the senior of the burden of doing or arranging for repairs, upkeep, insurance and the cost of increasing real estate taxes. Because most sale and leaseback transactions are between relatives, the transaction must be structured so that financing (if any) and rent are at market rates to withstand Internal Revenue Service "IRS" scrutiny.

If the purchaser is not able to pay the entire sale price with current funds she or he can borrow all or a portion of the purchase price. If the purchaser cannot obtain the necessary financing the senior could finance the purchase of the senior's home. The finance of the home sale should provide the senior with a steady source of income in excess of rent. The sale of all legal rights to a home can qualify for the $250,000 per person exclusion from capital gains tax on the difference between purchase price (tax basis) and sale price.[269] The seller of a residence can exclude $250,000 in gain for one person or $500,000 in gain for a couple so long as they have resided in the home two out of the last five years.[270]

2. Retain Life Estate. Another way to accomplish almost the same result is for the senior to sell his or her interest in the home but retain a life estate allowing him or her to stay in the home for the rest of his or her life without having to pay rent to the purchaser.[271] The value of a remainder interest must be calculated using the IRS tables on life expectancy. The amount the senior will receive on sale of the home will be the value of the home minus the value of the life estate. Thus the senior receives the value of the remainder interest in the home. The retention of a life estate has the advantage to the senior of not paying rent that will reduce the senior's cash flow. Besides the valuation issue, the main problem with a senior retaining a life interest in the home is that the senior cannot exclude any gain on the sale of the remainder interest if the purchaser is a relative.[272] Paying taxes on the sale of the remainder interest of a residence to a relative will diminish the funds available to a senior. The sale of a remainder interest to an in-law or step child will not be deemed a sale to a

[268] Frolik, Lawrence A., Residence Options for Older and Disabled Clients, American Bar Association, p.49 (2008).
[269] 26 U.S.C. § 121 (2009).
[270] 26 U.S.C. § 121(b) (2009).
[271] Supra N. 268.
[272] 26 U.S.C. § 121 (d)(8) and Christopher, A. Mark, Planning For the Residence Post-DRA, National Academy of Elder Law Attorneys, Inc, 2006 NAELA Institute 13-1.

relative. One commentator has stated that if a transaction is structured as a complete sale of the entire property and then a sale back of a remainder interest the senior will be able to exclude gain on the sale of the residence up to $250,000 per person.[273] However there are no rulings or regulations to support this position and the IRS may disqualify the transactions as a step transaction and link the two transactions. A retained life estate will not be considered a resource for Medicaid purposes.[274] Thus while it is possible to structure a transaction to provide a life interest in a home for the senior; the safest transaction is to have the purchaser lease back the home to the senior.

3. Home Sharing. Home sharing can provide both financial and non-financial benefits to the senior.[275] The senior can share his or her home with a relative or a non-relative or the senior can sell his or her home and then live with someone, usually a relative. The financial advantage to the senior of sharing his or her home with someone is the rent or other financial contribution the sharing person pays for household expenses. The person sharing the home usually assists the senior in performing cleaning, maintenance and repair tasks on the home. In addition the home sharer can provide companionship to the senior. If the senior is able to move into a home with a relative, usually a son or daughter, the senior can sell his or her home, have financial resources and be helped by multiple generations in a home.

Although there are financial and social advantages to home sharing, there could be life style differences and past family conflicts between family members that could present problems. The parties to any home sharing should discuss the issues involved in home sharing before committing to such an arrangement.[276] One safeguard for the senior is to not name the home-sharing relative as the medical or financial power of attorney. In addition there should be agreement on what conditions can terminate the arrangement or if both parties have the right to terminate the arrangement at any time for any reason.

