



ElderLaw Advisor



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ELDER SELF-NEGLECT IS A GROWING AND LARGELY HIDDEN PROBLEM

As elder law attorneys we often encounter the situation where the elder wishes to remain in their home although they are unable to perform essential self-care activities.

According to the Elder Justice Act which was enacted in 2010, elder self-neglect is defined as the “inability, due to physical or mental impairment or diminished capacity, to perform essential self-care.” This would include an elder’s inability to maintain his or her basic daily necessities such as food, clothing, shelter, or medical care; or to manage his or her financial affairs.

Although elder self-neglect doesn’t involve a third-party perpetrator, it’s still considered a form of elder abuse that raises serious health and safety concerns. In fact, most reported cases of elder abuse involve elder self-neglect. AARP estimates that between 40% and 50% of cases reported to Adult Protective Services involve self-neglect.

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THE LIFE OF THE “DEATH WITH DIGNITY” ACT

On June 12, 2019, Governor Mills signed into law Maine’s new medical aid in dying law, known as the “Death with Dignity” act. Maine is the 9th state to provide for “death with dignity” by statute or case law. Other states include California, Colorado, Washington, Oregon, Vermont, Hawaii, the District of Columbia, and New Jersey. Under the Act a qualified terminally ill person may obtain a prescription for life ending purposes.

Qualified terminally ill patient status is limited to Maine residents who are determined by both an attending physician and a consulting physician as capable of making an informed decision on end-of-life matters and who have been informed of a terminal diagnosis with a life expectancy of less than six months. Prior to writing the prescription, the patient must make two oral and one written request to the attending physician.

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“We may encounter many defeats, but we must not be defeated.” – Maya Angelou



JOHN NALE

Elder Law Offices of John and Mark Nale

Experience Integrity Compassion

660-9191 info@nalelaw.com

Visit us at www.nalelaw.com



MARK NALE

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The warning signs of self-neglect most often cited by care managers are:

1. Signs of poor personal hygiene/not bathing or taking care of hair and nails (92%)
2. Poor medication management or refusing to take medications (89%)
3. Signs of dehydration, malnutrition or other unattended health conditions (75%)
4. Unsanitary or very unclean living quarters (72%)
5. Signs of unpaid bills, bounced checks or utility shut-offs (64%)
6. Lack of adequate food in house or signs of weight loss (63%)

If you suspect a case of elder self-neglect, contact Maine Adult Protective Services (APS) office at 1-800-624-8404. APS provides social services to abused, neglected, or exploited elders or adults with certain disabilities.

In some instances of elder self-neglect, a conservatorship or guardianship may be required. This is especially the case where an elder is suffering from diminished mental capacity or is resistant to outside intervention and doesn't want to sign a power of attorney. A conservator or guardian is appointed and supervised by the court and is normally granted the authority to manage the personal, financial and health care decisions of an adult who is not able to do so on their own. For more information on conservatorships and guardianships, see our website at www.nalelaw.com.*

The Life of the "Death with Dignity Act" continued from page 1

A 15-day waiting period must elapse between the first and second oral request.

The patient is capable within the meaning of the new law, if he or she has the capacity to make health care decisions and to communicate such decisions to a health care professional or a health care facility. If his or her capability is subject to doubt, the patient may be referred to a mental health care professional

(i.e., a psychiatrist, psychologist, or clinical social worker) for a written report confirming or ruling out capability on the part of the patient, and if the patient is capable, that he or she is acting voluntarily and has made an informed decision to request the life-ending medication.

The patient must also be informed of his or her prognosis, the potential risks associated with taking the medication, and the probable result of taking the medication. The attending physician must also inform the patient of feasible alternatives to the medication, including additional treatment opportunities, palliative care, comfort care, hospice care, and pain control.

The attending physician must refer the patient to a consulting physician, who is required to examine the patient's medical records, confirm in writing the terminal diagnosis and who must verify that the patient is capable, is acting voluntarily, and has made an informed decision as to the medication request.

As stated above, the patient is required to sign and date a standardized written request form before two witnesses, one of whom is unrelated to, not an heir of, and not subject to inherit from, the patient. One of the witnesses must be an owner, operator, or employee of a health care facility, or, if the patient is residing in a long-term care facility, one of the witnesses must be an individual designated by the facility. Both witnesses must affirm in writing that the patient is capable of making the decision and is acting voluntarily to sign the request.

