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Seniors and Special Needs News - May 31, 2015

1 message

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With help, seniors and people with special needs can keep some of their assets in the family rather than lose their entire life savings to the costs of long term care. They can use these protected assets to enhance their quality of life beyond what long term care alone will provide.

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The Koewler Law Firm
 JAMES L. KOEWLER, JR.



Seniors and Special Needs News

Legal Issues when someone has Dementia: Preparing Power of Attorney for Health Care

This week's newsletter continues the discussion of Legal Issues when someone has Dementia. The introductory newsletter (May 1, 2015) put forth the issue of "Who can speak for someone with dementia?" The May 15, 2015 newsletter discussed the situation where the person with dementia has Advance Directives in place. The May 22, 2015 newsletter discussed the legal issues in determining whether a dementia sufferer can choose to have new Advance Directives prepared.

For people whose dementia hasn't yet taken away their ability to make decisions about Advance Directives, the next questions are which Advance Directives to prepare and how to prepare them.

Before we get confused, let's set out our terminology.

- A "power of attorney" is a legal document which appoints one or more people to handle the affairs of another person.
- The "principal" is the person who signed a power of attorney document, aka the person whose affairs will be handled by someone else. In this blog series, the "principal" is the person who now suffers from dementia and (for our discussion of preparing Advance Directives when the dementia isn't "too bad"

yet) the person who is having the power of attorney prepared.

- The “agent” is the person appointed through a power of attorney document to act for the principal.
- Note: People often use the term “power of attorney” to mean the agent, as in “I am Dad’s power of attorney.” Technically, the “power of attorney” is not a person but the legal document. I don’t try to be a stickler about the use of terms, and I often refer to a person as the “power of attorney” when talking. In these blog posts, though, I will try to refer to the “power of attorney” as the document and the “agent” as a person.

Before the dementia takes away the principal's ability to make decisions, the principal's support (family, friends, social workers, etc.) should encourage him or her to prepare and execute (fancy legal word for signing one's name) a Power of Attorney for Health Care. (The Power of Attorney for Health Care is often called something different in states other than Ohio, where I practice. I often hear the terms Health Care Surrogate or Health Care Proxy. I am not an expert on the law in other states, I think all of these terms mean roughly the same thing.) The Power of Attorney for Health Care is, as the name implies, a document appointing an agent to make decisions about the principal's health care. (I'll try to call the document a Health Care POA for the rest of this discussion because, frankly, "Power of Attorney for Health Care" sounds stuffy.)

The Health Care POA is about the skin and contents. (Thanks to Dan Keenan, a friend of mine who brokers health and disability insurance, for the description of "skin and contents.") In my opinion, the Health Care POA is the most important of the advance directives. No matter whether the principal is rich or is poor, he or she has his or her health. The principal may be in good health or in poor health, but the decisions about his or her health are very important.

Because the principal's health is important, he or she must choose an agent carefully. Because the principal (in this discussion, at least) already has dementia, the best choice for health care agent (in my opinion) is the principal's family member who is acting as caregiver or as care "quarterback." (If the principal doesn't need hands-on care on a daily basis, there is no caregiver, but, because of the dementia, a family member probably tags along on doctor visits and maybe helps manage medicine. That person is the care "quarterback." If the principal does need hands-on care on a daily or frequent basis, but someone other than a family member is providing the hands-on care, the family member most involved with the caregiver is the care "quarterback.")

The health care agent should be the person who is most involved in the

principal's care and, at the same time, emotionally connected to the principal. Someone connected to the principal's care but not connected emotionally is more likely to make appropriate clinical decisions but is not likely to be able to make the decisions in a way that the principal himself or herself would have made. Someone connected to the principal in an emotional way but not involved in the principal's care would probably have the necessary empathy to make the decisions like the principal would make them, but would lack the necessary information and experience to understand the principal's health situation. (Note: The hands-on caregiver is far more likely to be a woman than a man. The care "quarterback" is also more likely to be a woman than a man, but it's somewhat closer to even than for hands-on caregivers.)

If the principal isn't yet receiving care (because the dementia isn't yet that bad,) I suggest that the principal name his or her spouse as the agent, if the spouse is still able to make the necessary decisions. If there is no spouse, or if the spouse is unable to make these important decisions, the principal should name as agent the child most likely to become caregiver or care "quarterback."

The principal should also name successor agents. The first-named agent might become unavailable through illness, relocation, or (sadly) death. The successor agents should be the children in order of their likelihood of becoming caregiver or care "quarterback."

Also, I do not suggest naming more than one agent at a time. One person can reach a decision. Two or more people are far more likely to reach an impasse. In the event of an impasse, no care decisions are made until the health care need reaches crisis level. (Successor agents still comply with my "one at a time" suggestion. A successor takes over if the agent appointed before them is not able to serve.)

