

LEGAL AND FINANCIAL TOOLS FOR CAREGIVERS

JULIEANN CALARESO, ESQ.
GLEASON DUNN WALSH & O'SHEA
40 BEAVER ST. 4TH FLOOR ALBANY NY 12207
JACALARESO@GDWO.NET
518-432-7511



LEGAL AND FINANCIAL

- ✓ Legal documents empower another to assist the person with the disease if needed
- ✓ Financial considerations need to be addressed

LEGAL AND FINANCIAL

- ✓ Start planning NOW
- ✓ Plan for your care recipient
- ✓ Plan for yourself

LEGAL AND FINANCIAL

- ✓ Long-term care (LTC) is a variety of services which help meet both the medical and non-medical needs of a person with a chronic illness or disability who cannot care for himself/herself for long periods
- ✓ Can be received in a home setting or homelike setting, assisted living, nursing home

HOW TO PLAN

- ✓ **Get organized:** advanced directives in place; inventory of documents; inventory of assets; inventory of important persons/contacts
- ✓ **Educate yourself:** understand the choices for care
- ✓ **Spend some money:** consider long term care insurance; relocate or modify your home before you need it
- ✓ **Use Resources:** hire professionals such as financial advisors, accountants, lawyers, to help you implement whatever plan you decide on

LEGAL DOCUMENTS YOU NEED TO CONSIDER

- ✓ **Health care documents:**

- ✓ Health Care Proxy, Living Will, MOLST

- ✓ **Personal decision documents:**

- ✓ Funeral Arrangements, Guardianship

- ✓ **Financial Documents and Arrangements:**

- ✓ Power of Attorney, Last Will and Testament, Trusts, Testamentary Substitutes



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FINANCIAL CIRCUMSTANCES YOU NEED TO CONSIDER

✓ **Health insurance**

- ✓ Private, Medicare, Medicaid

✓ **Long Term Care Insurance**

- ✓ Use it if you've got it!

✓ **What pays for what?**

- ✓ Medicare's limited on skilled nursing
- ✓ Medicaid's limits and the practical implications of using it



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HEALTH CARE DECISION DOCUMENTS

✓ **Health Care Proxy**

- ❖ Principal and Agent (and Successor Agent)
- ❖ Only when doctor determines your inability to make medical decisions
- ❖ Fluid (turns on and off, and sometimes dependent upon the complexity of the decision to be made)



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HEALTH CARE DECISION DOCUMENTS

✓ **Living Will**

- ✓ “clear and convincing” evidence of your wishes
- ✓ no strict form

HEALTH CARE DECISION DOCUMENTS

✓ DNR

- ✓ Do Not Resuscitate (heart and lungs a/k/a cardiopulmonary resuscitation); Public Health Law Article 29-CCC still gives us non-hospital DNRs
- ✓ But with the availability of MOLST, consider that instead

HEALTH CARE DECISION DOCUMENTS

- ✓ MOLST: **M**edical **O**rders for **L**ife **S**ustaining **T**reatment
 - ✓ **Medical** order – doctor does it
 - ✓ Good to review and prepare to answer questions
 - ✓ Health Care Proxy Agent can consent to it
 - ✓ https://www.health.ny.gov/professionals/patients/patient_rights/molst/



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PERSONAL DECISION DOCUMENTS

- ✓ Agent to Handle Disposition of Remains
- ✓ Organ Donation
- ✓ Nomination of Guardian
- ✓ Preneed Funeral Arrangements

PERSONAL DECISION DOCUMENTS

- ✓ Agent to Handle Disposition of Remains

- ✓ In Last Will and Testament or in a stand-alone document

- ✓ Organ Donation (or anatomical gift)

- ✓ Consider New York's Donate Life Registry

- ✓ <https://donatelife.ny.gov/>

- ✓ Albany Med has an anatomical gift program

- ✓ <http://www.amc.edu/AnatomicalGift/>

- ✓ I'm a lawyer, not a doctor...in this day and age, the need for tissue (skin) may make you a good donor even if they don't want your kidneys!

PERSONAL DECISION DOCUMENTS

✓ Pre-Need Burial Arrangements

- ✓ General Business Law § 453. Moneys paid in connection with agreements for funeral merchandise or services in advance of need to be kept on deposit pending use or repayment
- ✓ Refundable (called “REVOCABLE”) unless an exception under the Social Services Law applies (when Medicaid is needed, it is permissible to convert the preneed arrangement to IRREVOCABLE)

FINANCIAL DECISION DOCUMENTS

- ✓ Power of Attorney
- ✓ Joint Ownership
- ✓ Guardianship
- ✓ Last Will and Testament
- ✓ Trusts
- ✓ Testamentary Substitutes

