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Elder Legal Planning: Let's Give Them Something To Talk About


Presented by

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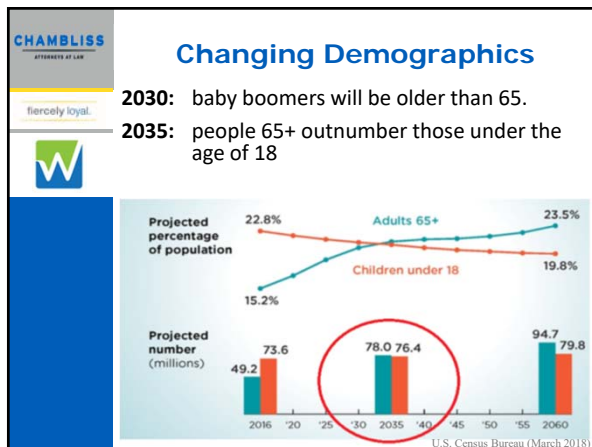


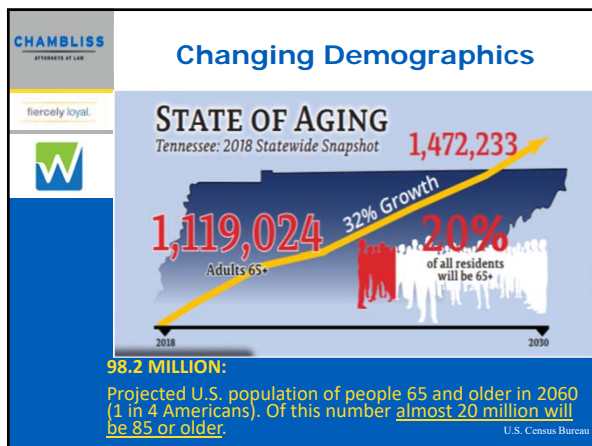
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- Dana Perry focuses her practice on estate planning, elder law, and special needs trust planning
- 30 years of experience in the field
- Certified as an Elder Law Specialist (CELA) by the National Elder Law Foundation
- Licensed to practice in Tennessee and Georgia









Family Ties & Elder Orphans

2013 report by AARP—Approximately 16% of women 80 to 84 will be childless by **2030**.

2016: Approximately 22% of people 65+ in the U.S. are either childless or have children who are not in contact.

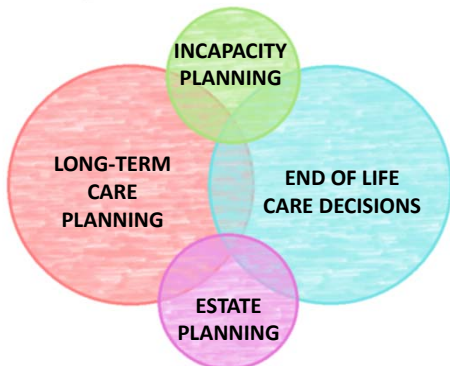
2018: 28% of the 1,119,024 people in TN who are 65+ live alone.






HAVING THE TALK! WHAT DO YOU NEED TO DISCUSS






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What Incapacity Documents Are Needed?



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Financial Power of Attorney


Document appointing someone (agent) to manage financial or business affairs for another individual

- Usually gives agent ability to conduct bank transactions, deal with stocks, securities, or other property, or collect on any owed debts
- Usually effective immediately, but can be a 'springing' Power of Attorney
- **Make sure it has appropriate gifting powers**
- **Make sure it is 'durable' POA**

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Advance Directive for Health Care (NEW FORM for TN in 2017)

Provides for appointment of health care agent

- May indicate unacceptable quality of life conditions
- May indicate treatments to be withheld or continued if quality of life becomes unacceptable
- May give instructions related to funeral arrangements, hospice care, and organ donation
- Needs two witnesses or a notary (should be unrelated)

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POST (TN) or POLST (GA)

Standardized form created by each State containing orders from a physician who has personally examined the patient and discussed the patient's end of life treatment preferences

- **Advance Directive does not include Do Not Resuscitate Orders**
- The POLST or POST form is a Universal Do Not Resuscitate (DNR) Order
 - Utilized by health care entities in the state, i.e. EMS, nursing homes, hospitals



The form compliments, but does not replace Health Care Power of Attorney, Living Will, and/or Advance Directive

- ADHC vs. POLST/DNR:
 - ADHC—FUTURE PLANS: sets out the end-of-life preference for an individual to be carried out by named agent.
 - POLST (POST)—HERE AND NOW: is specific to an institution and operates as a physician's order to staff as to certain treatment choices.



