MASER | AMUNDSON | BOGGIO | HENDRICKS P.A.

Your rock in a hard place

ELDER LAW ISSUES

I. POWER OF ATTORNEY

A) Financial
   1) Definition: a written authorization for a person(s) you name to act on your behalf within the scope of their authority identified.
   2) Important terms:
      Principal - The person creating the power of attorney.
      Attorney-in-Fact - Person appointed by the principal.
   3) The power of attorney is durable if the principal designates that it continues even after the disability or incapacity of the principal.
   4) MN has a Statutory Short Form to make the process much easier.
   5) The law requires that the principal be competent at the execution of a power of attorney.
   6) After completing your power of attorney and signing it in the presence of a notary, give your agent a signed original or store it in a safe place that your agent knows about and can get to with minimal trouble.
   7) It is important to remember that your wishes and the law may change over the years, so review your power of attorney and other legal documents very few years, and update them as necessary.

II. HEALTH CARE DIRECTIVE

A) Allows one to:
   1) Appoint another person (called an agent) to make health care decisions for you if you become unable to make or communicate decisions for yourself (part I), or
   2) Leave written instructions so that others can make decisions based on your wishes and preferences (part II), or
   3) Do both, appoint a health care agent and leave instructions.

B) Recommended that both parts are completed because selecting an agent and giving them instructions helps to carry out your wishes and have a plan in place.

C) The Health Care Directive combines the former “living will” document and a durable power of attorney for health care into one form that can include funerary directives and organ donor directives as well.

D) Naming an agent:
   1) Someone at least 18 years of age;
   2) Someone whom you trust;
   3) Has similar beliefs/values about medical care and death or dying OR is willing to carry out your wishes if their beliefs differ;
   4) Is not easily intimidated by family members, friends or health care professionals;
   5) Will be an advocate for your interests; and
   6) Can make decisions under stress.

II. HEALTH CARE DIRECTIVE (cont.)

E) Always speak with your agent and address the difficult issues they may have to address.
F) If you did not name an agent in Part I, then you must leave instructions within Part II for your health care directive to be valid.
G) Leaving instructions helps others understand your health care goals, fears, concerns and what you want as well as what you do not want.
H) You do not have to complete all of the questions or blanks on the worksheet. Complete only those you feel will help others understand your personal wishes.
I) Take your time and think about your directives. There are no right or wrong answers, what is right for you may not be right for someone else.
J) Copies of your completed directive should be placed:
    1) In your medical record;
    2) With other health care providers, such as a doctor, nursing home or hospital;
    3) With named health care agents;
    4) With family members and close friends.
K) Do not keep the health care directive in a safe deposit box, where it would not be available in an emergency.

III. PLANNNG FOR LONG-TERM CARE – FUNDING

A) Medicare
    1) Medicare coverage is for acute care.
    2) Medicare Part A covers hospital, some nursing home and some home health care benefits.
    3) Medicare Part B pays for a physician's services, durable medical goods, ambulance services, and other medical costs.
    4) As a result of the many gaps in Medicare, it only covers 35-40% of a senior citizen's health costs.
B) Medicare Supplemental Insurance
    1) Health insurance companies sell health insurance policies to cover some of the gaps in Medicare coverage.
    2) These policies rarely cover more than the Medicare co-insurance for long-term care costs.
C) Medicare HMOs
    1) Health Maintenance Organizations (HMOs) contract with the Federal Health Care Financing Administration to provide Medicare enrollees all medically necessary care covered by Medicare.
    2) Long term care coverage under this type of arrangement is identical to the coverage provided under regular Medicare coverage.
D) Medical Assistance or Medicaid
    1) Minnesota's Medicaid program is called Medical Assistance.
    2) Medical Assistance generally fills in the Medicare and supplemental insurance gaps for low-income individuals.
    3) Recipients must meet program asset and income limits.
    4) Most medically necessary services, including long-term care services will be paid by Medical Assistance if the applicant qualifies.

III. PLANNNG FOR LONG-TERM CARE - FUNDING (cont.)

E) Long-Term Care Insurance
   1) Private insurance companies offer insurance policies to cover extended nursing home and home health care costs.
   2) These policies should be examined carefully to see of they meet your needs.
   3) Delay in purchasing a policy may mean that you are unable to purchase such a policy due to changes in your health.

IV. MEDICAL ASSISTANCE ELIGIBILITY

A) Three basic elements
   1) Minnesota residency - only MN residents are eligible for Medical Assistance, residency is established for this purpose if:
      a) Physically present in the State;
      b) Residing in Minnesota voluntarily; and
      c) Not maintaining a home elsewhere.
   2) Categorical Eligibility
      a) Only individuals who fit within a basis of eligibility or category of needing care can receive Medical assistance benefits.
      b) The bases most applicable are blindness, disability, and over age 65.
   3) Financial Eligibility
      a) Financial eligibility is based upon assets and income.

B) Asset Limitations and Availability for Medical Assistance for Skilled Care Placement
   1) Allowable Limits
      a) A single person is allowed $3,000 plus exempt property.
      b) There are special rules when one is married and only one spouse is applying for medical assistance; an asset and income allowance is set for the community spouse, other assets may have to be reduced to the eligibility levels.
   2) Assets
      a) Excluded Assets:
         1. Homestead
            i.) Excluded if a spouse, disabled or minor child resides there, otherwise must be placed for sale within 6 months of entry into a care facility.
         2. One vehicle (per couple), so long as it meets certain criteria.
         3. Household goods and personal effects.
         4. Business assets.
         5. Burial Allowances (if they meet the MA requirements).
         6. Supplemental and Special Needs trusts.

IV. MEDICAL ASSISTANCE ELIGIBILITY (cont.)

C) Income Limits
   1) The income of a person seeking long-term care assistance is applied toward their care costs after certain deductions are allowed.
   2) The income of the recipient may be assigned in whole or in part to the community spouse, if the community spouse's own income is below allowable monies.

D) For individual's whose funds exceed the protected amount (or want to know how much is protected), a contact in Elder Law can help.
   1) Assets can be preserved through gifting, annuitization, purchase of exempt or excluded assets and transfers to the spouse.
   2) This must be done in very specific ways to meet the Medical Assistance guidelines.

E) There are also medical assistance programs than can help cover care costs in the community, which are not limited to nursing home costs. These programs also have asset and income rate limitations.

F) Veterans and their spouses may have benefits available that will assist with income needs, care costs, and burial expenses. Care may also be received at the State Veterans' Home.

G) There are Spend Down Options to protect assets including:
   1) Paying down a mortgage on your home;
   2) Making repairs or improvements to your home;
   3) Purchasing a new vehicle for the community spouse;
   4) Paying debts; and
   5) Purchasing additional furniture or other items for the institutionalized spouse.

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This is not to be used as legal advice. Please seek legal representation to discuss your legal needs and address your specific questions.

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