

SPECIAL REPORT

PLANNING AHEAD

FOR THE

ALZHEIMER'S FAMILY

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PLANNING AHEAD FOR THE ALZHEIMER'S FAMILY

FIRST LEGAL STEPS

PLANNING AHEAD

SAFE DRIVING

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MAINECARE PLANNING & DIVISION OF ASSETS

WELCOME

Alzheimer's disease leads to a number of life adjustments, including the need to make a wide range of decisions that pose possible legal consequences.

This kit explains the major legal issues you may face over time and suggests ways to deal with them. Beginning with the first legal steps you should take, the kit gives information about long range financial planning, safe driving, health care services and government benefits, and the process of MaineCare planning and division of assets.

As you examine the contents of the kit, please keep in mind that each situation is unique. No single plan fits everyone. You're not likely to need every type of legal advice described here. And this kit is not intended as a substitute for a legal advisor. To ensure that you comply with the law and, at the same time, protect assets for your family, you'll want to get an overall legal review of your particular circumstances.

FIRST LEGAL STEPS

When the diagnosis is Alzheimer's disease, find out as much as you can about the disease. Then plan for the future. While the disease is in its early stages, you may be able to complete important documents that will give you peace of mind

and save you and your family money. It's critical that you authorize another person (e.g. a spouse, adult child or close friend) to make decisions for you. And you should take this step now, while you're still able, so that you, and not some judge, can select the person best-suited to carry out your wishes.

As a "first legal step" it is important to seek help from an attorney to put three documents in place:

1. Durable Power of Attorney

This document grants legal rights and powers to another. Choose someone you implicitly trust, such as your spouse or adult child, to act as your agent (sometimes called your attorney-in-fact). If you become incapacitated, a Durable Power of Attorney lets your agent act for you in financial and business matters.

2. Durable Power of Attorney for Health Care Decisions

With this document, if you can't make health care decisions yourself, another person of your choice can make a broad range of decisions for you. These decisions cover virtually everything to do with medical matters, such as selecting doctors, hospitals, treatments, procedures or medications.

3. Living Will

This document concerns whether or not life support should be withdrawn in the case of a patient who is terminally ill. It states your wishes regarding this issue.

Without these powers of attorney, you may need a court-appointed conservator to handle financial matters and guardian to handle health care matters. In that event, a court would control your personal and financial life. A judge would have to approve your decisions and expenses. This situation can easily be avoided if you act now and put proper powers of attorney in place.

PLANNING AHEAD

When the diagnosis is Alzheimer's disease, the ability to manage one's own affairs will decrease over time. Making adequate, informed decisions about your personal business and your health care will become more difficult. **But, early legal**

planning lets you choose a person to manage these things for you, according to your wishes.

You can control, in advance, the way your affairs will be handled. However, if you don't plan early, a court may eventually appoint a guardian or conservator to make decisions for you. Act while you have the capacity to indicate your wishes and to understand and sign documents that ensure your wishes will be respected and carried out.

Depending on your specific situation, a host of legal issues related to your condition may arise. After you execute a Durable Power of Attorney, a Durable Power of Attorney for Health Care Decisions, and a Living Will consider other legal planning.

Simply stated, life care planning helps you understand how to position your resources to best serve your needs and those of persons dear to you. This kind of planning is highly individualized. Some of the issues you and your family may want to discuss with an attorney included:

Revising wills and trusts

Whenever a major life event occurs, attorneys recommend that you review your wills and trust. Your current legal documents may no longer be appropriate. You may want to make changes that reflect your new circumstances. A diagnosis of Alzheimer's disease is a major life event worthy of this kind of legal review.

Changing property titles

The way real estate and other property is titled is important. In some cases, how your property is held means that selling it will require court intervention. Reviewing property titles is also an important part of planning to ensure that you and your family members are protected if you ever need long term care in a nursing home.

Strategies for financial or other gifts

Consulting a knowledgeable attorney is especially important before you transfer any property or make gifts. The attorney

can help you review your financial situation to determine whether a gifting program or other financial strategy is appropriate for your situation. Making gifts can protect your family and help save your estate. But, acting improperly can have severe legal implications, and can even make you ineligible for government benefits.

