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BASIC PLANNING FOR ELDERLY CARE

The term Elder Care generally refers to the health and maintenance of the elderly and may or may not have anything to do with estate planning depending on your concerns. From an estate planning perspective, planning for either an elderly loved one or for your own benefits when you reach that age is a very common request.

Some of the concerns I've heard range from the ability to pay for health related costs, to where to place elderly loved ones who are showing signs of dementia or other health related issues, to how to acquire state aid, or what can be done to allow "me" to make certain decisions on that person's behalf. Of all the concerns I have heard, by far the biggest are financial and control issues.

The biggest mistake I see with clients who approach me for advice on elder care is that it's too late because they waited too long. Usually, they see me after a parent or grand-parent is showing signs of diminished capacity and by that time it's simply too late to prepare many of the instruments which could have been extremely useful and could have saved my clients a significant amount of money.

As it relates to elder care, any good estate plan will include instruments designed to ease your loved ones from the litany of red tape that surrounds the ability to care for you and make decisions on your behalf. Instruments such as Powers of Attorney and the designation of Conservators, Living Wills and Irrevocable Trusts are just a few.

A Durable Power of Attorney is a basic instrument which can be used to give anyone the power to make necessary decisions on your behalf, and because they are durable, they are valid beyond your incapacity. With this instrument, your designated person can make medical and financial arrangements on your behalf. However, once you are no longer of sound mind, you lose the capacity to execute such an instrument forever. In that case, your only alternative is to go to court and seek a Court Ordered Conservatorship which is extremely costly and requires hearings, medical affidavits, medical records, etc.

Living Wills are designed to provide medical providers with a concise definition of your intentions as it relates to medical care once you can no longer make those decisions on your own behalf. A good living Will describes your desired medical care, and can designate people as your health care representatives and proposed conservators. Again, once you are no longer of sound mind, you lose the capacity to execute such an instrument forever.

Another great concern regarding elder care is medical costs. In Connecticut, the general term for the state Medicaid program is "Title 19" benefits. Title 19 provides the minimum requirements necessary to apply for state benefits for medical costs. The biggest hurdle in acquiring such aid is the financial capacity of the person in need of medical care. In order to qualify, your assets, income, and expenses will be evaluated and if you have too much, you may be denied. Instruments such as Irrevocable Trusts and scheduled gifting can be an avenue to rid yourself of certain assets which would then qualify you for Title 19 Benefits.

Elder care is a complete section of law which is bountiful in its own right. However, as it relates to estate planning, many are amazed at how just a little preparation can result in great relief when the need for significant medical care becomes necessary. Having these instruments in place prior to that need is essential and ultimately rewarding on both a personal and financial level.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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