

## **Aging in America**

Presentation by the National Academy of Elder Law Attorneys, 2009

Many families and their senior members have not planned for how to deal with a critical point in an older person's life. The result is, in a moment of crisis, having to deal with paperwork and how to pay for care.

To begin the discussion before a crisis, family members should take care of their "own home". Make sure you have a will, health care proxy, living will, etc. Then you can open the conversation by talking about the actions you have taken (and that it wasn't too painful!) Likely responses include:

- Deciding to wait until last moment – 80 to 90% of people will wait for the crisis, which greatly decreases options and increases costs.
- Complete denial such as "never get sick"
- Seem relieved to open the conversation in a safe environment

Options are much greater if plan ahead. One lawyer saw a mother's \$700,000 quickly decrease to \$20,000 because there was no plan. More assets could have been protected if an elder law attorney had been consulted earlier. It is never too late to start planning.

Fastest growing population segment is the 85+ year olds. The current number of people in this age group is only the tip of the ice burg with the aging of baby boomers.

Elder law encompasses –

- Taxation
- Medicare coverage and choices
- Medicaid
- Veterans' benefits
- Estate planning
- Key legal documents (will, health care agent, living will, power of attorney)
- Conservatorship laws

These documents need to be reviewed periodically as the law, personal wishes and medical technology change.

Possible Scenarios:

- Elderly person stricken with illness and taken to the hospital. Health care is NOT a right, so quality of care will be affected by available funds. Decisions about where the person will go after the hospital must be made quickly. Lots of paperwork for the patient and/or family to complete.

Information on which to base decisions may not be readily available. Medicare does NOT pay for long-term care. Permanent stay in a skilled nursing facility will cost from \$90,000 to \$100,000 per year, depending on the location.

- Family dynamics make each situation unique. For example, Dad is living at home, alone. He exhibiting some evidence of dementia but is still driving. The entire family is likely to face a period of denial – things aren't the way they used to be and they are not used to including everyone in the family in decision-making with and for Dad. Often, one child is the primary caregiver and will face conflicts with siblings who are less involved. Working with a physician who specializes in geriatric care and a geriatric care manager can be helpful.
- Mom has been living in her own home with support from a daughter who lives locally and a home health aide (private pay). She doesn't socialize as much as she used to and seems more confused. Safety is the key to determining if a move is necessary. Can in-home supports be increased? A primary reason for a move to assisted living is that the family caregiver network finally "gives out". Once an elderly person is in assisted living or nursing home, the family caregiving doesn't end. Social contact must be maintained – visit at unusual times, look for signs of rapid turnover in staff and neglect.

### Key Legal Documents

- Health proxy/Healthcare power of attorney. Rules vary by state so check the State Department of Health website in the relevant state. This document appoints someone to make health decisions for you, when you cannot. Important to have at any age. Be careful to select someone who won't impose their wishes, rather than yours. And appoint an alternate if the primary appointee is not available.
- Will. Distributes assets upon death.
- Power of Attorney (POA). Appoints someone to make financial decisions. This document does NOT cover health decisions, even in an emergency.
- Living Will. States your wishes for care as you near death.

### Long Term Care Insurance

Pays for "activities of daily living" when you need help, including food preparation, shopping, laundry, bathing, dressing, eating. Medicare does NOT pay for these services for the long term. Check out your State's Department of Insurance website.