

THE PLAIN TRUTH ABOUT ALZHEIMER'S DISEASE

**And the 9 Steps You Need to Take Right
Now to Care for Your Loved One and to
Protect Your Family's Finances**



***Crucial Information for
New Jersey Families***

**Fredrick P. Niemann, Esq.
Elder Law, Asset and Estate Protection
Planning, Medicare, Medicaid and Veteran's
Benefit Assistance Lawyers**

HANLON NIEMANN, PC

FREDRICK P. NIEMANN, Counsel
3499 Route 9 North, Suite 1F
Freehold, NJ 07728
Phone: (888) 800-7442 Fax: (732) 780-3440
Email: fneimann@hnlawfirm.com

A Message from Fredrick P. Niemann, Esq.

Dear Friend,

I understand your concern. You may have a loved one or know someone with Alzheimer's and you're worried. You are concerned about getting good care ... and you're wondering how you can possibly care for your loved one throughout the Alzheimer's process.

And when you think of the cost... you begin to worry about how you might lose everything to Alzheimer's. It's very upsetting.

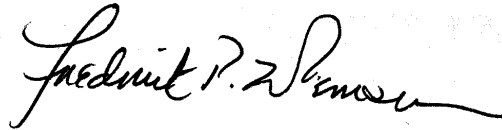
But there is hope. My firm has helped families throughout New Jersey cope with Alzheimer's. We are here to help our clients every step of the way.

We work with families only in those situations where we can truly help. We are not some "legal factory." And since we genuinely care about our clients we offer more personal attention for you and your family.

Plus, we know how the system works ... we know how to qualify for Medicaid benefits and Veterans benefits when they're needed. Clients hire us when a loved one is in the very early stages and pre-planning is possible ... or in the middle or late stages where crisis Alzheimer's planning is needed.

If you would like to discuss your situation, call us today at (732) 863-9900 in New Jersey or Toll Free at 1-888-800-7442. You can also reach me personally at fniemann@hnlawfirm.com, or visit us at www.hnlawfirm.com.

Warmly,

A handwritten signature in black ink that reads "Frederick P. Niemann". The signature is fluid and cursive, with a long horizontal flourish at the end.

Frederick P. Niemann

INTRODUCTION

For those suffering from Alzheimer's, routine tasks such as bathing, dressing, eating, meal preparation, and paying bills may become difficult or impossible. In some cases, your loved one may be able to understand and comprehend some things. In other cases, your loved one may have completely lost the ability to communicate or make decisions. For some Alzheimer's patients, in-home assistance may be required. For others, care in a skilled nursing facility or an assisted living environment may be necessary.

Unfortunately, where Alzheimer's is concerned, families are often not quick to obtain necessary and appropriate medical care for their loved one in these situations. Perhaps it's out of fear. .. fear that it truly is Alzheimer's or fear that the family will lose everything. Or perhaps they don't seek help because they're ashamed or embarrassed to admit what's going on. What's more, they may be worried that they will have to help their loved one come to terms with the idea that life will be different. Loved ones may become agitated and upset when they no longer can control what is

going on around them and they face losing their privacy and their independence.

Alzheimer's disease also raises legal questions that require immediate planning. Making these legal decisions may seem overwhelming to care givers who are already emotionally and physically exhausted. Nevertheless, legal planning can help the family get the appropriate care for their loved one while also protecting the family's resources.

Don't let what may seem to be overwhelming circumstances paralyze the decision-making process. With good and accurate information, you will be able to understand the options available to you so you can make the important decisions that lie ahead. To that end, this guide has been designed as a road map for your journey through Alzheimer's (or other dementias) and through the aging process in general. We hope you find this booklet useful as you navigate these difficult roads.

As elder care attorneys, we encounter these issues on a daily basis, and we are familiar with the questions you have. We know that you need answers. We know that often, it is difficult to get the answers you seek in one location. That's no longer the case.

Our office is pleased to offer our trained staff as a resource for you. Please accept our offer to call for more detailed information or to ask questions specific to your situation.

WHY PLAN AHEAD?

When your loved one is diagnosed with Alzheimer's you are faced with many different issues: How do you handle your loved ones' affairs when they can no longer do so? How can you provide care for your loved one without neglecting other family members or your job? Can you get help caring for your loved one if you are physically unable to provide that care yourself? Is financial assistance available to offset the expenses of caring for your loved one?

If you have a loved one with Alzheimer's, It IS critically important that you answer these questions now ... before a crisis hits.



Legal pre-crisis planning allows you to arrange and organize financial and health care matters before the need for long-term care arises. Decisions can be made thoughtfully and carefully based on accurate and up-to-date information.

Alzheimer's disease is a progressive, neurological brain disorder. During the different stages of Alzheimer's disease, we recommend specific legal planning to avoid crisis decision making at a later date. The following is a brief listing of tasks that can be accomplished during specific stages.

Stages of Alzheimer's Disease

No two cases of Alzheimer's are ever alike, but researchers have been able to identify certain patterns in the progression of the disease. These are known as the seven stages of Alzheimer's Disease. There is no established length of time for any of the stages since each individual case progresses at a different pace.

Stage 1:

This stage may last for several years. It is characterized by the destruction of nerve cells and accumulation of plaque. There is usually no outward sign the disease is taking hold.

Stage 2: Slight memory loss begins to occur. An individual may struggle to remember names, recall recent events or find items, such as car keys or bills. It is not uncommon for sadness, depression or anxiety to set in.

Stage 3: Memory loss is more pronounced and begins to interfere with work and home life. An individual in this stage may find it hard to recall the names of everyday objects, run even short errands or retain anything they read. Following recipes or balancing a checkbook may also be difficult. These symptoms often

lead to frustration, anxiety and denial for both the individual with Alzheimer's and their loved ones so people in this stage often begin to withdraw from social situations.

Stage 4: Memory loss becomes even more pronounced in this stage. Appointments are quickly forgotten as are current events or family activities. Watch for a change in sleeping habits, wandering, anger, paranoia or depression.

Stage 5: The individual needs assistance with activities of daily living, such as cooking, picking out clothes and grooming. They may be unable to recall phone numbers, addresses or the names of people they do not see frequently.

