

# Hope For Caregivers: ABC's of Long-Term Care and Legal Planning



**Discover strategies to effectively manage a loved one's care, stay in control and reduce financial burdens on the family during a medical crisis.**

**By: Attorney Dennis Toman, Founder of The Elderlaw Firm**

# Introduction

I am honored and excited that you have taken the time to read this book. Why? Because statistics show that most caregivers are in the dark about key information and education that could make their life a *whole lot easier* when caring for an aging or disabled loved one.

As a caregiver, you probably know better than anyone that good help and clear guidance are hard to find.

Information about things such as public benefits, home health care, nursing home care, social security, hospice, etc. is often lacking. It can be overwhelming and confusing trying to determine exactly what your loved one is eligible for and just how much it's going to cost.

I know. I have been in your shoes.

Together, we are going to change the status quo. This guide will put you back on a path toward understanding and control.

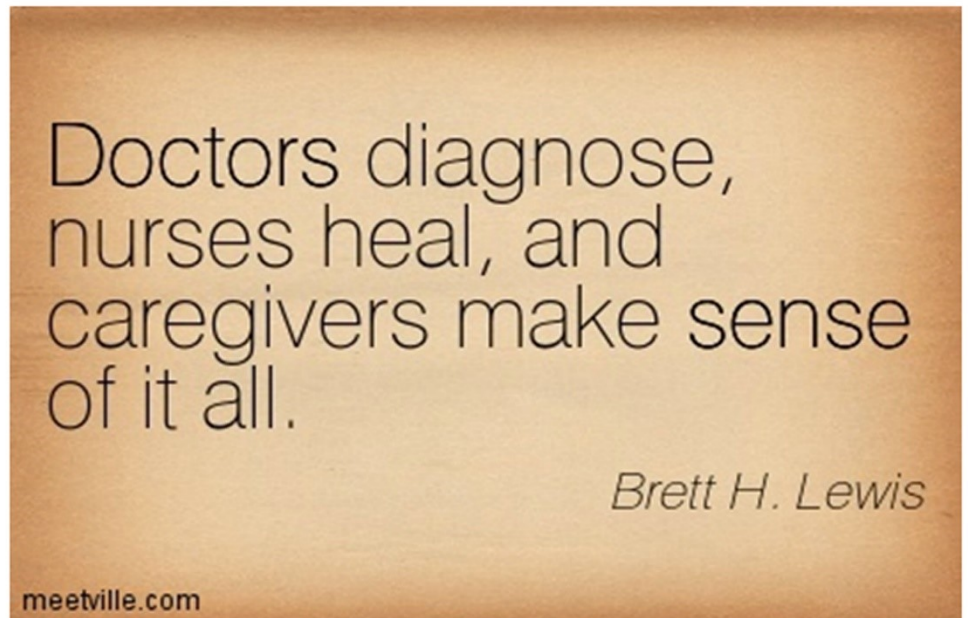
We are also going to deal with the money problems you are likely facing, too. You also know better than anyone that caregiving is not really free. A 2015 study by the Family Caregiver Alliance found that lost income and benefits over a caregiver's lifetime is estimated to range from a total of \$283,716 for men to \$324,044 for women, or an average of \$303,880. A 2009 study by the National Alliance for Caregiving and Evercare found that 47% (almost half!) of caregivers had used up ALL or MOST of their savings to help cover a loved one's long-term care expenses.

*Can you relate?*

Maybe you have been forced to leave your career, or significantly cut back the amount of hours that you are able to work. No one ever talks about these "hidden costs," but they are significant and life-changing. My purpose in writing this guide is two-fold: first, I believe caregivers should receive as much support and empowerment as the individual who is disabled or sick. You are right there in the trenches and your journey matters too.

Second, as an attorney, my job is to share with you simple legal and financial strategies that you may not already be aware of that will save you money and time and will open the door to more choices and resources for your family.

Yes, caregiving is *hard work*, but my goal is to help you *work smarter* and take advantage of every opportunity to provide care to your loved one with confidence, grace and ease.





# How To Get The Most Out of This Guide

I encourage you to take notes as you read this guide. Write down any questions or concerns that come up for you. Begin brainstorming on what a “care plan” really means to you and your loved one. Start identifying some of the areas where you are not prepared should things take a turn for the worse, and how you can begin getting your “ducks in a row” NOW so you are not shaken by an unexpected medical crisis.

Most importantly, begin talking to your loved one about their expectations and wishes for care. Use the points in this guide to make sure you are both on the same page. Doing so will allow you to help provide the highest level of care while giving your loved one the ability to age or face their most trying days with dignity and financial freedom.

In the areas where you find you still need assistance, our team of attorneys and support staff are here to help you. Please feel free to utilize the certificate at the end of this guide to meet with the attorneys of The Elder Law Firm at no charge and with no obligation, or simply call us at (336) 378-1122 and let us know how we may be able to guide you toward clarity and peace of mind.

We are here to support you,

Dennis Toman, JD, CELA  
Board Certified Specialist in Elder Law, Estate Planning, and Probate



# ABC's of Long-Term Care and Legal Planning

## A is for Ask The Tough Questions

### It's Time To Face the Elephant in the Room

No one ever anticipates becoming ill or disabled to the point that they would be unable to care for themselves. That means, in most cases, the person you are caring for right now **never intended to have you in this role**—leaving both you and them unprepared and ill-equipped for the future.

You probably stepped in because you saw a need—and an immediate one at that. There likely wasn't a lot of time to "talk through" the situation and perfectly plan out your caregiving role. I'd venture to guess that you went from living a normal life to switching gears right into survival mode. And that's a scary place to be.

No matter where you are in your caregiving journey, it's time to rewind for a minute and get back to basics. Chances are you missed a few steps that could immediately remove some of the pressure and fear that you now face.

All legal and financial planning must start with a conversation. It's what I call a *critical conversation*.

This might sound like a "duh" step, but let me explain. It's more important than you think.

Even if you feel like you know your loved one well and that you have an understanding of their wishes, my first request is that you sit down and actually talk about them-- especially if your loved one is still of sound mind and able to make their own decisions.

The goal is to face the "elephant" in the room and dig deeper than you have before into tough subjects such as incapacity, death, money, and control.

