Caregiver Connections
An Educational Webinar Series With The Experts

The presentation will begin shortly.
Thank you for your patience!

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919-660-7510
LEGAL ISSUES FOR FAMILY CAREGIVERS DURING A PANDEMIC(!)
JONATHAN WILLIAMS

• Undergraduate degree in Math and Physics, Wake Forest
• Master’s degree in the Study of Religions, Wake Forest
• Juris Doctorate, Wake Forest University School of Law
• Order of the Coif
• Elder Law Clinic
• Served on the editorial staff of the Wake Forest Law Review
• Awarded the distinguished E. McGruder Faris Award for Character, Leadership, and Scholarship
• Introduction to planning issues confronting family caregivers for aging adults
• Basic understanding of legal tools available to allow a caregiver to manage their loved one’s health care, financial, and legal affairs
• Distinguish between guardianship, durable power of attorney, and health care power of attorney
• (Brief) introduction to long-term care planning for Medicaid
THE GOALS OF ESTATE PLANNING AND LONG-TERM CARE PLANNING ARE TO

(1) Plan for the outcome the person wants; and

(2) Create tools and structures that make it possible for the people who help to work easily and get it right.
WHEN SOMEONE ELSE DECIDES
WHO MAKES DECISIONS?

- Legal guardian
- Agent Under Durable Power of Attorney
- Trustee
- Health Care Agent
- Living Will
- Physician
- Family
- Executor
WHEN SOMEONE ELSE DECIDES...

...because your loved one is incompetent and has not pre-planned, or there is a family dispute:

Guardianships/Court
WHEN SOMEONE ELSE DECIDES...

...and your loved one has planned in advance:

- Powers of Attorney
- Living Trusts
- Health Care Powers of Attorney
- Living Wills
- HIPAA Authorization
- DNR/MOST Forms
WHEN SOMEONE ELSE DECIDES...

...after your loved one’s death:

Executors under Wills
Trustees under Trusts
Burial or Cremation
Taxes
Disputes
WHY DOESN’T EVERYONE HAVE PROPER PLANNING?

3 MAJOR REASONS
PROCRASTINATION
BUT, CONSIDER THE COST OF FAILING TO PLAN
DENIAL

IT COULD NEVER HAPPEN TO ME!
What are our chances of dying?
What are our chances of becoming incapacitated?
Anyone can file an incompetency petition
Clerk of Court decides whether your loved one is incompetent
Clerk can appoint anyone to serve as Guardian
Not required, but advisable to consult an attorney
• Part of Estate Planning is planning for incapacity.

• Without proper planning, you will have to go through a Guardianship Proceeding if your loved one becomes incapacitated
  • Public proceeding that can be humiliating, time consuming, and expensive
  • Court appoints someone to handle your loved one’s finances and make medical decisions

• Power of attorney is intended to avoid, and typically designates your loved one’s choice of guardian
PLAN TO AVOID GUARDIANSHIP

- No authority attaches to family relationships for adults
- Contractual Arrangements
- Legal Documents
ESTATE PLANNING INCLUDES:

- Planning for Health Care Decisions
- Planning for Asset Management
- Planning for Incapacity
- Planning for Death
WHAT ARE THE CORE LEGAL DOCUMENTS?

- Last Will and Testament
- General (Financial, Durable) Power of Attorney
- Revocable Living Trust
- Health Care Power of Attorney
- Living Will (aka Advance Directive for a Natural Death or Declaration of Desire for Natural Death)
- HIPAA Authorization
WHAT A LIVING WILL CAN AND CANNOT ACCOMPLISH

• Allows your loved one to specify when they do not want their lives prolonged
• Only pertains to life prolonging measures
• Typically does not apply to emergencies
• Option to allow Health Care agent to override
  • Principal’s Decision, or
  • Principal’s Expression of Preference
• 65%-76% of physicians whose patients DO have advance directives are unaware of the documents
Agent’s authority can be limited by your loved one, if desired
- Springing, but may be applicable throughout life
- Agency relationship – broad or limited delegation of authority
- When does the agent act?
- Some powers persist after death:
  - Autopsy and disposition of remains
  - Organ donation and anatomical gifts
HIPAA AUTHORIZATION

• If there is a Health Care Power of Attorney, your loved one needs a HIPAA Authorization

• Allows Health Care Agent (and any other named individual) to talk with your loved one’s medical providers and obtain medical records, if needed
Names an agent to manage legal and financial affairs
• Can be springing or standing
• Not all powers of attorney are the same!
• Can name multiple agents, and your loved one decides whether:
  • Each Co-Agent may act independently, or
  • Co-Agents must act together
LAST WILL AND TESTAMENT

- Only works after death
- Does not control all assets
- May determine what individuals/charities receive some assets
- Defines who has the authority to decide as to legal affairs and some assets
REVOCABLE TRUSTS

- Controls the disposition of some assets
  - Controlled by Trustee
  - Private
  - May be different during life and at death
  - Can define gifts and set up further trust arrangements for beneficiaries
  - Fewer challenges to use in the event of incapacity
SPECIAL NEEDS BENEFICIARY

- Beneficiary with a disability
- Because of disabilities, is on Medicaid and Supplemental Security Income (SSI)
- Will lose government benefits if she receives an inheritance outright
SUPPLEMENTAL NEEDS TRUST

• No Loss of Government Benefits
  • Third Party Serves as Trustee
  • Provides support and enhanced quality of life for Ella above what government benefits provide

Inheritance

Supplemental Needs Trust
QUESTIONS?
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Thank you for joining us today!

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