SMART PLANNER

Useful Tips for a Better Tomorrow Spring 2015

Advance Directives: How to Take Charge of your Healthcare Choices

What happens when you lose your capacity to make decisions about your medical care?

The news these days is full of stories about people on life support and their family members fighting over whether brain dead means something different than dead.

What if you were the one on life support? What would you choose?

Ideally, you would have already chosen, and your wishes would be clearly spelled out in your advance healthcare directives. Unfortunately, only about 30% of Americans have made their wishes known.

Advance directives are not just needed by older adults; young people on life support are making the news. Advance directives are important for all adults.

What are advance healthcare directives?

Advance healthcare directives are a key component of your estate plan. Your Last Will and Testament specifies how you want your estate to be distributed upon your death. Your Power of Attorney appoints someone you trust to take charge of your finances if you become incapacitated. In your advance healthcare directives you will:

1. Appoint a healthcare representative, sometimes called healthcare agent or durable power of attorney for healthcare.
2. Define the types of medical interventions and life support measures you want, or do not want, at the end of your life. This is called your Living Will.

What is life support?

Some of the commonly used life support measures include:

- Artificial nutrition and hydration (tube feeding)
- Cardiopulmonary resuscitation
- Mechanical ventilation
- Kidney dialysis

What you decide is up to you and you alone. You may want every technological innovation available regardless of your medical condition, or you may choose to have a good quality of life without excessive life prolonging interventions.

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GOOD TO KNOW

How to Retrieve a Letter You Mailed by Mistake

Believe it or not, you can retrieve a letter you've already mailed. All you have to do is go to the post office and file a Sender's Application for Recall of Mail. The service is **absolutely free**. But hurry. Your chances are best if you contact the post office before the mail is collected from the mailbox.

Wrinkles should merely indicate where smiles have been.

– Mark Twain

THE ABLE ACT:
What is it and How Will it Help People with Disabilities?

Legislators recently passed the federal Achieving a Better Life Experience Act (ABLE), which will allow individuals with disabilities or their families to open savings accounts, with no tax on the earnings, to pay for certain qualified expenses.

The federal law states that individuals can build up a financial cushion without fear that their eligibility for Social Security and Medicaid benefits will be jeopardized.

We are hoping that, in the near future, this federal opportunity will become a reality for Connecticut families and individuals with disabilities.

Currently, to qualify for many public benefits, people with disabilities can only have $2,000 in assets — making it very difficult to save for retirement, education or even general living expenses.

With ABLE, they can now put money aside for expenses that Medicaid and Supplemental Security Income don't cover.

Expenses covered under ABLE:

- Education
- Housing
- Transportation
- Employment training and support
- Assistive technology and personal support services
- Health, prevention, and wellness
- Financial management and administrative services
- Legal fees
- Expenses for oversight and monitoring
- Funeral and burial expenses
- Any other expenses approved under regulations

Important facts (Federal Statute):

- ABLE accounts are available to **individuals who have become disabled before age 26** and (1) receive Social Security Disability Insurance (SSDI) or SSI; or (2) file a disability certification under rules that the IRS will write.
- **Up to $14,000 per year can be saved, and the lifetime contribution cannot exceed the state-based limits for 529 accounts.**
- **Only one account can be opened** per individual, and anyone can contribute to it with cash only, tax free, including the person with the disability.
- An ABLE account will **only affect SSI if it exceeds $100,000**. If the ABLE account exceeds $100,000, the monthly SSI benefit will be suspended until the account balance falls below $100,000. Eligibility for Medicaid will not be affected.
- When the person with the disability dies, Medicaid inherits the ABLE account funds first, then the heirs.
- Assets in an ABLE account **can be rolled over without penalty** into another ABLE account for either the beneficiary or any of the beneficiary's qualifying family members.
- **ABLE accounts will not replace other planning tools such as special needs trusts;** they serve as an additional tool to address financial challenges of individuals with disabilities. Which tools work best will depend on individual needs and circumstances, and each individual or family should consult with a special needs planning attorney to determine how an ABLE account might fit into a comprehensive special needs plan.

What's the outlook for Connecticut?

Although federal law applies uniformly to all states, individual states may regulate ABLE accounts differently. At this point in time, there is no language in the Connecticut bill to indicate that ABLE account balances will be excluded from being counted as assets for Medicaid. This must be remedied as it defeats the whole purpose and intent of the federal legislation.

We anticipate the federal program will be rolled out later this year. Connecticut legislators need to pass the bill, hopefully with some modifications, so that we'll have a better idea as to when Connecticut residents can open these accounts, later this year or early 2016.

ABLE is much more than a savings account. It's about self-sufficiency, helping people live independently, work, and go to college. It's about allowing people with disabilities to save money to achieve the best life possible, just like anyone else.