What If There Are No Incapacity Documents?





Surrogate Designation

Order of preference for surrogate designation
(may give consideration)

- Spouse
- Adult child
- Parent
- Adult sibling
- Any other adult relative
- Any other adult who satisfies the surrogate qualifications

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Who Can Be A Surrogate? Criteria For Selecting

- Appears best able to make decisions according to the patient's wishes, best interests, and values
- Had regular contact with the patient prior to and during the incapacitating illness
- Available to visit the patient during illness
- Available to engage in face-to-face contact with the health care providers to fully participate in decision making
- Exhibits special care and concern for patient
- Willing to serve
- Not a person subject to a protective order that directs the person not to have contact with the patient

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Who Can't be a Surrogate?

- Treating healthcare provider or operator of a health care facility
- An employee of either of the above, unless the employee
 - is a relative of the patient by blood, marriage or adoption
 - satisfies the other surrogate qualifications

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Guardianship/ Conservatorship

- May be the only option if no advance planning
- Is expensive
- Must be deemed incompetent by a physician
- Requires court proceedings in which personal and financial rights are removed (or curtailed)
- Requires submission of annual accountings to the Court
- Can usually be avoided with financial POA and ADHC
- **Surrogate rules described in slides above are for health care decisions only**

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What To Know About Long-Term Care (LTC) Planning?



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Who Needs It And How Much?

- **52%** of people turning 65 will need LTC services in their lifetime.
- **14%** of people will need LTC longer than 5 years.
- **15.2%** of people turning 65 between 2015 and 2019 will spend more than \$250,000 on LTC.
- **\$225 Billion:** LTC expenditures in the US, 2015.

Morningstar, Inc. (2018)

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Care Type	Average monthly cost
HOME HEALTH CARE: Includes care such as that received from a skilled nurse; wound care, patient and caregiver education, nutrition therapy, injections, monitoring of illness and health stability, monitoring of medical equipment, and communication with your doctor(s). (40-44 hours per week)	\$4,099
HOMEMAKER SERVICES (non-medical care): Includes daily household activities and chores such as meal preparation, light housework, laundry, making bed, changing linens, errand running, and appointment companion. (40-44 hours per week)	\$3,994
ADULT DAY CARE (non-medical care): Provide supervision and social activities in a structured setting during daytime hours. (40 hours per week)	\$1,560

Genworth Financial 2015 Cost of Care Survey

CARE TYPE	NATIONAL MONTHLY AVERAGE	TENNESSEE MONTHLY AVERAGE	GEORGIA MONTHLY AVERAGE
Nursing Home Dual occupancy, rate per person	\$7,148	\$4,563 to \$7,848	\$3,498 to \$7,756
Nursing Home Private room	\$8,121	\$4,623 to \$12,532	\$3,650 to \$20,653

- Skilled 24/7 nursing care ranges from \$1,200 to \$24,000 monthly.
- Patients requiring dementia care can spend an average of \$1,200 more per month.

Genworth Financial 2015 Cost of Care Survey

Who Is Paying Long-Term Care Costs?

Payor	Type of Expenditure					
	Hospitals	Professional Services	Nursing Care	Retail Drugs	Other	All
Out-of-pocket	1.1%	9.4%	28.2%	18.6%	27.9%	13.2%
Private Insurance	13.4%	18.6%	7.8%	23.4%	3.8%	13.3%
Medicaid	6.8%	2.1%	29.7%	1.3%	21.9%	11.1%
Medicare	69.7%	64.3%	24.3%	52.8%	36.5%	54.4%
Other	9.0%	5.6%	10.0%	4.0%	10.0%	8.0%

Notes: Data from the National Health Expenditure Accounts.

