

## The Importance of Planning Early

“Planning is bringing the future into the present so that you can do something about it now.”

Alan Lakein, American author and Time Management Expert

We plan to go on vacation. We plan to have dinner with friends. But when it comes to planning for how we will be taken care of as we advance in age, many of us prefer not to think about it, believing it will somehow all work out. Unfortunately, when it comes to long term care planning, including finding the appropriate care and figuring out how to pay for it, those who fail to plan are clearly the ones who risk losing the most.

Consider the two simplified scenarios below that contrast the different outcomes of planning early and choosing the “wait and see” approach for long term care.

### The Facts

Hank is 72 and Ellen is 69. They have been retired for several years and have started traveling a few times a year to visit their children and grandchildren who live in nearby states. During a recent visit, their oldest child asked them whether they had made any plans in the event one of them suddenly got sick. Hank and Ellen had not thought much about this since both of them were in good health. However, they agreed to seek some advice upon returning home to see what their options were.

Hank and Ellen own a home that they have lived in since their marriage 45 years ago, and they have checking, savings and CD accounts that total \$325,000. They both worked most of their adult lives, carefully watching their expenses and never spending money on extravagant items they didn't feel they needed.

**Scenario #1 – Hank and Ellen planning ahead.** Hank and Ellen spoke with an elder law attorney, as they knew they should update their will and their powers of attorney. While there, they learned that they could plan now to preserve their assets should they need long term care either at home or in a facility. With the help of their elder law attorney, they placed \$200,000 and their home into an

**From:**  
**Elizabeth P. Allen, JD, LLM**

**Gibbons, Neuman, Bello, Segall,  
Allen & Halloran, P.A.**  
3321 Henderson Blvd.  
Tampa, FL 33609  
Phone: 813-877-9222  
Fax 813-877-9290



irrevocable trust, and named their children as beneficiaries of the trust. If needed, their children would be able to take a distribution from the irrevocable trust rather than using their own money for Hank and Ellen's needs.

The remaining \$125,000 would be kept in a revocable trust that Hank and Ellen would use for their living and travel expenses. Ellen would apply for a long term care insurance policy to provide further protection for them should her health fail (Hank had applied previously but was denied). The \$200,000 placed into the irrevocable trust would not be counted against them after 5 years, should either of them need long term care and the assistance of state benefits to pay for it.

Unfortunately, six years later Hank had a severe stroke and ended up in a nursing home unable to use his right side arm or leg. Ellen had tried caring for him at home but was simply unable to. Ellen went back to see the elder law attorney for help. Because they had planned ahead and had set up an irrevocable trust, Ellen was able to keep all of the remaining cash assets in their revocable trust (which by this time were less than \$110,000), and Hank was able to qualify immediately for state Medicaid benefits. The irrevocable trust (which had now grown to \$215,000) remained in place but did not count against Hank since more than 5 years had passed and neither Hank nor Ellen had any direct access to the trust assets.

Ellen was incredibly relieved to know that she did not have to worry about paying for Hank's care and could instead focus on visiting him and providing as much support as possible to him. She has piece of mind knowing their children continue to manage the irrevocable trust and are ready to help both Ellen and Hank as needed.

**Scenario #2 – Hank and Ellen without planning ahead.** Let's assume Hank and Ellen did not plan ahead or go see an elder law attorney after his stroke. When Hank had a stroke at age 78, the couple had \$300,000 in checking, savings and CDs. Under the Medicaid regulations in place at the time, Ellen was able to keep \$110,000 of the assets. Their Florida home was protected since it was their homestead and Ellen was still living in it. However, not knowing there were other options available, most of the remaining assets (all but \$2,000) were spent down over the course of a couple years on Hank's care until Hank could apply for Medicaid. The process was incredibly stressful for Ellen and her children. Furthermore, since no planning has been done for Ellen and if her health fails, any remaining assets could still be at risk.

If Ellen had sought the assistance of an elder law attorney after Hank's stroke, she would have found out that there were asset preservation techniques that could have been implemented to avoid the depletion of most of the assets in excess of the \$110,000 she was allowed to retain and quicken Hank's eligibility for Medicaid.

### **What If Hank Was Not Married?**

Let's assume Hank was not married, but had the same assets. If Hank planned early, all of the assets he put into an irrevocable trust (including his home) would be protected. Any assets left outside the trust could be transferred or turned into an income stream to pay for his care, should his health fail and he would need to qualify for Medicaid. Just as above, the Medicaid application process would go smoothly and quickly. In addition, the enhanced power of attorney he executed as part of his planning would avoid the need for a guardianship in the event Hank was unable to make the transfers or sign the Medicaid application himself.

If Hank did not plan ahead he would have to spend down his assets to the \$2,000.00 Medicaid level before being able to apply or seek crisis Medicaid planning from an elder law attorney. If, as a result of the stroke, Hank did not have capacity to spend down, make any transfers or to engage in other asset protection techniques, without an enhanced durable power of attorney a guardianship proceeding would have to be initiated before any of those actions could be made. Furthermore, the guardianship court would have to grant permission for such transfers to be made.

### **Conclusion**

The scenarios above have highlighted the importance of seniors and their loved ones planning early for the possibility of needing long term care. There are not only financial benefits to doing so, but also numerous non-financial benefits, including reduced stress on the family and peace of mind knowing that the family's needs are taken care of regardless of any health care crisis that may occur.

Our law firm helps families plan for their long term care needs, whether it is years in advance or after a health care crisis has occurred. We would be honored to work with you or the seniors and families you assist.

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