Q&A

We invite you to submit your questions to us at plantoday@ctseniorlaw.com.

I divorced a while ago and remarried. My ex-wife has not remarried. I was told that she could apply for a spousal Social Security benefit based on my work record. Will this reduce my current wife's spousal benefit?

No. Your former wife can apply for spousal benefits based on your earnings record, and the collection of that benefit will have no impact on the amount of the spousal benefit that your current wife can receive. Your former spouse can collect spousal benefits as long as she was married to you for at least 10 years, is 62 or older, and has not remarried. If you die first, both women will be able to collect a survivor benefit based on your work record.

Estate Planning and Disgruntled Heirs: Ways to Avoid the Fight

By Carmine Perri, CzepigaDalyPope

Because of my practice area, probate and elder law litigation, I oftentimes find myself in either the courtroom or the hallway with a client fielding this all-too-common question:

"What could we have done to avoid all of this?"

You probably have an estate plan which means you have certainly taken a step in the right direction to protect your assets and ensure that they get distributed as you wish.

But you may be able to do more.

Consider this all too common scenario:

- You pass away, leaving your entire estate to your daughter
- Your daughter seeks to probate your Last Will and Testament
- Your disgruntled step son from a prior marriage believes that when you executed your Will, you did so under your daughter's undue influence
- Your step son challenges the admission of your Will in Probate Court, which could take months and, if he loses, he has the right to appeal to the Superior Court, a process that could take years

Ultimately, all of this takes time and prevents, or significantly delays, your daughter from receiving her inheritance, a fact not lost on the disgruntled step son.

So, if your daughter comes to me in the hallway, at a break in the action during the Will contest, and asks me . . .

"What could mom have done to avoid all this?"

Here is a sample of what I'd tell her:

Your mom could have **added a living trust to her estate plan**, where she could have transferred legal title of assets to a trustee (oftentimes the owner of the assets). One of the benefits of the living trust is that the trustee has immediate access to the trust assets.

Another possible solution is that she could have **set up joint bank accounts**, payable on death accounts, or transfer on death accounts. Of course, estate planning must be tailored to each person but accounting for these issues in the first place is a must.

In my experience, a successful outcome is one where you or your beneficiaries avoid court by preemptively addressing issues before they arise.

Believe me, the disgruntled step son is looking for access to some assets. If there is no access, there is nothing to be disgruntled about. If there is nothing to be disgruntled about, your daughter receives what you intended her to and the step son turns his opportunistic eye elsewhere.

Advance Directives

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The only way your family members or physicians will know your wishes is if you tell them, and to tell them in a written, legally enforceable document. They may not agree, but they cannot dispute what you have decided if it is unambiguously stated in your Living Will.

What if I want to change my advance directives?

Your advance directives are not written in stone. You should re-visit your healthcare wishes every few years or whenever any of the "5 Ds" occurs:

❶ **Decade** – when you start each new decade of your life.

❷ **Death** – whenever you experience the death of a loved one.

❸ **Divorce** – when you experience a divorce or other major family change.

❹ **Diagnosis** – when you are diagnosed with a serious health condition.

❺ **Decline** – when you experience a significant decline or deterioration of an existing health condition, especially when it diminishes your ability to live independently.

Who should get a copy of my advance directives?

You should tell the following people that you have completed an advance directive and give them copies of the directives you have made:

- Your physician
- The person(s) you have named as your health care representative
- Anyone who will make the existence of your advance directives known if you cannot do so yourself such as family members, close friends, your attorney or your clergy

Life is full of surprises — don't leave your end-of-life plans to chance. Take charge now and, working with us, clearly spell out your wishes in your advance healthcare directives. If you don't, someone else will make the choices. And that's a pretty scary thought.

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April 7	**Paying for Long-Term Care** Glastonbury Hills Country Club
April 8	**Estate Planning: Don't Make These Mistakes!** Farmington Senior Center
April 8	**Paying for Long-Term Care** Wethersfield Adult Ed
April 12	**Estate Planning: Don't Make These Mistakes!** Emmanuel Synagogue Men's Group, West Hartford
April 14	**Estate Planning: Don't Make These Mistakes!** Wethersfield Senior Center
April 14	**How to Protect Your Home and Assets if You Need Nursing Home Care** Windsor Senior Center
April 20	**End of life planning: Living Will, DNR, POAs & Conservators** Ashlar Village, Wallingford
April 23	**Paying for Long-Term Care** Glastonbury Adult Ed
April 28	**Paying for Long-Term Care** Meriden Adult Ed
May 4	**Estate Planning: Don't Make These Mistakes!** Meriden Adult Ed

To see our Adult Education schedule, go to www.ctseniorlaw.com.