Stage 6: Help will be needed with even the most basic of activities - bathing, eating and using the bathroom. Individuals in this stage also have trouble remembering any recent events or the names of their loved ones although events in the distant past may still be quite vivid. Delusional thinking and paranoia often set in, sometimes leading to violent behavior. The individual may sleep more often and withdraw, while talking less and less frequently.

Stage 7: Individuals in this stage are usually bed-ridden, incontinent, incapable of feeding themselves, speaking or communicating in all but the most rudimentary of ways.

LEGAL PLANNING

Legal Planning in the Early Stages

1. Research the different services available.
2. Discuss options and specific wishes for support, including home care, alternative living situations, and adult day care.
3. Call to find out what local resources are available to you from the Office on Aging. Nationwide toll-free 1-877-222-3737, or Monmouth County 732-431-7450, Ocean County 732-929-2091, Mercer County 609-989-6661, Middlesex County 732-745-3295.
4. Learn about qualification for and benefits of Medicaid and whether Medicaid will be an option in your situation.
5. Contact an Alzheimer's planning attorney to make sure appropriate estate planning is in place, sign financial and health care powers of attorney and learn how to qualify for Medicaid benefits. It is

extremely important this be done as early as possible, before the ability to make decisions is lost.

Legal Planning in the Middle Stage

1. Finalize legal and financial planning. Consider Home-Based Care Services and Veterans benefits.
2. If you haven't already done so, contact an Alzheimer's planning attorney to make sure appropriate estate planning is in place, sign financial and health care powers of attorney and learn how to qualify for Medicaid benefits. It is extremely important this be done as early as possible, before the ability to make decisions is lost.



Legal Planning in the Late Stage

1. If application has not been completed, start Medicaid process with the help of an Alzheimer's planning attorney.
2. Make sure all health care directives are in order. If not done by this point, it may be too late to do Power of Attorney forms. In that case, guardianship and/or conservatorship proceedings may be necessary.

In recent years, qualifying for government benefits has become much tougher. That's why it is so important to consult an attorney who understands what legal steps must be taken when an individual has received a diagnosis of Alzheimer's Disease or other dementia. Consult an elder care attorney as soon as possible to determine how to preserve the greatest amount of assets, qualify your loved one for all the benefits to which he or she is entitled and ensure the right estate planning is put into place before the ability to make decisions is lost.

The sooner the planning takes place, the more likely it is that the best results for your family can be achieved.

STEP 1

Consider Health Care Directives

HEALTH CARE POWER OF ATTORNEY

A health care power of attorney (HCPOA) is a written document that allows you (the principal) to designate someone else (the agent) to make health care treatment decisions for you if you can't. The HCPOA is only applicable if you (the principal) become incapable of making health care decisions for yourself. The HCPOA must:

1. Clearly declare the principal's intent to delegate the power to make health care decisions to a specific person.
2. Be signed by a principal who has legal capacity and is free from duress;
3. Should be witnessed by at least two adults who are not the agent, a relative or heir of the principal or directly involved in providing health care to the principal.

The principal should choose an agent who is trustworthy and who will be willing to make the necessary

health care decisions. The principal should also give a copy of the HCPOA to the physician and to the agent so that the agent can exercise the decision-making authority if necessary. As long as the principal has sufficient capacity, the HCPOA may be revoked or changed at a later date.

It is crucial that the Alzheimer's patient designate someone to act on his or her behalf while they are still able to do so. If they wait too long, and lose capacity to act, a costly court proceeding, called a guardianship, may be needed.

Having a health care power of attorney will maximize a person's chances of avoiding court involvement, which is restrictive, expensive, and time consuming.

LIVING WILL

A living will is an expression of your wishes regarding end-of-life decisions. If you don't want to be kept alive artificially (for instance, hooked up to a feeding tube), should you be terminally ill and unconscious, then you should sign a living will making your wishes clear. For a doctor to withhold or withdraw artificial life

sustaining treatment, the law says there has to be clear and convincing evidence that says what the patient's wishes are. The best way to accomplish this is by signing a living will.

A living will can be tailored to suit your wishes. For example, some people don't want their lives prolonged in any way if they are terminally ill and unconscious; while others may want all means possible used to keep them alive. Still others may wish to decline all life prolonging treatment with the exception of food and water. By stating your wishes, you get to choose.

Regardless of the decision, it is critical that you discuss your wishes with your family members and loved ones. While a living will is clear and convincing evidence of a person's wishes, it is possible that from a practical standpoint, in a true end-of-life situation, the document's strength might be diminished if parents, children, or spouses claim the living will does not reflect their loved one's wishes.

Begin by contacting an elder care attorney to discuss questions you have about living wills. Once you've been educated about your options, you can make the

decision that's right for you. Once your decision is made and you have acted on it, you can take the next step of discussing your wishes with your family.

STEP 2

Consider Financial Powers of Attorney

FINANCIAL POWERS OF ATTORNEY

A durable power of attorney for finances (POA) is a written document that allows you (the principal) to designate someone else (the agent) to make financial and legal decisions for you regarding finances - paying the bills, handling investments and bank accounts, paying taxes, dealing with real estate issues and so on.

The principal must be able to understand, in a reasonable manner, the nature and effect of signing a POA. As long as the principal remains competent, a POA can be revoked or changed. In addition, the law also requires the following:

1. The principal must sign the POA willingly and without being coerced.
2. A notary public must notarize the document. Many attorneys also recommend having two witnesses,

unrelated to the principal, witness and sign the document.

In the last few years, laws about POAs have become stricter. The agent must use the principal's assets only for the benefit of the principal. For the agent to receive any benefit at all from the principal's assets, the document must specifically grant such authority.

A POA can be a powerful tool in Alzheimer's planning. In many cases, the POA is the most important tool to be used for planning purposes. It can be used by a trusted agent to make decisions for the Alzheimer's patient when he or she can no longer do so.

If the Alzheimer's patient later loses the ability to act, the power of attorney remains in effect so long as it is "durable." It can mean the difference between preserving assets for the Alzheimer's patient and/or the family... or losing everything to the cost of care. For this reason, getting a proper power of attorney in place can be crucial.

In order to ensure an agent can take full advantage of Alzheimer's planning, the POA should contain the

right legal language regarding real estate, gifting and trusts. An elder care attorney can help with the wording.

