

Alzheimer's Legal

Survival Kit

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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 and your spouse may face over time and suggests ways to deal with them. Beginning with the first legal steps you should take, this kit contains information about long range financial planning, safe driving, health care services and government benefits, and the process of Medicaid planning and division of assets.

As you examine this kit, please keep in mind that each situation is unique. No single plan fits everyone. You are not likely to need every type of legal strategy 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 your assets for your family, you will want to get an overall legal view of your particular circumstances from a legal professional.

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First Legal Steps

When diagnosed with Alzheimer's disease, learn 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 and inconvenience during a very difficult time. It is critical that you authorize another person (e.g. a spouse, adult child or close friend) to make decisions for you that you may not be able to make. And you should take this step now, while you are still able, so that you, and not a judge that does not know you or your family, can select the person best suited to carry out your wishes.

As a "first legal step" it is important to seek legal 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 trust, such as your spouse or adult child, to act as your agent (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 are unable to make health care decisions for 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 of 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 life support issues.

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

It is important to remember that your situation is unique, and what may be a perfectly valid power of attorney may not contain the appropriate provisions to accomplish your goals. As you may be familiar with, there are many different types of apples in the grocery store and they all taste different, but they are all apples. The same is true with estate planning documents. There are many different power of attorney, Will, and Trust documents and they all act very differently, but they all remain power of attorney, Will, and Trust documents. There is no substitute for properly drafted documents when control of your finances and health care decisions are at stake.

Planning Ahead

Alzheimer's disease will decrease your ability to manage your own affairs 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 do not plan early, a court may eventually appoint a Guardian to make these decisions for you. Act while you have the capacity to indicate your wishes and to understand and sign documents that ensure your wishes are respected and carried out.

Depending on your specific situation, a host of legal issues related to your medical condition may arise. After you execute a durable power of attorney, a durable power of attorney for health care decisions, and a living will, discuss other legal planning that may be appropriate for your unique situation with your attorney.

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 include:

Revising Wills and Trusts

Whenever a major life event occurs, attorneys recommend that you review your wills and trusts. Your current legal documents may no longer be appropriate to your situation. 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. Your 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 save your estate. But, acting improperly can have severe legal implications, and can even make you ineligible for government benefits and leave you unable to obtain the care that you need.

Long Term Care Situations

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

Medicaid Planning

Medicaid, a federal and state program administered by the states, pays for health care expenses when eligible patients cannot. Many people think they don't need Medicaid or won't qualify for it. However, Alzheimer's disease has been identified as the third most expensive illness in the United States, after heart disease and cancer. The average lifetime cost per patient is \$174,000.00 according to the Alzheimer's Association. In cases where nursing home care is needed or expected, the average cost of nursing home care in Texas **exceeds \$5,000 every month**. Many people simply can't manage these costs on their own. Others are afraid to deplete their resources and impoverish their families. Medicaid 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 are entitled to.

Preplanning and crisis planning for Medicaid are two ways to accomplish these goals. Preplanning involves things you can do over time. If you are an Alzheimer's patient in the early stages, you may 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 may be 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 or misjudge the speed of oncoming traffic or fail to notice stop 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 would 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 to not admit having difficulty behind the wheel.

However, people with Alzheimer's 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 without Alzheimer's disease.

The American Psychiatric Association (APA) has published guidelines for restricting driving privileges of patients with Alzheimer's. These guidelines 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 a supervised program during the day, 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 is because Alzheimer's disease can require nursing home admission at some point now or in the future. You and your family should be aware of the following legal issues concerning continuing care of an Alzheimer's patient:

- Guardian of the Estate
- Guardian of the Person
- Legal rights of a nursing home resident

Guardians

By the time you need nursing home care – if ever – you will likely be unable to make decisions about financial matters and health care. If you have not executed a durable power of attorney and a durable power for health care decisions, you will need a court appointed Guardian of the estate and a court appointed Guardian of the person. The Guardian of the estate will manage your financial business; while the Guardian of the person 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 plan 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.

Seeking Help

It is important to have help and support during a difficult time. If you or a loved one is living with Alzheimer's disease, you may want to contact the Houston Chapter of the Alzheimer's Association. Their helpline is 1-800-272-3900. If you are considering placement in a professional care facility, feel free to request a copy of the **Houston Nursing Home Guide** from this office to learn how to evaluate a facility and have a convenient list of every facility in the Harris and Montgomery County areas and the benefit programs they honor.