Long term care strategies

Now is the time to consider what changes in living arrangements you might need over time. Those arrangements can include independent living, assisted living, and assisted living/nursing home combination for you and your spouse, or nursing home placement. Check provisions of any long term care insurance policy you have in effect. (If you don't already have this kind of coverage, you probably won't be able to qualify for it once you've been diagnosed with Alzheimer's disease. Still, it may be an option for your spouse.) You'll want to review this and other possible strategies with your legal advisor.

MaineCare planning

MaineCare, a federal/state program administered by the states, pays for health care when eligible patients cannot. Many people think they won't need MaineCare or won't qualify for it. But Alzheimer's disease is the third most expensive illness in the United States, after heart disease and cancer. The average lifetime cost per patient is **\$174,000**. Many people simply can't manage these costs on their own. Others are afraid to deplete their resources and impoverish their families. MaineCare planning addresses this issue. Proper planning lets you retain as much of your resources for your family as possible while ensuring that you get the benefits you're entitled to.

Preplanning and crisis planning for MaineCare are two ways to accomplish these goals. Preplanning involves things you can do over time. If you're an Alzheimer's patient in the early stages, you'll be able to participate in this type of planning. But even in the later stages, crisis planning can allow your family to protect you and them from financial disaster. An attorney experienced in this aspect of elder law can help you comply with the law while taking full advantage of options open to you.

SAFE DRIVING

If you have Alzheimer's disease, you may someday be faced with a recommendation that you restrict your driving privileges. Your doctor may write a prescription that says, "Do not drive." Or, family members may begin to notice effects the disease has on your memory, judgment and attention--effects you are unaware of.

Those mental abilities are critical for driving. If you have recently been diagnosed with Alzheimer's disease, you might not have a problem with driving for a while. At some point, however, you may begin to notice that you lose your way, misjudge the speed of oncoming traffic or fail to notice stops signs or other signals. You may be driving legally--that is you have a valid driver's license--but you might not be driving responsibly. The last thing you'd want is to cause an accident. And liability for one could cause legal problems and financial burdens for you and your family.

The independence that driving affords isn't easy to give up. Some people even feel lowered self-esteem when they can no longer drive. We have all grown up in a culture where driving is important to us. And, no one wants to be a burden on others for transportation. So it's common for Alzheimer's patients not to admit difficulty behind the wheel.

However, people with Alzheimer's disease and their families and doctors have a responsibility to balance patients' convenience and safety along with the safety of other drivers and their passengers. Studies have found that, particularly in later stages of Alzheimer's disease, you are twice as likely to cause or be involved in motor vehicle accidents as drivers of the same age with the condition.

Recently published American Psychiatric Association (APA) guidelines for restricting driving privileges of patients with Alzheimer's disease say that all severely impaired Alzheimer's patients pose unacceptable risks on the road. So do people with moderate impairment who cannot cook or perform simple household tasks. In early stages of the disease, some people can drive safely for as long as two or three years after diagnosis. Others, however, cannot drive even short distances without endangering themselves or others. Discuss this issue openly with your family members and doctor. Trust them to tell you when to turn over your car keys.

CONTINUING CARE

As Alzheimer's disease progresses, the care you need increases. In the early stages, you may be able to continue living independently at home or with help from family members or home health aides. Other possibilities include adult day care or respite care. With adult day care, you are in supervised programs during the day, and then return home at night. Respite care programs provide substitute caregivers to temporarily relieve family members or others who usually help you with daily activities.

Another possibility is the need for a nursing home. That's because Alzheimer's disease is the leading diagnosis requiring nursing home admission. You and your family should be aware of the following legal issues concerning the continuing care of an Alzheimer's patient:

- Guardianship
- Conservatorship
- Legal rights of a nursing home resident

Guardians and Conservators

By the time you need nursing home care—if ever—you'll likely be unable to make decisions about financial matters or health care. If you have not executed a durable power of attorney and a durable power of attorney for health care decisions, you'll need a court-appointed conservator and guardian. The conservator will manage your financial business; while the guardian will make personal and medical decisions for you.