STEP 3

Consider Establishing a Revocable Living Trust or Last Will and Testament

REVOCABLE LIVING TRUST

Although many types of trusts exist, for the purpose of this booklet the discussion will be limited to what is commonly referred to as a revocable living trust (also known as an *inter vivos* trust). A living trust is created by someone known as the trustor or grantor.

In a trust, the trustee holds legal title to property for the benefit of one or more beneficiaries. The trustor (i.e. the one who sets up the trust) can also be the trustee and the beneficiary. For example:

Mrs. Green created the Green Revocable Trust. Mrs. Green was the Trustor. The Trust also names Mrs. Green as the Trustee. The Trust also names Mrs. Green's only daughter, Mrs. Blue, as successor Trustee

in the event Mrs. Green becomes incapacitated or dies. For as long as she lives, Mrs. Green is also the Beneficiary of the Trust. Upon Mrs. Green's death, her daughter and heir, Mrs. Blue, will become the Beneficiary and will inherit all of the property in the trust.

A trust may be used for management of assets during a person's lifetime, and the management can continue as directed by the trustor even after the trustor's death. One of the main benefits is that trust assets are not subject to probate.

A revocable living trust can be revoked as long as the trustor is alive and has the capacity to do so. Trusts are inexpensive to establish. They can be particularly beneficial where a family member has Alzheimer's; however, having assets in a trust may impact Medicaid planning. For that reason, the trust should be drafted by an attorney experienced in Alzheimer's planning. Also, putting assets in a revocable living trust will typically not protect them from Medicaid.

An alternative to a Revocable Living Trust is the typical will which discusses in written form what happens to your property upon your death.

STEP 4

Review How Your Property is Titled

Oftentimes, people own property jointly with another. The most common form is Joint Tenancy with Rights of Survivorship. Joint ownership of a bank account may allow all owners complete access to the money in that account.

If real property (land) is owned as joint tenants with right of survivorship, when one owner dies, the land will belong to the surviving owner(s). However, as long as all joint owners of the real property are alive, the signatures of all of them are required to sell or transfer the property. This can be a real problem if one of the joint owners has Alzheimer's and loses the capacity to make decisions. That's why it's critically important to have a durable power of attorney for finances in place.

Jointly held property may also be subject to the claims of the creditors of the joint owners so you have to be careful about who is listed as a joint owner on your accounts. As you can see, there are advantages and

disadvantages to owning property as a joint tenant. It's important, therefore, to have the property titling reviewed by an attorney experienced in Alzheimer's planning.

GUARDIANSHIPS

What is a guardianship?

A guardian is an individual appointed by the court to make personal decisions for someone called the ward. A guardian has powers similar to those of a parent for a child. The guardian, however, is not required to provide financial support for the ward from the guardian's own funds. A guardian makes decisions about where the ward will live and what kind of medical care the ward will receive.

When is a guardianship necessary?

A guardian may need to be appointed for a person who does not have enough understanding or capacity to make or communicate responsible personal decisions. When considering whether a guardianship is necessary, family and friends should evaluate answers to the following questions:

- Does my loved one have difficulty doing familiar tasks?
- Can my loved one communicate coherently?
- Does my loved one know what medications he/she is taking, and is my loved one taking the medications appropriately?
- Does my loved one have extreme mood swings for no apparent reason?
- Does my loved one become easily agitated, aggressive, or combative?
- Does my loved one forget where he/she is?
- Can my loved one attend to and provide for necessary food, shelter, clothing, and medical care so as to avoid physical harm or illness?
- Can my loved one keep safe in stressful or emergency situations such as fire, power outage, or crossing a busy street?

All adults should have a health care power of attorney in place, authorizing someone else to make medical and placement decisions when they are not able to do so. This is especially true for someone who has Alzheimer's. The health care power of attorney is an excellent tool that maximizes a person's chances of avoiding court involvement. When Alzheimer's is suspected, the

patient should immediately put financial and health care powers of attorney in place, (while they are still able to do so), to avoid the cost and hardship of court proceedings.

What does a guardian have to do?

If, for whatever reason, a guardianship cannot be avoided, then the guardian will be responsible for the care, comfort and maintenance of the ward. In making decisions for the ward, the guardian must consider the ward's wishes. The guardian must make sure the ward's living arrangements are the most appropriate and the least restrictive based on the ward's needs, abilities, and financial resources. The guardian can place the ward in an assisted living facility or skilled nursing facility if necessary. The guardian must also make sure the ward has appropriate and sufficient clothing and receives appropriate medical care. The guardian has the authority to consent to medical care or other professional services. The guardian must report to the court annually about the ward's health, welfare, and status.

Usually, the guardian does not handle the ward's money. In circumstances where that is necessary, a

conservator may be appointed by the court to manage the ward's assets.

How is a guardian appointed?

Someone, often a family member, petitions the court for the appointment of a guardian. The court schedules a hearing on the incapacity of the proposed ward. A physician's report regarding capacity issues and the need for a guardianship is also necessary. At the hearing, the judge or commissioner hears testimony, considers the report of the physician, and appoints a guardian if appropriate.

CONSERVATORSHIP

What is conservatorship?

A conservator is an individual appointed by the court to make financial decisions for another person, who is called the protected person. The court can grant very broad powers to the conservator to handle all of the protected person's assets, or the court can restrict the conservator's powers as necessary under the circumstances.

When is a conservatorship necessary?

A conservator may be appointed for a person who is unable to manage his or her financial affairs effectively due to Alzheimer's or other mental or physical illness. When considering whether a conservatorship is necessary, family and friends should ask themselves the following questions:

- Can my loved one handle everyday money issues such as counting change, writing checks, or balancing a checkbook?
- Could my loved one easily be persuaded by scam artists or others, including family members and friends, to give away money or other property?
- Does my loved one know what and where his or her assets are?

A full conservatorship may not always be needed. In certain circumstances authority to handle a single transaction or to make limited protective arrangements may be sufficient. For example, where all of a married protected person's assets are titled in joint tenancy with the spouse, except one account, a single transaction authority may be appropriate to re-title that account so that the spouse can manage it. Even single transaction

authority like this, however, requires a petition to the court.

