

Prepare to Care

PRESENTED BY:
Helen Mesoloras JD
 Partner and Elder Law Attorney

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ITEMS TO BE DISCUSSED

- Health Care Decision-Making and Management
- Financial Decision-Making and Management
- Care Planning
- Long-Term Care Costs

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SURROGATE DECISION-MAKING

Who has the authority to make health care and financial decisions?

1. The patient if not incapacitated – legal presumption of capacity;
2. An agent under Power of Attorney;
3. A surrogate under the HCSA;
4. A court-appointed guardian.

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POWER OF ATTORNEY FOR HEALTH CARE


- ◆ Revocable (even without capacity) and amendable (with capacity)
- ◆ May name only one person to act at a time
- ◆ Successor Agents
- ◆ Statutory form states that signing new power revokes old powers
- ◆ Agent to use substituted judgment. In making decisions if known, otherwise to act in best interests
- ◆ Although agent has no duty to act, if agent does act, must be with due care for principal

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HEALTH CARE SURROGATE ACT



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HEALTH CARE SURROGATE ACT

Routine medical decisions:
When a person lacks "decisional capacity" and has no Power of Attorney for Health Care, persons, in order of hierarchy, may make routine medical decisions.

Decisions to refuse or discontinue life support:
When a person both lacks "decisional capacity" and has a "qualifying condition" and has no Power of Attorney for Health Care, persons, in order of hierarchy, may make decisions to refuse or discontinue life support.

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POWER OF ATTORNEY FOR PROPERTY

- ♦ Executing new Power of Attorney for Property revokes old Powers unless customized
- ♦ Agent must act in accordance with principal's known expectations, otherwise in principal's best interests
- ♦ Powers of agent defined in statute unless modified in document – very broad
- ♦ Agent must keep record of receipts, disbursements, and other significant actions.

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POWER OF ATTORNEY FOR PROPERTY

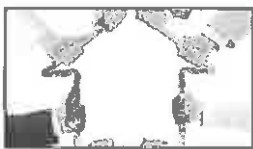
- ♦ Duty to Account
- ♦ Agent must provide, upon request, a copy of receipts, disbursements, significant actions to principal or fiduciary on behalf of principal, Adult Protective Services agency, ombudsman, public guardian or court
- ♦ Standard of Actions
- ♦ Agent must be act in "good faith" using "due care, competence and diligence" in acting for principal
- ♦ Gifting
- ♦ No authority to gift unless power is added to the document

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JOINT TENANCY



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DEFINITION

What is a trust?

- A legal arrangement through which one person or an institution holds legal title to property for another person. The rules/instructions under which the trustee operates are set out in the trust instrument.

Types of Trusts:

- Revocable and Irrevocable

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REVOCABLE TRUSTS

Revocable Trusts

Gives the donor complete control over the trust, can take back the funds he or she put in the trust or change the trust's terms.

Used For:

- 1. Asset Management:** Allows the trustee to administer and invest the trust property for the benefit of one or more beneficiaries of the trust.
- 2. Probate Avoidance:** at the death of the person who created the trust, the trust property passes to whomever is named in the trust. It does not come under the jurisdiction of the probate court and its distribution need not be helped up by the probate process. However, the property of a revocable trust will be included in the donor's estate for tax purposes.

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REVOCABLE TRUSTS

- 3. Tax Planning:** While the assets of a revocable trustee will be included in the donor's taxable estate, the trust can be drafted so that the assets will not be included in the estates of the beneficiaries, thus avoiding taxes when they die.
- 4. Disability Planning:** Wills only provide for death. Trusts can help a person have a plan in place in the event of their own illness.

Important to Know:

Assets must be transferred to the trust and held in the trust, which requires lifetime administration.

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SPECIAL NEEDS TRUSTS

- Established by the Omnibus Reconciliation Act of 1993. Often called OBRA Trusts.
- Irrevocable
- Can be used to assist a person who is, or may become, eligible for SSI or Medicaid.

- Two Types:

(D)(4)(A)- for people under 65 years old & disabled

(D) (4)(C)-for people over 65 years old

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(D)(4)(A)- FOR PEOPLE UNDER AGE 65

- Irrevocable
- In the past, the trust needed to be established by parent, grandparent, court or guardian. However, the Special Needs Trust Fairness Act, which recently became law, allows individuals who have a disability to create their own trust.
- If proceeds of trust are from personal injury action, a lien from Medicaid must be paid off before transferring the proceeds to the trust.
- Trustee can be an individual or corporate trustee.

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(D)(4)(C) – FOR PEOPLE OVER AGE 65

- Irrevocable
- Established by parent, grandparent, court or guardian or the beneficiary him or herself
- Referred to as 'pooled trust' as assets are pooled together with assets of other people for investment purposes
- Administered by a non-profit organization partnered with a corporate trustee.
- The SMART Act (effective July 1, 2012) restricts the use of this type of trust as a transfer into the trust is considered a 'transfer of asset for less than fair market value' which results in period of Medicaid ineligibility.

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PLAN FOR LONG-TERM CARE

- ◆ Driving
- ◆ Meal Preparation
- ◆ Bathing
- ◆ Toileting
- ◆ Dressing
- ◆ Transferring from bed to chair, etc.

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PLANNING FOR LONG-TERM CARE COSTS

The cost of long term care-meaning either in-home care or in a care community for individuals requiring assistance with activities of daily living- is largely an uninsured healthcare cost for most individuals.

