

# Planning for Your Long Term Care

## Why Plan?

### Aging Arkansas

Arkansas' over 65 population is one of the largest in the country..

The cost of a year in a nursing home can exceed \$80,000.00. Home health care cost varies upon the type and level of care needed.

Many people live long, healthy lives because of medical advances and healthier lifestyles. But all people face the possibility that during some of those years they may require assistance with their personal affairs. They may also be faced with expensive long term care bills. Victims of Alzheimer's disease, disabling strokes or accidents require the greatest need for planning.

Failing to plan can create emotional and financial hardship on the family. They may be forced to seek guardianship over their loved one and may face financial ruin.

At the beginning I should point out two facts:

Everyone should plan for the possibility of disability and if signs of a disabling illness are present, legal planning should begin immediately.

Many more options are available when the person is competent and before family resources have been depleted.

### Basic Legal Problems

#### A. Assistance with Personal Affairs

The goal in life, for most of us, is to live life with dignity, comfort, and as much self-sufficiency as possible.

Every day, families are placed in the painful

position of having to make decisions for a sick or disabled person with no indication of what the person himself would have wanted. Families may be forced to go to court to obtain permission to carry out the decision that they believe the patient would have made.

You can try to avoid these problems by planning ahead. You can document your wishes regarding medical care, name a person you would like to have make medical decisions for you in the event that you become incapable of doing so, or both.



Three forms of advanced directives are widely recognized:

- The Living Will for death with dignity,
- Durable Power of Attorney for Health Care, and
- Durable Power of Attorney for Financial Management.

### Living Wills

A living will is a document in which you state that you do not wish to receive life prolonging treatment in the event you suffer a terminal illness or become permanently unconscious and become unable to make health care decisions.

It is a good idea to notify your family and physician of your living will and ask to have a copy placed in your medical records.

### Durable Power of Attorney

A power of attorney is a legal document, signed by a competent person, which gives another person the authority to handle some or all the first person's affairs.

A durable power of attorney is a special kind of

## ABOUT US

*We are an Elder Law and Special Needs Trust Law Firm. Located in Little Rock, Arkansas, we focus on helping individuals obtain Medicaid benefits without losing their home, Long Term Care Planning for victims of Alzheimer's Disease and other related disorders, Special Needs Trust solutions for families with children with special needs, and Preserving Eligibility for Public Benefits for personal injury victims.*

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## Planning Ahead: Powers of Attorney and Guardianship

power of attorney that continues to operate even after the principal becomes incompetent. You should have one that covers financial decisions and another that covers healthcare decisions.

### What if you have no Advance Directive?

Guardianship is a tool to be considered only when a person cannot make competent decisions regarding his/her own affairs. Guardianship is necessary when access to the individual's assets is required (to pay for care or basic necessities) or healthcare and living decisions must be made.

### Types of Guardianship

Arkansas Legislature has set out two basic types of guardianships:

#### 1. Guardianship of the Person

A guardianship of the person grants the guardian powers over the ward's personal care, but not over his property. The guardian is generally responsible for the ward's care and protection. This means that the guardian must make decisions regarding the living arrangements, health care, personal care, meals, housekeeping, transportation, recreation, and all other aspects of the daily living needs of the ward.

#### 2. Guardianship of the Estate

A guardianship of the estate only grants the guardian powers over the ward's property. The guardian is responsible for the financial management of the ward's assets.

### Conclusion

Most important of all is to act *now* to put your preferences in writing. Many people tend to postpone this step, because the prospect of future illness and incapacity is disturbing, and seems remote. But incapacitating illness can strike at any time. You may avoid unnecessary suffering for yourself and your family if you execute a living will and durable powers of attorney now.

### B. Paying for Long Term Care

The cost of nursing home care can exceed \$80,000.00 a year. This can easily wipe out savings and impoverish a married couple. Paying for care comes from a variety of ways.

#### Medicare

While Medicare provides health insurance to most Americans age 65 and above, it provides for very little long term care. It will pay for up to 100 days of skilled nursing facility (SNF) care following a hospitalization, but several conditions apply:

- The move to an SNF must be within 30 days of a hospital stay that itself lasted at least three days.
- The care must be provided in a Medicare certified nursing home.
- The patient must receive skilled nursing care or occupational or physical therapy that he or she could not as a practical matter receive at home.

Medicare pays completely only for the first 20 days. A co-payment is required for the 21st through the 100th day.

#### Medicaid

Medicaid is a medical assistance program for low-income people. There are two main Medicaid programs in Arkansas that affect the elderly: The Long Term Care/Nursing Home program and ARChoices, the waiver program for home and community-based care. The basic rules of eligibility concern income and assets.

