

# THE HOLISTIC APPROACH TO ELDER CARE AND HOW IT IMPACTS ESTATE PLANNING

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# ABOUT CHRISTINA LESHER

Christina Lesher provides comprehensive legal advice on Elder Law, Medicaid and Special Needs Planning, Veteran's Benefits, and other legal issues confronting seniors and persons with disabilities.

Christina is a 2003 graduate from the University of Houston Law Center. She also holds a bachelor's degree from Texas State University in San Marcos, Texas, where she graduated Summa Cum Laude.

She serves on the board of directors for the Texas Chapter of the National Academy of Elder Law Attorneys, and is a member of the board of directors of Alzheimer's Association Houston/ Southeast Texas Chapter.

Christina is a frequent speaker to professional organizations, social workers, attorneys, and community groups on the areas of law she practices. In 2010 and 2011, she was named as a "Super Lawyer" in the Texas Rising Stars Edition of Texas Monthly. Christina had regular guest appearances on Houston's Local Fox news "Wake Up Money".

Prior to becoming an attorney, she was a caregiver for her grandfather who had dementia. Christina has dedicated her career to assisting older adults and persons with special needs. A native of Huntsville, Texas, she now resides in Houston with her husband, Kirby, her mother Lois, and sons Luke and Max.



# CHECKLIST OF DOCUMENTS FOR ILLNESS/ INCAPACITY & MEDICAL DECISIONS

- **1. Durable Power of Attorney:**  
Appoints an agent to handle business/ financial affairs
- **2. Medical Power of Attorney:**  
Appoints an agent to make health care decisions
- **3. Directive to Physicians:**  
Allows you to put in writing your desires for end of life treatment
- **4. HIPAA Release:**  
Allows you to appoint agents who can access your medical information
- **5. Revocable Trust:** Trust assets are managed by Trustee  
Can avoid Medicaid estate recovery



# CHECKLIST OF DOCUMENTS THAT DISTRIBUTE ASSETS AT YOUR DEATH

- **5. A Will** appoints an executor and distributes your assets to family/friends/ charity.
- Probate transfers title and ownership of certain types of assets at your death.
- **5. A Trust** appoints a Trustee to handle assets for incapacity and distribute trust assets at death.
- **Special or Supplemental Needs Trust** provides for asset management and eligibility for public benefits.
  - Planning for Minor or Disabled Children
  - Planning for a Disabled Spouse



## ESTATE PLANNING FOLLOW UP

- If I have out of state documents I need to:
- If I spend significant time in another state I need to:
- I need to review my estate plan every \_\_\_\_\_ years.
- Beneficiary designation check up:
- I need to review the following:
  - Agent:
  - Distribution plan:
  - Life changes:



## WHO PAYS FOR LONG-TERM CARE?

- Limited Medicare Coverage
- Veteran's Benefits
  - 1-800-827-1000 (then press 1 then press 0)
  - Aid and attendant benefits (cash benefit), also for spouses
  - Va.gov
  - See Local Field Office
- Long Term Care Insurance
- Private Pay
- Medicaid- usually limited to nursing home settings



# QUICK LESSON ON MEDICARE VS. MEDICAID

- Medicare
  - Federally Administered
  - Entitlement
  - **Most programs not “Means Tested”**
  - Part A- Hospital Insurance
  - Part B- Medical Insurance
- Medicaid- “needs based”
  - Uses State & Federal Funds
  - State Administered
  - Multiple programs, different requirements
  - **Means Tested**
  - **Spousal Protections for Long-term care**



## WHAT DOES MEDICAID PAY FOR?

- Basic Care
- Medical and Support needs
- Prescriptions\*
  - (Medicare Part D)
- **Does not cover:**
  - Dental work
  - Bed hold charges
  - Some miscellaneous medical supplies



## WHO QUALIFIES FOR MEDICAID NURSING HOME BENEFITS?

- Over 65 or disabled
- Meet the
  - Income,
  - Resource and
  - Medical Necessity Requirements
- Person is in a “Medicaid” bed and in a Medicaid nursing home



## NURSING HOME MEDICAID

- **Income requirement**
  - Name on the Check Rule
  - Single \$2,199.00 Gross monthly
  - Couple \$4,398.00 Gross monthly
  - Can “fix” with Miller Trust
- **Resource requirements**
  - Some resources count
    - Countable= fair market value
  - Some resources are exempt
    - \$0 value
- **Medical Necessity**
  - Care provided by a trained professional, nurse supervisor
  - Not include inability to perform activities of daily living



## EXEMPT VS. COUNTABLE RESOURCES

- Exempt
  - Your house (equity \$534,000 unless there is a community spouse or minor or disabled child at home)
  - One car
  - Your wedding set
  - Term life insurance
  - Pre-need funeral contract
- Countable
  - Checking & Savings Accounts
  - Annuities (unless meets certain requirements)
  - Retirement Accounts (maybe)
  - Second Car, Home
  - Cash Value of Life Insurance Policies



## RESOURCES- SINGLE

- \$2,000 in countable resources
- Homestead is exempt up to \$534,000- unless minor or disabled child (but estate recovery applies)



## RESOURCES- MARRIED

- Depends on the amount of countable resources they had as of the first month of stay in the medical institution
- Depends on the income\* of the Community and Institutionalized Spouse
- Many couples will spend down their assets needlessly
- There are many techniques such as:
  - Gifting (must do with advice from attorney),
    - Disabled family member
    - Gift to TUTMA
    - Take a penalty
  - Pay debt,
  - Purchase of annuity,
  - Convert investments in retirement accounts, and
  - Purchase exempt assets.



## MEDICAID CHANGES

- “Look back period” now five years for transfers/gifts
- Penalty period start delayed
- Recover from Medicaid recipients the amount expended for their care after their death
- Some Exemptions:
  - During lifetime of surviving spouse
  - Surviving child under 21
  - Surviving child with blindness or disability
  - Undue hardship (low value homes)
  - Recovery not cost effective

## WHAT IS A GERIATRIC CARE MANAGER?

- Assists in locating appropriate long-term care placement
- Assess needs and situation to establish a plan of care
- Your own personal tour guide through the maze of healthcare
- Monitor care in nursing home, assisted living, adult day care, etc.
- Saves you time, energy and money, and provides peace of mind!
- [WWW.AGINGLIFECARE.ORG](http://WWW.AGINGLIFECARE.ORG)



# OTHER RESOURCES

- Elder Law Attorneys  
[www.NAELA.org](http://www.NAELA.org)
- Medicare Coverage
  - [www.medicare.gov](http://www.medicare.gov)
- Medicaid
  - [www.dads.state.tx.us](http://www.dads.state.tx.us)
- Veteran's Benefits
  - 1-800-827-1000
  - [www.va.gov](http://www.va.gov)
- AARP - [www.aarp.org](http://www.aarp.org)
- Alzheimer's Association
  - [www.alz.org/texas](http://www.alz.org/texas)
- Harris County Area on Aging
  - <http://www.houstontx.gov/health/Aging/>
- Phone 2-1-1 Texas United Way Help Line
- Locate a caremanager: [aginglifecare.org](http://aginglifecare.org)

