



EIN NO: 55-0819817

David L. McGuffey, CELA* – Attorney
Marnie Dodd, LCSW – Elder Care Coordinator
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Medicaid Planning Fee Agreement

THIS AGREEMENT is between ***The Elder Law Practice of David L. McGuffey, LLC***, (“We” or “Us”) and John Smith (“You”) and is entered into as of October 30, 2009. We have agreed, and you have asked us to represent you as follows:

Scope of our Agreement: You are retaining us to assist you in planning to attain Medicaid eligibility in Georgia. You are our client and all of the services we provide will be for your sole benefit. Our services include consultations, drafting and implementation of a coordinated Medicaid plan designed to achieve Medicaid eligibility. Our fee includes all necessary legal documents such as qualified income trusts, powers of attorney and the like to achieve this goal; assistance in asset restructuring; and research, conferences, telephone calls, and the like which are necessary to implement the Plan.

We do not offer a one-size fits all plan. Your plan will be unique for you and will be based on, among other things, preferences you express. We will provide you with our advice concerning possible planning options, but often we are *balancing risks* (e.g., sometimes an action helps us accelerate Medicaid eligibility, but triggers a tax). Our focus will remain on you, your preferences and maintaining resources that can be used for your benefit as we balance risks.

We will assist you in organizing the information necessary to file a Medicaid application; making the Medicaid application; communicating with DFACS regarding any matters associated with the application. We will assist you in planning to achieve Medicaid eligibility if you have assets in excess of the eligibility limits. We will assist you in establishing a Qualified Income Trust if your income exceeds the Georgia Income Cap.

If a Medicaid fair hearing is required, then we will represent you at the fair hearing after the additional payment described below. An additional fee applies to any and all appeals beyond the fair hearing.

- 1. Additional Services.** This is not a general representation agreement and is not a personal services agreement; it is an agreement outlining the terms of legal representation. The scope of our representation is strictly limited to those services described in this Agreement. If you need any other services which may or may not be related to the above matter, you and we may make a new agreement to provide the other services which must be in writing signed by you and by us.
- 2. Intensive Case Management.** We are agreeing to assist you in planning for Medicaid eligibility. We are not agreeing to do things that you should be able to do

for yourself such as locating and bringing us documents from insurance companies, financial institutions and the like. Although we are willing to assist you, if you request, for example, that we track down old insurance policies and financial records that should be available to you, then we will charge an additional hourly fee for those services. Our elder care coordinators who generally assist with those matters are billed at \$150 per hour. We will speak with you about this before charging an additional fee so you are not surprised with a bill.

3. **Fees.** The fee for your Plan is \$ _____, due on signing. Thereafter, unless otherwise agreed, no more fees will be owed for what we do for you under the Plan. Fees are considered earned when you pay them to us and are not refundable. We do not begin any work until the fee is paid. There may be instances where we would be required to produce an invoice for services rendered on an hourly basis. You understand that if for any reason we are required to bill at an hourly rate, Mr. McGuffey's hourly fee is \$350 and each Elder Care Coordinator's hourly fee is \$100; hourly fees are subject to increase at any time.
4. **Costs and Expenses.** The fee does not include out of pocket costs or expenses that we may have to spend on your behalf. In addition to our fees, you must pay (if these are a part of your Plan) such costs and expenses as court costs, accountants' fees, appraisers' fees, title search fees, recording fees, overnight delivery charges, and any other expenses that are reasonably related to your Plan.
5. **No Guarantee.** We will provide conscientious, competent, and diligent services and at all times will seek to achieve solutions that are just and reasonable for you. However, because of the uncertainty of legal matters, especially pertaining to the public benefits laws, the interpretation and changes in the law and many unknown factors, we cannot and do not warrant, predict, or guarantee results or the final outcome of any matter.
6. **When this Agreement Ends.** Most of our initial planning work will take place within the first 90 days after you hire us. Thereafter, most of what we are doing is monitoring your plan. Our obligation to provide services under this Agreement ends upon the earlier of (i) when you are approved for Medicaid; (ii) your death; (iii) any change in your marital status; or (iv) two years after this agreement is executed. Our obligation to perform services under the Plan also ends if you move out of the State of Georgia. Our obligation may also end for any reason in which we are unable to provide services to you because it is impractical, impossible, unlawful, or unethical, or if you intentionally provide us with incorrect information. Our obligation ends when we have done everything we agreed to do under the Plan, and there is nothing else for us to do for you. Our obligation also ends if you terminate our services.
7. **Extending this Agreement.** If you decide to continue our services beyond the term of this Agreement, then we will review your circumstances with you and discuss extending your representation on an hourly basis, a monthly basis or for an additional flat fee.
8. **This and That.** The fee you pay for the Medicaid Plan is based upon the accuracy and completeness of the information you provided to us. The fee may be adjusted (up or down) to account for deviations from the original information. In part, this is because revised disclosures must be made to Medicaid and other agencies if inaccurate information is given to us. The fee you pay includes a "final meeting." This

meeting takes place after your death with your family or other representatives. At the final meeting, we review what needs to be done (if anything) to administer your estate and will usually offer our help if your family needs our services with those things, such as title transfers, probate or non-probate, and the like. However, the Medicaid Plan fee does not cover these services.