Home sharing with strangers provides the same financial, social and help with maintenance benefits as sharing a home with a relative. Sharing a home with a stranger can eliminate the family disagreements and strains among relatives. However the risks of theft, different lifestyles and possible elder abuse in sharing a home with a stranger are real. Thus a detailed questionnaire and written agreement are essential to creating a good relationship. Often a broker is involved in screening potential younger people to share a home. In any event prior to any home sharing

[273] Id.
[274] Id.
[275] Supra N. 268.
[276] See Appendix for issues to consider in house sharing

or leasing arrangement the senior should conduct background checks, credit checks and interviews to determine compatibility with the senior. Zoning laws almost always allow sharing an entire home between relatives, however renting a room within a home could violate zoning laws restricting renters in a single family house neighborhood.[277]

C. Long Term Care Insurance

Long term care insurance ("LTCI") has traditionally been purchased to protect against the cost of staying in a nursing home. However as LTCI policies have developed over the years there has been recognition that seniors face many costs in staying in their home and that insurance can pay some of those costs.[278] The largest cost of providing care to a senior is the cost of hiring people to provide services to the senior that the senior used to do by herself. [279] If a person qualifies for Medicaid then Medicaid can pay the costs of allowing the senior to stay in his or her home through HCBS. However for those seniors who have income and/or assets that disqualify them for Medicaid, LTCI provides a way to pay for needed services.

Like all insurance the LTCI policy must be purchased before the event triggering payment from the insurance company occurs. LTCI policies are structured so that the earlier the person takes out a policy the lower the yearly premiums on the policy.[280] LTCI premiums become prohibitively expensive if the senior waits until he or she is in their late 70's to purchase LTCI. However if purchased early enough the policy can be effective to provide coverage to pay the services necessary to continue to reside in the senior's home. Therefore LTCI should be purchased many years before there is a need.[281]

LTCI is very confusing to buy because of the many different features, coverages, what can be paid by the policy, waiting periods, what condition triggers payment, inflation coverage and maximum total benefits that can be paid.[282] An insurance agent that has extensive experience in evaluating LTCI policies and matching policies to the needs of the insured is necessary to tailor the policy to the person's needs.[283]

Obviously the LTCI policy should cover home health services and specify that the following can be paid by the policy: personal care and health aides, adult

[277] Supra N. 268.
[278] Farley, Margaret, § 21:45 Private Long-Term Care Insurance for Long-Term Care, 2 Advising the Elderly Client (May 2009).
[279] Dayton, A. Kimberley, Guare, Timothy H., and Wood, Molly M., 3 Advising the Elderly Client § 24.14 Benefits (May 2009).
[280] Knueppel, Richard W., Counseling Clients About Long-Term Care Expense: What are the Alternatives?, 6 MARQEA, 165, 168 (Fall 2004).
[281] Id.
[282] Supra N. 279 at § 24:11 Characteristics of long-term care insurance policies.
[283] Id. at § 24:22 Recommendations.

day care, and respite care without preconditions for skilled care or medical necessity.[284] Custodial care is non-medical assistance with ADLs that may be provided by nonprofessional personnel.[285] The elimination periods should not be longer than 100 days. Sometimes the home care benefit must be purchased as a rider to the LTCI policy and sometimes it is part of the policy itself. Some states have mandated long term care in the home and the industry association standards provide home care coverage as an option.[286] "Most policies offer home care services provided by a registered nurse, licensed practical nurse, or licensed therapist. Better policies also cover "homemakers" and "home health or personal assistance aides."[287] LTCI policies usually pay a percentage of the maximum daily nursing payment for home health care. Some policies pay as much as 80% of the maximum daily nursing home payment for home health care. However the most common percentage is 50% of a maximum daily nursing home payment rate.[288] Respite care for the caregiver in the home is short term institutional stay for the senior to provide relief to a caregiver for a maximum number of days in a year.[289]

Missouri and the federal government provide deductions from income tax for LTCI premiums.[290] In addition Kansas and Missouri have adopted the so called Partnership insurance program that allows people to keep assets and receive Medicaid dollars to the extent that LTCI pays the costs of nursing home and home health and custodial care.[291]