Where possible, if the Alzheimer's patient still has capacity to grant a durable power of attorney for finances, then a conservatorship can usually be avoided.



The durable financial power of attorney is an excellent tool that is extremely useful in Alzheimer's planning. Even when there is a durable power of attorney for finances, a conservatorship may still be necessary if the named agent is unable or unwilling to act for the loved one. In other cases, where the agent could and would

act under the financial power of attorney, the loved one may be uncooperative or antagonistic and may not allow the agent to assume any of the responsibility. Unfortunately, sometimes the agent named under a durable power of attorney does not act in the best interests of the loved one. In other situations, a person may not have any friend or family members who can serve as an agent under a power of attorney. In such cases, a conservatorship may offer the only solution for handling financial and legal issues.

What does a conservator have to do?

A conservator can authorize payment of debts and expenses and can also bring or defend legal actions on behalf of the protected person. The conservator must make an inventory of the assets and indicate the fair market value of each asset. The conservator must prudently invest the funds of the estate. The conservator may acquire or dispose of property and may deal with insurance companies for the estate. The conservator must preserve and protect estate property and must pay income and property taxes. The conservator must also keep detailed records of all monies that come in or go out of the protected person's estate and then provide an annual accounting to the

court, itemizing every expense and receipt. The conservator may not use funds belonging to the protected person for the benefit of the conservator or the conservator's family unless the charges are approved by the court.

A conservator does not make any of the lifestyle, placement, or medical decisions for the protected person; those decisions are made either by close family members, an agent under a medical power of attorney, or by a court-appointed guardian.

How is a conservator appointed?

An interested person petitions the court for the appointment of a conservator. The petitioner could be family member or someone who would be affected if the protected person's assets are not managed appropriately.

The court schedules a hearing on the matter. An attorney is appointed to represent the proposed ward. The court may also require a medical or psychological report from a medical expert. At the hearing, the judge or commissioner hears testimony, considers any medical report, and appoints a conservator if appropriate.

What if our situation is an emergency; how long does the process take?

The usual time frame for establishing a guardianship or a conservatorship is about six to eight weeks, which is the time it takes to get the case on the court's calendar. If the situation is an emergency, then a petition for the temporary appointment of a guardian and/or conservatorship is filed at the same time the petition for the permanent appointment is filed. A hearing on the temporary appointment can often be held in approximately three days. Emergency situations may include medical emergencies requiring immediate intervention. Depending on the circumstances, some financial issues also may constitute an emergency.

STEP 5

Starting Alzheimer's Planning Now

This sounds complicated, when should I start?

The key is to get the appropriate planning and documents in place as soon as Alzheimer's or even mild memory loss is suspected. Family members

should consult with an experienced Alzheimer's planning attorney to evaluate their situation.



The family should bring to the appointment important documents for the attorney to review, such as any powers of attorney, trusts, or wills. The family should also bring any documents that they can find relating to the loved one's assets. The attorney can evaluate the information and provide guidance as to the appropriate steps to be taken. Acting now can often avoid costly, intrusive court proceedings at a later date.

FREQUENTLY ASKED QUESTIONS

If something happens to me, the well spouse, can someone else make health care decisions for my spouse with Alzheimer's?

Yes, if your spouse has given someone authority under a power of attorney. If no one is designated under a health care power of attorney then the Court may have to appoint a guardian for the spouse with Alzheimer's.

What if our children disagree with our health care choices?

As long as you have the capacity to make your own decisions, your children do not have the right to take that control away from you, regardless of whether or not they agree with your decisions.

STEP 6

Plan Now to Pay For Future Long-Term Care

Alzheimer's care is expensive. Studies show the cost of care for patients with Alzheimer's will be, on average, more than \$400,000 during their lifetime.

Few families can afford that. Smart families immediately ask, "How will we pay for the assistance required?" In-home care will cost from \$15-\$25 per hour. In New Jersey, skilled nursing homes for Alzheimer's patients typically run between \$6,500 and \$9,500 per month. Where can you turn for help?

LEARN YOUR FINANCIAL OPTIONS

Basically, there are four ways to pay for long term health care. Some of these options may not apply in your situation:

Long-term care insurance. This is insurance that typically pays a daily rate for nursing home or in-home health care. The amount of the benefit depends on how much coverage the individual takes out.

Unfortunately, if your loved has Alzheimer's, and you do not already have a policy, it will be too late to qualify for one. However, for those who are healthy and can afford the coverage, this insurance can provide a whole range of services from in-home care to skilled nursing coverage.

Self funding. Often, when people do not know where to turn, they believe that they will have to pay all of the cost for nursing home or assisted living care out of their own funds. This may be true for those who are financially independent. However, if funds are limited, and those funds are required to support a well spouse, this is not a very good option - especially when other options are available.

Medicare. This is the national healthcare entitlement program provided to individual 65- years of age and older, as well as certain disabled younger individuals. Medicare provides short-term assistance with nursing home costs, but only if there is a prior hospital stay and strict qualification criteria are met. Medicare does not pay for custodial Alzheimer's nursing care.

Medicaid. This is a program jointly funded by federal and state governments. It is administered by the New Jersey Department of Health & Senior Services through

the County Board of Social Services. There are both medical and financial eligibility requirements. However, once a person qualifies for benefits, this program will cover the cost of medical care, nursing home care and, in some instances, provide home and community based services for those who may need nursing care but are able to remain in their homes.



KNOW THE DIFFERENCES BETWEEN MEDICARE AND MEDICAID

People often confuse the Medicare program with the Medicaid program. There are major differences between these separate and distinct programs.

Medicare is the federally-funded health insurance program designed to provide healthcare services primarily to individuals over the age of 65. Recent

changes to the program have expanded benefits through Medicare managed plans. However, long-term custodial nursing home benefits have never been part of either managed care or traditional Medicare plans.

For example, suppose that your loved one is enrolled in traditional Medicare. What is available? In most cases, Medicare will cover the first 20 days in a skilled nursing facility. In some circumstances, Medicare may cover the next 80 days of nursing home care, but with a deductible that is over \$114 per day. If your loved one is enrolled in a managed Medicare plan, days 21-100 are covered without a deductible, but only if your loved one meets strict qualification criteria. We strongly recommend a complete review of your health benefits so that you can be prepared and understand the qualifying factors to receive services. If your loved one receives treatment and recovers, he or she may again be eligible for additional Medicare skilled nursing benefits.