Table 1: Funding Sources of the Elderly's Personal Health Care Expenditures, 2010

<p>Assisted Living No Medicare—Paid by long term care policy benefits or out-of-pocket</p>	<p>Skilled Nursing Home Care Medicare pays for a <u>limited</u> amount of skilled nursing rehabilitation; otherwise paid by long term care policy benefits or out-of-pocket</p>
<p>Non-Skilled Nursing Home Care (MOST people) No Medicare—Paid by long term care policy benefits or out-of-pocket</p>	<p>Non-Skilled Care at home (caregivers) No Medicare—Paid by long term care policy benefits or out-of-pocket</p>

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Medicare

Should you apply? YES!

Unless you have access to group health coverage through your or your spouse's current employment or retiree insurance

You can apply between 3 months before and 3 months after your 65th birthday.



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COMING IN 2018

New Medicare cards with new numbers. **Are you ready?**
#NewCardNewNumber [Learn More](#)

MEDICARE HEALTH INSURANCE

Name/Nombre
JOHN L SMITH

Medicare Number/Número de Medicare
1EG4-TE5-MK72

Entitled to/Con derecho a	Coverage starts/Coertura empieza
PART A	03-03-2016
PART B	03-03-2016



Medicare Choice 1

- Sign up for original Medicare which includes Medicare **Part A** (Hospital Insurance) and **Part B** (Medical Insurance)
- Choose a **Part D** plan with prescription drug coverage
- Decide on Medicare Supplement Insurance (Medigap Policy)





Medicare Choice 2

Sign up for a Medicare Advantage Plan

- Many Medicare Advantage Plans do not allow use of a Medigap policy
- They take the place of Part A and Part B, but still follow all the Medicare guidelines
- Usually includes Medicare prescription drug coverage (Part D) as part of the plan, but individuals must check the formulary





Medicare Advantage Plans

- Many of the plans are a PPO or a HMO. A PPO has an in-network list of providers. An HMO requires the individual to have a primary care physician who makes all referrals to specialists and facilities.





Aid and Attendance Allowance for Veterans or Surviving Spouses

You may qualify for Aid and Attendance if you receive a VA pension and meet 1 of the below:

- Your eyesight is limited (5/200 or less vision in both eyes or concentric contraction of 5 degrees or less);
- You are in a Nursing Home due to mental or physical disabilities;
- You are bedbound because of illness; or
- You require help with daily activities (bathing, feeding, dressing).



V.A. Net Worth and Transfer Rules

- **\$123,600** - Current net worth limit
 - Home and 2 acres not part of net worth
 - Both spouse's assets counted
- **Covered Assets** – An asset that was part of net worth and if not transferred would have caused the net worth to exceed the limit
- **36 month look back period**
 - Only transferred covered assets will be penalized
 - Triggered by the receipt of an original or new claim following a period of non-entitlement




Penalty Period

- Penalty period based on the MAPR for aid and attendance for a married Veteran begins the month after an asset transfer is made.
 - MAPR is divided by 12 to come up with the monthly amount
 - MAPR with one dependent for a married veteran is \$2,169

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Examples Of Net Worth And Penalty Period

Veteran has:

- \$122,000 in net worth
- Transfers \$50,000 on 11/1/2018
- Applied for VA pension on 11/15/2018


APPROVED!

Because the transferred amount was not over the net worth limit (covered assets), there is no penalty.

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Examples Of Net Worth And Penalty Period

Veteran has:

- \$200,000 in bank account
- \$24,000 in annual income
- \$34,000 in unreimbursed medical expenses

Total net worth = \$200,000

- o Veteran transfers \$80,000 on 11/1/2018
- o Filed for VA pension on 12/1/2018
- o Net worth = \$120,000

Penalty period - $\$76,400 / \$2,169 = 35.22$

Penalty would start 12/1/2018 and run 35 months (rounded down from 35.22)

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Veterans Pension Rate Table

MAXIMUM ANNUAL PENSION RATE (MAPR) CATEGORY	AMOUNT
VETERANS WITH NO DEPENDENTS	Your MAPR amount is:
Do not qualify for Housebound or Aid and Attendance benefits	\$13,166
You qualify for Housebound benefits	\$16,089
You qualify for Aid and Attendance benefits	\$21,962
VETERANS WITH 1 DEPENDENT	
Do not qualify for Housebound or Aid and Attendance benefits	\$17,241
You qualify for Housebound benefits	\$20,166
You qualify for Aid and Attendance benefits	\$26,036

If you have more than 1 dependent, add \$2,250 for each additional.