D. Life Insurance

Many seniors have life insurance policies that they purchased many years ago. Some are term policies on which seniors continue to pay the premiums every year. Others are whole life, universal or hybrid policies that have some residual value, on which the senior may or may not be paying premiums. It has always been possible for an owner of a life insurance policy that has cash surrender value to cancel the policy and receive that value from the insurance company. Over the last thirty years a market has developed whereby owners of life insurance policies can sell their policies. In this market buyers pay the owner of the policy more than any cash surrender value of the policy but less than the death benefit of the policy. A life insurance policy owner could also sell a portion of the policy and keep the remainder of the policy (however most sales of life insurance policies are for the full policy.) There are three ways a senior can

[284] Id. at § 24:14 Benefits.
[285] Id.
[286] Id. at § 21:45 Private long-term care insurance for long-term care.
[287] Id. at § 24:14 Benefits.
[288] Id. at § 21:45 Private long-term care insurance for long-term care and § 24:11 Characteristics of long-term care insurance policies.
[289] Supra N. 287.
[290] Rev.Stat.MO § 135.096 (2009).
[291] Shilling, Dana, LTCI Partnership Programs, 209 ELDLAWADV 1 (July 2008).

obtain money from his or her life insurance policy prior to death: viatical settlement, life settlement and accelerated death benefit.

1. Viatical Settlement The first market to develop for life insurance policy owners to receive money prior to the death of the insured was the sale of insurance policies in what were called "viatical settlements." A viatical settlement ("VS") is the sale of a life insurance policy to an investor when the insured has a short life expectancy.[292] The limited life span of the insured allows the owner to receive funds at a time when there may be a great need for money to assist the senior while living. VSs first became a recognized market in the 1980s when AIDS infected many people and there were no medicines to sustain life. AIDS patients used the proceeds from the sale of life insurance policies to pay for needed health care and assistance during their last months of life.[293] VSs include the purchase of term life insurance and group life insurance as well as universal and whole life policies.

The first requirement to enter into a VS is that the life insurance policy to be sold must have been in effect at least two years.[294] If this condition is met the VS process starts with the policy owner, called the viator, soliciting offers to purchase the policy. In order for the process to be a VS the viator must be terminally ill and be expected to die within a specific period of time, usually within 24 months.[295] The investor is the person or institution that ultimately buys the policy. Usually there is a person or company that acts as a broker for the viator that distributes information about the viator and the policy to prospective investors. After the viator or broker solicits offers from investors to get the best purchase price for the policy the viator or broker negotiates the details of the VS.[296] The broker is paid a percentage of the amount paid to the viator for his or her services. A viator could receive between 60% and 90% of the policy's face value in the right circumstances.[297] However some viators may receive as little as 25% of the face value of the policy.[298] A person is considered terminally ill if a physician certifies that the person is reasonably expected to die within a specific number of months from the date of certification.[299] A VS is not taxed by the federal government when the viator is terminally ill.[300] Most times the named beneficiaries of the

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[292] www.wikipedia.org/wiki/Viatical_settlement.
[293] Id.
[294] Wolk, Gloria Grening, Cash for the Final Days, (1997) Bialkin Books.
[295] Id.
[296] Id.
[297] Id.
[298] Hook, Andrew H. and Begley Jr., Thomas D., Lawyering for Older Clients: a New Paradigm, 1 NAELAJ 269, 278 (2005).
[299] Perez, Jessica Maria, You Can Bet Your Life on IT! Regulating Senior Settlements to be a Financial Alternative for the Elderly, 10 ELDLJ 425, 2002.
[300] 26 U.S.C. § 101(g) (2009).

policy must sign a waiver before the VS can be completed. The investor must pay any premiums due on the policy after the completion of the sale of the policy until the death of the insured.