In addition to lifestyle changes, a person with Alzheimer's disease faces unique legal issues, including: organizing your estate and financial planning so that someone of your choice will manage your affairs; division of assets and Medicaid planning, property disposition, durable powers of attorney, establishing Guardianship and so on. ***It is essential to remember that every situation is unique and what may be proper planning for someone else could lead to disaster to you.***

In order to help you or a loved one address the legal issues of Alzheimer's disease, it is important to have the assistance of a knowledgeable Elder Law attorney. I am committed to helping you maintain control of your affairs without court intervention. If you need legal assistance, please call Richard L. Shea, Attorney at Law at (832) 426-3913.

Medicaid Planning & Division of Assets

Medicaid, a federally funded program administered by the states, pays some health care costs while an eligible patient remains at home, as well as nursing home costs for qualified individuals.

You may not want to think about using Medicaid benefits. But most families are financially unprepared for the health care costs of an Alzheimer's patient. Over a patient's lifetime, those costs average \$174,000.00. Even if you enter a nursing home as a "private pay" resident (paying your own rent), you may eventually exhaust personal funds and need Medicaid assistance. And even if you can manage the costs, you may worry about depleting assets and impoverishing your family.

You may share the frequently expressed fear among potential Medicaid applicants, "I'm afraid I'm going to lose everything." However, with legal assistance and proper Medicaid planning, you may be able to save half, or even all of your assets.

Medicaid planning uses legal strategies to maximize the amount of money your family can keep for their support while qualifying you for government benefits. Consult an elder law attorney to help you with this planning process. It is similar to asking a qualified accountant (CPA) to prepare your income tax forms to be sure that you are taking all legal documents the tax code makes available. ***Do not apply for benefits before making sure that you have taken all possible steps to protect yourself and your family.***

Medicaid Application and Division of Assets

Applying for Medicaid is a complicated process. You may need legal assistance to be sure you complete the 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 is at risk.

While you are expected to pay as much as you can toward the cost of your care, Medicaid 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 after deducting exempt assets from the total.

Your spouse keeps his or her half (up to a maximum value that changes annually, \$109,560.00 in 2010), but you, must "spend down" your half until your assets total no more than \$2,000.00. Single applicants must meet the same low limits on countable assets to qualify for Medicaid.

Exempt assets (those you can keep without affecting Medicaid eligibility) include your residence while your spouse lives there (up to a certain amount of equity), one motor vehicle, furniture and household belongings, personal jewelry and clothing, prepaid funeral plans, and whole life insurance with a death benefit of \$1,500.00 or less.

Non-exempt assets (those assets that **DO** affect Medicaid eligibility) include checking and savings accounts, 401(k) plans and individual retirement accounts (IRAs), and stocks, bonds, and mutual funds. Simply, everything that is not identified as an exempt asset is a non-exempt asset and is considered in determining Medicaid eligibility.

You should consult an attorney experienced in Medicaid matters before giving away money or property to family members or others. Transferring assets during a “look back” period of three years (five years for certain transfers to and from trusts) prior to submitting a Medicaid application can create periods of ineligibility for benefits. In Texas, you will be ineligible for benefits for one month for every \$3,926 you give away in fiscal year 2009-2010 and during the appropriate look back period.

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 or capital gains taxes
- Make home repairs or buy household furnishings
- Prepay funeral expenses
- Buy clothing
- Travel
- Pay legal and medical bills

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

During the Medicaid application stage, your spouse can often increase the amount of assets that she can keep by working with an attorney skilled in this area. Your spouse has rights protected by federal law. However, if you do not enforce your rights, then you can lose them and your family could be in an even worse position than necessary.

Additional rules exist concerning income for you and your spouse. *Generally* (but not always), your spouse living at home may keep his or her income. However your income, except for \$60.00 per month (for fiscal year 2009-2010), must go to the nursing home to pay for your care. If your spouse’s needs exceed his or her income, some or all of your income may be used to make up the difference. But proper planning and knowledge of the application law is important to protect your rights. Consult a legal professional.