These issues are uncomfortable for a healthy person to face, let alone someone who is sick, in pain, or feeling guilty and sad about needing so much care and struggling to face their own mortality.

But if you don't address these conversations, you may find yourself in a crisis situation where you are unsure of your loved one's most private healthcare wishes and how to proceed with the next best steps. You may also find yourself at odds with other family members, fighting over what your loved one "would have wanted" in that situation.

Worse yet, you may learn of your loved one's wishes during a crisis only to discover that it's "too late" to honor them because their current mental or medical condition is too far progressed. Especially in the case of dementia or memory loss, a person's condition can deteriorate so rapidly that you simply won't have time to get legal control to pay their bills or make medical decisions the easy way. I say the "easy way" because once your loved one loses the mental capacity to sign legal documents such as a Power of Attorney or a Healthcare Directive, you'll be forced to petition the local courts for a conservatorship, which is a legal process that is *very expensive*, entirely public and extremely time consuming.

# Take a Deep Breath and Have “The Talk”

It's extremely important to sit down and have hard conversations with your loved one *now* to ensure everyone is on the same page and that there's enough time to put a solid plan in place.

Remember, even choosing a great nursing home or assisted living facility can seem almost impossible if you run up against waitlists or financial hurdles that prevent your loved one from getting great care. The time to plan is now!

To get the conversations rolling, here are a few key issues to begin discussing with your loved one. Approach them gently with your loved one's continued independence and best wishes in mind, as you ask:



- What are your wishes for emergency or end-of-life medical care (i.e. life support, feeding tubes, blood transfusions, organ donation)?
- Are there any lifesaving procedures you would NEVER want?
- Who do you trust to make medical decisions and communicate with your doctors if you are unable to speak for yourself?
- What are your thoughts on long-term care? If it seems you were becoming too sick to live at home, what are your thoughts on assisted living or a nursing home?
- If at all possible, would you prefer in-home assistance?
- If you needed nursing home or in-home care, how would you want us to pay for it? What if Medicare or Medicaid is not an option?
- Do you have a Will, Trust or other estate planning documents in place? Where can we find them and are they up-to-date?
- Who have you named in your “legal helper” roles (i.e. Power of Attorney, Healthcare Proxy)? Where can we find the documentation we need to handle your affairs in an emergency?

While these are just a handful of basic questions to start with, as your conversation progresses, you will learn so much more about your loved one and where maybe you thought they felt one way, but they had hoped for a completely different outcome than what you were prepared to facilitate or provide.

In all, you will find that knowing your loved one's wishes in these different situations will make your job as a caregiver much easier. You will be prepared to make great decisions under pressure and have the ability to plan ahead to secure the right resources so you are not paying out-of-pocket for their desired care.

# Take the Health Care Quiz

At some point during your critical conversations, print out two copies of the health care quiz below. Ask your loved one to fill it out based on their wishes, and YOU fill out the other copy based on what you THINK your loved one's wishes are. When you are done, compare answers. This quiz will likely open up the door to even more conversations and help you get to the bottom of areas where your responses do not agree.

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**If you had Alzheimer's disease and it had progressed to the point where you could not recognize or communicate with your loved ones and spoon-feeding was no longer possible, would you want to be fed by a tube in your stomach?**

- A. Yes
- B. No
- C. Uncertain

**Imagine that you are now seriously ill and doctors are recommending chemotherapy that usually has severe side effects such as pain, nausea, vomiting, tiredness and weakness that could last for several months. Would you be willing to endure the side effects if the chance of regaining your current health was less than 5 percent?**

- A. Yes
- B. No
- C. Uncertain

**In the same situation as above, suppose that your condition is clearly terminal, but the chemotherapy might give you an additional six months of life. Would you want the chemotherapy even though it has severe side effects?**

- A. Yes
- B. No
- C. Uncertain

**Which of the following do you fear most near the end of life?**

- A. Being in pain
- B. Losing the ability to think
- C. Being a financial burden on loved ones
- D. All of the above

**If you were terminally ill with a condition that caused much pain, would you want to be sedated, even to the point of unconsciousness, if it were necessary to control the pain?**

- A. Yes
- B. No
- C. Uncertain

# Take the Health Care Quiz

**Imagine that you have moderate dementia causing mental confusion. Almost half of the time you recognize and interact with friends and family on a simple level. In addition, you also have circulatory problems which resulted in one leg being amputated because it developed gangrene. Now the other leg has gangrene and the doctor recommends amputation because the condition could be fatal. Would you want the operation?**

- A. Yes
- B. No
- C. Uncertain

**Is it more important for you to: (a) have your specific treatment preferences followed at the end of life even if family members or friends disagree or (b) have family and friends all in agreement and comfortable with whatever decision is made?**

- A. Have specific preferences followed, even if there is disagreement
- B. Have family and friends all in agreement
- C. I want to name one person to make the decisions for me based on what they feel is best and knowing my wishes.
- D. Uncertain

**Imagine that you are physically frail and you need help with most daily living activities (dressing, bathing, eating, toileting) and you live in a nursing home. However, your mind is fairly clear most of the time. You have had pneumonia or other lung infections 4-5 times in the past year and each time you had to be hospitalized for several days and given IV antibiotics. The next time you get pneumonia do you want aggressive antibiotic treatment again or just comfort care until death occurs?**

- A. Antibiotic treatment
- B. Comfort care only
- C. Uncertain

**Imagine that you are in a permanent coma and you are dependent on a tube inserted into your stomach for nutrition and hydration, for food and water. Would it be important to you that decisions about your treatment be guided by particular religious beliefs or spiritual values you hold?**

- A. Yes
- B. No
- C. Uncertain
- D. This is not a situation in which I would want to continue receiving artificial hydration and nutrition.

**If your heart, kidneys, pancreas, lungs and liver could all be used in transplant operations to save lives, would you want to donate them at death?**

- A. Yes
- B. No
- C. Uncertain



# Take the Health Care Quiz

Here are things about end-of-life care that some people believe. Do you agree?

