

Issues of Time and Space

Navigating the Minefield of Long-distance Caregiving

By GINA M. BARRY, Esq.

There comes a point when most of our nation's elders will need assistance with various tasks, such as household management, bathing, dressing, medication management, meal preparation and eating, transferring, and/or using the restroom. In the past, such assistance was typically provided by family members, however, with the increased mobility of our society, it is now common for family members to be too physically distant to provide hands on care.

It is also common for an elder to be unwilling to move closer to their family, even if staying where they are means receiving care from someone other than their family members. Although the distance creates many hazards, steps can be taken to allow successful navigation of the minefield of legal, financial, and administrative issues that lie in wait for the long-distance caregiver.

The most common legal issue associated with providing proper care and oversight from a distance involves establishing proper legal authority to ensure ongoing care in the event of incapacity of the elder. When proper legal authority is not established, caregiving can be interrupted, leaving the elder at risk for physical, mental, and/or financial harm.

This legal issue can be easily resolved through the elder's execution of a durable power of attorney and health care proxy. The durable power of attorney and health care proxy are two distinct legal documents that give the person the elder chooses the authority to make financial and medical decisions on the elder's behalf if the elder is incapacitated.

In the event that a durable power of attorney and health care proxy are not established and the elder loses capacity, it will be necessary to petition the probate court to appoint a conservator and/or guardian to make financial and medical decisions for the elder. The process of having a conservator or guardian appointed is expensive, time-consuming, and results in the elder's



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loss of privacy and legal rights. As such, the overseer of the elder's care should discuss with the elder the need to establish these documents while the elder is still capable of executing them.

In addition, end-of-life decisions should be discussed with the elder, and the elder's wishes should be memorialized in writing within the proper legal document. Ideally, the estate plan will also include a will, which provides clear instructions as to the disposition of the elder's estate upon their passing away.

Because the law varies from state to state, another common legal pitfall arises when the estate planning documents that have been established are not valid or are not recognized. This pitfall usually arises because: (1) the documents were not properly prepared or executed; (2) the documents were prepared in the caregiver's state and are not recognized in the elder's state; or (3) the documents were prepared in the elder's state and the elder moves to the caregiver's state where documents are not recognized.

To avoid the pitfall of having unusable estate-planning documents, it is best to hire elder law attorneys practicing in both the

elder's and the caregiver's states, so that you can be sure the advice you receive will pertain to the law of each state, and any necessary state-specific provisions will be incorporated into the estate-plan documents. Otherwise, it is possible 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.

Financing care is another area loaded with potential problems for the long-distance caregiver. Many times, the elder expects that public benefits (Medicaid) will pay for his or her care needs. Again, each state has different rules relative 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 effects of long-term-care insurance, and the effects of past gifts. Again, it is imperative to consider the rules in both states when planning if there is any possibility that the elder will relocate.

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, and at the same time, minimize the exposure of the elder's estate to recovery efforts.

With respect to administrative issues, coordinating caregivers can be a daunting task. It can also be a serious mistake to rely on an elder's self-reported care needs, because many do not recognize their own needs when they arise. As such, every long-distance caregiver should hire 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 situa-

tion, the geriatric care manager will act as a liaison for the distant caregiver. Here, the geriatric care 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, is the equivalent of employing a minesweeper. With

proper planning and the advice of elder care professionals, caregivers can diffuse or altogether avoid the mines and successfully navigate the minefield of long distance caregiving. ❖

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