Only after all of the foregoing steps have been taken and documented in the patient's chart, and a period of at least 48 hours has passed after the attending physician receives the patient's written request, may the attending physician write the prescription. The attending physician is responsible for ensuring proper documentation in the patient's chart and that all of the required safeguards have been followed for the patient in question.

The law as designed and enacted leaves very little room for abuse or overreaching by anyone. We must trust ourselves, family, and medical team that the human pain, suffering, and indignity is avoided by one's free choice. For those who loathe the "dying" more than the "death", they now have the right to choose. *

THE BENEFITS OF FILING FOR SOCIAL SECURITY AT FULL RETIREMENT AGE

As elder law attorneys we are often asked when is the best time to start collecting the Social Security retirement benefit.

Though your Social Security benefits are calculated based on your highest-paid 35 working years, the age at which you choose to file for them will determine the amount of money you ultimately collect each month in retirement. Seniors who accumulate enough credits during their working years can file for Social Security as early as age 62, and as late as age 70. In fact, you don't actually have to file at 70, but financially speaking, there's no reason to wait past that point.

Right in the middle of that eight-year window is full retirement age, or FRA. That age is a function of the year you were born as follows:

1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960	67

Knowing your FRA is important, because it's the age at which you're entitled to your full monthly Social Security benefit based on your work record. Filing before FRA will shrink your benefits (and generally for life), while delaying benefits past FRA will boost them by 8% a year up until you reach age 70, at which point that incentive runs out (which is why 70 is generally considered the latest age to file).

Now you'll often hear pros and cons for claiming benefits at various ages. The advantage of filing at 62, for example, is getting your benefits as early as possible, but the downside is facing the largest reduction in benefits possible. Meanwhile, the

upside of filing for benefits at 70 is increasing those monthly payments exponentially, while the drawback is having to wait a long time to start collecting them.

Filing for benefits at full retirement age, however, makes sense in a lot of different scenarios. Here are three good reasons to claim Social Security at 66, 67, or somewhere in between, depending on your specific FRA.

1. You won't shrink your benefits.

Unless you enter retirement with an extremely robust nest egg, you'll probably end up relying on Social Security as a critical income source. As such, the last thing you'd want to do is reduce those benefits and collect a lower monthly payment for life. The great thing about waiting until FRA to file is that you won't have to worry about slashing your benefits and struggling financially as a result.

2. You won't have to wait too long to get benefits.

It's hard to sit back and wait patiently to collect your benefits when you know there's a potential income source out there just waiting to be tapped. The good thing about taking benefits at FRA is that you won't face nearly the same wait as you would by delaying Social Security all the way until 70. Keep in mind that if you decide to continue working until you claim benefits at FRA, you can still look forward to a nice, long retirement, since life expectancies have increased for seniors and many are living well into their 80s and beyond.

The Social Security Administration will allow you to work and collect benefits simultaneously, provided you're old enough to file. If you do so before reaching FRA, however, you'll have a portion of your benefits withheld once your earnings exceed a certain threshold that varies from year to year.

When it comes to Social Security, there's no right or wrong age to claim benefits. Ultimately, your decision should be based on your financial needs and other life circumstances. At the same time, it pays to consider the merits of taking benefits at FRA. If anything, it's a good middle-ground solution to an otherwise challenging decision. *

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58 Elm Street
Waterville, Maine 04901

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- Legislative Update



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LEGISLATIVE UPDATE

The first regular session of the 129th Maine Legislative Session was very active and most bills relating to elders were passed with strong bipartisan support and considerably low conflict. The following bills became law or will soon become law:

LD 1228: Resolve, Requiring the Department of Health and Human Services to Develop More Comprehensible MaineCare Benefit Letters for Individuals Eligible for the Medicare Savings Program

LD 123: An Act To Recodify and Revise the Maine Probate Code

LD 1272: An Act To Increase Access to Low-Cost Prescription Drugs

LD 1437: Resolution, Proposing an Amendment to the Constitution of Maine Concerning Alternative Signatures Made by Persons with Disabilities

LD 1313: An Act To Enact the Maine Death with Dignity Act

LD 1350: An Act To Improve Rural Health Care

LD 1655: An Act To Improve and Modernize Home-Based Care

LD 1758: An Act To Clarify and Amend MaineCare Reimbursement Provisions for Nursing and Residential Care Facilities

LD 1839: Resolve, To Provide Sustainable Funding for Assisted Living Facilities

As elder law attorneys and members of the Maine Council on Aging, we will continue to advocate for legislation that will have a positive impact on improving and maintaining a good quality of life for all Maine elders. *