



Planning for Long-Term Care

By Raymon B. Harvey

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Planning for Your Future

Why Plan?

With the growing elderly population, increased attention has been focused on the particular legal and financial planning needs of older adults. Many people live long, healthy lives because of medical advances and healthier lifestyles. But all people face the possibility that during some of those years they may require assistance with their personal affairs. They may also be faced with expensive long term care bills. Victims of Alzheimer's disease, disabling strokes or accidents require the greatest need for planning.

Failing to plan can create emotional and financial hardship on the family. They may be forced to seek guardianship over their loved one and may face financial ruin.

At the beginning I should point out two facts that will become more apparent as one reads further:

- Everyone should plan for the possibility of disability and if signs of a disabling illness are present, legal planning should begin immediately.
- Many more options are available when the person is competent and before family resources have been depleted.

Basic Legal Problems

Assistance with Personal Affairs

Even with the best intentions, a spouse or child may hit roadblocks when trying to

transact legal business for their family member. The law is written to protect people against those who would take advantage of them, and cannot readily distinguish between the well-intended person and the unscrupulous individual.

Paying for Long Term Care

Families learn that they have little protection from financial ruin if they need long-term care. As discussed later, Medicare does NOT cover long term care in a nursing home, nor do most private insurance policies, including the typical Medicare Supplement or Medigap Policies.



With typical nursing home costs approximately \$4,500.00 per month (nursing home and prescription drug costs), the financial impact of a lengthy nursing home stay can be devastating.

Most Find it Difficult to Admit They Might Need Long Term Care at Some Point

Baby boomers are turning 60. They often feel pressed between taking care of their parents and children while also managing their personal lives. However, the bottom line is that boomers need to plan now.

Aging Arkansas

Arkansas' over 65 population is one of the largest in the country..

The cost of a year in a nursing home can exceed \$60,000.00. Home health care cost varies upon the type and level of care needed.

ABOUT US

We are an Elder Law and Special Needs Trust Law Firm. Located in Little Rock, Arkansas, we focus on helping individuals obtain Medicaid benefits without losing their home, Long Term Care Planning for victims of Alzheimer's Disease and other related disorders, Special Needs Trust solutions for families with children with special needs, and Preserving Eligibility for Public Benefits for personal injury victims.

DISTRIBUTION OF THIS BOOKLET

Raymon B. Harvey, P.A. encourages you to share this information with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this booklet may be copied and distributed, without charge and without permission, but with appropriate citation to Raymon B. Harvey, P.A.

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Planning Ahead: Powers of Attorney and Guardianship

The goal in life, for most of us, is to live life with dignity, comfort, and as much self-sufficiency as possible.

Every day, families are placed in the painful position of having to make decisions for a sick or disabled person with no indication of what the person himself would have wanted. Families may be forced to go to court to obtain permission to carry out the decision that they believe the patient would have made. Not only can the involvement of outsiders be an unwelcome intrusion into this private matter, but the publicity that such cases often generate (like Terri Schiavo) can be painful.

You can try to avoid these problems by planning ahead. You can document your wishes regarding medical care, name a person you would like to have make medical decisions for you in the event that you become incapable of doing so, or both.

Three forms of advanced directives are widely recognized:

The Living Will for death with dignity,

Durable Power of Attorney for Health Care, and

Durable Power of Attorney for Financial Management.

Living Wills

A living will is a document in which you state that you do not wish to receive life prolonging treatment in the event you suffer a terminal illness or become permanently unconscious and become unable to make health care decisions.

It is a good idea to notify your family and physician of your living will and ask to have a copy placed in your medical records.

Durable Power of Attorney

A power of attorney is a legal document, signed by a competent person, which gives another person the authority to handle some or all the first person's affairs.

A durable power of attorney is a special kind of power of attorney that continues to operate even after the princi-

pal becomes incompetent.

A Durable Power of Attorney for Health Care allow for health care decisions. A Durable Power of Attorney for Finances allows for the management and control of an individual's assets.

What if you have no Advance Directive?

Guardianship is a tool to be considered only when a person cannot because of age or mental limitations, make com-



petent decisions regarding his/her own affairs. It is the most restrictive and intrusive form of surrogate decision-making. Guardianship is necessary when access to the individual's assets is required (to pay for care or basic necessities) or healthcare and living decisions must be made. An individual, who has an appointed guardian, is called the ward.

Types of Guardianship

Arkansas Legislature has set out two basic types of guardianships:

1. Guardianship of the Person

A guardian with power over the person refers to the individual appointed by the circuit court to have legal rights

and powers of personal decision-making over the individual. The Court may authorize a guardian to ensure the individual's personal needs and care needs are met. This includes housing and medical care.

A guardianship of the person grants the guardian powers over the ward's personal care, but not over his property. The guardian is generally responsible for the ward's care and protection. This means that the guardian must make decisions regarding the living arrangements, health care, personal care, meals, housekeeping, transportation, recreation, and all other aspects of the daily living needs of the ward.

2. Guardianship of the Estate

A guardian with power over the estate refers to the individual authorized by the Court to assume responsibility for the management of all or part of the individual's property. This might include the individual's income, stocks and bonds, certificates of deposit, real estate or other assets. These assets must be kept separate from the guardian's assets. The Court requires an accounting of all income and use of assets.

A guardianship of the estate only grants the guardian powers over the ward's property. The guardian is responsible for the financial management of the ward's assets. The ward's assets must be managed consistent with ward's needs.

Conclusion

Most important of all is to act *now* to put your preferences in writing. Many people tend to postpone this step, because the prospect of future illness and incapacity is disturbing, and seems remote. But incapacitating illness can strike at any time. You may avoid unnecessary suffering for yourself and your family if you execute a living will and durable powers of attorney now.

