Legal and Financial Planning for Alzheimer's

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Estate Planning Documents Everyone Should Have

- Health Care Proxy and Living Will
- Disposition of Remains form
- Durable Power of Attorney (POA)
- Will

Health Care Proxy

- Basics
  - A powerful legal document that allows an individual to name another (Proxy) to make medical decisions for them when they are unable to do so
  - Principal must have capacity to sign
  - Must be signed and witnessed by 2 disinterested witnesses

Living Will

- Living Will
  - Instructions relating to end of life decisions such as:
- Artificial Nutrition and Hydration
- CPR
- Ventilator

DNR

Do Not Resuscitate

- Medical Form
- If patient is in respiratory or cardiac arrest, NO:
  - Chest compressions
  - Ventilation
  - Defibrillation
  - Endotracheal intubation
  - Medications

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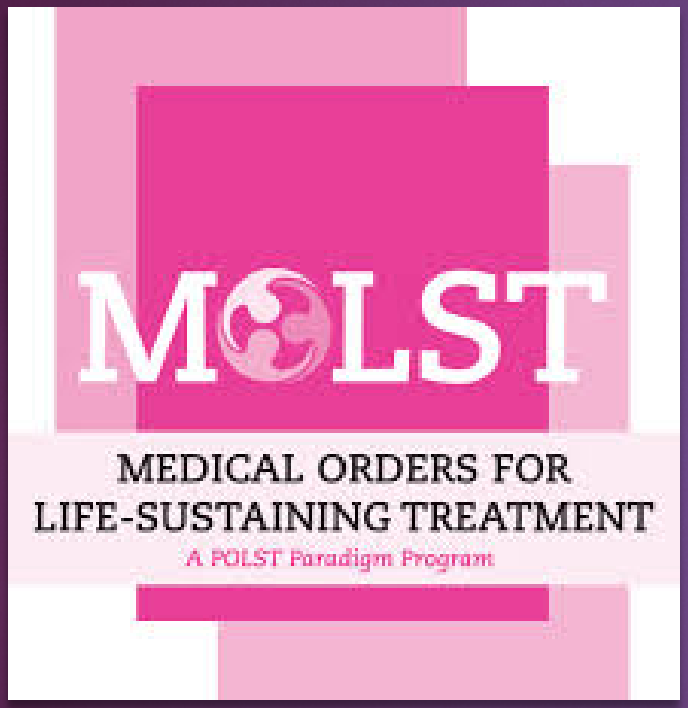


Medical Orders for Life-Sustaining Treatment

- Bright pink medical order form
- Designate treatment guidelines for end of life decisions
- Intended for patients with serious health conditions:
  - Want to avoid or receive any or all life-sustaining treatment
  - Reside in a long-term care facility or require long-term care services
  - Might die within the next year

Power Of Attorney

- Basics
  - A powerful legal document that allows an individual (Principal) to name another (Agent) to act on their behalf with financial matters
  - Principal must have capacity to sign.
  - Must be signed and notarized by the Principal AND the Agent(s)
    - It does NOT need to be signed simultaneously

Power of Attorney

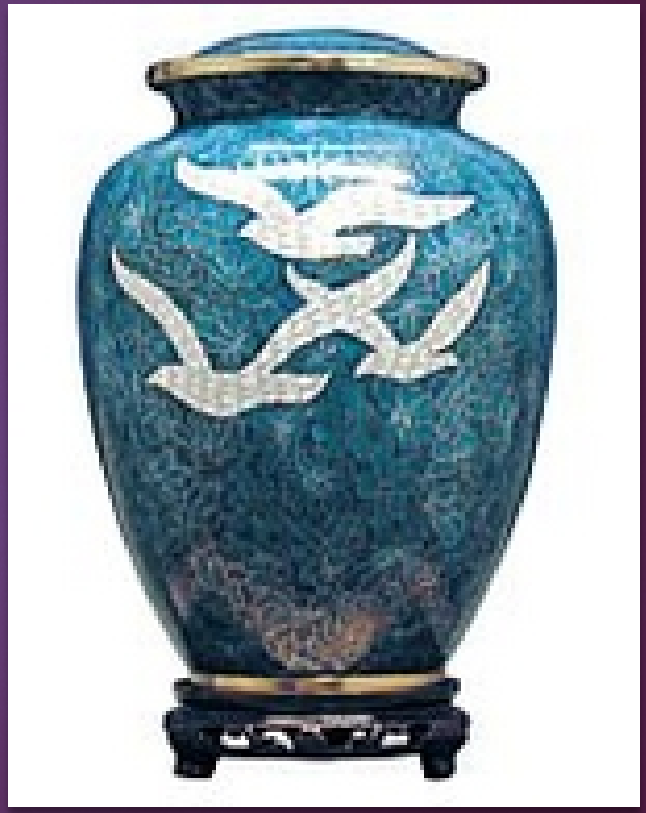
- Powers
  - Real Estate Transactions
  - Goods Transactions
  - Stocks, Bonds, Mutual Funds, Investments, Etc.
  - Banking Transactions
  - Business Operating Transactions
  - Insurance Transactions
  - Estate Transactions
  - Claims and Litigation
  - Gifts of not more than $500
  - Benefits
  - Health Care Billing
  - Retirement Benefits
  - Tax Matters
  - All Other Matters
  - Power to Delegate
  - ALL

Power of Attorney

- Statutory Gifts Rider
  - For gifts of more than $500
  - Creating trusts, funding trusts, Medicaid planning
  - Must be signed, notarized and witnessed by 2 disinterested witnesses
- Termination
  - Revocable
  - Ceases at Death

Disposition of Remains

- Appoint an individual to be in control of your remains
- Avoid people fighting "over your dead body"
- Provide for special instructions
- Useful in a second marriage situation



Long-Term Care Planning

- Long term care planning is planning for how we will live our lives as we age – do we want to live at home with help or do we want to move to a facility that will provide help to us

87% of adults age 65 and older want to stay in their current home and community as they age.