Legal Rights of a Nursing Home Resident

Each nursing home resident has a right to personal and appropriate care, which is guided by the resident's care plan. The care is a contract created by a "team," that includes you, the nursing home staff and anyone else you want to involve. The plan should detail your current medical, psychological and social needs and spell out what will be done to maintain or, when possible, improve your health. Because the care plan creates a contract, getting legal assistance with this document is advisable.

MAINECARE PLANNING & DIVISION OF ASSETS

MaineCare, a federally funded program is administered by the states, and helps pay some health care costs (assistance with bathing, light housekeeping, cooking and laundry) while an eligible patient remains at home, as well as nursing home costs for qualified individuals.

You may not want to think about using MaineCare benefits. But most families are financially unprepared to pay for health care costs for an Alzheimer's patient. Over a patient's lifetime, those costs average \$174,000. Even if you enter a nursing home as a "private pay" resident (paying your own way), you may eventually exhaust personal funds and need MaineCare assistance. And even if you can manage the costs, you may worry about depleting your assets and impoverishing your family.

You may share the frequently expressed fear among potential MaineCare applicants, "I'm afraid I'm going to lose everything." However, with legal assistance and proper MaineCare planning, you can typically save *at least* half—and frequently all—of your assets.

MaineCare planning uses legal strategies to maximize the amount of money your family can keep for their care while qualifying you for government benefits. Consult an elder law attorney to help you with this planning process. It's like asking a certified public accountant (CPA) to prepare your income tax forms to be sure that you are taking all legal deductions the tax code makes available. Don't apply for benefits before making sure you've taken all the steps possible to protect yourself and your family.

MaineCare Application and Division of Assets

Applying for MaineCare is a complicated process. You may need legal assistance to be sure you complete forms accurately and completely. Incomplete forms and other errors can delay or jeopardize benefit payments. Married couples go through a process called division of assets. An elder law attorney can help you list and review your assets and income sources in terms of what you can keep (called exempt assets), what you can't keep, and what's at risk

While you are expected to pay as much as you can toward the cost of your care, MaineCare law does not require your spouse to live

in poverty while you live in a nursing home. Division of assets, in general, means dividing your and your spouse's assets in half and deducting exempt assets from the total.

Your spouse keeps his or her half (up to a maximum of approximately **\$95,540**), but you, must "spend down" your half until your assets total no more than **\$10,000**. (Single applicants must meet the same low limits on countable assets to qualify for MaineCare aid.)

Exempt assets (those you can keep without affecting MaineCare eligibility) include your residence, one motor vehicle, furniture and household belongings, personal jewelry and clothing, prepaid funeral plans, and whole life insurance with a death benefit of **\$1,500** or less.

Non-exempt assets (assets that DO affect MaineCare eligibility) include checking and savings accounts, 401(k) plans and individual retirement accounts (IRAs), and stocks, bonds, and mutual funds.

You should consult an attorney experienced in MaineCare matters before giving away money or property to family members or others. Transferring assets during a "look back" period of three years prior to making MaineCare application can create periods of ineligibility for benefits.

Your individual situation affects decisions about how to accomplish the division of assets. You or your spouse can "spend down" your half of the assets to:

- Pay nursing home bills
- Pay off outstanding debt (like credit card bills)
- Prepay an outstanding mortgage, property taxes, and estimated income taxes or capital gain taxes
- Make home repairs or buy household furnishings
- Prepay funeral expenses
- Buy clothing
- Travel
- Pay legal and medical bills
- Buy an annuity (Consult an attorney before purchasing an annuity to be sure you're complying with recent changes in the law).

Important note: Be sure to map out your spend-down plan in advance and coordinate it with your MaineCare application before you move into a nursing home.

The community spouse can often increase the amount available to him or her by working with an advisor skilled in this area.

Additional rules exist concerning income for you and your spouse. Generally, your spouse may keep his or her income. However, your income, except for \$40.00 per month, must go to the nursing home for your care. If your spouse's need exceeds his or her income, some or all of your income may be used to make up your spouse's income needs. Knowing the MaineCare rules are important to guarantee compliance with the law. Consult a professional.