



Question: I am 56 years old, my husband is 60, and our children are grown. Our parents are in their mid-80's. We are in good health, but recently began talking about the need to plan for our future health and long-term care given the rising cost of medical care and health coverage that everyone is apparently taking for granted. Our question is: When should the planning process begin, and what should be done, as our parents are still in good health?

Answer: Assuming that you believe in the concept that planning should begin at a time when the most options are available, we believe that the health care and long-term care planning process should start as early as possible, especially if: 1) you are over age 40; 2) you have parents who are aged 62 or older; 3) you live in one of the states that makes children responsible for their parents' medical care; 4) you have a disabled child; 5) you are divorcing; 6) you are divorced and are paying long-term support to a former spouse; 7) you are over age 45 and are remarrying; 7) you are marrying for the second time -- or even more, or 9) your family has a history of Alzheimer's Disease, stroke, or other chronic illness.

What are the basics? First, you must understand that the only ways to pay for long-term care in a nursing home are 1) out of your own pocket, 2) with long-term care insurance, or 3) via Medicaid after you have become impoverished. If you are over age 65, Medicare will pay for nursing home care only in limited circumstances for a limited period of time. Second, understand that the only payment sources for assisted living are 1) your own money, or 2) long-term care. This is because Medicare coverage of nursing home care is very limited. Third, understand that if you have a premarital agreement providing that you are not responsible for your spouse's obligations, your agreement is not binding on third persons – meaning that if your spouse enters a nursing home or requires medical care or other "necessaries," your assets can be tapped for this care.

What is the best way to begin the process? We believe that the first step is for family members to seek the advice of a qualified attorney in their state of residence who can explain the ins and outs of long-term and health care planning. Then, at a minimum, family members should sign appropriate durable powers of attorney, durable health care powers of attorney, and wills designed for their specific individual needs and circumstances. We caution our readers not to rely on forms, kits, books or computer programs for "do-it-yourself" documents when you are dealing with issues this important. And, lastly, we suggest that you look into long-term care insurance as a way to either fully or partially fund long-term care expenses should they occur. The younger you are, the lower the cost.

Question: My mother was in a nursing home for nearly two years as a private-pay patient before my father could get her qualified for Medicaid by "spending down," that is, paying more than \$120,000 to the nursing home. Feeling he had paid all that was necessary, Dad changed his will, excluded my mother from his estate, and left everything to me and my

two sisters. When he died, we were told that Mom's Medicaid was being terminated because she was entitled to one-third of his \$180,000 estate but didn't make a claim for her share. The money in Dad's estate came from the sale of his home. Why did this happen?

Answer: Even though your Dad thought he was "cutting your mother out," as a married individual in your state of residence, your mother apparently has a statutory right to elect to take against your father's will and acquire one-third of his estate. In the eyes of the Medicaid folks, the decision of your mother -- or her guardian -- not to file this claim to one-third of your father's estate was treated as if your mother had received the \$60,000 and then gave it away -- thus disqualifying her from benefits. In other words, if an individual on Medicaid is entitled to assets but does not receive them because of action or inaction on his or her part, he or she is deemed to have received the asset and then given it away.

Your father could have avoided this unintended result by, among other options, using a QTIP or "special needs" trust in his will.