

Legal Issues and Tools

First Task ~ Organize Papers

Legal issues relating to care planning are divided into two categories:

1. Health Care
2. Financial

Healthcare ~ Determine whether certain documents already exist. Look for:

1. Advance Health Care Directive
2. Power of Attorney for Health Care
3. Living Will
4. Directive to Physicians
5. HIPAA Authorization (means "Health Insurance Portability and Accountability Act")
6. POLST (means "Physician Orders for Life Sustaining Treatment")

Financial ~ Look for papers relating to property and financial matters:

1. Trusts
2. Wills
3. Power of Attorney for Finances
4. Deeds or Certificates of Ownership for Property
5. Annuities
6. Life Insurance
7. Long-Term Care Insurance Policies
8. Retirement Accounts/ Benefits (IRA, 401k, 403b, Pensions)
9. Veterans Benefits
10. Most-recent statements from bank, credit union, investments.

Next, you'll want to visit a qualified attorney to review these papers.

DO NOT WAIT FOR A MEDICAL CRISIS. The person signing new documents must have legal capacity to understand what they are signing.

Second Task ~ Choose An Attorney

Sometimes the best choice is the original attorney who prepared the papers. If you have confidence in that person, this is an obvious choice.

However, sometimes clients lose touch with the attorney or feel that they need someone more familiar with their current life issues.

Finding An Elder Law Attorney

The attorney who practices Elder Law or Special Needs Law works primarily with people as they age and people with disabilities. Using a holistic approach, the attorney will address general estate planning issues and will counsel clients

about planning for incapacity and possible long-term care needs. The attorney typically wants to be sure the documents properly coordinate private and public resources to finance the cost of quality care. The attorney may also have suggestions for support services in your area. You can locate an elder law attorney through:

NAELA

National Academy of Elder Law Attorneys' website at www.naela.org. On the NAELA homepage, you will find a link that will help you locate an elder law attorney near you.

Third Task ~ Get Ready For The Attorney Visit

Here are a few tips as you prepare. (Each attorney has a slightly different approach):

1. Make a list: Discuss with your spouse, partner, or those helping you what questions are on your mind. Write them down.
2. Think about your care managers: If you were unable to manage your finances and health care, who would you choose for those important jobs? Do you have alternates in mind? Would they agree to serve?
3. Are there doubts about the present ability of the client to understand and sign documents? If so, mention this to the attorney very soon!
4. If the client has a serious, chronic or terminal illness, or if there is some other urgency mention it to the attorney immediately!
5. When you make the appointment, ask the attorney these questions:
 - Does the attorney offer a no-charge first visit?
 - What documents should you bring to the meeting?
 - Should you complete a questionnaire first?
 - Will the attorney want to meet privately with the client?
 - Are family members welcome? Are designated trustees, financial agents or health care agents welcome?
 - If the attorney accepts the case, what are the fees and costs? When will the client receive the legal services agreement for review? (In most cases, attorneys are required to have a written agreement for any legal work. It must be signed by both client and attorney).

Advance Care Planning Basics

1. Every adult needs an Advance Healthcare Directive:

- * To name your choice of person(s) to make your health care decisions when you can no longer communicate;
- * To tell those caring for you what kind of health care you want/don't want;
- * To tell everyone caring for you how you feel about life support;
- * To make special requests about the people or things important to you when you are ill (friends, music, clergy, pets, poetry, scripture, etc.);
- * To tell everyone where you want to live in your final days;
- * To make choices about organ donation, cremation, burial;
- * To tell everyone how you want to be remembered

2. Complete a POLST with your doctor's help if you presently have a serious life-threatening or terminal illness. *Physician Orders for Life Sustaining Treatment* forms are detailed doctor's orders which reflect your choices about life support options or resuscitation. These orders are kept in your medical chart. The law requires doctors, emergency medical responders, and healthcare workers to honor these detailed choices. Similar documents are often called DNR (Do Not Resuscitate).

3. Review AHCD and POLST information. Physicians and patients can find the latest information and download forms on Advance Care Directives and POLST.

- * POLST California
<https://capolst.org/>
- * California Department of Justice - Advance Healthcare Directives
https://oag.ca.gov/consumers/general/adv_hc_dir
- * Coalition for Compassionate Care of California (non-profit)
<http://coalitionccc.org>
- * Five Wishes – Changing the way we plan for end of life care
<https://www.agingwithdignity.org/five-wishes/about-five-wishes>

Medical Privacy and HIPAA

The *Health Information Portability and Accountability Act* ~ 1996 (HIPAA) is intended to safeguard an individual's health information.

A HIPAA release is a document signed and dated by you to authorize use and disclosure of protected health information for reasons other than treatment,

payment or health care operations. An authorization must contain a description of the protected health information, the names of persons permitted to make a disclosure, the names of persons to whom the covered entity may disclose, an expiration date or event, an explanation of the individual's right to revoke, how to revoke, and a statement about potential re-disclosures.

Your doctor and other medical professionals are required by law to protect your medical privacy. This is why you are often asked to sign a form stating that you have received the provider's Privacy Statement.

IMPORTANT: The form often includes an authorization giving permission to share your medical information with other health care providers, your spouse or other person you designate.

Don't wait until a medical emergency to sign a HIPAA release and an Advance Health Care Directive. Every time you visit a doctor, hospital, medical lab, etc., give them a copy of your Advance Health Care Directive and ask to sign the provider's HIPAA form so that those assisting you are authorized to receive information about your care.

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