**If a dying person can't get enough nutrition by mouth, a feeding tube should always be used if it will keep the person alive.**

- A. Yes, I agree
- B. No, I don't agree
- C. I don't know

**Once a treatment is started to keep someone alive, it's sometimes okay to decide to stop and withdraw it when the person's quality of life is very low.**

- A. Yes, I agree
- B. No, I don't agree
- C. I don't know

**It's usually better for a dying person to be given good comfort care at home than to be admitted to a hospital for intensive care.**

- A. Yes, I agree
  - B. No, I don't agree
  - C. I don't know
- 

**Remember that planning for health care never stops.** Circumstances change, lives change, and our values and priorities may even change. It's a good idea to review your advance directives each year or:

- When you start each new decade of your life.
- Whenever you experience the death of a loved-one.
- When you experience a divorce or other major family change.
- When you are diagnosed with a serious health condition.
- When you experience a significant decline or deterioration of an existing health condition, especially when it diminishes your ability to live independently.



# ABC's of Long-Term Care and Legal Planning

## B is for BE FAST to Update or Create a Legal Plan

**A solid estate plan is your key to a worry and drama-free future!**

It's an unfortunate reality that many people will create an estate plan (usually a Will or Trust) when their kids are young, but then fail to re-visit and update their estate plan as circumstances change through the years.

This can cause major problems for you as a caregiver. Here's why.

Perhaps the person you are caring for has outdated documents; maybe the person they selected to be their Power of Attorney or Healthcare agent 25 years ago is no longer alive, or is no longer close with them, or even lives across the country. **In all reality, if you are the full-time caregiver, the person named in these documents should probably be YOU!**

Another concern is that their old estate plan may fail to take into account newer HIPAA laws, which could make accessing medical information extremely hard for a caregiver in an emergency. You don't want to face a situation where a hospital or doctors are refusing to communicate with you on your loved one's behalf. It's important to deal with Healthcare Directives and HIPAA issues now, so that you don't have to face unnecessary hurdles and roadblocks in the future.

Finally, there's a very good chance that the Will or Trust your loved one created years ago was not drafted with the **long-term care needs** they now face in mind.

Incapacity planning or disability planning is typically not an immediate concern for younger families, and they often make the choice to leave it out of their planning with the assumption that they can "change things" down the road.

*Only they don't.*

As people age or become disabled, they often forget that they failed to tackle this important piece of their planning when they sat down with a lawyer years ago.

They may even swear up and down that they HAVE a Will and Trust and no additional planning is necessary, when in reality, the documents they have only deal with death and taxes and not protecting their assets and or their independence should they become sick and unable to care for themselves.

The bottom line is that if your loved one's estate plan is not current, doesn't account for incapacity or disability and doesn't have the right tools built in, there's a good chance it **will not work in an emergency... which is a huge problem for them, and you.**

If it's been at least three years since your loved one had their plan reviewed or their attorney never talked to them about disability planning in the first place, don't wait to schedule an appointment with our office and have everything thoroughly reviewed.



# 6 Legal and Financial Steps To Help Your Loved One Take Before or During a Health Care Crisis

If your loved one does not have an estate plan, or it's outdated, the following are six (6) areas that are critical to start with as you help your loved one prepare for the future.

## 1. Name a Power of Attorney

A Power of Attorney is the person(s) whom you legally designate to make financial decisions your behalf. Even married couples should have legal Powers of Attorney documents in place, as financial institutions can refuse to speak even to a spouse without legal authority. Caregivers will find it is helpful to be named in these documents so that they are able to help pay bills, manage assets, coordinate healthcare and speak to doctors on their loved one's behalf.

If the person you are caring for already has a Power of Attorney, but it is over a year old, you will want to have it "refreshed" by an attorney, as it may be considered "out of date" and rejected by banks and other corporations when you try to use it.

## 2. Name a Healthcare Agent

A Healthcare Agent is different from a Power of Attorney in that this person(s) will be responsible solely for making **healthcare decisions** on your loved one's behalf if they are unable to speak for themselves.

If this person is not already YOU, the caregiver, you may want to work with a lawyer to help change that. If you will not be the person in this role, it is important to help your loved one choose someone who deeply understands their wishes, is committed to carrying them out, lives close enough to be able to act in an emergency and makes good decisions, even under pressure (especially from family members and loved ones).

## 3. Develop a "Care Plan"

It's important to take the time to map out a "Care Plan" that your loved one can find comfort in when facing full disability or incapacity. This will ensure that their independence is preserved as long as possible and that they receive the highest quality of care in the least restrictive environment as their illness or disease progresses.

For example, if your loved one desires to live at home for the duration of their illness, begin to research home healthcare agencies and other resources that are available to assist you and your family now. Set up "meet and greets" and tours of alternative facility choices. Research the costs. The goal is to be ready to pull the trigger on your plan when it's time without facing surprises, delays, waitlists, unexpected costs or roadblocks.

# 6 Legal and Financial Steps To Help Your Loved One Take Before or During a Health Care Crisis

## 4. Create a Solid Estate Plan (or Update an Older Plan)

As I mentioned before, having an estate plan is critical to help ensure that your loved one's assets are passed on responsibly, their end-of-life affairs are addressed and that life will be as easy as possible for your family after death or following a healthcare crisis.

Using legal tools such as Wills and Trusts, a good estate planning attorney can help make your loved one's wishes for their money and family legally known, and work to spare beneficiaries from the costs and delays of the Probate court.

A good attorney will also walk your family through the process of creating a solid disability, incapacity or Medicaid plan to hopefully shield your loved one's assets from having to be used up to pay for nursing home or long-term care, and empower caregivers to act on their loved one's behalf without having to go to Court.

If your loved one already has already have an estate plan, but it's been at least three years since a attorney has reviewed it, you will want to have it "updated" to ensure it reflects your loved one's current healthcare situation and new wishes/goals for their estate. Likewise, if your loved one has a Trust, now is a good time to make sure that all of their assets are still properly owned in the name of the Trust, so that the plan actually works when your family needs it.