Helping Seniors Age in place

- Where do you want to live?
- Who will provide care?
- How to pay for it?
- What financial resources are available?

Long Term Care Costs

Home Care

- unpaid home care – spouse, children, family, friends
- paid home health aides – average cost $30 per hour, costs vary depending on number of hours needed

Assisted Living

- costs can range from $3,000 per month to $8,000 per month, depending on the level of assistance needed
- For example, memory care can cost up to $10,000

Nursing Home

- average cost is $14,000 to $15,000 per month

Funding Sources for Long-term Care

In New York, Medicaid is the primary payer for long-term care services.

- Private Pay
- Medicare
- Medicaid
- Long Term Care Insurance
- Respite/Caregiver Support Grants
- Veteran's Programs

Medicare – What Does it Cover?

- **Hospital Stays**
- **Short term stay in nursing home following a hospitalization**
  - First 20 days, Medicare pays 100%
  - Days 21-100, Co-Pay of $185.50
  - No coverage after 100 days
- **Limited Home Care Coverage**
- **No coverage for custodial care at home**

Veterans Benefits

- Home and Community Based Services
- Financial Benefits
  - Compensation
    - Service Connected Disability and Disability Compensation
      - https://www.va.gov/disability/
  - Veterans Pension
    - Tax free, paid to low-income war-time veterans
      - https://www.benefits.va.gov/pension/
  - Aid and Attendance
    - Financial assistance for homecare, assisted Living and nursing home
      - https://www.va.gov/pension/aid-attendance-housebound/

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Medicaid

Medicaid will cover long-term care services for people who are over age 65 and/or disabled if you meet the financial eligibility requirements

- **What does Community Medicaid pay for?**
  - Home Care
  - Adult Day Care
  - Assisted Living

Types of Community Medicaid

- **Waiver Programs – includes oversight and monitoring**
  - Nursing Home Transition Diversion (NHTD)
  - Traumatic Brain Injury (TBI) Waiver
- **Managed Long Term Care – task-based services**
  - Personal Care Assistant (PCA)
  - Consumer Directed Personal Assistance Program (CDPAP)

Community Medicaid Income and Asset Limits

Community Medicaid 2021 Income & Asset Levels		
	Individual Applicant	Couple
Income	$ 904	disregarded
Assets	$ 15,900	$ 74,820

Exempt Assets

Principal Residence	Burial Plot	Pre-paid irrevocable burial contract
Life Insurance Policy with a face value up to $1,500	One automobile	Retirement Accounts in Periodic Payment Status

Financial Eligibility for Medicaid

What if your income or assets are too high?

Assets

- Exempt transfers of assets
- Transfer assets to trust

Income

- Excess income - Pooled Supplemental Needs Trust

Irrevocable Trusts

- An Irrevocable Trust can be used to protect your assets and pass them to your children, if you plan far enough in advance.
- If properly established, you can apply for Medicaid and the assets in the trust will not be counted or have to be spent down for Medicaid eligibility purposes

Irrevocable Trusts

For the trust to qualify to protect your assets:

- **Trustee** – cannot be you or your spouse – can be children or other relatives. You reserve the right to change the trustee.
- **Principal Residence** – you maintain a life estate in your house
- **Trust Income** – you receive all the income from the trust
- **Trust Principal** – You cannot receive principal distributions from the trust (unless you do a Partial Revocation of Trust)
- **Upon your death** – trust assets go to your beneficiaries

Funding your Irrevocable Trust

What assets should be placed in a trust?

- Home
- Stocks
- Bonds
- Investment accounts
- Life Insurance with Cash Value

What assets to keep out of a trust?

- Checking account
- Savings Account
- CDs

Transferring Assets to Qualify For Community Medicaid

- Starting October 1, 2020 – there will be a 30 month lookback period for Community Medicaid applications
- Delayed implementation to 7/1/2021

How to Avoid Penalty Period

- Create a trust well in advance of the time you may need Medicaid
- If not, other solutions
  - Gift and Promissory Note
  - Transfers to spouse
  - Exempt transfers to disabled child or caregiver child

How to Qualify for Medicaid with Income Spend-down

Deposit excess monthly income into a Pooled Supplemental Needs Trust (SNT) and use that money to pay bills and other expenses not covered by Medicaid

Using a Pooled Trust for Income Spend-down

After depositing the spenddown to the pooled trust, Norma will have

$1,000 in her trust account to pay bills and other expenses

Norma's total monthly income:	**$1,904**
Medicaid Income Limit:	- $904
Excess monthly income (spend-down)	= $1,000
Amount to Deposit to Pooled Trust	$1,000

What can A POOLED trust pay for?

For a person receiving Community Medicaid, the trust will typically pay for living expenses, such as:

- Rent or mortgage, property maintenance, and taxes
- Utility bills, cable, phone, etc.
- Groceries, clothing, and other personal needs
- Additional hours for home health aids not covered by Medicaid

Review of Rules

- Community Medicaid pays for you to stay in your home and receive care
- You can protect assets by placing them in a trust
- Currently there is no look back period for Community Medicaid
- As of October 1, 2020, there is a 30 month lookback period
- Plan in Advance!

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