

Nine Things Every Senior Needs to Know About Elder Law

1 What is Elder Law?

In the past, the key estate planning question was: What happens when I die? Now, with Americans living longer than ever, the question is: What happens if I don't die? If I need at-home health care, assisted living or skilled nursing care, how will I afford it without losing my life savings? Elder law helps you come up with a plan so that you do not have to exhaust your life savings to pay for long-term care AND helps you put a plan in place to make sure that your wishes are carried out the way you would like them to be.

2 The Importance of a Durable Power of Attorney and Advance Healthcare Directive

How many times have seniors or their loved ones come to our office for help, and we've had to tell them that their power of attorney is no good? Worse yet, sometimes we have to tell a senior's loved one that it's too late to sign a power of attorney or advance healthcare directive. By appointing someone as your agent in a power of attorney you direct how you would like your health and finances to be handled. If you become unable to manage your own affairs and do not have these documents in place your loved ones may be forced to go to court to request permission to take over, which can be time-consuming and expensive. In order to allow your loved ones to do your asset protection planning, it is very important that you speak with an elder law attorney to make sure that your power of attorney permits them to do so. Many powers of attorney do not contain provisions regarding asset protection planning.

3 It's Never Too Late to Plan

Many seniors who are living in assisted living or skilled nursing facilities or who are at home with mobility or health issues do not seek help to protect assets, believing it's either too late or there is nothing they can do, perhaps attributing it to the five-year Medicaid lookback. This is not true. In most cases, regardless of amount of assets and your current health or living situation, we can plan to protect assets, obtain VA or Medicaid benefits, or set up trusts to protect assets. Make sure that the person you seek advice from, whether an attorney, financial advisor or accountant, is experienced in this area.

4 Giving away \$10,000 Per Year Is NOT OK!!

Many clients we see have heard that they can give away \$10,000 per year to whomever they want with no penalty. This is an IRS gift tax rule (and the limit this year is actually \$13,000).

That means that if you have to apply for Medicaid benefits and you have made any of these kinds of gifts in the last five years, Medicaid will penalize you for making these gifts. Giving away \$13,000 roughly equals a two-month penalty for Medicaid purposes.

5 Planning Ahead Gives You Peace of Mind

The most important thing about elder law is not that you are protecting assets, but that you are putting things in place so that your wishes, not someone else's, can be carried out. Most clients we see are very relieved after meeting with us because they know their options and they know that their wishes will be carried out.

6 Medicare v. Medicaid

Many people use these words interchangeably. Although the names are similar, these are two very different programs.

Medicare covers healthcare costs for all Americans over the age of 65. It is not means-tested (anyone regardless of their wealth qualifies). Medicare only covers custodial care (nursing home care) fully for 20 days and partially up to 100 days. Medicare does not cover long-term care nursing home stays.

Medicaid covers long-term care costs (including skilled nursing, assisted living and home healthcare costs) but is means-tested, meaning that you have to meet certain income and asset tests to qualify.

Community Spouse Allowance: Minimum: \$21,912 Maximum: \$109,560

7 Medicaid Exemptions

When applying for long-term care Medicaid help it's important to know which assets Medicaid does not count. The most common exemptions are

- Primary residence for married couples;
- Personal effects;
- One car regardless of value;
- An irrevocable, prepaid funeral up to \$15,000 in value;
- Life insurance up to a total face value of \$1,500;

- For married couples, the IRA of the “community spouse” (the spouse who is still living at home).

8 The Power of VA Benefits

Many veterans or surviving spouses of a veteran don't know they may qualify for a non-service-connected disability pension of up to \$1,900 per month if they meet certain requirements. The basic requirements are that the claimant be a veteran who was honorably discharged and who served at least ninety days of continuous active duty, at least one day of which occurred during wartime. The veteran (or surviving spouse) must also meet certain income and net worth tests.

9 Who Needs to Consult an Elder Law Attorney

We highly recommend that you consult an experienced elder law attorney if you are ever in any of the following situations:

- Your spouse or loved one is about to enter an assisted living or nursing facility or has already been there for some time and is concerned about preserving assets.
- You or a loved one are concerned about protecting assets from the possibility of future long-term care costs.
- You or a loved one have been diagnosed with a chronic illness, such as Alzheimer's, Parkinson's or MS.
- You or a loved one can't afford long-term care insurance premiums or can't get long-term care insurance.