

Financial & Legal Matters for Caregivers



Del Mar Caregiver Resource Center
Supporting Caregivers through their Journey

What are the financial and legal matters for caregivers to be aware of? Planning and decision-making skills can be greatly impaired for a family member with a neurological condition who develops problems with judgment, memory loss and confusion. This paper introduces aspects of financial and legal planning for caregivers.

Managing the financial and legal affairs of a family member is difficult. The act of caregiving itself runs counter to the values of self-sufficiency and independence, compounding the difficulty when stepping in to help. It is important to approach the business of financial and legal planning with great respect and in a fashion that maintains the person's dignity.

Individuals with a neurological condition are at risk for developing cognitive impairments. Cognition refers to the capacity to think, remember, plan and organize and exercise good judgment. When cognitive impairment develops, a person loses the capacity to perform routine activities such as responding to mail, managing a household budget, paying bills, or filing important documents, such as income and property taxes. Loss of judgment increases the risk of falling victim to scams and financial exploitation.

Upholding the value of self-sufficiency and independence for a family member must be balanced with protecting a loved one from harm. With this understanding, family caregivers adjust and begin the process of stepping in to help mom and dad.

Early Stage of Caregiving

In the early stages of caregiving, the cognitive skills of a person newly diagnosed with a neurological condition may be intact. In the early stages, the family member may not exhibit memory loss or confusion. During this stage, caregivers are encouraged to engage their loved one in learning about the illness, its symptoms and course of progression. It is important during this time to begin discussions about long term planning, with special attention to financial and legal matters.

Having long term planning conversations is difficult. To ensure a good outcome, it is best to proceed truthfully and with transparency. Speaking truthfully means courage to talk about the illness and what can be expected as the illness progresses. Being transparent means courage to face your fears and talk openly about them. Having "the" conversation with your loved one with transparency also means acknowledging reality, *"There may come a day when you are unable to respond to mail, pay bills and manage the household budget."* Upholding your family member's dignity is achieved when you include them in the planning and approach them with patience and sensitivity. Most importantly, ask them directly what their preferences and wishes are.

Middle to Late Stage of Caregiving

Cognitive functioning of a person in the middle to late stages of a neurological condition may no longer have capacity to make informed decisions. The concept of informed decision making means an individual can comprehend matters and understand the benefits and consequences of a decision. What happens when a person is no longer able to make informed decisions? The answer to this question circles back to the importance of having long-term planning conversations before the onset of advanced cognitive impairment.

Measures to Protect a Loved One's Finances & Legal Affairs

Planning to protect a family member's finances and legal affairs is determined by the status of their cognitive functioning. When cognitive functioning is intact, the person retains the right to have the say and participate in planning. When cognitive functioning is impaired and legal and financial arrangements have not been established, caregivers may find themselves having to turn to the courts for assistance.

The following is a general overview of financial and legal arrangements that can be established to protect a person's interests in the event of a cognitive impairment.

Personal Banking

When a person's cognitive functioning is intact, it is important to accompany them to a meeting with their banker to inquire about options for a legal representative. Caution should be taken when considering establishing a joint account. Although this arrangement allows for ease of conducting business, it also obligates the caregiver to significant obligations and responsibilities that warrant thorough review and understanding.

Durable Power of Attorney for Finances (DPOA)

Durable Power of Attorney for Finances grants the person appointed as "Agent" authority to access and manage assets on behalf of the principle holder of the DPOA. The word "durable" means the DPOA remains in effect after incapacity. Prior to incapacity the Agent is authorized to act only as directed by the principle.

Advance Health Care Directive

An advanced health care directive is used to document a person's wishes and preferences for how to receive health care and end of life decisions. An Advanced Health Care Directive has two parts, Part One: Durable Power of Attorney (for Health Care), Part Two: Health Care Decisions.

The person named as health care agent has legal authority to make all health care decisions including those to provide, withdraw or withhold artificial nutrition and hydration. The health

care agent also has post death authority to authorize organ donation, autopsy, and disposition of remains.

An Advanced Health Care Directive is important. It gives assurance to the agent and medical team that the decisions being made are based on the patient's wishes. The Directive helps avoid disagreements between family members and prevents a medical provider from have to rely upon a court order for treatment.

Revocable Living Trusts

A revocable living trust is a written document that says how a person's assets will be managed during their lifetime, even if incapacitated. The document outlines how the person's assets will be distributed at time of death. The person who creates the trust is known as the "Settlor," "Trustor" or "Grantor." The person to carry out the trust is named the "Executor."

A Trust is not a document filed in court. The services of an attorney are recommended to ensure proper arrangements are made in the trust such as establishing a new property deed and changing title on financial accounts with banks and brokerages. A trust may be amended or revoked so long as the Grantor is living and has mental capacity. The trust is irrevocable upon the Grantor's death.

Advantages of a Trust:

- A trust is a life management tool. It says how assets are to be managed during a person's lifetime, during incapacity and after death.
 - Helps avoid the need for a conservatorship.
 - Avoids probate of a person's estate after death.
 - Distribution of assets after death is generally quicker and less expensive
 - Avoids Medi-Cal recovery by the state after death
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Will

A will, like a trust, outlines how a person's assets will be distributed upon death. A will, unlike a trust, is not protected from court probate. A will has no legal effect until death and until the court has accepted it for probate.

Conservatorship

Conservatorship may be required in absence of formal estate planning such as a Power of Attorney for Finances and an Advanced Health Care Directive. Conservatorship is a court process resulting in the appointment of a person to serv as conservator for health care, financial decisions and personal arrangements, such as housing. Conservatorship is granted

upon clear evidence presented to the court of a person's inability to manage their own affairs due to mental or cognitive incapacity. The appointed conservator is supervised by the court and must report to the court periodically. A conservatorship remains in place until the person regains capacity or upon death.

In Conclusion

Caregivers, professionals and the courts do not take the subject of managing another person's financial and legal affairs lightly. Arriving at the best solution for your family requires thoughtful planning and a series of intimate discussions.

For information about caregiver services & support, call:
Del Mar Caregiver Resource Center | 1-800-624-8304
Or visit: www.delmarcaregiver.org

This paper was prepared by Sam Trevino, MSW, LCSW, Health Services Manager for Health Projects Center (HPC). HPC is a nonprofit organization that administers the Del Mar Caregiver Resources. For more information about HPC please visit www.hpcn.org