

Navigating Health Challenges from a Legal Perspective.

VIRGINIA SAMPSON ATTORNEY

PRACTICING LAW WITH COMPASSION

WWW.VIRGINIASAMPSONLAW.COM

512-980-4610

Disclaimer

- ▶ The information contained in this PowerPoint is for educational and informational purposes only. This presentation does not constitute and is not a substitute for legal advice nor does it establish an attorney client relationship. The contents of this presentation represent the opinions of the presenter only. Other attorneys may have different opinions. Each state has different laws and each person's situation is unique. Please consult with an attorney before taking any action based on information contained in this PowerPoint presentation. If you need legal advice or have any legal issue we recommend that you consult with an attorney as soon as possible to discuss your individual needs and to plan for your individual situation. Waiting to seek legal advice may hinder your ability to obtain government benefits, execute the necessary legal documents or obtain any other legal assistance.

Myth number One

There is no rush to plan because my spouse or parents are very healthy.

Myth Number Two


Because you are the primary caregiver you can make medical decisions when the person you are caring for cannot make decisions for themselves.

Myth number Three


A spouse or adult child of an incapacitated person is automatically eligible to make financial decisions for them.

Myth number Four

You have to be penniless to qualify for veterans benefits or Medicaid.



“What can I do? My spouse or parents don't want to talk about these issues.”



When is the right time to give permission or ask to be an agent for another?

Right now if you are 18 or older!

Why is it better to ask before someone needs help?

- ❖ **MAXIMIZES CONTROL:** Gives the person signing the documents control over who will be making decisions for them; Otherwise the court will select the agent.
- ❖ **REDUCES EXPENSES:** Typically avoids the expense of hiring an attorney to file a guardianship action in court.
- ❖ **REDUCES STRESS:** Reduces the stress for the signor of the documents and his/her family because it avoids the stress and expense of court but also because it avoids family conflict over who will be appointed guardian by the court.
- ❖ Much easier to get the consent of people especially ill or seniors if you talk to them about this before their illness progresses and they begin to feel they are losing control over their life. When they are ill or frail they begin to feel threatened and worry that you want to take all control from them. They tend to resist at that point.

What (basic) legal documents are available?

- ▶ Durable Power of Attorney
- ▶ Power of Attorney for Mental Health (not specifically authorized in Texas)
- ▶ Medical Power of Attorney
- ▶ HIPAA Release
- ▶ Advance Directive
- ▶ Advance Directive for Mental Health (if necessary)
- ▶ Declaration of Guardian
- ▶ Last Will and Testament
- ▶ Disposition of Remains (if necessary)
- ▶ DNR - Do not Resuscitate

Is my loved one able to sign documents?

- ▶ The person must be capable of understanding the nature of the document he/she is signing at the time he/she is signing.
- ▶ There is no universal standard.
- ▶ The lawyer must assess the mental capacity of the signor on a case by case basis.
- ▶ Ethically the lawyer cannot have someone sign a document who is not capable of understanding the consequences/nature of the document he/she is signing.
- ▶ People who have been diagnosed with dementia/mental illness **may** be capable of signing a document. It may be subject to challenge at a later day.

Durable Power of Attorney

- ▶ **What does it do?** Authorizes the designated agent to make financial decisions and handle the financial affairs of the senior/loved one;
- ▶ Typically is required by a community if the agent believes the senior/loved one needs to move to a community. Independent living, assisted living or skilled nursing.

Medical Power of Attorney

- ▶ **What does it do?** Authorizes the designated agent to make medical decisions for the senior/loved one;
- ▶ Usually required by a community in which the senior will be residing;
- ▶ Permits the agent to order medical services for the loved one.

Mental Health Power of Attorney

- ▶ **What does it do?** Authorizes a designated person or persons to make mental health care decisions for the person who executes the document;
- ▶ If a loved one suffers from a mental illness, dementia, Alzheimer's, etc. the agent will not be able to commit the person to a facility for treatment without this document.
- ▶ A medical power of attorney does not authorize mental health care decisions to be made by the agent.

HIPAA Release

- ▶ **What does it do?** Authorizes the senior/loved ones medical care providers to speak with and share medical information with the agent.
- ▶ Health care providers will not speak to you without this document.
- ▶ The agent can to speak to health insurance companies.

Advance Directive

- ▶ The senior/loved one expresses their wishes as to how they wish to be treated in the event of a terminal illness or a certain type of life changing event.
- ▶ Do you want to receive every available treatment or
- ▶ Do you want to be just kept comfortable and allowed to die peacefully.

