BRENNAN & ROGERS PLLC
Informed and compassionate legal care

NEWSLETTER

Why You Need to Plan for Long-Term Care

Thinking about a time when you will need help taking care of yourself is not fun. That is why most people put off discussing long-term care until it can't be ignored. But it is better to start long-term care planning early. Here are some reasons to start planning now:

- **People are living longer and are more likely to need long-term care.** Life expectancies keep increasing, which means you are more likely to need help at some point. At least 70 percent of people over age 65 will require some long-term care services at some point in their lives, according to the U.S. Department of Health and Human Services.

- **Care expenses are high**. Whether you receive care in a nursing home or at home, expenses are rising. The median cost of a private nursing home room in the United States has increased to $97,455 a year, up 5.5 percent from 2016, according to Genworth's 2017 Cost of Care survey.Those figures aren't going to start going down. Proactive planning may enable you to stay home longer, reducing care costs and ensuing your home caring planning desires are not cut short.

- **Family caregivers may not be available or not up to the challenge.** Children often move far away from their parents or continue to have to work due to their own financial needs. This means that your adult children may not be able to easily take of you when the time comes or providing care may burden them in unnecessary ways. Additionally, most children lack the knowledge and skill to ensure you receive the right care.

- **The earlier you plan, the better.** By planning ahead, you may be able to preserve your assets instead of using them all up paying for long-term care and to ensure you can age where and how you hope. In addition, if you plan early, you may have more options for care, including staying home.

The 5 Stages of A Life Care Plan

We have developed a life care planning system with 5 stages:

1) **Annual Client Relationship Service (ACRS)**: The ACRS is an inexpensive monitoring service that asks that you complete an annual report card and return it to us noting only what, if anything has changed over the year. It entitles you to a no cost phone call or email with our firm to encourage you to make use of what we know, to get an

opinion on an issue that concerns you or to obtain a professional referral. It also includes this newsletter. ACRS membership also entitles you to document storage in our office and notary services by our firm.

2) **Annual Client Care Service (ACCS):** The ACCS is the next step in our care service. It entitles you to a home visit by one of our care coordinators, who will conduct a written evaluation of you and your living environment and will make recommendations based on your long-term planning goals and needs. It also entitles you to a couple of follow up hours over the year with that care coordinator to help address your concerns/needs as they arise. Finally, you are entitled to a meeting with your lawyer and all the benefits of the ACRS plan discussed above. The ACCS was developed as a cost effective means of prevention with the hope it will help clients with few or no at home living limitations stay that way by bringing our insight into the home to proactively ward off foreseeable problems and to ensure our recommendations about your estate planning haven't changed due to changes in your circumstances or changes in the law.

3) **Life Care Plan Lite (LCPL)**: Building on the above plans, the LCPL takes matters a step further and intensifies the care coordination activities of our care coordinator. This plan can be an effective means to relieve some of the burden placed on family caregivers, help ensure that clients staying at home can continue to do so safely for as long as it is manageable and help effectively plan for a facility placement, if it comes to that, that works best for the client, their finances and their family.

4) **Life Care Plan (LCP)**: Building on the above plans, the LCP takes matters a step further and offers unlimited care coordination and estate planning services excluding Medicaid (MaineCare) application assistance; in some instances we may offer clients the option between unlimited estate planning services and Medicaid

Changes at Brennan & Rogers, PLLC

In 2017 we added two staff members to our firm, Karen Dillion, LCSW, and Kim Woods. In addition to our full time care coordinator, Edie Reno, Karen Dillion now will be available to assist firm clients. Kim Woods will assist us with administrative tasks and MaineCare applications.

We also added a second office in York to our practice, which is located in the same building complex.

application assistance.

5) **Life Care Plan Plus (LCPP)**: Building on the above plans, the LCP takes matters a step further and gives a client unlimited access to our firm's estate planning, care coordination and Medicaid application assistance. In a LCPP plan, we are all in. LCPP is crisis planning and the stakes, time demands and skills needed are at their highest.

