Life Care Planning

Elder Law Practice of David L. McGuffey
Dalton, Georgia
September 9, 2009
Fundamental Concepts

- Find, get and pay for good care
- Facilitate health care decisions
- Manage assets
- Where possible, increase income
- Protect wealth
  - For the Elder or disabled individual
  - Surplus assets protected for heirs
The Life Care Planning Process

- Medicaid ALF/NH
- Continued care follow up
- 6 month follow up
- Annual assessment
- Action Plan
- Estate Planning
- Placement
- 6 month follow up
- Financial Planning
- Medicaid application home
- 6 month follow up
- VA Benefits
- Meet with attorney and life care coordinator
- Assessment of needs
- Financial situation
- Change in financial situation
- Address problems with care
Initial Meeting

• Assess client situation/LISTEN
• What concerns are expressed
  – Can Mom or Dad return home?
  – If so, what caregiver support is available?
  – If not, where should they be placed?
  – Cost?
  – Is financial assistance available?
Assessment

• Face-to-face visit with client
  – Done where the patient receives care
• To plan effectively, you have to see a person, not just a disease
• What does the client need?
• What will improve the client’s quality of life?
What Elders Want

Studies tell us that older people have two goals in their health management:

• prevent illness
• manage the changes

They want to prolong independence and activity.
The Continuum of Care

1. Declines in functional ability result in a loss of Independence (dependence).
2. Can result in a caregiver crisis.
3. Can result in a financial crisis.
Client Education

• The patient is a member of his or her own health care team.
  – Patient (or representative) must understand condition and options
• The patient’s wishes about his or her care predominate.
Estate Planning

- Initial focus is on LIFE NEEDS, not on leaving an inheritance
- Important documents
  - Health Care Advance Directive
  - Durable (financial) Power of Attorney
  - Will
Surrogate Decisions

Advance Directive
An Advance Directive

• A written document that tells what you want or don’t want if you cannot make your wishes known about medical treatment.

• Also called a health care proxy.

• Usually State specific. HOWEVER, documents created in other states are valid.
TN v. GA

• Tennessee
  – Health Care POA and Living Will are separate documents

• Georgia
  – Health Care POA and Living Will are combined into a single document
Durable Power of Attorney for Health Care

- A written directive appointing a surrogate to make medical decisions for a patient when the patient cannot make his or her own decisions.
- Agent has authority to receive all relevant medical information necessary to make decisions.
Living Will

• A written document that tells what medical treatment the patient does and does not want in a terminal situation.

• Misunderstandings prevent clients from executing documents.
  – NOT a death wish
  – NOT permission to kill
Values Statement

• Not legally required
• If completed, usually a separate document
• Provides detailed information concerning patient’s wishes and values
• Usually not enforceable, but would be evidence of patient choice if there is a family conflict over care
Why should everyone have an Advance Directive?

• You might get very sick
• You might have an accident
• You might not be able to tell your doctor what you want.
• Having an advanced directive let’s you control what happens.
Why should everyone have an Advance Directive?

• It helps your family and friends know what you want them to do.
• They may be asked to make decisions during a time of grief.
• If you’ve already made your own decisions, it will be easier on your family.
Use of Generic Forms

Dangers

- Ask whether there is an existing Advance Directive before offering generic forms
  - Does the patient want to make a change?
- Execution of new documents may revoke an existing plan.

Issues

- The name of the person authorized to act for you. It is good to appoint an alternate as well.
- If you are terminally ill, in a coma, or have brain damage with no hope of recovery, you can explain the kind of treatment you don't want. For example, do you want feeding tubes, resuscitation, dialysis, or blood transfusions?
- Whether or not you want to be kept alive by machines if you are in a persistent vegetative state.
- Under what circumstances you want pain medication to be administered.
- Whether you want to donate your organs. Whether you want to be cremated or buried and where and how your remains should be disposed of.
Tennessee Law

- Modified in 2004
- T.C.A. section 68-11-1801 et seq.
- New Law does not invalidate old documents
- Specifies new procedure
  - How documents should be prepared
  - Default mechanism when no document exists
Tennessee Advance Directive

- Must be in writing
- Must be notarized OR witnessed by two individuals
- Remains in effect despite incapacity
- Must contain an attestation clause that attests witnesses comply with requirements.
Using GA Documents in TN

• Advance directives made in other states are valid if they were executed in compliance with (1) the Tennessee Health Care Decisions Act; or (2) in compliance with the laws of the principals' state of residence.
Georgia Advanced Directive for Health Care

- New law effective July 1, 2007
- Does **not** invalidate documents executed prior to July 1, 2007
- Combines health care power of attorney and living will
- Statutory form is optional
Caregiving

Making It Work
Co-operative Effort

Client Preferences for Quality of Life

Mental Capacity

Caregiver Preferences for Quality of Care

Total Loss
The Continuum of Care

Functional Limitations

Meeting Needs/Levels of Care

Home Sweet Home  Retirement Center  Assisted living  Memory Care  Skilled Care Facility
The Continuum of Care

Functional Limitations

Meeting Needs/Levels of Care

Home Sweet Home  Retirement Center  Assisted living  Memory Care  Skilled Care Facility

LOC Needed

Danger Zone

LOC Provided
Risks

- Falls
- Poor nutrition
- Improper administration of medications
- Abuse/neglect
- Other
Considerations

What is the Elder’s ability to compensate and provide self-care?

How long is the condition expected to last?

Do we have a caregiving plan in place? Is it adequate?

How might the elder’s condition improve or worsen?

Is full recovery possible?

Would therapy promote recovery?

How will we handle emergencies?
Caring for the Caregiver

**Respite care** provides time off for family members who care for someone who is ill, injured or frail. It can take place in an **adult day center**, **in the home** of the person being cared for, **or even in a residential setting** such as an assisted living facility or nursing home.
Completing the Plan

Find, get and PAY for good care
Financial Planning

• Authority to Act
  – Power of Attorney
  – Trust (only applies to assets in trust)
  – Joint Accounts or adding signature authority
Medicaid

• Only program that pays for nursing home care
• Generally, single applicant cannot have more than $2,000 in countable assets
• If monthly income exceeds $2,021, then a Miller Trust is required
GA vs. TN

**Tennessee**
- GA resident can get TN Medicaid
- Transfer penalty divisor is $3,394
- No retroactive Medicaid
- Community Spouse gets one-half of marital assets between $21,912 and $109,560

**Georgia**
- TN resident can get GA Medicaid
- Transfer penalty divisor is $4,916
- 3 months retroactive Medicaid
- Community Spouse gets maximum allowance of $109,560
Veteran’s A&A

- Must serve 90 consecutive days duty; at least one day during war time
- Other than dishonorable discharge
- Assets below $80,000 (age test may be imposed)
- Income must be below allowance limits
- Medical expenses reduce income
Action Plan

- Begins with assessing needs and facilitating Care
  - Follow up and re-assessment
- Continues with benefits planning
  - Applying for benefits
- Estate Planning
LIFECARE PLAN

Finding and paying for long-term care

Personal care to insure mom's well-being

Future Issues

Asset protection planning

Resolving issues with care providers

Legal services to protect your family

Handling insurance and Medicaid problems

Getting and keeping government benefits
Thank you!!

Contact Us: (706) 428-0888