Advance Directive for Mental Health Issues

- ▶ This document expresses the wishes of someone suffering from a mental illness, dementia, Alzheimer's, etc. to elect to receive certain types of treatment or not.
- ▶ It is very specific and it is recommended that it be completed with the assistance of the treating physician or other health care professional.

DNR – Do Not Resuscitate

- ▶ For emergency situations e.g. when 911 is called;
- ▶ Requires signature of a physician
- ▶ Authorizes EMT to withhold the following treatments:
 - ▶ CPR-cardiopulmonary resuscitation
 - ▶ Transcutaneous cardiac pacing;
 - ▶ Defibrillation;
 - ▶ Advanced airway management;
 - ▶ Artificial ventilation.

Declaration of Guardian

- ▶ In the event the senior/loved one needs a guardian of their person and/or estate appointed they can express their wishes as to who they want to be appointed in this document.
- ▶ You may exclude certain persons from serving as your guardian
- ▶ A court proceeding will still be necessary.

Disposition of Remains

- ▶ For funeral home
- ▶ Appoint an agent to make decisions for your final remains;
- ▶ You can include a limitation on their decisions;
 - ▶ For example may be able to specify cremation rather than burial.

Last Will and Testament

- ▶ This is the document where the senior/loved one expresses their wishes as to how they want their assets to be distributed upon his/her death.
- ▶ It is legally enforceable.
- ▶ A probate proceeding is opened in the county where the death occurred.
- ▶ Assures the senior/loved one that their assets will pass as they desire (unless contested)

Avoiding Probate.

There are some simple ways to avoid probate altogether depending on the type of assets you have. (A will is still important.)

Long Term Care Cost

- ▶ Cost of care in Travis County is expensive.
- ▶ It can cost more than \$5,000.00 per month and even more.

How to pay for Long Term Care

- ▶ Use assets acquired during the senior/loved ones lifetime;
- ▶ Long Term Care Insurance;
- ▶ Veterans Administration Aid and Attendance Benefits;
- ▶ Medicaid.
- ▶ Reverse Mortgages

Personal Assets

- ▶ Many people do not have enough assets to cover the cost of long term care for the remainder of their lives.

Long Term Care Insurance

- ▶ Typically the senior/loved one will not be eligible to purchase this when they need to go into a community.
- ▶ Should be purchased at a much earlier time in their lives.
- ▶ Can be expensive to purchase.
- ▶ You may want to consider consulting with a reputable insurance agent now.

Veteran's Aid and Attendance Eligibility

- ▶ Available for Veterans and their spouses or widows
- ▶ Veteran must have served in active military for 90 or more consecutive days with one day during a period of wartime as defined by the Department of Veterans Affairs;
- ▶ Veteran must have been not dishonorably discharged;
- ▶ Veteran must be at least 65 years of age or totally or permanently disabled;
- ▶ There is a three year look back period;
- ▶ Medical expenses must exceed income;
- ▶ Cannot have total assets in excess of \$138,489.00 per individual or per couple. Increases slightly each year. Some assets are exempt.
- ▶ Medical need must exist – assistance with daily living tasks.

Veterans Aid & Attendance monthly benefits

- ▶ \$2,431.00 monthly for a married veteran
\$2,050.00 monthly for a single veteran
\$1,318.00 monthly for a surviving spouse
\$1,500.00+ monthly for a spouse needs care, living
veteran does not
- ▶ Benefits increase slightly each year.
- ▶ Tax free for remainder of Veteran/widow's life

Medicaid Facts

- ▶ Covers some of the cost of a skilled nursing facility that is medicaid approved or if senior/loved one is in a medicaid bed;
- ▶ Individuals can have \$2,000.00 and couples can have \$4,000.00 (in assets;) if both applying for medicaid
- ▶ Individuals can have only \$2523.00 in monthly income (this can be put into a trust)
- ▶ There is a five year look back period particularly regarding gifting of assets
- ▶ Some assets are exempt like your house) (there is a limit on the amount of equity you can have) Action should be taken to protect the home from a Medicaid lien.
- ▶ You can do some planning and restructuring of assets and income to qualify for medicaid

Taking care of you the caregiver

- ▶ The most important asset is you – the Caregiver.
- ▶ You must take care of yourself to be able to take care of your loved one (You must remain healthy physically and psychologically)
- ▶ Practice self-compassion – the same care and concern you show to others including your loved one - you should show to yourself

Virginia Sampson

- ▶ Elder Law Attorney
- ▶ Estate Planning
- ▶ Probate

- ▶ virginiasampsonlaw@gmail.com
- ▶ 512-980-4610
- ▶ www.virginiasampsonlaw.com