It's Annual Report Care Time

We will be sending out our annual report card to all our clients that have signed up for the Annual Client Relationship Service (ACRS) by mail this year. *If you elected to receive it through our portal, we may to resume that process next year but may discontinue sending report cards and our newsletter by portal altogether and just use regular mail.* We have begun using a new client portal service and the transition is not complete at this time, which requires the change this year to using the mail. On review, we believe that regular mail may be a better option for this service overall, as it ensures our clients have a hard copy on hand to complete and return. We think clients may be more likely to complete a hard copy and less likely to miss the report card if it comes in the mail. For more about our new client portal see below.

Please try to return your report card by the first week in January. We review report cards in bunches, rather than one at a time, for reasons of efficiency, so it is helpful to have as many in at one time as possible. We have made several changes and updates to the report card but there is always room to improve. Please let us know your thoughts. Due to the suggestions of some clients last year, "no" boxes have been added where the only option last year was a "yes". Smilie had designed the report card last year to try to avoid the use of "no" boxes so as to reduce the number of boxes clients felt they needed to check. If you don't check "yes" or "no", we will assume the answer is "no".

A New Client Portal Service

The current portal service has proved to be too complicated for many clients. Ideally, the addition of a portal would promote ease of access to estate planning documents but that has not been the case overall. Our new client relationship management software, **ActionStep**, offers a simplified portal which we believe will promote the original purpose of the portal idea. We will be moving clients from the old portal service to the new portal service during December and January. *Documents that were once password protected will no longer be password protected unless you request that the password protection remain.* The new portal is also more sophisticated than the old portal in that it allows emails/texts to occur within your client portal matter, which are then saved to your matter. This function is an efficient way to alert us of changes that you want preserved within your matter.

What are the Odds You Will Need Long-Term Care?

Planning for retirement and deciding whether to buy long-term care insurance would be a lot easier if you knew your odds of needing long-term care, as well as at what age and for how long. Unfortunately, there's no definite answer. On the other hand, some statistics do provide a bit of guidance.

The Numbers

In 2012, there were about 1.2 million nursing home residents over 65 years old in the United States. Of these,18 percent were 65 to 74 years old, 32 percent were between 75 and 84, 41 percent were between 85 and 94, and 9 percent were 95 or older. Of course, there are fewer of us in each age cohort, so the likelihood of needing nursing home care rises even more steeply with age than these percentages indicate. While these numbers do not reflect other types of long-term care, the need for home care, assisted living, or care provided by family members probably rises at similar rates.

According to the American Association for Long-Term Care Insurance, in 2012 64 percent of long-term care claims were made by those over age 80 and only 9 percent were from those in their 60s. Meanwhile, according to the association's figures for 2008, 44 percent nursing home residents stay less than a year, 30 percent stay between one and three years, and only 24 percent spend more than three years in a facility. Updated numbers would likely indicate even shorter stays as more seniors receive care at home or in assisted living facilities. Those who move to nursing homes do so when they are older and sicker, meaning that they stay for a shorter period of time than in the past. According to one reported statistic, only 40 percent of seniors spend any time in a nursing home.

Interpreting the Numbers

So, what do all of these statistics mean in terms of your planning? First, the odds are that you will not need care until you are at least 80 to 85. Second, if you do need nursing home care, there's a 44 percent chance it will last less than a year (either because you will return home after a period of rehabilitation or you will not survive more than a year) and only a one-in-four chance that your stay will last three or more years. Of course, if it does, your costs will become prohibitive. However, since only 40 percent of seniors spend any time in a nursing home and only a quarter of those stay longer than three years, this means that *statistically you have only a one in 10 chance* of needing more than three years of nursing home care.

Unfortunately, these statistics are somewhat dated and are just statistics. How do any of us know whether we are part of the percentage of seniors who will never enter a nursing home, the percentage who will spend less than three years there, or the percentage who will spend more than three years? We don't, but we can modify the statistics based on our own circumstances, especially with respect to certain factors.

Key Factors

Family History: Did your parents live to a ripe old age with no cognitive impairment or were they diagnosed with dementia at 72, requiring continuing care for another 10 years? While we do not have our parents' exact genes or live their same lifestyle, there are likely to be some similarities.

