



Elder Law Concepts

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An old Pennsylvania Dutch proverb says, “We get too soon old and too late smart.” Unfortunately this happens to a number of our Nation’s senior citizens when it comes to the concept of elder law. Quite frequently, an elder law attorney will be contacted by a child or spouse who is suddenly faced with the reality that their loved one requires some form of skilled nursing or long-term care. Usually, the flood of questions and “what if” scenarios from other family members and health care professionals can start to overwhelm even the strongest of spouses or the most reliable of children.



While much of the emotion and uncertainty in common situations like this cannot be preempted or resolved in advance, some of the most complicated matters, such as establishing who will make the health care decisions, what health insurance coverage exists, and what the best way is to protect the family home can be addressed by an experienced elder law attorney before you get “too soon old.” Failure to address these issues in advance of a health care crisis will certainly cost more money and cause more stress, and usually requires court intervention. You can plan ahead to avoid a crisis situation by being armed with accurate knowledge and having in place the necessary tools and mechanisms to help if such a situation arises.

The field of elder law, like estate planning, is not an isolated field of law confined to a single set of statutes and regulations, as you would typically find with other areas of the law. Rather, elder law is defined by the various needs of the client to be served. For example, elder law encompasses most issues a typical senior citizen will face during the second half of his or her life: legal; financial; tax; health insurance; asset protection; housing; and government benefits. Addressing these issues in advance will help you to avoid a crisis situation. While everyone should establish a proper estate plan when we begin our family and/or our careers, a good rule of thumb in establishing our “elder law plan” is to meet with an experienced elder law attorney when you receive your Medicare card at 65 years of age.

A typical elder law plan includes both advice and legal documentation. The advice revolves around achieving the following common goals: maintaining your current standard of living; ensuring all of your hard-earned assets go to your family how and when you choose; reducing or eliminating taxes and administration expenses;

establishing who will handle your financial and health care decisions; and planning for and minimizing the expense of potential long-term health care needs.

The experienced elder law attorney can help you achieve these goals by advising you of the legal and financial strategies available and helping you evaluate the benefits and limitations of the Medicare and Medicaid programs, long-term care insurance and the concept of self-insuring, and by helping you implement a legal elder law plan through documentation that balances these goals and issues. Your elder law plan must be completed before incapacity strikes, as you must have the ability to understand and express your decisions regarding the necessary legal documents such as a Health Care Proxy, Durable Power of Attorney, Living Will, Last Will and Testament and perhaps a Trust, or Family Agreement.

The exorbitant costs of long-term health care are typically the motivator when it comes to addressing the various elder law concerns. Long-term health care, which is usually not paid for by Medicare, is typically required when someone suffers from a chronic or disabling condition that requires either skilled nursing care or custodial assistance with common activities of daily living such as bathing, walking, and toileting. The out-of-pocket costs for these services can range from \$2,000 per month up to \$25,000 per month depending on the level of care needed and the market rate for the services in your region.

There are only a few payment options when the need for this type of care exists. First, Medicare offers only a limited benefit for those services that are skilled or therapeutic in nature. When Medicare coverage ends, families that have not planned in advance are faced with the extreme costs of paying for the needed care themselves until eligibility for Medicaid is obtained. The eligibility process for this second option can cost upwards of 50% of a single person's assets. If a person is married, eligibility can usually be obtained earlier but there is a very serious risk; the spouse who isn't in need of the long-term care faces the potential of being sued for reimbursement by the local Medicaid agency.

The third, and most recommended option for elder law planning, is to consider long-term health care insurance. A properly placed long-term care insurance policy can help protect the lifestyle of your spouse and/or family from the high cost of long-term care and can help protect your assets for your heirs. Each state is encouraging its residents to consider purchasing this type of health insurance. The New York State Office of the Aging confirms this on their Web site with the following advice: "insurance is an important part of securing your financial goals. Long-term care insurance can help to safeguard your assets and protect your financial stability...[it] is an important tool to help you with the high cost of long-term care services." There are several variables to consider when obtaining this type of health insurance. Your elder law attorney can help you sort through the various options.

While most agree that we do get "too soon old" it is very important to realize we don't also have to be "too late smart." Be encouraged in that there are proactive steps you can take in advance of any long-term health care need that can help you maintain control and security even as you face new challenges.

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