## 5. Utilize a Living Will to Document End-Of-Life Wishes

A Living Will is the part of your estate plan that outlines your wishes for healthcare and end-of-life preferences. Your loved one's physicians and their Healthcare Agent will be able to refer to this comprehensive document to help guide them through difficult medical choices such as the administration of feeding tubes, life support, blood transfusions, resuscitation and organ donation. When working with your loved one's attorney to create these legal documents, you may find it helpful to bring with you the answers to your "Critical Conversations" and the healthcare quiz you worked through earlier in this guide.

## 6. Review All Beneficiary Designations

Many people are surprised to learn that beneficiary designations on accounts actually trump what is listed in a Will or Trust. For example, if your loved one still has an ex-spouse listed on a retirement account or life insurance policy, there is a good chance they will inherit that asset—despite the beneficiaries listed in your loved one's actual estate plan. For this reason, it's important to help your loved one review any accounts with beneficiary designations (life insurance, IRAs, bank accounts, brokerage accounts, etc.) to ensure they only list the people that they want to inherit from them should they pass away.

# Legal Planning Document Checklist

Even if your loved one feels confident that they have taken the steps above, we encourage you to use the checklist below to identify any “holes” in their documents or planning. Remember, estate plans can and often become out-of-date. This checklist can help you get a more personalized look of what your loved one is missing and how to address the problem.

*Use this checklist to determine if you or your loved one needs additional planning or assistance.  
Answer yes, no or ?? if you are not sure.*

## Maintain Control of Healthcare Decisions

- Yes  No ?? You have an Advance Healthcare Directive (AHCD)
- Yes  No ?? Your AHCD was signed within the last 3 years
- Yes  No ?? Your AHCD accurately reflects your wishes, especially for end of life care
- Yes  No ?? Your AHCD thoughtfully chooses the best person to be your healthcare advocate
- Yes  No ?? You have talked to your healthcare agent & your family about your wishes
- Yes  No ?? You have a stand-alone HIPAA Authorization (Medical Information Release)

## Maintain Control of Finances and Property During Incapacity

- Yes  No ?? You have a Durable Financial Power of Attorney (DPA)
- Yes  No ?? Your DPA was signed within the last 3 years
- Yes  No ?? You have carefully chosen the best person to manage your finances if you are incapacitated
- Yes  No ?? Your children are not co-owners of your bank accounts and/or real property
- Yes  No ?? Your Trust identifies successor trustees in the event of your incapacity and death
- Yes  No ?? Your Trust defines incapacity and identifies who will make that determination
- Yes  No ?? Your incapacity determination panel contains both medical and non-medical members

## Comprehensive Wealth Transfer Plan (Plan refers to your Will or Trust)

- Yes  No ?? Your plan transfers your wealth in a private and efficient manner
- Yes  No ?? Your plan will not be subject to the unnecessary delays and costs of probate
- Yes  No ?? Your plan includes a simple way to transfer your Tangible Personal Property (your “special stuff”)
- Yes  No ?? Your plan addresses inheritance protection for your spouse and grown children (*protection from divorce, lawsuits, taxes and predators that can take the inheritance out of your child’s hands*)
- Yes  No ?? Your plan includes flexible provisions to ensure spouse’s eligibility for LTC benefits will not be jeopardized in the event of your death
- Yes  No ?? Your plan preserves the Tax Deferral Benefits of your Retirement Plans
- Yes  No ?? Your plan transfers your “values” (moral, spiritual and human) and creates a whole legacy

## Organize and Consolidate

- Yes  No ?? All of your assets are owned in the right way
- Yes  No ?? Your beneficiary designations are properly coordinated with the rest of your plan
- Yes  No ?? If you are incapacitated or pass away your family has access to your online world – passwords, online banking, online accounts, social media, and email

**If you answered “No” or ?? to 3 or more questions it’s imperative you speak to a lawyer as soon as possible to ensure your loved one’s wishes are carried out and you and your family can rest easy knowing that there will be no unnecessary burdens during this already difficult time.**



# ABC's of Long-Term Care and Legal Planning

## C is for Count the Cost of Care

If money is at the forefront of your concerns as a caregiver, you are not alone.

The statistics themselves are alarming. According to LongTermCare.Gov, the average cost of long-term care in the United States is \$6,844 per month for a semi-private nursing home room and \$3628 per month for assisted living. The average cost of a home health aid is \$20.25 per hour, with most supplemental in-home services costing families over \$30,000 per year!

Even with benefits such as Medicare covering some of the tab (which we will discuss shortly in more detail), it has co-pays and often only covers part of the cost. The unpaid costs can be crippling....if covered at all.

Worse, Medicare coverage for nursing homes is limited to rehabilitation after a hospital stay, and it is only for a short period of time. Medicare does not cover long-term care expenses related to the activities of daily living such as bathing, toileting, grooming, medication management and more. Some Medicare Advantage plans do not require hospitalization for rehab coverage, but they have co-pays and are for limited periods of time.

Because of these unexpected costs, it's not unusual for families facing a loved one's illness or incapacity to run out of savings or blow through a retirement account during the first 1-3 years of care. Not only does this limit the quality of care that the patient can receive, but it often forces the healthy family members into poverty as well.

### **Advanced Planning Is The Best Way to Ensure Financial Freedom For Your Family!**

Financial struggles do not have to be your fate when helping a loved one cope with a chronic illness. You have enough to worry about; let us help you take the issue of money off your mind once and for all. Let's dive into some of the ways to pay for the costs of care without going broke or losing your sanity in the process.

#### **1. Social Security Disability Benefits**

If your loved one is sick, over age 18 and unable to work, he or she may be entitled to Social Security Disability benefits. To collect benefits, your loved one must prove a true medical disability. This is often done with the help of a doctor, and possibly a Social Security Disability attorney. Second, your loved one must have worked in a career that has earned him or her enough work credits to be considered "insured" under the SSDI program, or have an income low enough to qualify for the SSI program.

Having the ability to collect Social Security Disability benefits is often a huge financial relief for individuals and families struggling to float bills and absorb medical costs when working outside of the home is no longer possible. However, the process of applying for Social Security Disability is long, tedious and you may not get approved right away. The appeals process could last for years, so be sure to speak to your medical and legal professionals to learn all possible ways to fast-track and streamline the process.