U.S. Department of Veterans Affairs

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Does Medicare Pay For Assisted Living?



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Medicare

Medicare pays for a limited amount of **skilled nursing rehabilitation** but does not pay for any assisted living care or home care services provided by a sitter or nurse aid

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Long Term Care Insurance

- The only insurance policy that covers extended care in a skilled nursing facility or assisted living facility
- Often have a waiting period from the time the services are requested to the time the coverage starts
- The individual must meet the criteria relating to his/her inability to perform activities of daily living.


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When I'm Ready, Can't I Just Send Momma To The Nursing Home Quickly?



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Nursing Home Placement

- Nursing home placement is based on a medical, mental, and physical criteria. Frail elderly needing custodial care are **not** target clients.
- Medicaid is the payer of last resort, and an unmarried patient may only have \$2,000 in the bank to qualify for the benefit

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Nursing Home Numbers

3 in 10 residents ages 75 to 84 stays less than 100 days , the maximum number of days covered by Medicare.	1 in 10 residents ages 75 to 84 stays in a nursing home at least 5 years .
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Is Medicaid Planning Worthy Of Consideration?



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Estate Planning with Medicaid Eligibility in Mind


Medicaid planning involves exploring estate planning in a unique way to help and meet the current and future care needs of seniors

- Consider a Medicaid Compliant Trust to protect assets and preserve for family IF elder can wait for care for 5 YEARS
- Don't give up on planning if time horizon is less the 5 years—especially if there is a living spouse who is in relatively good healthy or disabled child
- Consider Long Term Care insurance or entry into a CCRC if relatively young and/or in good health


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What Are The Options For Care Near The End Of Life?



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Best End of Life Care

Palliative care: a specialized medical care for people with serious illnesses. Focuses on providing patients with relief from the symptoms and stress of a serious illness. Goal is to improve quality of life for both the patient and the family.

Hospice care: specialized care for patients who have been diagnosed with a prognosis of 6 months or less to live. Offers care for the whole person focusing on symptom management and pain control

Best Setting: Home or a home-like environment

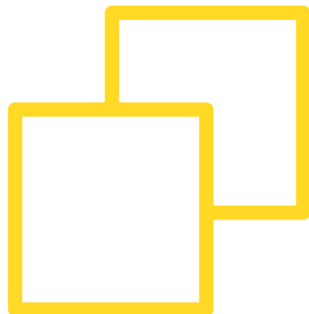


Contrast: Typical End of Life Care

- Approximately 25% of all US deaths occur in the long-term care setting, and this figure is projected to rise to 40% by the year 2040.
- Up to 20 percent of all deaths in the US occur in or shortly after an ICU stay.
- About half of hospice patients in the US received care for fewer than 17 days.



Planning For Disposition Of Assets After Death





Wills and Revocable Living Trusts

- If you want to vary the distribution for the intestate statutes
- If you want to control who the executor will be
- If you want to reduce possible family conflicts involved with the distribution of the estate
- If you want to reduce possible unintended consequences
- Be sure asset configuration and beneficiary designations match the legal documents!

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Providing For The Surviving Spouse

If you hold everything jointly with your spouse when you die, what happens if he/she later goes to the nursing home?

Don't do an "I Love You" Will.

Instead:

- Divide/separate assets between spouses
- Make a protective trust in the will of each—no 5 year look back

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What Is Probate?



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Estate Administration

- Probate is the process to authenticate a Last Will with the Court and to grant a qualified individual the authority to act on behalf of the estate
- Process of administering estates with the Court
- Death causes the creation of an estate
 - A new separate entity
 - Powers of Attorney of the decedent expire on death

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Relationship Between Probate, Nonprobate, and Taxable Estates

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In Conclusion, Consider.....

- Every case is unique
- Incapacity planning, Long term care planning, end of life planning, and estate planning are all important in creating a sustainable plan
- A team approach that wraps services around clients and families including care coordination

Proactive is always better than reactive

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Questions

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