Many consumer protection organizations have criticized VSs, as well as the life settlements (discussed below and abbreviated as "LS") and accelerated death benefits (described in the last part of this section "ADB") because most studies have concluded that there is a large discount in the amount the viator receives compared to the short time when the full value of the policy will be paid. Depending on the amount needed by the policy owner it may be better to borrow against the cash surrender value, use the policy as collateral for a conventional loan or obtain a partial ADB from the insurance company that issued the policy. Because of prior abuses some states have sought to regulate VSs. Both Kansas and Missouri have securities laws that prohibit false or misleading solicitation for the sale of securities. The securities commissioners of Kansas and Missouri can stop deceptive practices for any companies soliciting VSs.[301] VSs and LSs are considered securities. Missouri does not specifically regulate VSs and LSs.

Kansas regulates both VSs and LSs. [302] The Kansas statutes seek to impose protections for consumers by regulating the brokers and facilitators of VSs and LSs. Kansas statutes specifically provide the insurance commissioner shall require brokers and providers (but not purchasers) to register with the insurance commissioner, keep all viator information confidential, have all of their form contracts approved by the insurance commissioner, require disclosures to the viator, provide the viator a 15 day right to cancel the transaction and prohibit fraud or deception as defined in the statutes and regulations.[303]

2. Life Settlements Since the VS market has matured and become regulated investors have begun purchasing policies from people who do not have a terminal disease, but have a limited life expectancy based on actuarial statistics. The selling of life insurance policies where the insured does not have a life expectance of less than two years is a LS.[304] (Sometimes life settlements are called senior settlements.) The market for LSs has grown in the last ten years and there are many companies, including Berkshire Hathaway, that have a large business

[301] Kansas Special Order of the Securities Commissioner of the State of Kansas, Docket No. 2003E013dated October 17, 2002 incorporating the guidelines regarding viatical investments of the North American Securities Administration Association, Inc. found at www.securities.state.ks.us/opinion/op_main.html. and Missouri: www.viatical-expert.net/Dir/liberte_dir.htm.
[302] Kansas Statutes Annotated Chapter 40, Article 50.
[303] Id.
[304] Deloitte Development LLC, The Life Settlements Market, An Actuarial Perspective on Consumer Economic Value, 2005, found at www.acordlomaforum.org/2006/presentations/vadiveloo.pdf.

purchasing life insurance polices. Having a market for LSs reduces the ability of investors to pay too little because another investor may be willing to purchase the insurance policy for more money.[305] In addition the market for LSs helped standardize documents, marketing material and has weeded out disreputable brokers and investors.

The process for a LS is similar to a VS because the owner of the policy, over age 65, usually over age 70, seeks payment for the value of the life insurance policy that is in excess of any cash surrender value of the policy.[306] Most LSs involve a senior whose life expectancy is less than five years, as determined by actuarial statistics.[307] The viator can go through a broker or go directly to LS investors. The viator submits the insurance policy, a completed life style questionnaire and all medical history to a "life expectancy provider". The life expectancy provider calculates the "determined life expectancy" of the insured based on actuarial models and risk factors of the insured. The investor then uses the determined life expectancy to consider what to offer the viator to purchase the policy. Because of the many variables involved in judging when a death benefit will be paid, the percentage of the face value of the policy paid to the viator on a LS is less than in a VS. Payments for LS range from fifteen to eighty-five percent of the face value of the policy.[308] However an actuarial study of the LS market concluded that purchasers paid about 20% of the face value of the policy to viators.[309] The same study found that origination fees, servicing fees, underwriting fees and other costs took up 44% of the face value of the insurance policy, with the remaining dollars representing investor return.