# ABC's of Long-Term Care and Legal Planning

## 2. Veterans Benefits

Wartime and older veterans may be entitled to additional benefits through the VA to help offset long-term care and medical costs. These benefits are often non-service connected and can pay out in excess of \$25,000 per year tax-free to the veteran or spouse. The Veterans Administration is not required to tell veterans about these programs, so it is important to sit down with a good estate planning or elder law attorney to discuss your loved one's financial situation and learn what steps must be taken to qualify for aid under these special programs.



## 3. Medicare Benefits

For sick, disabled or older individuals who may have left their jobs and no longer have private health insurance (or may not have had private insurance in the first place), Medicare is often the bridge to begin receiving comprehensive medical services for the treatment of their illness.

Medicare benefits do have drawbacks, however, as there are limitations to the amount of care covered for recipients. In general, Medicare covers **skilled** nursing care and limited home care **for a very short period of time** of 100 days per benefit period and only for rehabilitation after at least three days of inpatient hospital treatment. Assistance with activities of daily living (ADLs) such as dressing, bathing, medication management, etc. is not typically covered.

Worse, after the first 20 days of nursing home coverage for rehabilitation, Medicare only pays for part of the nursing home stay. And, in other situations, Medicare may only cover 80% of the medical costs. While that sounds like a lot, when you factor in the astronomical price of medical services and treatments, the remaining 20%, in addition to co-pays can be quite significant and crippling for the average family. It is not unusual to rack up thousands, and even hundreds of thousands of dollars in medical debt, even with access to public benefits.

But, as you will learn shortly, there is a better solution to avoid the burdensome costs and limitations of Medicare Benefits with a little bit of legal planning!

## 4. Medicaid Benefits & Medicaid Planning

You may have been told in the past that if you have even a modest amount of income coming in and own any kind of assets, you will not qualify for **Medicaid benefits**—which are NEED BASED, but do happen to cover the majority of long-term care costs that Medicare falls short on.

While it is true that Medicaid is an insurance program for *low-income families*, **there are ways that YOU can qualify—regardless of your financial situation.**

The State you live in and the Federal Government allow for legal planning and proper reallocation of assets in order to fall within Medicaid's income and asset limitations. And, the best news is that when done right, your

# What Is Medicaid?

Medicaid is a program designed to assist disabled individuals and nursing home residents with the staggering costs of their care. It is a need-based program that is jointly funded by the state and the federal government. Expenses covered under the Medicaid program include:

- Doctor Bills
- Hospital Bills
- Skilled Nursing Facilities

## Medicare vs. Medicaid: Who Pays What?

A common assumption is that traditional Medicare (and not Medicaid) will cover all the costs associated a person's medical/long-term care. Unfortunately, this not the case.

Medicare will only provide limited benefits for "skilled care," such as physical therapy or injections that require the assistance of medical professionals or rehabilitation staff, for a limited period of time. This is in contrast to "custodial care," which is **not covered** by Medicare and provides much-needed assistance with the tasks of *every day living* such as bathing, eating, dressing, etc.

Medicaid on the other hand, does cover custodial care, as well as skilled care on **a long-term basis**. There are no arbitrary time limits and no burdensome co-pays (although your income may need to go to the nursing home under the "applied income" rules). Patients can get the care they need and families can rest easy knowing they won't be weighed down with long-term care costs.

## Functional Requirements for Long-Term Care

In order for Medicaid to cover your long-term care needs, a medical professional must evaluate the applicant to determine their need for long-term care services. This is based on how well your loved one is able to perform the Activities of Daily Living (ADL's) such as:

- Bathing
- Dressing
- Using the toilet
- Transferring to the bed or chair
- Caring for incontinence
- Eating
- Require supervision 24 hours a day for safety

If your loved one does not meet the functional eligibility requirements, Medicaid will not cover long-term care services—even if you are within their financial guidelines. It is often helpful to talk an attorney before meeting with your healthcare provider to ensure you are asking the right questions and receiving the right documentation when applying for benefits.

# What Is Medicaid?

## Asset and Income Requirements for Medicaid

Because Medicaid is a need-based program, there are income and asset limitations in order to qualify. BUT, don't count yourself out just yet! Far too many families make the mistake of believing that just because they don't initially meet Medicaid's income and asset limitations, they won't qualify for benefits.

This is simply not true. Under the Medicaid program, the state and federal government allow for a number of "legal workarounds" to help families qualify for this important assistance without losing everything they've worked so hard for.

## Income Requirements

You must have limited income to qualify for Medicaid benefits. The amount of income varies from state to state but is generally set at the poverty level. Your income may include:

- Salaries and Wages
- Rental Income
- Social Security payments
- Dividend and Annuity Payments
- Veterans' Benefits
- Pensions
- Interest from Bank Accounts

Calculating income eligibility can be tricky, as other factors such as ongoing medical expenses, joint income and income from trusts can come into play. Your countable income can either rise or fall based on these factors. It's a wise idea to talk to an attorney to ensure you are properly calculating income for eligibility purposes.

## Asset Requirements

In determining eligibility for Medicaid, your assets are divided into two categories: countable and non-countable. As you probably guessed, non-countable assets are exempt from calculations (and safe for your keeping!). These are not factored into Medicaid's asset limitations.

You are allowed up to \$2,000 in total countable assets in most states in order to qualify for the Medicaid program. Assets over this amount are subject to "spend down," meaning you will have to spend the assets completely before you are eligible for benefits.



Many families take this to mean that they will have to pay for long-term care costs out of their own pocket until resources are fully drained and Medicaid benefits kick in.

However, there are smarter ways to achieve this goal that ultimately benefit the resident and his or her family, such as converting an asset that is countable into one that is non-countable through proper Medicaid planning.



# What Is Medicaid?

## **Exempt or non-countable assets under the Medicaid program include:**

- Your home - A home that is the principal residence of an applicant or the applicant's spouse is exempt, provided the applicant/applicant's spouse lives there or intends to return home.
- Cash - Up to \$2000 in most states is exempt.
- Household Goods and Personal Effects.
- Other real property - In some cases, other real property besides your home may be exempt if it is used for a business or as a means of support.
- Primary Vehicle - One car is generally exempt when it is used for the benefit of the applicant or needed for medical reasons.
- Term Life Insurance
- Whole Life Insurance – A policy with a total face value of up to \$10,000 is exempt (with some exceptions).
- Burial plots
- Prepaid Irrevocable Funeral Contracts
- Retirement Benefits - Pension funds, IRA's, and 401k funds may be noncountable if not available for withdrawal and meet certain rules.