Planning for possible exposure to these costs is necessary for effective retirement planning.

Medicare Coverage

Covers up to 100 days of skilled nursing care provided in a Medicare certified nursing facility following an in-patient hospitalization of at least 3 Midnights. Medicare pays the full cost of the first 20 days. There is a coinsurance payment of per day for days 21 through 100 which many Medicare supplemental policies cover.

Medicare provides home care to those individuals needing intermittent skilled care, usually post hospitalization only, although long term part time skilled home care services are covered. Skilled care does not include custodial care, which is the type of long-term care most individuals require.

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LONG-TERM CARE INSURANCE

Long Term Care Insurance is the only health insurance that pays for custodial long term care, either at home, or in a care community.



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RESIDENCY

- ◆ Only residents of Illinois are eligible for Illinois Medicaid.
 - ◆ Voluntarily living in Illinois
 - ◆ No durational requirement
 - ◆ Intention to remain in Illinois
 - ◆ If an individual maintains a home in another state, Illinois residency may not be established.

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CITIZENSHIP

- ◆ Only U.S. Citizens or lawful aliens are eligible for Medicaid.
 - ◆ Lawfully admitted for permanent residency; or
 - ◆ Permanently residing in the United States under color of law
 - ◆ Documentation of U.S. Citizenship and identity is required of all applicants except for Medicare, SSI, and RSDI recipients.

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MEDICAID ELIGIBILITY ASSET LIMITATIONS

- ◆ Exempt assets:
 - ◆ \$2000 asset disregard
 - ◆ Homestead Property if: intend to return; occupied by spouse; siblings; minor or disabled child. Equity must be less than \$536,000 or not exempt unless occupied by spouse, dependent siblings, minor or disabled child.
 - ◆ Personal Effects or Household Goods
 - ◆ Motor Vehicle necessary for medical transportation, modified for handicap, transferred to community spouse, or worth less than \$4500
 - ◆ Life Insurance
 - ◆ Burial Funds
 - ◆ Burial Space and Merchandise

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BURIAL FUNDS

- ◆ Up to \$1,500 in a revocable burial fund contract;
- ◆ Funds in a irrevocable prepaid burial contract up to \$6,562 (2019), including both goods and services but not including burial spaces; or
- ◆ A prepaid burial contract funded by an irrevocable assignment of a person's life insurance policy to a trust which includes a statement that upon the death of the person the State will receive all amounts remaining in the trust. Must be acknowledged by insurance company.

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INCOME ELIGIBILITY

- ◆ To qualify for Medicaid coverage, the nursing home or supportive living resident's countable monthly income must be less than the nursing home's monthly private pay rate.
 - ◆ Different income rules apply to the Community Care Program
- ◆ Income in the community spouse's name is not considered available to the nursing home spouse from the first full month in which the nursing home spouse is institutionalized.
- ◆ "Name on the instrument" rule

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COMMUNITY SPOUSE ASSETS

- ◆ All assets of the institutionalized spouse and community spouse count as available in determining eligibility.
- ◆ Community Spouse Asset Allowance – the standard allowance is \$109,560. All other nonexempt assets considered available to pay for care.
- ◆ Court Orders – the State must allow assets awarded to the community spouse by court order

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MEDICAID TREATMENT OF TRUSTS

- ◆ **Self Settled (or by spouse) Revocable Trusts** - commonly known as "Living Trusts"
 - ◆ Count as an asset
- ◆ **Self Settled (or by spouse) Irrevocable Trusts**
 - ◆ Whatever amounts that the trustee may use for the benefit of the Medicaid applicant is presumed available; it can use any principal, all available
- ◆ **Third -Party Trusts**
 - ◆ Do not count if "discretionary"; count if can be used for support, health and maintenance
- ◆ **OBRA Payback Trusts**
 - ◆ Do not count if meet all requirements

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
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James Dutton, Kathryn Casey, and Helen Mesoloras are Certified Elder Law Attorneys (CELAS). The Certified Elder Law Attorney is the only American Bar Association approved designation for elder law.

ABOUT OUR FIRM
At Dutton Casey & Mesoloras, P.C., we provide comprehensive and personally tailored elder law, estate planning, guardianship, and probate services. Through our expertise of over 145 years of combined legal experience, personal attention, and commitment to service, we assist our clients in achieving their goals and finding peace of mind. Our clients can depend on our team for the knowledge, advice, and support they require to resolve their legal needs.

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OUR TEAM

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Kathryn Casey, CELA | Principal
Helen Mesoloras | CELA | Principal
Amy Gjesdahl | Attorney
Melissa Kello | Attorney
Samantha Zullo | Attorney
Elin Vogel | Client Care Coordinator

HOW WE CAN ASSIST YOU

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- ◆ Medicaid Planning and Applications
- ◆ Litigation for Vulnerable Adults Against Abuse, Neglect, and Financial Exploitation
- ◆ Care Navigation and Advocacy
- ◆ Senior Housing, Contracts, Admissions and Discharges

ESTATE PLANNING

- ◆ Estate Planning (will, trusts, powers of attorney)
- ◆ Long-Term Care Planning (for those living with dementia and other chronic medical conditions)
- ◆ Special Needs Planning

GUARDIANSHIP

- ◆ Guardianship and Contested Guardianship for Adults and Minors
- ◆ Financial Exploitation Litigation

PROBATE

- ◆ Probate and Trust Administration
- ◆ Will and Trust Litigation

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