Paying for Long Term Care

Medicare

While Medicare provides health insurance to most Americans age 65 and above, it provides for very little long-term care. It will pay for up to 100 days of skilled nursing facility (SNF) care following a hospitalization, but several conditions apply:

- The move to an SNF must be within 30 days of a hospital stay that itself lasted at least three days.
- The care must be provided in a Medicare certified nursing home.
- The patient must receive skilled nursing care or occupational or physical therapy that he or she could not as a practical matter receive at home.

Medicare pays completely only for the first 20 days. A co-payment is required for the 21st through the 100th day.

Medicaid

Medicaid is a medical assistance program for low-income people. There are two main Medicaid programs in Arkansas that affect the elderly: The Long Term Care/Nursing Home program and ElderChoices, the waiver program for home and community-based care. The basic rules of eligibility concern income and assets.

Income Standard

The basic income limit for Medicaid eligibility is \$1,869.00 a month for an individual. All of the applicant's income, with few exceptions, is counted. The spouse's income is not counted.

Assets

Applicants for Medicaid are limited to \$2,000 in "countable" assets. There are three kinds of assets: countable, noncountable, and inaccessible.

Countable Assets include real estate, cash, checking or savings accounts, certificates of deposit, promissory notes, mortgages; and stocks.

Noncountable Assets include the home, automobile, burial plots and bur-

ial funds.

Inaccessible assets are assets "to which the applicant has no legal access."

Trusts

Trusts created to protect your assets are very specific and should be drafted by a knowledgeable attorney. The creation can prevent Medicaid services and thus increase the hardship placed on the family.

Medicaid, which was established as a health care safety net for the poor, has become the long-term care insurance of the middle class.

The major emphasis is on your monthly income and your, and your spouse's, available assets.

Transfer Penalties

1) 60-Month Look-Back Period

There is a 60-month look back period for transfers (giving away assets without receiving fair market value in return). This means that Medicaid will look at all transfers made during that time period. There are no exceptions.

2) Transfer Penalty Period

You will receive no Medicaid help for transferring assets. How long will depend on the value of the asset transferred. The penalty period starts the day you submit an application for Medicaid. This penalty is the result of the Deficit Reduction Act of 2005, signed into law by President Bush on February 8, 2006. Transfers made prior to February 8th are governed by the rules in effect at that time.

Do not transfer property without first getting legal advice. There can be tax consequences as well as penalties under Medicaid.

Spousal Protection Provisions

There are special Medicaid provisions referred to as the Spousal Impoverishment Provisions. They require special treatment of the income and resources of individuals who are legally married to spouses living in the community. Resource protections apply to both the nursing home and ElderChoices Programs while the income protections apply only to the nursing home program.

1) Resource Protections

The "community spouse" is allowed to keep ½ of the couple's total countable assets up to \$104,400.00 and not below \$20,880.00. The remaining assets must be "spent down" before the nursing home spouse can qualify for Medicaid services.

2) Income Protections

The other side of the spousal impoverishment rules concerns the maintenance of an income floor for the community spouse. It gives the community spouse a right to share the institutionalized spouse's income to the extent necessary to bring his or her monthly income up to a floor. That floor is called the community spouse's "minimum monthly maintenance needs allowance."

Estate Recovery

Benefits paid for by Medicaid on your behalf results in a debt to the Arkansas Department of Health and Human Services. This debt can be claimed against your estate upon your death. DHHS will not seek to recover the debt if it is too expensive for it to do so, or if it results in a hardship to your family.

Your Savings and Personal Assets

Your only option is to pay with your personal or family assets if you:

- do not meet the narrow Medicare benefit qualifications;
- do not have long-term care insurance; or
- are not poor enough to qualify for Medicaid.

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Speaker

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Our Services Include

Medicaid Planning, Applications and Appeals

We assist our clients in qualifying for Medicaid benefits. This includes the submission of a Medicaid application and appeal of a denial for benefits.

Special Needs Trusts

We assist families with children with special needs to avoid the loss of SSI and Medicaid and to enhance the quality of life of the special needs child. We also assist personal injury victims preserve their eligibility for public benefits when they received substantial personal injury awards or settlements and who may require trust services.

Estate Planning

We assist clients in the development of an estate plan which may include all or some of the following documents: Durable Power of Attorney, Health Care Power of Attorney, Living Will, Wills, and Living Trusts. These documents help clients with the management of one's estate during life and its disposition upon death.

Guardianships and Conservatorships

We assist clients and their families with the establishment of guardianship and conservatorships. These are legal processes, utilized when a person can no longer make or communicate safe or sound decisions about his or her property or has become susceptible to fraud or undue influence.

Probate

We assist clients and their families with the initiation of probate proceedings and throughout the probate process. Probate is the legal process of validating a will, supervising the administration of a will, and making distributions of estate assets to beneficiaries.

Raymon B. Harvey, P. A.

Arkansas Elder Law & Special Needs Trusts

Raymon B. Harvey, P.A. is an Elder Law and Special Needs Trust Law Firm. We represent older persons, disabled persons, their families, and their advocates. The practice of Elder Law and Special Needs Trusts includes estate planning, estate and trust administration, powers of attorney, advance medical directives, guardianships, conservatorships, and public entitlements (Medicaid and SSI), disability planning, and long-term care planning. For more information about Raymon B. Harvey, P.A., please visit our web site at www.ArkansasElderLaw.com.



As the Arkansas member of the Special Needs Alliance, Raymon B. Harvey, P.A. assists injured plaintiffs and personal injury attorneys create special needs trusts. We also assist parents seeking supplement to their disabled child's benefits and maintain a quality of life. The Special Needs Alliance is a nationwide network of disability attorneys. For more information about the Special Needs Alliance, visit its website at www.specialneedsalliance.com.

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