## **All other remaining assets are generally considered “countable” towards Medicaid eligibility including:**

- Cash and balances in a checking, savings or money market account
- Stocks, bonds and mutual funds
- Additional vehicles
- Real property beyond that of your primary residence
- Property in Living, Revocable, and many Irrevocable Trusts
- Valuable collections such as fine art, coins, etc.
- Cash value of non-exempt life insurance policies
- IRAs, and other investment assets
- Amounts available from all deferred annuities and most immediate annuities

# Real-Life Examples of Successful Medicaid Planning

Many people come into our office suffocating under the weight of medical debt from attempting to pay age or illness related costs and worry how it will even be possible to continue to pay for services that are necessary for the future.

When I mention that we may be able to get them on Medicaid, which would cover most of their costs, I'm often met with protests that they could never qualify because they still have some assets or some money left to their name.

What they don't realize is that MEDICAID PLANNING, which is what we do, takes care of all of those concerns.



I'll use a client, Patricia, as an example. Patricia called my office frantic because she was a single parent diagnosed with a degenerative disease. Doctors advised her that she would likely need significant care in the future and should consider a nursing facility.

Patricia eventually called me because her financial planner insisted she talk to an attorney. When we told Patricia we could help protect assets for her daughter, she was in tears. Using our knowledge of the Medicaid rules, we were able to get Patricia's house and her assets held for her daughter and qualify Patricia for Medicaid to pay for her care.

So, the question in this situation was not whether it is too late. *The question is, how much can we protect and how soon?*

Or, take Sarah and John as an example. Sarah called my office after John was diagnosed with ALS. She was advised that ALS was progressive illness and that John was going to need considerable care. They had already done Wills and felt like they were very prepared to handle the illness. As John's health got worse it became apparent that he needed more care than Sarah could provide at home.

Sarah eventually called me because someone in their support group recommended us. When we met with Sarah and John we quickly determined that he needed a considerable amount of assistance, and it would be costly.

Sarah was very concerned about not having any retirement for herself and that all the money they had saved over the last 30 years of marriage would be lost. With our assistance we were able to develop a plan that protected both Sarah and John. We were able to protect assets so that John would qualify for Medicaid, and have his care covered. Our plan also protected them if something happened to Sarah using advanced estate planning techniques to ensure that John would always be protected providing them with peace of mind that whatever changes happened in the future, we had ensured financial stability, while also providing the care they needed.

Don't ever assume that going broke is just your fate when facing a serious illness or disability. Medicaid planning is complicated and must really be handled by an attorney, but going this route is so very worth it for families who wish to protect everything they've worked so hard for without jeopardizing access to the highest level of care through every stage of their illness.

# Avoiding Medicaid Mistakes

Far too many families attempt to take matters into their own hands when trying to qualify for Medicaid, which is a HUGE mistake. States have “look back” rules which create penalty periods and other administrative nightmares that could cost you eligibility based on one single oversight.

With that said, if you have already started the process, there are a number of mistakes to avoid when applying for Medicaid. This is not an exhaustive list, but demonstrates some of the most common mistakes families make when attempting to fall within Medicaid’s income and asset guidelines.

## Mistake 1: Gifting or Giving Away Assets

It’s natural for individuals who are sick or aging to want to “gift” away their assets to loved ones rather than watch them get eaten up by nursing home or long-term care costs.

Gifting assets to become eligible for Medicaid benefits may indeed be an important part of a solid Medicaid planning strategy, but it must be done very cautiously as it can result in serious penalties and ineligibility if done the wrong way. As previously mentioned, there are “look back” periods in which any improper transfer during that time can significantly delay or jeopardize your loved one’s approval. The transfers may also be deemed “fraudulent,” in which you will be forced to repay any benefits you’ve already received.

Under certain circumstances, a nursing home or care facility may have the right to sue to recover gifts from the family. Many people mistakenly believe they can give up to \$14,000 away each year without issue, but this is for tax and estate planning purposes- not Medicaid eligibility. There is no such threshold for Medicaid benefits, and all transfers will be scrutinized. Before you gift away any assets, talk to an experienced Certified Elder Law Attorney. The laws surrounding this issue are very complicated and may have unintended consequences for you and your family if done the wrong way.

## Mistake 2: Inadequate Trusts and Powers of Attorney

Assets in a typical Living Trust are *still counted* as your assets. Just because you have a Living Trust and Power of Attorney does not mean those documents have the proper provisions to help your family protect assets and make appropriate transfers during a health care crisis. Look closely at your Trust and Power of Attorney to ensure it has “gifting provisions” that are “unlimited” for Medicaid purposes.

If you do not have gifting provisions at all or they are “limited,” you will want to get this updated right away while your loved one is still in good health. Otherwise, if the applicant becomes incapacitated at anytime during the Medicaid application process, the family will be unable to fully act on his or her behalf, subjecting assets to unnecessary spend down and other financial repercussions. You may want to consider the use of other Trusts more conducive to Medicaid Planning (such as irrevocable Protector Trusts) to further protect your loved one’s assets.

# Avoiding Medicaid Mistakes

## Mistake 3: Missing Opportunities for Exempt Transfers

While there are strict rules regarding the transfer of assets prior to Medicaid eligibility, there are a number of transfers that are *permitted* by the state and federal government that tend to go overlooked by families who do not receive proper guidance. Failing to take advantage of exempt transfers could mean more money going to the nursing home or care facility rather than staying within your family.

## Mistake 4: Spending Down Assets When You Already Qualify For Benefits

While there are strict asset and income limitations to qualify for Medicaid, there is no black and white way to arrive at those numbers. Medical expenses may come into play; you may have countable assets that can be converted into non-countable assets and so on.

Far too many families assume they need to just spend down everything until they reach \$2,000. What they are unfortunately doing is continuing to spend down assets when they actually could have qualified for benefits long ago because of these other factors.