It is difficult to predict how many days of skilled nursing care Medicare will cover. From our experience, we have found that our Alzheimer's clients rarely

receive benefits that extend to the 100-day maximum. But even if you do receive the full 100 days, what happens when Medicare discontinues coverage and your loved one still requires around-the-clock care? As stated above, the options available are either: long-term care insurance, payment from one's own limited assets, or possibly coverage through the Medicaid program or through certain programs available through the Veterans Administration.

There are Health Maintenance Organizations (HMO's) that offer a Medicare +Choice program instead of traditional Medicare. These insurance companies use the Medicare reimbursement to provide additional services over what traditional Medicare provides. These are voluntary and are chosen by the Medicare recipient. There are strict enrollment rules. If a Medicare +Choice program is covering your family member with Alzheimer's disease, it is very important to know the benefits offered and what the qualifiers are for the services. These programs are required to follow Medicare regulations, but can offer more services. Remember that the Medicare +Choice programs are the "gatekeepers" instead of the physicians and, therefore, dictate when, where and if services are authorized.

STEP 7

Learn About Medicaid

- Planning Now May Be Wise

Medicaid is a federally-and-state funded health insurance program that provides benefits to those who meet strict qualification requirements. Many people are fearful that this program is only for people who need nursing home care. The goal of the Medicaid program is to keep the members at the lowest level of care possible. This effort reduces costs to the State while allowing the members to reside in their own homes or other less institutional residential settings. Many people wait much longer to plan for Medicaid than they would otherwise have to. They think it only covers nursing home care. Help in the home, whether respite care, housekeeping assistance, or a combination of different services, may mean the difference between a caregiver being able to care for the family member a little longer in the home or moving their loved one into a nursing home.

Unlike Medicare, which covers only skilled nursing services, Medicaid covers a range of healthcare services which Medicare refuses to pay. For example,

long-term custodial care in a nursing home for someone with Alzheimer's disease would not be covered by Medicare, even though the patient may need medical care on a daily basis. In contrast, the Medicaid program would pay for the custodial nursing home stay for as long as the patient meets the eligibility requirements.

WHY PLAN FOR MEDICAID NOW?

With the natural progression of Alzheimer's disease, it is important to think ahead and have a plan of action in place in the event long-term care is needed. If you are medically and financially able to qualify for long-term care insurance, look into purchasing that coverage now.

If you cannot qualify due to a medical condition or if the premiums are cost-prohibitive, you should consider planning ahead to qualify for Medicaid benefits before a crisis strikes. Changing laws are requiring smart families to plan sooner rather than later. It's believed that in the future, Medicaid planning may have to be done, in some cases, three years before help is needed in order to be fully effective. Even so, if

you are in a crisis situation and must obtain immediate care for a loved one there is still planning you can do to help your loved one qualify for Medicaid.

As with any government program, individuals must meet certain eligibility requirements before they can begin receiving benefits. The Medicaid program requires the applicant meet both medical and financial requirements. The criteria for these requirements are outlined on the following pages. The State determines eligibility for Medicaid.

ELIGIBILITY REQUIREMENTS

There are certain general criteria an applicant must meet before the financial assessment is made. The applicant must:

- Be a U.S. citizen or a legal alien;
- Be a New Jersey resident;
- Have a Social Security number;
- Reside in a medical institution or approved home and community based setting;
- Be willing to assign rights to medical benefits;
- Make an effort to secure potential primary benefits;
- Be cooperative and provide verifications.

Financial Eligibility

Resources A single applicant may have \$2,000 in countable resources in New Jersey. If both husband and wife are applying at the same time, the countable resources cannot exceed \$4,000 in New Jersey. The key words are countable resources.

What are countable resources?

Medicaid considers certain resources (assets) of the individual or family as exempt and does not include exempt resources when making the financial assessment. Exempt resources are distinguished from countable (non-exempt) resources. In general, the following are the primary exempt resources:

- Home, under limited circumstances. Planning to protect your home is tricky. (The home must be the principal place of residence. The single nursing home resident may be required to show some “intent to return home”, even if this never actually takes place)
- One vehicle
- Burial plots
- Irrevocable prepaid funeral plans
- Life insurance, if the face value is \$1,500 or less (If it exceeds \$1,500 in total face value, the cash value in this policy is countable).

All other resources are generally considered nonexempt and are countable for purposes of financial eligibility. These resources include all money and property that can be valued and converted into cash including, but not limited to:

- Cash, checking, and savings accounts
- Certificates of deposit
- U.S. savings bonds
- Retirement accounts including IRA, 401K, and TSA plans (In some instances, the plan of the community spouse may be exempt)
- Nursing home accounts
- Pre-paid funeral contracts which can be cancelled
- Trusts
- Real estate other than the primary residence
- Second car
- Boats or recreational vehicles
- Stocks, bonds, or mutual funds
- Promissory notes

While the Medicaid rules are complicated, it is safe to say that a single person will qualify for Medicaid as long as he or she holds less than \$2,000 in countable resources in New Jersey.

ANTI IMPOVERISHMENT LAWS ASSISTANCE FOR THE WELL SPOUSE

The government recognizes that for married couples, where one spouse is ill and one is well, a long-term illness may impoverish both spouses. In an effort to avoid this result," certain guidelines have been established to provide additional resources for the care and support of the well spouse. This additional allowance of resources for the at-home spouse is known as the Community Spouse Resource Allowance (CSRA).

The CSRA allows the well spouse to keep one-half of the countable resources with a minimum of \$20,880 and a maximum of \$104,400. For example, if a married couple has \$20,000 in countable resources, the amount of the allowance for the community spouse would be \$20,000 (minimum). If the couple has \$100,000 in countable resources, the allowance would be \$50,000. If the couple has \$208,750 in countable resources, the allowance would be \$104,400 (the maximum). The minimum and maximum amounts provided here are effective for 2008 and are updated each year.

Once the exempt resources have been determined and a community spouse resource allowance has been applied, any remaining resources are subject to spend down. (The spend down process is explained under the Frequently Asked Questions section.)

Do you need an Alzheimer's Planning Attorney to help with the Medicaid process?