FINANCIAL DECISION DOCUMENTS

- ✓ Power of Attorney:
- ✓ Principal and Agent (and Successor Agent)
 - ✓ Do-it-yourself-forms almost NEVER work
 - ✓ This is a binding, legal contract; this requires an extremely heightened level of ability to understand and imposes significant obligations on the Agent
 - ✓ Gifting can make-or-break ability to engage in Medicaid asset protection

FINANCIAL DECISION DOCUMENTS

✓ Joint Ownership:

- ✓ Banking Law lets account be opened as joint account with rights of survivorship
 - ✓ each owner is considered to have 100% access to the account (risk: child's creditors can get to it)
 - ✓ Medicaid laws treat this differently
 - ✓ Upon death, **the surviving joint owner gets it all**
- ✓ OR as “CONVENIENCE” accounts
 - ✓ Frozen at death until executor is appointed; **ensures account passes according to the Will**

FINANCIAL DECISION DOCUMENTS

- ✓ Guardianship is sometimes needed when Power of Attorney cannot be secured or when Power of Attorney is misused
- ✓ Court proceeding to appoint another to make decisions for one without capacity
- ✓ Can be for PERSON or for PROPERTY or for both

FINANCIAL DECISION DOCUMENTS

- ✓ Last Will and Testament
 - ✓ Gives away those assets in your own name at the time of your death that do not have joint owner or named beneficiary

FINANCIAL DECISION DOCUMENTS

✓ Trusts

- ✓ Revocable vs Irrevocable
- ✓ Many different types, many different reasons
 - ✓ Medicaid planning, creditors, disabled beneficiaries

FINANCIAL ISSUES YOU NEED TO CONSIDER



SOURCES FOR PAYING FOR LONG TERM CARE

1. Private Pay
2. Medicare
3. Veteran's Benefits
4. Local Government (County)
Benefits and nonprofits/grants
5. Long Term Care Insurance
6. Medicaid

PRIVATELY PAYING FOR CARE

- ✓ Sometimes this is best
 - ✓ Be wary of paying aides under the table (liability for injury, liability for wage and labor law violations)
 - ✓ Private aides do permit more control and greater likelihood of retention
- ✓ Paying for adult day programs and/or home health aides may be less expensive way to keep loved one in the community longer
- ✓ New York law presumes family cares for others out of LOVE AND AFFECTION – this is a rebuttable presumption; need a Caregiver Contract (a/k/a Personal Services Agreement)

MEDICARE

- ✓ Federally funded health insurance of persons over age 65, persons under 65 with certain disability
- ✓ **Pays for nursing home care in very limited ways**
 - ✓ Part A (hospital insurance) pays for a variety of inpatient services including patient care, hospice care and home health care
 - ✓ Pays for up to 100 days in a skilled nursing home for rehabilitation center if it is immediately preceded by 3 midnights in the hospital

MEDICARE

- ✓ 100 days NOT GUARANTEED
- ✓ Days 1-20 paid in full; days 21-100 has copay of \$164.90 per day (private health insurance might pay some of this)
- ✓ Be aware of OBSERVATION STATUS

VETERAN'S BENEFITS

- ✓ Veteran's Benefits Administration (VBA) rather than VA
- ✓ Compensation=payment for service-related injury; Pension=payment for disability after honorable discharge
- ✓ Some Veterans receive health care through the VA
- ✓ Some Veterans receive home health aides
- ✓ Some Veterans can qualify for Aide & Attendance or Homebound Benefits (enhanced pension for disabled Veterans in need of assistance with ADLs)
- ✓ Some Veterans can qualify to have nursing home paid for in whole or in part (in Veteran's Home or in other nursing home) based upon disability rating
- ✓ Get "in" with the VA as soon as possible!

COMMUNITY RESOURCES

- ✓ There are grants and agencies that can provide care on a very limited basis
 - ✓ County EISEP programs
 - ✓ Eddy Alzheimer's Services
 - ✓ Others

LONG TERM CARE INSURANCE

- ✓ Use it if you've got it!
- ✓ Examine policy ASAP
 - ✓ Evaluate whether we have home care, assisted living, respite care and/or skilled nursing home benefits
- ✓ Examine lifetime maximum
- ✓ Examine elimination period
- ✓ Examine trigger/how to start a claim
- ✓ Examine requirements for qualifications of caregivers
- ✓ You've paid for it for years...don't die without using it



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MEDICAID

- ✓ Government-funded; pays for most long term care
- ✓ Complex formula where some money comes from federal government, some from state government and some from county government
- ✓ County Department of Social Services (DSS) administers the program



MEDICAID

- ✓ Person may be eligible to receive Medicaid benefits provided assets and income do not exceed the amount determined by the federal and state governments
- ✓ Amounts differ depending on:
 - ✓ the types of benefits you are seeking;
 - ✓ marital status of applicant; and
 - ✓ types of assets applicant and spouse have



