

The Pitfalls of Estate Planning

Sweeping the Minefield of Long-distance Caregiving

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When the time comes for long-term care, most elders prefer to stay in their present location, even if staying there means being at a distance from their primary caregiver. Although the distance creates many hazards, steps can be taken, whether you are the elder or the caregiver, to avoid the minefield of legal and financial issues that await you.

Many times, caregiving is interrupted when the elder has not established an effective estate plan. The most common legal issue confronting caregivers is lack of authority to handle financial and medical decisions if the elder becomes incapacitated or incompetent. With proper estate-planning documents in place, the authority to make financial and medical decisions can be granted to the person that the elder chooses. Thus, while the elder is able to express his or her wishes, the caregiver should discuss with them the need to legally establish someone to handle financial and medical matters in the event of incapacity. The caregiver should also be sure to discuss end-of-life decisions with the elder and ensure that the elder's wishes are memorialized in writing within the proper legal document.

Generally, the estate plan will include a will as well as documents that protect the elder in the event that he or she becomes incapacitated. In Massachusetts, in addition to a will, the elder should execute a durable power of attorney relative to financial decisions and a health care proxy relative to health care decisions. In each document, the elder would name someone to make his or her financial and/or medical decisions if the time came that the elder no longer could

make them. Also, the health care proxy typically contains language guiding the caregiver with respect to end-of-life decisions for the elder. Together, a durable power of attorney and health care proxy protect the elder from guardianship, which is the time-consuming, expensive, and very public process of having a deci-

that the elder could lose the protection of the documents, especially if the elder moves after losing his or her capacity to execute new documents.

Another area loaded with potential problems for the long-distance caregiver is financing long-term care. Many times, the elder hopes that public benefits

hiring a geriatric care manager in the elder's area. A geriatric care manager is a health care professional with training in gerontology, social work, and nursing. In most cases, the geriatric care manager will conduct an assessment of the elder and develop an individualized care plan. In the long-distance caregiving situation, the geriatric care manager will act as a liaison for the distant caregiver.

Here, the manager will oversee the elder's care, providing a report to the caregiver at regular intervals and alerting the caregiver to any potential problems. The geriatric care manager's additional oversight not only provides peace of mind for the long-distance caregiver, but also guards the caregiver from claims that he or she is not conscientiously carrying out his or her duties due to the distance and/or lack of personal oversight.

Even though long-distance caregiving is a minefield, the wisest of caregivers knows that hiring professionals in the elder's area, the caregiver's area, or both, as the case may be, is the equivalent of employing a minesweeper. With proper planning and the advice of elder care professionals, caregivers can defuse and/or avoid the mines, and successfully navigate the minefield of long-distance caregiving.

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sion-maker appointed for the elder by the court.

As the law varies from state to state, another common legal pitfall appears when the estate-planning documents that have been established are not valid. This pitfall usually arises in one of two ways: the documents were prepared in the caregiver's state and are not valid in the elder's state, or the documents were prepared in the elder's state and the elder moves to the caregiver's state as the elder's health declines, and the documents are not recognized in the caregiver's state.

To avoid the pitfall of having unusable estate-planning documents, it would be best to hire an elder-law attorney practicing in the both the elder's and the caregiver's state so that you can be sure the advice you receive will pertain to the law of each state and that any necessary state-specific provisions will be incorporated into the estate-plan documents. Otherwise, it is possible

(Medicaid) will pay for his or her long-term care. Again, each state is different with regard to obtaining approval for public benefits, and there are vast differences between the states as to various issues, including but not limited to asset and income limits, the effect of long-term care insurance, and the effect of gifts. It is imperative to consider the rules in both states when planning if there is any possibility that the elder will relocate to the caregiver's state.

Further, there are also differences in the reach of each state's estate recovery rules, which are the rules that allow the state to recover benefits paid for care from the estate of a recipient who has passed away. Here, proper planning can ensure that benefits will be obtained as efficiently as possible while at the same time minimize the exposure of the elder's estate to recovery efforts.

Every long-distance caregiver should also seriously consider