Whether you need an Alzheimer's Planning Attorney to assist with this process depends upon your specific situation. The following checklist will help you decide if it would be helpful to consult with an Alzheimer's planning attorney:

- Is the applicant single, but has more than \$10,000 in assets?
- Is the applicant married, and has more than \$20,000 in assets?
- Do applicant's assets include a Trust, Life Insurance, Annuities, Long-Term Care Insurance, Interests in Real Property (including a Residence), Stocks, Bonds, Business Property, and/or retirement plans or IRAs?
- Has the Alzheimer's patient or the spouse gifted or transferred any cash bank accounts, real property,

or personal property (i.e. something other than typical birthday and Christmas presents) to another person within the last 60 months? This would include placing another's name on any real property.

- Although the applicant may have enough income and assets to currently pay for his or her care needs, is the Alzheimer's patient expected to be paying for long-term costs within the next 12 months?
- Does the Alzheimer's patient want to legally protect assets for a spouse or child?

If you have said "yes" to any of the above questions, it is in the best interest of the applicant to consult with an Alzheimer's planning attorney BEFORE applying for benefits.

FREQUENTLY ASKED QUESTIONS

What is a spend down? To qualify for Medicaid, the non-exempt resources must be spent down to the amount allowed in each case. However, with proper planning there are often ways to preserve some of these resources. For a single person that's \$2,000 in New Jersey. For a married couple that means going through division of assets as explained earlier.

Similarly, for married couples, the rules are even more complex. The community spouse, (i.e. the at-home spouse) may generally keep roughly one-half of the couple's assets up to a maximum of about \$104,400. Depending upon their resources, again the couple may have a substantial amount of money which needs to be spent before the nursing home spouse qualifies for Medicaid.

Items a person pursuing Medicaid eligibility may consider purchasing during the spend down process include a new car, nursing home expenses, clothing, wheelchair, home improvements, household goods, debt repayment or even a vacation for a spouse living at home.

A pre-paid funeral plan is often another good item to purchase during the spend down process. However, the rules regarding funerals differ so you should only deal with a funeral home knowledgeable in this type of planning.

These are, of course, not the only appropriate items for a spend-down. There are other expenses, which would also qualify. The main rule to keep in mind is that whatever goods or services are purchased must be done at fair market value. In other words, giving the money away or paying outrageous amounts for less than the real value of the services can cause Medicaid disqualification.

Also, don't let anyone tell you that anything spent must be done solely for the benefit of the nursing home spouse. On the contrary, virtually anything that benefits the community spouse will also benefit the nursing home spouse and therefore may be an appropriate spend down item.

Finally, keep in mind that while some of the spend-down strategies will not work as well for a single

person qualifying for Medicaid, there are other strategies that can work equally well, no matter whether you are dealing with a single person or a married couple. Consult an experienced Alzheimer's planning attorney for guidance.

Use caution! Certain types of resource transfer could make your loved one ineligible for Medicaid benefits for a period of time. For instance, you may not be able to give your money away to your children or others and then become eligible for Medicaid benefits. Medicaid currently has a three- to five-year look back period (depending on the situation) and may penalize any gifts transferred during the three to five year prior to your application for benefits. It is in your best interest to review your situation with an Alzheimer's planning attorney before you change or transfer any assets!

Can I give my assets away in order to qualify for Medicaid? We frequently counsel clients who are under the impression that they are allowed to give away \$12,000 as a gift based upon the federal gift tax rules. Federal gift and estate tax rules allow gifting of up to \$12,000 per person per year without any gift tax

consequence. However those gifts may still result in a period of ineligibility for someone applying for Medicaid benefits. That does not mean gifting can't be done. You just need to learn the rules.

Can I gift certain amounts of money to my family and still be eligible for Medicaid? There are ways to do some gifting; however, this must be done in strict conformance with Medicaid rules and regulations.

Since my children's names are on my bank accounts, will those assets still count against me for Medicaid purposes? Simply placing a child's name on a bank account does not transfer the account to your child. This is true even if the child's name has been on those accounts for several years. The state says when you add your child's name to an account, you are doing so for 'convenience purposes.' Generally, the entire amount will be counted for Medicaid purposes unless it can be proven the monies in those accounts were contributed by the child. This rule applies to savings and checking accounts, credit union and share draft accounts, certificates of deposit, and other similar financial accounts.

All of my assets are in a Revocable Living Trust. Are these assets exempt from Medicaid? Medicaid considers all assets in a revocable trust to be countable for Medicaid. Therefore, they are not protected and may need to be spent down.

Will I lose my home? Oftentimes, people are concerned that they will have to forfeit their home to qualify for Medicaid benefits. When an individual is applying for Medicaid benefits, the home can be a non-countable resource. However, there is a federal law requiring each state to have a plan in place to recover the costs Medicaid paid for long-term care. This is called Estate Recovery. In other words, after an individual who has received Medicaid benefits passes away, it is the State's responsibility to recover the value of Medicaid payments from the recipient's estate, including a home.

New Jersey's Estate Recovery Acts attempt to recover the money paid for benefits through the estate of the individual who received the benefits. For a married couple, however, this typically does not occur until both spouses have passed away. Once that happens, (or upon the death of a single Medicaid recipient) the

Estate Recovery Act will lay claim to the value of the house up to the cost of benefits provided by Medicaid. Of course, estate recovery planning should not be left until the individual passes away. It should be part of an overall plan prior to application.

My husband is 47 and has just been diagnosed with early onset Alzheimer's disease, can you explain some of the unique legal issues that will arise due to this?

In future years, more individuals will be accurately diagnosed at younger ages due to the increase in productive diagnostic procedures.

Alzheimer's disease is considered to be early onset if an individual is age 55 or younger when symptoms first appear. Early onset individuals may not necessarily be in the early stage of Alzheimer's when diagnosis is made. Individuals with early onset Alzheimer's will experience similar symptoms as early stage Alzheimer's, but there are other issues that may also be present. These individuals may experience issues due to their younger age (e.g. children still living at home, employment issues). Issues that families may consider include:

- Investigating early retirement or other financial planning options.

- Consulting with a skilled financial consultant or elder law attorney.
- Applying for any disability insurance benefits to which you may be entitled.
- Preplanning (including Powers of Attorney) is crucial to Alzheimer's planning and needs to be completed as soon as possible.