#### Income Standard

The basic income limit for Medicaid eligibility is \$2,349.00 a month for an individual (2020 limit). All of the applicant's income, with few exceptions, is counted. The spouse's income is not counted but will be considered to determine if they can keep any of their spouse's income.

#### Assets

Applicants for Medicaid are limited to \$2,000 in "countable" assets. There are three kinds of assets: countable, noncountable, and inaccessible.

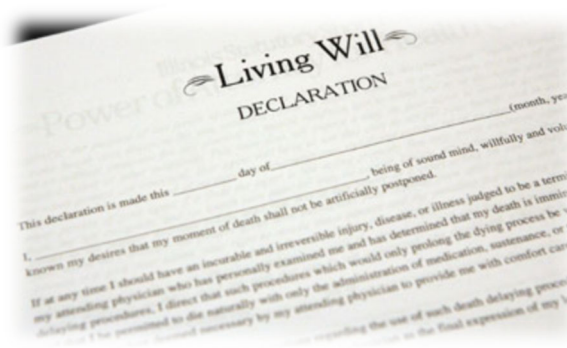
Countable Assets include real estate, cash, checking or savings accounts, certificates of deposit, promissory notes, mortgages; and stocks.

Noncountable Assets include the home, automobile, burial plots and burial funds.

Inaccessible assets are assets "to which the applicant has no legal access."

#### Trusts

Trusts created to protect your assets are very specific and should be drafted by a knowledgeable attorney. The creation can prevent Medicaid services and thus increase the hardship placed on the family.



## Paying for Long Term Care

### Transfer Penalties

#### 1) 60-Month Look-Back Period

There is a 60-month look back period for transfers (giving away assets without receiving fair market value in return). This means that Medicaid will look at all transfers made during that time period. There are no exceptions.

#### 2) Transfer Penalty Period

Medicaid benefits are delayed if you give away assets. The delay is roughly one month for every \$5,800.00 in cash or fair market value given away within the previous 60 months. The penalty period starts the day you submit an application for LTC Medicaid, assuming you are qualified in all other areas. Certain types of transfers are excused from penalty.

Do not transfer property without first getting legal advice. There can be tax consequences as well as penalties under Medicaid.

### Spousal Protection Provisions

There are special Medicaid provisions referred to as the Spousal Impoverishment Provisions. They require special treatment of the income and resources of individuals who are legally married to spouses living in the community. Resource protections apply to both the nursing home and ARChoices Programs while the income protections apply only to the nursing home program.

#### 1) Resource Protections

The "community spouse" is allowed to keep ½ of the couple's total countable assets up to \$128,640.00 and not below \$25,728.00. The remaining assets must be "spent down" before the nursing home spouse can qualify for Medicaid services.

#### 2) Income Protections

The other side of the spousal impoverishment rules concerns the maintenance of an income floor for the community spouse. It gives the community spouse a right to share the institutionalized spouse's income to the extent necessary to bring his or her monthly income up to a floor. That floor is called the community spouse's "minimum monthly maintenance needs allowance."

### Estate Recovery

Benefits paid for by Medicaid on your behalf results in a debt to the Arkansas Department of Health and Human Services. This debt can be claimed against your estate upon your death. DHS will not seek to recover the debt if it is too expensive for it to do

so, or if it results in a hardship to your family.

### VA Benefits

The major VA Benefits are Aid and Attendance or Housebound allowance. Cash assistance may be available to a Veteran or their spouse who has substantial medical expenses that are not covered by insurance. This assistance is not enough to cover nursing home care but can supplement an individual with other income.

Income and resources are considered but are not as complex as Medicaid eligibility. Transferring assets do not result in a penalty but will cause difficulties with Medicaid eligibility.

### Long Term Care Insurance

Long Term Care Insurance can be a boon, if you have it. Most policies cover home care, assisted living, and nursing facility care. While many consider it too expensive, consider that one month in a nursing facility will exceed \$6,500.00. You would pay several years of premiums before spending

that amount. Long Term Care Insurance is essentially insuring your assets from being wiped out by the high cost of care.

### Your Savings and Personal Assets

Your only option is to pay with your personal or family assets if you:

- \* do not meet the narrow Medicare benefit qualifications;
- \* do not have long-term care insurance; or
- \* are not poor enough to qualify for Medicaid.



## THE RAYMON B. HARVEY LAW FIRM

### Arkansas Elder Law & Special Needs Trusts

#### Practice areas include:

- Long Term Care Planning and Medicaid Eligibility
- Special Needs Trusts (Estate Planning and Personal Injury)
- Estate Planning (Wills, Trusts and Powers of Attorney)
- Guardianships
- Probate (Settling a Decedent's Estate)

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