Health and Fitness: Do you have any illnesses or conditions that could lead to future impairments or are you in good health and take good care of yourself? Are you overweight or obese, which can lead to illness and disability? Of course, in terms of long-term care, health can cut in both directions. Bad health can lead to the need for care or it can cause an early death, eliminating the need for care. Good physical health can delay the need for care but, in the event of cognitive challenges, mean that you live a long time with impairments.

Family Situation: If you do need assistance in the future, do you have a spouse, children or other family members who could provide care? Or would you need to pay for it whether at home, in assisted living or in a nursing home?

We have statistics on the need for nursing home care because nursing homes are highly regulated. We know how many people are in them at any one time and how long they stay. We don't know for sure how many seniors are receiving care at home or in assisted living facilities. But let's assume for the sake of argument that for every person living in a nursing home, there's another receiving care at home or in assisted living. Then we can assess the average likelihood of needing care as follows:

No Need for Care	0 - 1 Year	1 - 3 Years	More than 3 Years
22%	35%	24%	19%

Then, you can adjust these numbers up or down based on your health, family history and family situation. For instance, if you are in excellent health, you might add 10 percentage points to the likelihood that you will not need any care, reducing the likelihood of needing 1 to 3 years or more than 3 years of care by 5 percentage points each. If, on the other hand, one of your parents needed a decade of care due to Alzheimer's disease, you might add 5 percentage points each to the longer levels of care, taking 5 percent off of both the "no need" and the "less than one year" categories. Statistically, men are more likely to receive assistance from their wives, than women from their husbands, in large part because women live longer on average.

While this is far from perfect, by developing your own table you will have a better idea of how to protect yourself and your family's finances should you require long-term care. Your attorney can help with this planning, explaining your options and the steps that can be taken now to avoid a bad outcome later.

To this analysis you might also factor in how proactive you are being in terms of gaining access to early care coordination and to legal oversight. Our Life Care Planning approach is designed to help clients, at least in part, be more proactive about their legal and care coordination needs, rather than waiting and reacting only when a crisis arises.

New Medicare Cards Are Coming

In 2015, the Medicare Access and CHIP Reauthorization Act was passed; this Act requires that Social Security Numbers be removed from all Medicare cards by April 2019. Medicare will be issuing new cards with new ID numbers to all 60 million Medicare beneficiaries. The reason Medicare is taking this step is to keep personal information more secure and to combat identity theft and fraud. In preparing for this transition, Medicare will be sending handbooks to all enrollees. Medicare also has a call center ready to answer questions from physicians and beneficiaries.

Medicare has historically used an individual's Social Security number as his or her Medicare number. Starting in April 2018, individuals with Medicare will start receiving new Medicare cards. The new Medicare number will be unique and will be used only for Medicare coverage. The new card will not change coverage or benefits. The new Medicare cards will have a randomly assigned Medicare Beneficiary Identifier made up of a combination of 11 upper case letters and numbers.

The Center for Medicare and Medicaid Services (CMS) has established a transition period during which individuals can use either the Social Security based Medicare number or the new Medicare Beneficiary Identifier. This transition period will begin on April 1, 2018 and will end on December 31, 2019. On January 1, 2020, all beneficiaries will need to use the Medicare Beneficiary Identifier on all claims with a few exceptions.

In order to prepare for the transition to new Medicare cards, make sure your mailing address is up to date. If you need to update your mailing address, contact Social Security at sss.gov/myaccount or call 1-800-772-1213. Beware of anyone who contacts you about your new Medicare card. Medicare will not call you and ask you to give out personal information. Your new Medicare number is confidential and you should protect it as you do your Social Security number. Keep in mind that it will take some time for all 60 million Medicare beneficiaries to receive their new Medicare cards, so your card may arrive at a different time than your friends or neighbors.

If you would like additional information about the new Medicare cards, please check CMS.gov.

Always Put Caregiver Contracts in Writing

Maine has strict requirements regarding whether or not payments to caregivers, family members in particular, will be honored or treated as gifts that trigger penalties. To avoid being treated as gifts, the following criteria must be met:

1) Payment for caregiver services must take place at the time the services are rendered;
2) Caregiver services must be performed after written agreement has been executed;
3) The applicant (for MaineCare) may not be residing in a facility;

4) The caregiver services must have been recommended, in writing and signed by a physician, as necessary to prevent the applicant from residing in an assisted living facility or nursing home; and
5) The agreement must show the type, frequency and duration of the services being provided and the amount of money or property being received by the provider.