Driving concerns are frequently discussed by family members of someone diagnosed with Alzheimer's disease. Consider the following recommendations regarding restriction of driving:

- A diagnosis of Alzheimer's is never itself a sufficient reason for loss of driving privileges.
- If an Alzheimer's patient's driving is impaired, driving privileges must be limited.
- Driving privileges must be withheld when the individual poses a serious risk to self or others.
- The person with dementia, if competent, should participate in decision making regarding driving restrictions.

Informed and caring family members can often successfully implement compromise especially when the person with Alzheimer's has insight into

diminishing mental abilities and loss of competence. When the family simply cannot negotiate limits on driving with a loved one (who is a danger to self or others), it is appropriate for the physician to order that driving be limited or halted. This technique will usually succeed, although it may be necessary to contact the state to suspend driving privileges or even to disable the vehicle if the Alzheimer's patient continues to insist on driving.

STEP 8

Learn From the Experiences of Others

CASE STUDY #1

Robert, age 79, has Alzheimer's. He and his wife, Mildred, age 81, are New Jersey residents who have struggled with his disease for years.

At first, the memory loss was subtle. He would forget where he put his keys. Later, he began having trouble with the checkbook. The family doctor said it was dementia and it was progressing slowly. But as it progressed, Robert's condition worsened to the point where he not only forgot where he put his keys... but

now when he sees his keys, he is not sure what they are used for.

Mildred has been making a valiant struggle to keep him at home. And she is exhausted. In order to get some relief, her children have finally convinced her to take Robert to adult day services ... sometimes known as adult day care. And while taking Robert five days a week has been a blessing, she is worried about the cost. She asks if there are any steps she should be taking.

Of course, the first thing she should look at (in fact, she should have looked at long ago) are the Powers of Attorney. She already has both financial and healthcare Powers of Attorney along with a Living Will. But beyond that... are there any steps she should consider?

It's apparent that without her incredible dedication, along with that of her family and the folks at the day care, Robert would already be in a nursing home. Unfortunately, none of the costs of his care count against a Medicaid spend down. That's because there is no snapshot in place, since he is not currently in a nursing home.

Robert and Mildred have a house valued at about \$500,000 along with a 2006 Buick. Both of those are exempt. Somehow, Robert and Mildred have managed to save about \$200,000. Now as she sees that erode (last year at this time it was nearly \$300,000), she worries.

In this case, we would apply for Medicaid immediately and ask for benefits under the Home and Community Based Services (HCBS) waiver, which in 2009 will be consolidated under a statewide program known as Global Options.

We designate Robert as the "institutionalized spouse." Therefore any of the assets which are spent from that point forward will come off Robert's side as part of a Medicaid spend down. If Mildred spends her assets down to the point where he qualifies for home based services (in this case they would have a spend down of nearly \$100,000 after the division of assets), then when Robert later needs nursing home care, he would already be Medicaid qualified. This planning may save the family tens of thousands of dollars.

The bottom line is that by properly applying for home based services ... the monies spent on his care after

that, including the adult day care plus any other expenses (in fact, whatever else they spend) would all count as part of his Medicaid spend down simply because she's established the snapshot date.

In addition, they may also qualify for certain **Veteran's benefits in this case, which can provide a much as \$1,675 in extra income** to them each month!

Mildred feels better knowing that the money she's spending will count as part of a Medicaid spend down. She also understands that by taking these steps now, she may be saving her family tens of thousands of dollars while qualifying him for additional care giving services in her home. Plus, a great portion of the cost of Robert's care may be covered by the Veteran's Administration.

As in any area of the Medicaid laws, the rules are tricky. But with proper advice, the savings and benefits to Robert and Mildred and their family will be enormous.

CASE STUDY #2

Mrs. Brown is an 81-year-old New Jersey resident suffering from early Alzheimer's. She is still able to live alone in her own home. Her income is \$750 a month, she has a home worth \$235,000 and other assets of approximately \$600,000. She heard from a friend that she should give away all her assets now (including her home) to her kids just in case she would ever need to go to a nursing home. Her friend told her that so long as she gives everything away more than three years before moving to nursing home, she'll be able to qualify for Medicaid without having to spend down any of her assets.

Unfortunately, there are many problems with the advice Mrs. Brown's friend gave her. First, Mrs. Brown may need nursing home care in less than five years. Due to this large transfer being made within the five year look back period, she will now be ineligible for Medicaid and will have no funds to pay for her own care. Once the money and house are transferred to her children, those assets actually belong to the children - no strings attached. Even if the children are trustworthy, and would be willing to give the money back if Mrs. Brown needed nursing home care, once

the assets are in the kids' names, the assets are subject to the children's creditors. One of the children could be sued or go through a divorce. Since the assets are in the children's names, a lawsuit, tax problems, or a divorce could easily wipe out mom's life savings, as well as leave her without her home and with no way to pay for the cost of her care due to Medicaid penalties. Also, keep in mind that Mrs. Brown may never need nursing home care. Rather, she may need to move to an assisted living facility that specializes in residents with Alzheimer's. Typically, Medicaid does not cover the cost of care in an assisted living facility. Therefore, it's important that Mrs. Brown hang on to a portion of her assets while she's still relatively healthy so she can have the freedom and independence to pay for the level of care she needs when she needs it.

In this scenario, we might advise Mrs. Brown to get the proper estate planning documents in place so her children could act on her behalf in the event of incapacity, and to avoid probate in the event of her death. Depending on the family dynamics and Mrs. Brown's prognosis, we may also help properly structure a proper gifting program to preserve some or all of her assets.

STEP 9

Select an Alzheimer's Planning Attorney

A family dealing with a long-term care crisis is in a vulnerable position and in need of help. There are many questions that must be considered, including appropriate long-term placement for a loved one, financial security for the well spouse and preparation of wills or trusts and powers of attorney.

In many cases, Alzheimer's estate and Medicaid planning is crucial. The family also needs the assurance that their rights are protected and that their limited resources are not wasted.