9. **Duty to Provide Correct Information and to Update.** If part of your Plan includes an application for public benefits such as Medicaid, you agree that you will provide us with accurate information prior to the application for public benefits. You also agree to promptly disclose any change in financial condition to Medicaid officials within 10 days.
10. **Transfers of Assets.** You agree to disclose ALL transfers of assets within the last 60 months to us and that you will not make any additional transfers of assets without consulting with us. Under the Medicaid rules, a transfer of assets (a gift) occurs when you transfer property to someone else, or when you relinquish control over property, without receiving something of equivalent value in return.
11. **Elder-Centered Approach:** We are an Elder Law firm. We will not knowingly take a position that harms an Elder and it is our goal to improve the quality of life for those Elders we serve. By entering into this Agreement with us, you expressly authorize us to act in your best interests at all times in order to further this goal.
12. **Family Agreement:** You warrant that you have advised us if any of your family members object to our planning approach and that you will immediately advise us if any of your family members raise an objection. One of our goals in planning for you is to preserve family relationships and, therefore, we strive, where possible, to assist you in that regard. A secondary concern is to avoid unnecessary litigation, particularly over matters that can be cleared up through family agreement. Your agreement to bring these matters to our attention does not mean that we insist upon you resolving family disagreements; the decision regarding how to address disagreements is yours and yours alone, but we cannot provide you with advice if you do not bring them to our attention.
13. **Fraudulent Conveyances.** We will not knowingly assist you in transferring assets for the purpose of avoiding payment to legitimate creditors. Any asset protection strategies we employ may or may not protect assets under the Medicaid rules, but they do not prevent other creditors from asserting claims. It is imperative that you pay all legitimate debts before you employ any strategy that includes a transfer of assets. If you have questions about whether debts are legitimate, please ask us. Similarly, if your Agent transfers assets in a manner that would change your estate plan, then disappointed heirs might contend that your Agent engaged in fraud, undue influence or coercion even though failure to do so might result in dissipation of your estate paying nursing home bills. To prevent this from happening, we strongly advise you to consult with other family members before taking any such action.
14. **Estate Administration and Distributions.** After the death of someone we are planning for, probate is often unnecessary. That does not, however, mean that potential heirs cannot assert a claim against the decedent's assets. If you ask us to employ an asset protection plan that reduces or eliminates the probate estate, then you must satisfy any legal obligation owed to other heirs. Failure to do so may result

in contested probate litigation. In this regard, we remind you that our representation ends at your death and any work we perform probating your estate is subject to an additional fee.

15. Fiduciary Conflict Waiver: You hereby authorize us to represent any fiduciary of yours (such as an attorney-in-fact under a durable power of attorney) and to release any and all information and documentation to such fiduciary without limitation in regard to such representation. It is understood that providing advice to your fiduciary may cause a conflict of interest to arise. You have carefully considered the possibility of a conflict between yourself and your fiduciary. By signing this Agreement, you acknowledge that such conflicts may arise and waive such conflicts of interest as they apply to us.

16. Communication with Caregivers and Family Members: You have the right to keep your confidential matters private. However, sometimes it is beneficial, for you, if we communicate with your family and, in particular, those who are your caregivers. Please indicate whether you authorize us to communicate and work with persons holding a power of attorney for finances or for health care.

I authorize you to communicate and work with persons holding a power of attorney over my finances and health care.

I do not authorize you to communicate and work with persons holding a power of attorney over my finances and health care.

Signatures. You and we have read and agree to this Agreement. You have been given a copy of this Agreement. You understand that you can review this Agreement with another attorney before retaining us.

Elder Law Practice of David L. McGuffey, LLC

By _____ Dated _____
David L. McGuffey, Attorney

By _____ Dated _____
JOHN SMITH

Exhibit A to Fee Agreement

Real Estate and Insurance Matters

Mr. McGuffey holds a Georgia real estate license (#332690) and a Georgia insurance license for life and health (#761518). Accordingly, although you are under no obligation to do so, you may request his services in listing property for sale, or in purchasing life insurance, health insurance, supplemental insurance, long-term care insurance and annuities. You may also use any other agent you choose to use in securing these services. If you request these services from Mr. McGuffey, then by initialing below you understand that Mr. McGuffey may be entitled to a separate fee in connection with providing those services. Typically this would be a referral fee paid by a co-operating real estate agent or insurance agent.

Fees for Intensive Case Management

If you request intensive case management as described above, then an additional fee may apply. Although we will be evaluating and organizing information, our fee does not cover contacting various insurance companies, financial institutions and the like to track down the information necessary to assist you since most of this information should already be in your possession.

If you request intensive case management, then those services are generally provided by one of our care coordinators working under Mr. McGuffey's supervision. We bill our care coordinators at an hourly rate of \$150. We will speak with you about these matters before charging an additional fee so you are not surprised.

Initials