

## Who needs to plan for incapacity and why?

According to the Centers for Medicare and Medicaid Services, at least 70% of people over age 65 will need long-term care services and support at some point. The Alzheimer's Association recently found that one in nine Americans age 65 or older currently have Alzheimer's. With baby boomers aging and people living longer, that number may nearly triple by 2050.

So while not everyone will need long-term care, most of us probably will, and *all of us* should plan for the possibility.

Starting the discussion can sometimes be difficult. A lot of people don't want to think about it. Many just assume family members will take care of them. But waiting too late can plunge your family into crisis mode as they try to determine what you would want, what care options are available, and what resources are available to pay for them. Rushed decisions are often costly ones and, at this point, you may have no control over who provides the care you need and where you will be.

Planning ahead will make things easier for all involved—physically, emotionally and financially. It will prevent the court from getting involved with your assets and your care; it will let you have some say about where you receive care and who will provide it; it helps your family determine how to pay for your care before it is needed; it will relieve stress on your family; it can let you live as independently as possible for as long as possible; and it will give you great peace of mind.

## Why would the court get involved?

If your name is on the titles of your assets and you become unable to handle your financial affairs, who will conduct business for you? The person you have named as executor in your will cannot act, because your will cannot go into effect until after you die. Someone else cannot just take over and sign your name for you. Eventually, a relative or friend will ask the court to appoint a guardian/conservator so that your assets can be used to pay your expenses.

A public hearing will be held and if you are found incompetent, a guardian/conservator will be appointed. The court will oversee this person to protect your interests and make sure your assets are not squandered. However, this protection is not free or easy. It can become costly, time consuming and cumbersome with annual accountings, bonds, reports, ongoing determinations

of incompetency, and fees for attorneys, accountants, doctors and guardians. All costs are paid from your assets, reducing the amount available to pay for your care, and court proceedings are part of the public probate record.

Someone will also be appointed to oversee your care and report to the court. Usually this will be your spouse or a family member, but the court can appoint a professional who does not know you.

This court supervision of your assets and care usually lasts until you recover or die, which could be years. If you recover, you will have to prove your competency to the court. Most families prefer to handle these matters privately, outside the court system.

## Wouldn't a power of attorney prevent this?

Most become invalid at incapacity. A durable power of attorney does extend through incapacity, but it may not work when it's needed. That's because some financial institutions will not accept any power of attorney; others will insist that it be on their own forms. The reason is they have no way of knowing if you have changed your mind, and they do not want to be held liable for giving access to your assets to someone you may not want to have them.

If it is accepted, it still may not work the way you want. Giving someone power of attorney is often like giving that person a blank check to do whatever he/she wants with your assets. Most people prefer having a living trust.

## What is a living trust and how does it work?

A living trust is a document that is similar to a will in that it contains your instructions for distributing your assets after you die. But, unlike a will, it can also prevent the court from taking control if you become incapacitated.

When you set up your trust, you change the titles of your assets from your name to the name of your trust. Legally, you no longer own anything, so there is nothing for the courts to take control of if you become unable to conduct business. The person you have named (your successor trustee) will be able to step in and manage your financial affairs for as long as needed. If you recover, your successor trustee steps aside and you return to managing your assets. All of this is done outside the court system.

## Do I need other legal documents?

Yes. Here are the basic documents every adult should have.

## ■ Advanced Healthcare Directive (also called Health Care Proxy and Durable Power of Attorney for Health Care):

This document lets you legally name someone as your health care agent/proxy to make health care decisions for you if you cannot make them for yourself. Without one, the court could still get involved, especially if your family members and/or the medical community disagree about your care.

■ **Living Will:** This simple document lets your doctors know the kind of life support treatment you would want in case of a terminal illness or injury when death is imminent. It may or may not be honored by itself, but it lets your health care agent/proxy know what you would want so he/she can make these decisions for you.

■ **HIPAA Affidavit:** This gives your written consent for doctors to discuss your medical situation with others. You may want to include family members, close friends, clergy, and/or the successor trustee of your living trust.

■ **Durable Limited Power of Attorney:** Limited powers are given to your successor trustee so he/she can transfer forgotten assets to your trust and manage assets (like tax-deferred accounts) that cannot be owned by your trust.