If the insured is "chronically ill" then there are limits on what money is tax free under federal law and what is taxable either as capital gains or ordinary income. The exclusion for the chronically ill is limited to the amount that would be incurred for qualified long-term care expenses up to $240 per day in 2005 (thereafter adjusted annually for inflation.)[310] In addition the IRS has recently stated in a revenue ruling that the viator must recognize income on the sale proceeds minus the premiums paid that created cash surrender amount minus the amount of the premiums that was spent for the cost-of-insurance.[311] The IRS has stated that the amount of sale proceeds up to the amount of the cash surrender value would be treated as ordinary income and the amount above the cash surrender value

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305 Doherty, Neil, and Singer, Hal, The Benefits of a Secondary Market For Life Insurance Policies, Wharton Financial Institutions Center, October 2002, found at (http://knowledge.wharton.upenn/edu/index.cfm?fa=viewPaper&id=1132).
306 Supra N. 299.
307 Id.
308 Id.
309 Supra. N. 298.
310 26 U.S.C. A. § 101(g) (2009).
311 Revenue Ruling 2009-13 found at www.irs.gov/pub/irs-drop/rr-09-13.pdf.

would be treated as long-term capital gain.[312] However there have been no cases on whether to treat this difference between premiums and sale price as a capital gain or ordinary income.

3. Accelerated death benefit. An alternative to receiving funds through a VS or LS is obtaining an ADB from the insurance company issuing the life insurance policy. Under an ADB the insurance company pays some of the death benefit before the person dies.[313] The condition or event that will enable an owner to obtain an ADB varies by insurance company and state regulation. An ADB can be paid when events or conditions greatly reduce the life expectancy of the insured from what is determined to be the normal life expectancy or the person is in a chronic, debilitating condition that requires care from an individual care giver or admittance to a nursing home.[314] After paying a partial ADB the insurance company is still required to pay a portion of the remaining death benefit after the death of the insured, reduced by the ADB and an amount for future earnings. "Many insurance companies charge interest on the payment to make up for what the company would have earned had the money not been withdrawn from the policy and some companies charge an administrative fee."[315] The advantages of an ADB compared to VSs and LSs are there no broker fees, there still is some death benefit and less profit to an investor. The concern is that without competition the insurance company may pay less than what the market could pay under a VS or LS.

Life insurance companies have determined the criteria for when the condition of the insured will allow the insurance company to pay an ADB. Some insurance companies require that the owner of the policy pay for a rider or amendment to the insurance policy in order to have the option of an ADB. However more and more insurance companies are paying ADB as part of the policy to compete against the investors purchasing policies under a VS or LS.[316]

Some states have statutes or regulations that determine when an ADB can be paid.[317] Many states require the insurance companies to provide the owner and irrevocable beneficiary with a disclosure document stating the impact of the distribution on the policy, the remaining benefit, the possible tax consequences and the possible impact on Medicaid and other government benefits. Kansas and Missouri do not have any statutes

[312] Id.
[313] Begley & Barrett, Representing the Elderly or Disabled Client, ¶ 4.02 Accelerated Death Benefits (2009).
[314] Supra N. 298.
[315] Id. at 280.
[316] Id.
[317] Id., and see for example Alabama Department of Insurance requires a brochure be presented to anyone considering an ADB that provides disclosures and alternatives to an ADB.

or regulations on when an ADB can be paid or requiring specific disclosures to the owner or beneficiary.[318] The tax consequences of the ADB are the same as the VSs and LSs with the same standards for an insured being terminally ill or chronically ill. Therefore the senior seeking to obtain funds from a life insurance policy should consider an ADB and then test the waters for a VS or LS.

CONCLUSION

Most seniors want to stay in their home as long as possible. However seniors face many financial, physical and mental issues trying to stay in their home. Society has an interest in helping seniors stay in their home. Not only does aging in place create many benefits for the senior, their neighborhood and community, but it also saves society the large costs of medical and long term institutional care. With the large increases in the number of seniors projected in the next thirty years the United States will have to develop strategies for aiding seniors to allow them to stay in their homes. Many of the programs mentioned in this paper help seniors stay in their home at relatively small costs. Hopefully these programs will evolve into an overall strategy to help more seniors age in place.

[318] Id. at 281.