Not everyone agrees with my suggestion to name one's likely caregiver as agent in the Health Care POA. For example, **Summit County Ohio Probate Judge, The Honorable Elinore Marsh Stormer**, suggests that the principal should name as agent the person most likely to follow through on the principal's express wishes. (I learned Judge Stormer's position on whom to appoint when she and I spoke on this topic at a public outreach event for **Akron General Visiting Nurse Service and Affiliates** in October 2013.) Most notably in the context of a dementia sufferer, those wishes might include never going to a nursing home. Holding someone to the promise that the principal will never be moved into a nursing home is incredibly difficult. It may seem an easy promise to keep before dementia gets too bad. As the disease progresses, or as other afflictions appear, that promise can become an overwhelming burden for the agent/caregiver. I greatly respect Judge Stormer, but I disagree with her on this suggestion.

Finally, a Health Care POA gives an agent the power to make health care decisions for the principal. It does not take away the principal's ability to make decisions for himself or herself. The agent is the principal's backup, not the principal's replacement. The health care professionals involved in a certain may determine that the principal is not so far out of touch with himself or herself that his or her wishes should be ignored.

The principal's disagreement with the agent's decision can put the health care professional in a difficult situation. By the nature of the Health Care POA, everything over which the Health Care agent has authority involves, at some point, the principal's body. That means that the principal is present when the agent's instructions are carried out. Unless unconscious, the principal has the ability to resist the agent's wishes. That resistance can be as simple as saying "no" or as violent as biting, hitting, and kicking. Just because the Health Care agent orders something for the principal doesn't necessarily mean that it will be carried out.

To sum up for this week, if a person with mild dementia is still able to make decisions about who can make his or her health care decisions, then

- The person should prepare and sign a Health Care POA,
- The person should, in my opinion, name as agent his or her spouse and then his or her children in order of their likelihood of becoming the principal's caregiver, and
- The person should name only one person at a time as agent.

(Sorry that I didn't get this out on Friday morning as I've done in the past. It's been a crazy few weeks.)

Suggest a Newsletter Topic

I try to write something new (and useful) in my newsletter every week. So, I know that I will sometimes have writer's block. I'd like your help, please.

If you have a topic for my newsletter that you'd kindly suggest, I promise to consider it. (I don't promise to pursue it. I just promise to consider it.) I try to write about issues concerning seniors, health care, long term care, special needs, Veterans Pension (aka Aid and Attendance) benefits, and Veterans Compensation benefits. Please keep your suggestions within or near to those topics.

Please submit your suggestion [here](#). If I use your topic suggestion, I'll put the content in both my blog and newsletter.

Thank you for your help.

Social Media Posts since the last newsletter

05-30-2015 One #Family member's experience with #EndOfLifeCare <http://ow.ly/NkoUx>

05-29-2015 The value of a #Trust in #EstatePlanning and #LongTermCare planning <http://ow.ly/Nkm4y>

05-28-2015 #Animals have calming effect for children with #Autism <http://ow.ly/NjQvL>

05-27-2015 Easing the #Costs of the #FamilyCaregiver <http://ow.ly/NkmYB>

05-26-2015 Motivation to consider #LongTermCareInsurance and to talk about it with #AgingParents <http://ow.ly/NjQ1D>

05-25-2015 What can happen when an #AgingParent has a #Rehab stay in a #NursingHome <http://ow.ly/Nkoil>

05-24-2015 #AgingParents need to talk with #Family about #EstatePlan <http://ow.ly/N0wha>

05-23-2015 #EstatePlanning options when a #Family member is a #DrugAddict <http://ow.ly/NkiHE>

05-22-2015 #LegalIssues when someone has #Dementia:
Can #AdvanceDirectives be done? <http://wp.me/p47F09-bb>

Older social media posts can be found in the [social media post archive](#) on the firm's website, ProtectingSeniors.com.

The Koewler Law Firm News

6-9-2015 Jim Koewler will discuss Preventing Senior Fraud at The AbbeWood in Elyria, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

6-10-2015 Jim Koewler will discuss Helping Seniors Pre-Plan their Funerals at UH Parma Medical Center in Parma, Ohio. Continuing education credit is available for social workers, counselors, and nurses.

6-16-2015 Jim Koewler will speak on planning ahead to protect your life savings against long term care costs at a meeting of the University Hospitals Bedford Medical Center SeniorNet at the Atrium of Anna Maria in Aurora, Ohio.