Families with these types of issues are faced with the difficult dilemma of where to turn for help: Someone familiar with Medicaid? A financial planner? A CPA? An insurance salesman? An attorney? Who is in a position to handle these diverse and complex issues and to consider them collectively so that the appropriate result is achieved? It is important to seek advice from someone who can look at the big picture to make sure all rights are protected and resources are not wasted. Elder care attorneys who do a great deal of

Alzheimer's planning are uniquely qualified to help. Alzheimer's planning includes a broad range of legal issues specifically affecting seniors, including long-term care planning, Medicaid planning, guardianships, conservatorships, trusts, and estate planning. In the case of Alzheimer's planning, an experienced attorney will consider the possible legal issues which may arise during the Medicaid qualification process and plan accordingly. This requires not only a thorough knowledge of the Medicaid rules, policies, and procedure but also the ability to understand the complex legal rules as well as the difficulties that a diagnosis of Alzheimer's brings.

Many elder law attorneys are a member of (NAELA). However, membership in NAELA does not guarantee that the attorney is familiar with long-term care or Alzheimer's planning. It is a good idea to consult trusted organizations such as the Alzheimer's Association, the Area Agency on Aging, senior centers, and hospital social workers for a recommendation of a qualified Alzheimer's planning attorney. Family members should also do some research on the prospective attorney. The following are some issues

which should be addressed before selecting an Alzheimer's planning attorney.

What specific areas of law are practiced by the attorney? Do they regularly handle Medicaid applications, estate planning and powers of attorney? If a firm handles these types of matters on a regular basis, they will have a grasp on the issues that need to be resolved.

Has the attorney received any specific training and how often? Typically, attorneys who are active in this type of practice attend many seminars and continuing education courses each year to keep current with the ever-changing laws and regulations. Ask them how often they go to their continuing education seminars or those conducted by the State or local Bar Association.

Request literature they may have prepared regarding long-term care planning. The literature should demonstrate the depth of their knowledge regarding these issues and may raise additional issues for you to consider.

All of the above are appropriate areas of inquiry when making this important decision, and any qualified Alzheimer's planning attorney would be happy to answer them for you. Indeed, just as a person with only first aid training is not prepared to provide full medical care to a stroke victim someone who is not well-versed in Alzheimer's planning may lack the expertise to properly advise a family in a long-term care crisis. Proper Alzheimer's planning advice to a family in crisis eases tension, protects rights, preserves assets, and prevents unnecessary costs.

Hanlon Niemann, P.C. thanks you for reviewing this Guide

It is our hope that this guide has provided you with answers. Knowledge is power. We believe strongly in providing you, the consumer, with the power to make strong decisions that will ultimately help the Alzheimer's patient, the caregivers, and the family. We appreciate this opportunity to share this information with you.

If you have more questions or would like to schedule an Alzheimer's planning consultation, we welcome

your call. New Jersey clients can reach us at (732) 863-9900, or Toll Free at 1-888-800-7442 or contact our managing partner, Fredrick Niemann at fniemann@hnlawfirm.com.

COPYRIGHT

Copyright © 2010 Hanlon Niemann, P.C. All rights reserved. All materials presented in this publication are copyrighted and owned by Hanlon Niemann, P.C., or other individuals or entities as designated. Any republication, retransmission, reproduction, downloading, storing or distribution of all or part of any materials found in this publication is expressly prohibited.

NO REPRESENTATIONS

This material may contain technical or typographical errors. Hanlon Niemann does not guarantee its accuracy or completeness or suitability. IN NO EVENT SHALL Hanlon Niemann BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RELATING TO THIS MATERIAL, FOR ANY USE OF THIS PUBLICATION. Hanlon Niemann takes no responsibility and makes no warranty whatever for the content or information contained herein.



Fredrick P. Niemann, Esq.

Fredrick P. Niemann offers his clients nearly 30 years of accomplished practice in the law. He is a member of the New Jersey Institute of Local Government Attorneys, the National Academy of Elder Law Attorneys, the Guardianship and Conservatorship Committee of NAELA, Monmouth County Probate and Estate Committee and the Monmouth County Chancery Practice Committee. Mr. Niemann is also an approved civil mediator by the Supreme Court of New Jersey and mediates contested probate, family, estate and other civil cases filed in the Superior Courts throughout the State of New Jersey. In addition, Mr. Niemann is accredited by the US Veteran's Administration as a certified attorney accredited to file, prepare, counsel and assist veterans and their families in Aid and Attendance pension benefits. Mr. Niemann

is listed in the prestigious Martindale-Hubbell Peer Review List for 2008 as a “rated” attorney in the State of New Jersey.

He counsels clients (individual and corporate) at all economic levels in asset protection, estate tax planning for tax reduction and avoidance, wills, trusts and probate including probate litigation, contested family and estate disputes, will contests, guardianships and nursing home planning for Medicaid qualification, particularly for clients and families dealing with dementia, Alzheimer's, Parkinson's, Multiple Sclerosis, stroke and other health related issues affecting our aging population. He manages the firm's services for clients seeking Veterans benefits, Medicare coverage and eligibility for state funded programs for health and medical benefits. He litigates denials of benefits by governmental agencies at fair hearings, administrative law proceedings and direct appeals to the Appellate Division of the New Jersey Superior Court. He speaks at seminars and conferences on nursing home and community based alternatives to institutional care, the Nursing Home Reform Law and Veterans benefits. He heads the elder law, business litigation and probate sections of the firm.

Mr. Niemann was the lead attorney in many significant cases in New Jersey which have been the subject of published decisions in the official law books of this State.

A seasoned and experienced trial attorney, over his career, Mr. Niemann has represented numerous private and governmental clients. He has also served as Special Counsel to select public clients.

Mr. Niemann is a partner of the firm and resides in Wall Township with his family where he offers his time to many organizations. He is also a member of the Monmouth County and New Jersey State Bar Associations, the U.S. Federal District Court of New Jersey, and the U.S. Third Circuit U.S. Court of Appeals.

Diagnosis Alzheimer's?

Read this book for helpful guidance
and possible solutions to your
problems and answers to your most
frequently asked questions.

HANLON NIEMANN, PC

Fredrick P. Niemann, Esq.
3499 Route 9 North, Suite 1F
Freehold, NJ 07728
Toll Free: (888) 800-7442
www.hnlawfirm.com
fniemann@hnlawfirm.com
