

Eye on elder issues

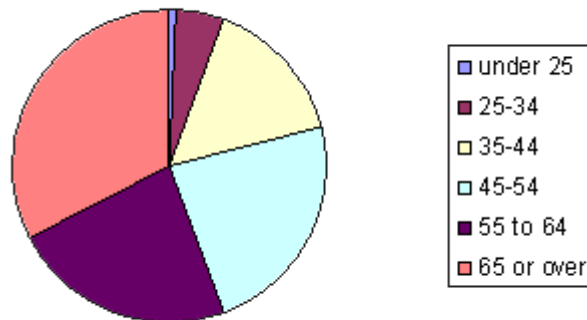
EYE on ELDER ISSUES
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Long-Term Health Care Costs Threaten Family Farms And Family Businesses

The Heartland of America was built on the blood, sweat and tears of family-owned farms and family-owned businesses. Generation after generation passed down the love of the land and the value of working for oneself and providing for one's family. Keeping these businesses in the family is a source of pride and the foundation of the All American Dream. Now, having survived tornadoes, draughts, price cuts, and import and export fluctuations, those who work the earth or run small businesses are having their livelihoods threatened by longer lives and rising health care costs.

Nearly every President in the last 40 years, either Democrat or Republican, has vowed to protect family farms and family businesses, yet this nation's health care policy is perhaps the greatest threat to those family farms and family businesses . Most family farms and family businesses have values less than \$1.5 million, and have never been affected by the Federal Estate Tax. They are, however, affected by health care issues. If the owner of the business, or family farm, requires nursing home care, that business or farm is threatened. **With one third of farmers at 65 or more years of age, the potential for nursing home care is significant.**

Age of farm operators that spent 50% or more of their time farming:



SOURCE: 2002 Census of Agriculture/United States Dept of Agriculture

Through careful planning, most family farms and family businesses have been protected utilizing a combination of planning options utilized by elder law attorneys, and traditional estate planning tools. There are two recent changes, which either erode or eliminate many of these options.



More aggressive estate recovery plans, which are being adopted in many states, are threatening these family farms and family businesses. A small family farm near Athens, Ohio, which has been in the family for several generations, and which totaled 30 acres, has been the subject to such a battle. The husband had died many years ago, and the wife had continued to live in the home. Her daughter decided to quit her job, move in with her mother and care for her full-time. If the daughter hadn't taken these drastic steps, her mother would have required nursing home care

for several years. The farm and home, which were recently sold for \$55,000, became the subject of a claim by the Ohio Estate Recovery Section for over \$90,000. The case recently settled, and the state will ultimately receive one-half of the net estate. The daughter and the balance of the family will receive the other one-half of the proceeds, but **the family farm has been lost and no child, or grandchild, will be given the opportunity to maintain that family farm.**

Similar circumstances occurred in Tennessee, where a family farm was the subject of an estate recovery by the Tennessee Medicaid Agency. The Agency in Tennessee forced the property to an auction. Family heirlooms, including furniture, were also forced to sale. Some family members were able to purchase some of the family heirlooms, but again, **the family farm was lost and the proceeds were utilized to pay the state of Tennessee.** These families could have avoided this outcome had they engaged an elder law attorney prior to the crisis developing, or if the states of Ohio and Tennessee had not started to more aggressively pursue their estate recovery efforts.

In most family businesses, the business owner between ages 55 and 65 typically engages their children in a discussion regarding a transition of the business or family farm to the next generation. In most circumstances, one or more of the children will participate in the family business or family farm, and have been paid on some sort of discounted wage with the promise that they will eventually receive the family business or family farm.

New legislation being considered by the Congress will make it very unlikely that these family businesses and family farms will be preserved. ***This new legislation would, for purposes of Medicaid eligibility, consider any transfer that has occurred at any time, to be effective upon the date the business owner or spouse is institutionalized or requires Medicaid services.*** For example, if the father transfers the family farm to his son or daughter as part of a retirement plan at age 62, and at age 80 requires nursing home care, **the agency will consider that transfer 18 years earlier, and determine that the family farm or family business is still part of his estate for purposes of determining Medicaid eligibility.** As often happens, the unintended results are inconsistent with other policy positions that the legislature or executive branch have taken in the past.

The current Congress has vowed to protect family farms and family businesses from the “death tax”, but perhaps unwittingly condemns family farms and family businesses (by virtue of a health care tax), should long-term nursing care be required. **While the maximum Federal Estate Tax top bracket is 45%, the effects of these new policies for a long-term nursing care will be 100%.**

The National Academy of Elder Law Attorneys believes that small family run businesses and farms are the backbone of our culture and our economy. Owners of family businesses and farms should be encouraged to continue their traditions, to provide much needed products and services to our country, and to cultivate generations for the future. If we continue to allow this injustice to the very Heartland that built our country, we can count on it coming to every citizen in the future. **It is imperative to speak up and tell your Congressmen that we just won't allow this to happen!**



For more information about elder law attorneys and the National Academy of Elder Law Attorneys, visit <http://sdm3.rm04.net/ctt?kn=1&m=373758&r=NTkxMDI5MzA4S0&b=0&j=NzE0ODg5MwS2>. Established in 1987, NAELA provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with legal services to the elderly and people with special needs.

Note to Our Readers: This e-newsletter, ***Eye on Elder Issues***, is presented as a public service by the National Academy of Elder Law Attorneys (NAELA). We are pleased to send you this issue and welcome your comments. You can expect to receive this newsletter monthly as NAELA explores, reports and provides insight on timely topics affecting our nation's seniors and their families. In addition, the growing population of Baby Boomers is addressing issues for themselves and their families that are new and unique. This publication is intended to explore those issues from all sides and to educate consumers, aging network

professionals, law makers, and members of the media.

Please feel free to forward this e-newsletter or suggest additional recipients to us.

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