MEDICAID

- ✓ Institutional Medicaid (a/k/a Chronic Care or Nursing Home Medicaid)
- ✓ Community Based Medicaid Benefits
 - ✓ Delivered through Managed Long Term Care Programs
 - ✓ Waivered Programs (TBI, NHTD)

MEDICAID

- ✓ Be realistic
- ✓ Government rarely can pay for 24 hour care for one person to stay home
- ✓ Current staffing challenges make home care difficult but not impossible



NURSING HOME MEDICAID

- ✓ Applicant **and** spouse have “spent down” to appropriate asset level
 - ✓ Single = \$30,182
 - ✓ Married = \$30,182 + \$74,820
 - ✓ Increase for spouse is possible if spouse does not have income (see later slides) OR if spouse is willing to commit equal amount (\$148,620 can be kept if applicant applies when spouse has commits to spending \$148,620)

NURSING HOME MEDICAID

✓ Exempt Assets:

- ✓ Preneed irrevocable funeral arrangements
- ✓ Personal property (TV, furniture, clothes)
- ✓ Automobile
- ✓ House (equity cap of \$1,033,000); also, if single, no forced sale but LIEN placed on it; if married, spouse can keep free of lien if LIVING THERE

NURSING HOME MEDICAID

- ✓ Assets with Special Rules:
 - ✓ Annuities – must be in pay out status that will deplete it during owner's life time; must name NYS as beneficiary
 - ✓ Retirement Accounts – if only taking RMDs (required minimum distributions), exempt from asset level but counted as income; if invaded for any more than RMDs, all available

NURSING HOME MEDICAID

✓ The LOOK BACK

- ✓ Must provide 60 months of statements for every asset owned
 - ✓ DSS can get bank statements, but you should have them so you can review them
 - ✓ You must provide IRA statements, investment statements, stock statements, life insurance statements

NURSING HOME MEDICAID

- ✓ The LOOK BACK
 - ✓ DSS has been advised by NYS to consider transfers of \$2,000 or more, but they have the right to look at everything
- ✓ All transactions in question must be explained
- ✓ It's OK to spend money on yourself; it is NOT OK to spend money on someone else during the 5 years immediately preceding your application

NURSING HOME MEDICAID

- ✓ Unexplained transfers/gifts
 - ✓ Aggregate all gifts during the 5 years and divide by “magic number”
 - ✓ 2023 magic number is \$12,744 for this region
- ✓ Gift/unexplained transfers totaling \$127,440 = 10 months of NO MEDICAID BENEFITS

$$\$127,440 \div 12,744 = 10$$

NURSING HOME MEDICAID

- ✓ Single individual applicant
 - ✓ \$50 per month + enough to pay health insurance premiums
- ✓ Married applicant
 - ✓ \$50 per month + enough to pay health insurance premiums
 - ✓ \$3,715.50 per month + enough to pay health insurance premiums + 75% of all income over that

NURSING HOME MEDICAID

- ✓ Result is that you don't have enough money to pay for this nursing home during those 10 months
- ✓ Nursing Homes are afraid to accept patients without sufficient private pay and without Medicaid already in place
- ✓ **GET ORGANIZED and BE AWARE OF YOUR FINANCIAL HISTORY from a Medicaid perspective**



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MEDICAID IN THE COMMUNITY

- ✓ MLTC – Managed Long Term Care
 - ✓ Coordinated, “insurance” for long term care
 - ✓ Medical need, then financial eligibility determined
- ✓ Consumer Directed Personal Assistance Program (CDPAP) – hire aides who work for Medicaid rate
- ✓ Traumatic Brain Injury/Nursing Home Transition and Diversion Program



MEDICAID IN THE COMMUNITY

- ✓ MLTC – Managed Long Term Care
 - ✓ No LOOK BACK and therefore no PENALTY PERIOD
 - ✓ Supposedly 2½ year look back coming next year
- ✓ Consider use of POOLED TRUST for excess income of applicant



PLANNING FOR MEDICAID

- ✓ Types of planning: long range (5 years+ or crisis planning)
- ✓ Crisis Planning available
- ✓ **NEED TO KNOW YOUR FINANCIAL HISTORY**

PLANNING FOR MEDICAID

✓ The house

- ✓ Single individual living there with Community Based Medicaid = NO LIEN
- ✓ Single individual in nursing home = LIEN
- ✓ Married individual spouse living in home = NO LIEN
- ✓ Married individual spouse elsewhere = LIEN

PLANNING FOR MEDICAID

- ✓ The house
 - ✓ Consider irrevocable trust for 5 year plan
 - ✓ Deed with life estate rarely used anymore for variety of reasons; some old ones still exist and are OK but since 2006, this planning technique is disfavored

PLAN AHEAD...

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