## What care options are available and how much do they cost?

Over time, you may need different levels of care. The costs below are from Genworth, a company that provides long-term care insurance. It routinely researches these costs in all parts of the country. You can access their results at [www.Genworth.com](http://www.Genworth.com) to see costs in your area.

■ **Home Health Care:** Most people want to stay in their homes for as long as possible. This can often be accomplished by hiring caregivers to provide help and services. *Companions* can provide social interaction and help with housekeeping, errands, meal preparation and medication supervision. *Personal care aides* provide hands-on assistance with personal hygiene, dressing and moving to different rooms. *Licensed or registered nurses* can provide skilled medical care. In-home care is available to even those with advanced needs.

The national median cost for a home health aide working 44 hours a week is over \$46,000 per year. Actual costs will depend on the level of care and number of hours needed.

■ **Adult Day Care Centers:** These provide care and

companionship for older adults who need supervision during the day. They may provide social activities, meals, physical therapy and medication supervision. This is an option when family caregivers need to work or just need a break. Annual median cost is almost \$18,000 per year.

■ **Assisted Living:** These are residential facilities for seniors who need some assistance with activities of daily living (ADLs), such as bathing, dressing, and eating. Assisted living facilities typically provide all meals, a private or semi-private room or apartment, medication supervision, housekeeping, social activities, 24-hour staff and security. Annual median cost is over \$44,000 per year.

■ **Nursing Homes:** These provide around the clock nursing care. Annual median cost is more than \$82,000 per year for a semi-private room; over \$92,000 per year for a private room.

### Who will pay for my care?

Health insurance does not cover assisted living or nursing home facilities, or help with ADLs. Medicare covers some in-home health care and a limited number of days of skilled nursing home care, but not long-term care. Medicaid, which does cover long-term care, was designed for the indigent; to qualify, you have to spend down your assets to almost nothing. VA benefits for Aid & Attendance may be available for veterans and their spouses, but are mostly need-based.

If you have significant assets, you can pay as you go. Many people use their retirement savings and home equity. If you want to protect these assets for your family, long-term care insurance may be an option; unfortunately, many people wait until they are uninsurable or the premiums are too expensive.

### What can I do now to plan?

Start with thinking about where you would like to receive care, research the options that are available in your area and determine what you can afford.

If you have limited assets, as many people do, consider other options you may have. Perhaps you could move into an adult child's home, or someone could move in with you. Caregiving, while done in love, is an exhausting task and caregivers often have to compromise their work and family obligations. If family members can help care for you, consider how they can be compensated. If none

## Benefits of Planning for Incapacity

- Prevents court control of your assets and your care at incapacity, avoiding associated costs, delays and lack of privacy.
- Lets you have some say about where you will receive care and who will provide it.
- Lets your family know how to provide and pay for your care before it is needed, reducing the risk of rushed and costly decisions.
- Minimizes emotional stress on you and your family.
- Helps you live as independently as possible for as long as possible.
- Can help you remain in your home for as long as possible if that is what you want.
- Gives you maximum control, privacy and peace of mind.

are available, perhaps a friend, neighbor or clergy could oversee your care or be your successor trustee.

If you want to remain in your home, start making changes now to make it safe. Install grab bars and ramps, arrange for a bedroom and bathroom on the first floor, and so on.

If you do need long-term care in the future, it will have an impact on your family. Talk to them now about your desires and your fears, and involve them in the planning process. The hope is that you won't have to use your plan. But if you do, it will help if your family knows what to do.

### Do I need to use an attorney?

An experienced attorney has already helped many families in these situations. He or she will prepare the documents correctly and will be able to make suggestions that will save you considerable time, money and stress. Your attorney can also work with your other advisors (insurance, investment, CPA, etc.) to help make your plan a success.

This information is from the bestselling book, *Understanding Living Trusts*® by Vickie Schumacher. It is available from Amazon and most bookstores.

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# Understanding PLANNING FOR INCAPACITY

HOW YOU CAN KEEP CONTROL  
OF YOUR ASSETS AND YOUR CARE,  
AND ENJOY PEACE OF MIND

*Your information here*

Name  
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Street Address

City, State, Zip

Phone: 123-456-7890

Email address

www.my-website.com