Don't go it alone when crunching the numbers. Talk to a professional and find out in your specific situation what it will take to qualify. You may find many opportunities to preserve assets and income streams that you didn't realize existed.

## Mistake 5: Not Getting Help To Stay at Home

Benefits from Medicaid, Waiver Programs, and State programs may also be available to help keep a loved one at home.

Eligibility rules similar to Medicaid must be met. There are slight but important differences an attorney can help you understand. Even with the availability of these in home benefits, the need of a patient for care may be greater than the amount of care these programs provide.





# ABC's of Long-Term Care and Legal Planning

## D is for Getting Your “Ducks in a Row”

As a caregiver, your life may already feel pretty crazy, but, nothing is worse than the chaos and frustration of facing a serious medical emergency without the right documents, financials or information in place.

In a crisis situation, there is simply no time to be hunting for insurance cards, looking for important phone numbers or gathering information you need to make the very best decisions for your love one.

Bottom line: you need to have your “Ducks in a Row” *before* a major healthcare crisis strikes.

To do that, you'll want to sit down with your loved one to begin compiling all of the documentation you could possibly need related to their healthcare so that it's organized and easily accessible in a medical emergency.

Such information would include:

- Copies of the front and back of cards, including your loved one's drivers license, insurance cards, prescription cards and military ID cards.
- The names and phone numbers of their primary doctor, medical specialists and care managers.
- The contact information for their bank, financial advisor, insurance agents and attorneys.
- The account numbers and locations for any savings, checking or investment accounts.
- The location of any safe deposit boxes and how to access them in an emergency.
- A detailed list of their prior medical history, including any surgeries, allergies and blood type.
- A current list of their medication and the doses they take.

Having this information handy and organized will save you a tremendous amount of time and headaches if, and when, a medical crisis strikes.



# ABC's of Long-Term Care and Legal Planning

## Online Passwords Matter, Too!

Believe it or not, seniors are among the fastest growing demographic of online users.

More and more of our aging loved ones are learning how to use the internet to communicate with friends and family via social media, send emails, pay bills, manage brokerage accounts and more.

Like most of us though, many seniors do not have their passwords recorded in a safe place that someone could access in an emergency.

If no one has the ability to log into their accounts, all of their “digital assets” would be lost if and when something happens to them.

You and your family would lose access to *everything* ranging from special pictures your loved one may have stored on Facebook—to even the knowledge of certain bills that are sent to your loved one via paperless statements!

In addition to compiling your loved one's emergency medical information, talk to them about gaining access to online passwords and logins, too. Having this information on hand will help preserve their “digital real estate” and allow you to maintain control of online accounts if something happens.

## Request It, Record It... Now Store It!

Once you work through compiling your loved ones medical and personal information, the next step is to keep everything you gathered in a central location that all caregivers or family members can access quickly and easily. This may be in a home safe, a kitchen cabinet, under the bed or in a filing cabinet.

However, if the location you choose happens to be a safety deposit box at the bank, be sure that everyone who might need those documents also has permission to access the box if necessary.



# ABC's of Long-Term Care and Legal Planning

## E is for Enlist Help

Just because you have chosen to sacrifice your time and energy to be a caregiver does not mean that you have to go through your journey alone. You may be great at taking care of your loved one, but you are not Superman or Superwoman. At some point, you may find it beneficial to enlist the help of other family members or even agencies to supplement or enhance the care that you are able to provide. **You deserve a break and the freedom to “outsource” tasks that are a drain on you.**

That means you don't have to keep doing things day in and day out that zap all of your time or give you a headache and make your stomach turn. You can delegate some of these things and choose to focus on what you do best. In all reality, spreading around the tasks of caring for your loved one may be the answer to helping you keep your job, freeing up personal time that can be spent with your own kids or family and providing your loved one with a more well-rounded access to care from other people who complement the services and support you are currently providing. Even if you feel like you are, and should be, responsible for everything, here are a few ideas where you may be able *to give yourself a break* and start delegating to lighten your heavy load:

- **Ask other people to help with the little things.** Maybe someone can drive your loved one to routine doctors appointments or treatments that really don't require your input. Someone could pitch in to grab groceries at the supermarket each week. A neighbor could help sort through all your loved one's mail to weed out the important stuff out from the junk. Every contribution helps- take advantage of it!
- **Determine which daily tasks are most difficult or time-consuming for you to handle (bathing, bill paying, etc.) and get them off your plate!** Maybe budget to have a nurse or agency visit your loved one a few times a week just to handle your least-favorite responsibilities. Talk to a local bookkeeper about helping you a few hours a month to pay bills and keep things organized for yearly taxes. Getting specialized help where you need it is likely more affordable than you think and will help you to stay laser focused on the caregiving roles that you don't mind, or even enjoy. It's OK to say, "I don't like doing XYZ and I'm going to let someone else step in who does!"
- **Delegate responsibilities in your own home.** Hire a housekeeping service to come out and clean once a week so you don't have to. Give your kids a chore list. Have a teenage neighbor mow the lawn. It's often a breath of fresh air to know that after caring for someone for hours on end, you won't be burdened down with your own "chores" when you finally get to go home.
- **Talk to a social worker at your hospital or long-term care facility.** There may be local resources that you are eligible for to help provide your loved one with transportation, healthcare services and long-term care assistance. A social worker at your hospital or long-term care facility is a good person to contact who can hopefully point you in the right direction.
- **Explore hospice care.** People have a huge misunderstanding about hospice care, believing that once you go on it, doctors and caregivers just sit back and watch you die. This is untrue. People who are eligible for hospice care can stay on it for years, and you would be surprised at the amount of support and care they provide not only for the patient, but for the family and caregivers, as well. You may be given a nurse to watch your loved one overnight so you can get some sleep. You may be provided with in-home counseling and even help with managing meds, dressing wounds, transferring, etc. Don't be afraid to explore hospice care with your loved one's doctor to find out the level of support you can receive when facing a terminal illness.

As a final resource, talk to your estate or elder law attorney. We work with clients through all stages of illness, and we are privy to many of the facilities, organizations and support groups that have made a big difference in the lives of the people we serve. If you don't already have an attorney, contact our office. We are happy to connect you with local resources that we have already researched and vetted that might be a good fit to help offset some of the "hands-on" care you are currently faced with.