6-23-2015 Jim Koewler will discuss Helping Reluctant Seniors accept the benefits of Long Term Care at Medina General Hospital in Medina, Ohio with the Medina Senior Services Network. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

8-24-2015 Jim Koewler will discuss Advance Directives (General Power of Attorney, Health Care Power of Attorney, Living Will, etc.) at the Soprema Senior Center in Wadsworth, Ohio. Jim will provide help for a limited number of people to prepare and execute their Living Wills.

9-22-2015 Jim Koewler will discuss Money Management for Seniors at Chambrel of Montrose, a Brookdale Community, in Akron, Ohio.

Older items of firm news can be found in the [news archive](#) on the firm's website, ProtectingSeniors.com.

Jim's available presentations

- Overcoming Seniors' Resistance to Long Term Care (Continuing Education credit available for social workers, counselors, nurses and Certified Case Managers)
- Preventing Senior Fraud (Continuing Education credit available for social workers, counselors, nurses and Certified Case Managers)
- My Care Ohio and Medicare/Medicaid “Dual Eligibles” (Continuing Education credit available for social workers, counselors, and nurses)
- Navigating Medicaid, Medicare, and the Affordable Care Act (Continuing Education credit available for social workers, counselors, and nurses)
- Government Benefits that can help Pay for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Legal Issues for People with Dementia (Continuing Education credit available for social workers, counselors, and nurses)
- Protect your Life Savings from the Costs of Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Veterans Benefits for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Advance Directives – Powers of Attorney, Living Wills, etc. (Continuing Education credit available for social workers, counselors, and nurses)
- Buying Long Term Care Insurance Wisely (Continuing Education credit available for social workers, counselors, and nurses)
- Planning Ahead to Protect against Long Term Care Costs (Continuing Education credit available for social workers, counselors, and nurses)
- Organizing for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Pre-planning your Funeral (Continuing Education credit available for

- social workers, counselors, and nurses)
- Protecting your Money when you need Long Term Care and Essential Estate Planning Considerations (with free living wills for the audience)
 - What people Know about Long Term Care that is Wrong
 - Myths about Long Term Care Costs
 - How to help your Parents Manage their Affairs

Upcoming meetings

- 6-2-2015 Aging Services Network of Euclid, Euclid Hospital's Waltz Auditorium, Euclid, Ohio, 8:30 a.m.
- 6-3-2015 Stark Senior Services Network, Canton Baptist Temple, Canton, Ohio, 9:00 a.m.
- 6-3-2015 Richfield Chamber of Commerce luncheon, Days Inn and Suites, Richfield, Ohio, 11:45 a.m.
- 6-3-2015 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.
- 6-10-2015 Medina County Senior Services Network, Heimatland, Brunswick, Ohio, 8:00 a.m.
- 6-10-2015 Summit Senior Sales, Administrators and Marketers Association, Bath Manor, Akron, Ohio, 2:30 p.m.
- 6-11-2015 Lorain County Senior Services Network, The Northridge, North Ridgeville, Ohio, 8:30 a.m.
- 6-12-2015 Eldercare Professionals of Ohio, Village of the Falls, Olmsted Falls, Ohio, 9:00 a.m.
- 6-15-2015 Medina County Senior Services Network's Education Committee, Tres Potrillos, Medina, Ohio, 11:30 a.m.
- 6-16-2015 UH Bedford Medical Center Senior Network, The Atrium at Anna Maria, Aurora, Ohio, 8:30 a.m.
- 6-17-2015 Geauga Professional Association Specializing in Seniors ("PASS"), Geauga County Department on Aging, Chardon, Ohio, 8:30 a.m.
- 6-18-2015 UH Bedford SeniorNet Legislative Awareness Committee, Panera, Warrensville Heights, Ohio, 3:00 p.m.
- 6-23-2015 Summit County Senior Services Network, Anthony Kucko Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.
- 6-23-2015 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.
- 6-24-2015 Professional Networking Group, The Gathering Place, Beachwood, Ohio, 4:40 p.m.
- 6-25-2015 Parma Hospital Senior Resource Network, Pleasant Lake Villa, Parma, Ohio, 8:30 a.m.
- 6-25-2015 Portage Senior Services Network, Family and Community Services Building, Ravenna, Ohio, 8:30 a.m.
- 6-25-2015 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio, 8:30 a.m.
- 6-26-2015 Eldercare Professionals of Ohio, Solon Pointe, Solon, Ohio, 9:00 a.m.

Newsletter Archive

Past issues of this newsletter can be found in the [newsletter archive](#) on the firm's website, ProtectingSeniors.com.

Contact Jim Koewler

If you'd like to contact Jim, this newsletter has a dedicated [contact page](#) on the firm's blog site, ProtectingSeniorsNews.com.

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