SMART PLANNER

Spring 2015

Special Insert For Legal, Financial and Healthcare Professionals

New Jersey Settles Federal Lawsuit Involving Veterans Benefits and Medicaid Eligibility

In a case involving ElderLawAnswers member attorney Donald Vanarelli, the state of New Jersey has settled a class action lawsuit and agreed not to count veterans pension benefits as income when determining Medicaid eligibility. Plaintiffs' counsel has been paid $100,000 in fees.

As ElderLawAnswers previously reported, Alma Galletta filed a class action lawsuit against New Jersey, seeking to enjoin the state from treating Veterans Administration Improved Pension (VAIP) as income for Medicaid eligibility purposes. Ms. Galletta argued that the entire income she received from her VAIP benefit resulted from unusual medical expenses, so it should not count toward her income for Medicaid eligibility purposes.

After a U.S. district court enjoined the state from counting one of the class member's VAIP as income, the state began settlement negotiations with Ms. Galletta. On February 6, 2015, the court approved a consent order between the parties, in which the state agreed that VAIP will not be included as countable income during the Medicaid eligibility process and a notice will be distributed to caseworkers explaining the ruling. Ms. Galletta also received Medicaid benefits retroactive to her application. In addition, the court approved $100,000 in fees and costs for the plaintiffs' attorneys.

Special Needs Trust Fairness Act Reintroduced in the House

Reps. Glenn Thompson (R-PA) and Frank Pallone reintroduced the Special Needs Trust Fairness Act (H.R. 670) today to allow individuals with disabilities, who have the mental capacity, to create their own special needs trusts. This legislation would enable a disabled individual's assets to be held in a trust and used to supplement daily living expenses and care when government benefits alone are insufficient.

Under current law, only a parent, grandparent, legal guardian of the individual, or a court can establish a special needs trust. Those who do not have a parent, grandparent, or legal guardian must petition the court causing unnecessary legal fees.

In the last Congress, the Special Needs Trust Fairness Act garnered support from 12 Republicans and 10 Democrats in the House of Representatives. The Act also had bipartisan support in the Senate, passing out of the Senate Finance Committee as part of a larger package that primarily sought a permanent fix to a physician payments issue under Medicare. Unfortunately, Congress could not come to an agreement on the permanent fix and passed a temporary extension on the physician payments issue for one year, ending March 2015.

Attorney Liable to Third-Party Beneficiary Over Bungled Will

A Virginia court has ruled that an attorney is liable to a third-party beneficiary for more than $600,000 after a will he drafted failed to provide the fully intended bequest to the beneficiary, *Virginia Lawyers Weekly* reports.

Alice Dumville hired attorney James Thorsen to draft her will to ensure that her estranged husband did not receive any of her assets. The will left her estate to her mother and, if her mother predeceased her, to the Richmond Society for the Prevention of Cruelty to Animals (RSPCA). Ms. Dumville's mother died in 2007, and Ms. Dumville died in 2008.

Mr. Thorsen sought to have the will interpreted to leave everything to the RSPCA, but the court determined the will left only tangible personal property to the RSPCA. According to *Virginia Lawyers Weekly*, Mr. Thorsen was shocked that

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Attorney Liable over Bungled Will

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the will did not distribute the estate as Ms. Dumville intended.

The RSPCA sued Mr. Thorsen for legal malpractice. Mr. Thorsen acknowledged that the will did not reflect Ms. Dumville's intentions, but he argued that the RSPCA could not sue for legal malpractice because it was a third-party beneficiary of the will. According to Mr. Thorsen, the RSPCA stood in second place after Ms. Dumville's mother and Ms. Dumville's main intent with the will was to keep her estranged husband from inheriting.

The RSPCA used Mr. Thorsen's own words from the case interpreting the will and argued that Ms. Dumville's intent was that the RSPCA should inherit if Ms. Dumville's mother predeceased her. The circuit court judge adopted the RSPCA's findings and awarded it $603,409.90 in damages. Mr. Thorsen has said he will appeal the decision to the Supreme Court of Virginia.

DID YOU KNOW . . .

that we offer settlement planning?

Government benefits can be essential to the long term security of your client with a personal injury. We can help you make sure your client's benefits are protected when there is a settlement. Call us at **(860) 236-7673**.

UPCOMING EVENTS

Financial Planners Association annual conference

Date: April 22

Location: Aquaturf, Southington

Paul Czepiga to present *POA Pitfalls: How to spot potential threats and why the POA is more important than ever*

Business Connections – Doing Well by Doing Good

Date: April 23

Location: Town and County Club, Hartford

Sharon Pope to talk about how our professional work educates and sensitizes us to challenges that we want to improve. Sharon will share her experiences of how she blends her work with giving back to the communities she serves.

Hartford County Bar

Date: June 12

Location: Hartford

Sharon Pope is a panelist talking about career changes for women lawyers.

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