# ABC's of Long-Term Care and Legal Planning

## F is for Find Time for YOU

You are the caregiver who has signed up to help your loved one during their most trying times, so why in the world would we dedicate a section of this guide to getting help *for yourself*?

Because YOU are worthy and deserving of support, too!

Here's the bottom line: caregiving is one of the hardest jobs on the planet. We've already talked about the impact caregiving is likely having on your time, energy and your wallet. But we also know that caregiving can wreak havoc on your personal and mental health, too. A 2012 study conducted by the Family Caregiver Alliance found that a whopping 40-70% of family caregivers have significant symptoms of depression and more than a quarter of those surveyed met the diagnostic criteria for *major* depression. Caregivers often feel overworked, underappreciated and spread so thin to the point that they could snap at any moment. When you are on call around-the-clock and life spirals so majorly out of balance, the consequences are that YOU get sick. YOU get run-down. YOU breakdown. When everyone seems to need you, no one is going to stop and say, "hey there friend, I think you should take a break and some time out for yourself". That's why it MUST be **your job** to pencil in time EACH WEEK for self-care.

If you don't, no one else will.

It's important to keep in mind that self-care means different things for different people. What I want you to start putting on your calendar each week as **non-negotiables** are things that bring you joy, peace, relaxation and happiness. Even if you are majorly pressed for time each day, you can pencil in SOMETHING that's strictly "self-care" related—even if just for 10-20 minutes. Here are a few ideas:

- Take a quick walk around the block and enjoy the scenery.
- Get a manicure or pedicure.
- Enjoy a massage.
- Make a healthy and nourishing dinner to enjoy.
- Go on an ice-cream date with your kids or grandkids.
- Curl up in bed with a favorite book for 30 minutes.
- Take 5-10 deep, belly breaths to recharge and refocus.
- Pray or spend time with your higher power.
- Buy a great bottle of wine and enjoy a glass with a loved one.
- Block off time to go to YOUR doctors or dentists appointments. Don't neglect your own health!
- Take a nap when your loved one naps.
- Vent to a friend. Share with someone your fears, struggles and emotions.
- Write in a journal.
- Laugh! Rent a funny movie. Go to a local comedy night. Laughter is amazing medicine in stressful times.
- Meditate, do yoga or guided visualization to unwind.
- Take a car ride alone, driving past your favorite spots and listening to your favorite songs.

Remember, you're no good to anybody if you are sick, overwhelmed, stressed out, depressed or anxious. Do yourself, and the loved one you care for a favor by making time for YOU a little bit every day. Pencil your "me-time" into your calendar the way you would a doctor's appointment and honor the commitments you make with yourself.

You are worth it and you deserve it.





# ABC's of Long-Term Care and Legal Planning

## G is for Getting Help

As I mentioned at the beginning of this e-book, caring for a love one and overseeing their long-term care is certainly not easy, but by avoiding common mistakes and planning traps that I have outlined in this guide, you will be well positioned when medical and financial needs begin to present themselves.

I can't stress enough that there is no greater peace of mind for both the caregiver and the patient than knowing that all the bills will be paid, your loved one's assets will stay protected and they will receive the care they deserve during the duration of their illness or the final days of their life. **Taking the steps in this guide can help you accomplish ALL of these important goals.**

It's equally reassuring to know that there are ways to plan ahead to make your job as a caregiver *easier* and minimize the chance that you'll have to pay more for legal help or long-term care services during a health care crisis.

Not to mention, many sick or aging loved ones fear to becoming a burden to their family, and the long-term care strategies you have learned will hopefully give your loved one confidence knowing that they can age or decline with dignity and leave a legacy for their family that has nothing to do with debt or hardship.

But, having this peace of mind starts with sitting down with an estate or elder care attorney to review your loved one's current situation and discuss all of their options for preserving their independence, protecting their assets and making it easier for their family to manage their affairs.

You may be nervous to take this next step because you have enough on your plate and meeting with an attorney must be expensive, right?

Well, not necessarily. Because you've taken the time to read this e-book and learn some of the best ways to help your loved one plan for the future, I want to reward you with a certificate to come in for a comprehensive planning session with our office at no charge (\$350 value).

During this meeting, we'll sit down with you and/or your loved one to review their current situation and any documents they have in place. We'll check to make sure they have stayed up-to-date as their life (and the law) has changed through the years, and we'll also let you know exactly where your loved one would stand if incapacity or a medical crisis spiraled out of control tomorrow.

If we determine your loved one has everything in order and no further planning needs to be done, you'll leave with the peace of mind knowing that you are well prepared for the future.



# ABC's of Long-Term Care and Legal Planning

On the other hand, if you are not satisfied with your current state of affairs and the position your family would be in following a healthcare crisis, we'll determine your best options and help you create a plan that honors your loved one's wishes and adequately takes into account their long-term care needs.

**There's no pressure or obligation to sign up for legal services during this meeting.** Being a trusted caregiver is hard enough, and our goal is to simply help you make life easier and steer you clear of any legal or financial nightmares that may present themselves down the road.

To reserve your planning session, simply call our office at (336) 378-1122 and ask to redeem your certificate from the Caregiver e-book.

We hope you found this information helpful and encourage you to share this e-book with anyone you know that may be struggling to care for aging or sick loved ones.

Remember, time is your greatest asset when it comes to planning for quality long-term care, so don't wait to use your certificate to sit down with an attorney and make sure you are taking advantage of every tool, benefit and opportunity to give your family the greatest protection and security during your loved one's remaining months or years.



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**About The Elderlaw Firm**

Dennis Toman founded the Elderlaw Firm to help local families with estate planning and elder care concerns. Dennis is a Board Certified Elder Law Estate Planning attorney with more than 20 years of experience. Dennis is a member of the invitation-only Council of Advanced Practitioners through the National Elder Law Association. He is the co-author of the book “Protect Your Family: Don’t Write a Blank Check to the Nursing Home” and is sought out by media for insight and commentary about elder law estate planning. At the Elderlaw Firm, we serve seniors and those who love them, providing peace of mind and protecting their families and loved ones.

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