Legal Updates

Maine: Section 1115 Waivers

Maine's Department of Health and Human Services (DHHS) wants to change Maine's Medicaid program (MaineCare). DHHS is applying to the Federal Government for a Section 1115 Waiver. These waivers are supposed to promote the purpose of the Medicaid Program, which is to provide medical assistance to people who can't afford the health care they need. Instead, DHHS, without input from elected policy officials, is seeking a Section 1115 waiver that may create barriers that reduce access to timely and appropriate health care for thousands of Mainers. An overview of the changes that are being sought can be viewed at Maine Equal Justice Partners website or by going to https://www.mejp.org/sites/default/files/Medicaid-Waiver-Section-1115-Summary.pdf.

For seniors, the provisions of the Section 1115 Waiver that are concerning are: 1) The elimination of retroactive Medicaid eligibility (current law allows for eligibility to date back 3 months prior to the month of application, if the person had incurred prior medical bills and was otherwise eligible during the retroactive period). The proposed change would only allow eligibility to date back to the first day of the month of application. 2) The imposition of penalties on the elderly and disabled who have annuities. Elderly and disabled spouses who transfer funds into annuities may now be subject to new restrictions. These penalties could drastically change our ability to make an individual eligible for MaineCare when we are planning for an individual with a spouse living at home.

Lawyer Scuttlebutt - DHHS Rolls Out New "No Negotiations" Policy

It has been related to us by another attorney that Department of Health and Human Services (DHHS) is rolling out a "no negotiations" policy when it comes to settling sticky legal issues. If true, this change, which coincides with the appointment of Ricker Hamilton, who replaced Mary Mathew earlier this year, as the commissioner of DHHS, may make preplanning that much more important and signal legal battles to come. Our office has yet to experience any direct experience of a change in policy but the change in leadership may in fact be changing the landscape we will face in when sticky legal issues with DHHS.

Federal Law

1) Social Security: Social Security beneficiaries will receive a 2 percent increase in 2018

2) Tax Overhaul: The tax plan put forward by the Republican-led House of Representatives would eliminate many current deductions, and getting rid of one of them in particular could deal a financial blow to seniors and individuals with disabilities. The plan proposes eliminating the medical expense deduction, a change that will especially affect those needing long-term care (such as health insurance premiums, nursing home fees and home health care costs) or that pay for long term care insurance, all of which now qualify as medical deductions to the extent they exceed a percentage of income. There are numerous other proposed tax changes that may impact our clients. It may be that a second newsletter is needed this year to circle back and review the final outcome.

3) Reverse Mortgages: The Department of Housing and Urban Development has announced changes to the federal reverse mortgage program that will raise reverse mortgage fees for some borrowers and lower the amount homeowners can borrow. To start, HUD is changing the mortgage insurance premium fees that homeowners pay in order to obtain a loan. Currently, homeowners pay 0.5 percent of the value of their home as an upfront mortgage insurance premium on smaller loans, but homeowners who take out a loan that is more than 60 percent of their home's value pay a 2.5 percent premium. The new rule will require homeowners to pay a standard 2 percent upfront mortgage insurance premium. Homeowners considering a large reverse mortgage may want to wait until after the new rules go into effect. To offset the upfront costs, the annual mortgage insurance premium rate will be dropped from 1.25 percent to 0.5 percent. In addition, HUD is lowering the amount that homeowners can borrow. The average borrower at current interest rates will be able to borrow only around 58 percent of the value of their home, down from 64 percent. The changes are set to go into effect on October 2, 2017. The changes will only affect borrowers who take out new loans; they will not affect existing loans.

4) What if the Estate Tax is Repealed? The current estate tax exemption is $5,490,000. Maine adopted the federal estate tax exemption on 1/1/2016. That means that if you have less that $5,490,000, your estate won't pay any estate tax. If the estate tax is repealed, clients that have estate planning documents, usually revocable trusts, that contain estate tax planning should have their documents reviewed.

Don't forget!

The ACRS includes a no cost phone call or email. If you have questions or concerns, let us know!

Happy Holiday!