

What To Consider When There Is A Recent Dementia Diagnosis

It is a cruel fact of life that some of our clients or members of their families will be diagnosed with Alzheimer's Disease or other forms of dementia. They will slowly, but sometimes rapidly, deteriorate before our eyes. Their memories wane, particularly their capacity to recall things that recently took place.

A new diagnosis is a good time for individuals to review and perhaps reevaluate their estate plans. The most important document to be reviewed is their power of attorney (POA). A POA is a legal document whereby an individual appoints someone else to make legal and financial decisions for them. In the absence of a valid POA, if an individual becomes incapacitated, their family members may be forced to petition the Court to have a guardian or conservator appointed for them. This can be an incredibly costly, time-consuming, and heart-wrenching experience, particularly when family members do not agree about whom should be appointed as the guardian or conservator.

Next, the individual should engage in Medicaid planning. For the majority of seniors, or even those younger individuals who have a recent diagnosis, the cost of care that they will eventually require is huge. Both home care and nursing home care, for those who require it, are extremely expensive, particularly for individuals who require around the clock care. If done far enough in advance, individuals might be able to protect most, if not all, of their assets.

But Medicaid planning is not for the wealthy or those with means. Many of our clients do not need to engage in Medicaid planning because they either have sufficient funds to pay for their care or they have adequate long-term care insurance (LTCI). LTCI can be great, but sometimes it is insufficient to pay for the full cost of care. People should not wait until there is a dementia diagnosis in order to renew their LTCI policies.

Every adult, whether they are diagnosed with an illness or not should have a healthcare proxy (HCP) or health directive. A HCP is a document wherein an individual appoints someone else to make healthcare decisions for them if they should become incapacitated and unable to make those decisions on their own. Like the POA, the form will vary by state. Moreover, some states will allow individuals' closest relatives to make substituted healthcare decisions, even when there isn't a HCP, however, a person's closest relative is not always the "right" person to make those types of decisions.

We need to remember that just because someone has been diagnosed with Alzheimer's, dementia, or mild cognitive impairment, it does not mean that they cannot make decisions. The legal standard for the requisite capacity to execute a will varies from state to state. In New York, for example, the capacity required to execute a will is less than that required to execute a POA. In essence, if the person executing the will understands what will result from it, what their property is, and who their family members are, then they have the requisite capacity under New York law. But it is important that such individuals not delay in getting their affairs in order because, unfortunately, dementia is generally degenerative, and they may come to the point where they can no longer meet the standard.

One item a younger person should consider is possibly applying for Social Security Disability Insurance (SSDI) benefits. If individuals are still working or have recently stopped working, then they may be able to avail themselves of SSDI benefits. Additionally, they should look into whether their employer has a long-term disability policy and whether they are covered under such policy. Moreover, the individual might have a private disability policy that may pay out considering the individual's inability to continue working.

Finally, elder abuse and elder financial abuse is a terrible reality in our time. There are so many scams and scammers out there. Unfortunately, many of the victims of elder abuse and elder financial abuse are those seniors who do not have many family members with whom they are actively involved. Even more sadly, sometimes elder abuse is committed by the family members themselves. This is why it is so important for people to make sure their advance directives (POA and HCP) are in order and the professionals in their lives (i.e. physician, attorney, geriatric care manager, investment advisor) are fully briefed on whom the individuals have chosen to make these important decisions when they themselves cannot.

Truer Words Have Never Been Spoken

One of the saddest lessons of history is this: If we've been bamboozled long enough, we tend to reject any evidence of the bamboozle. We're no longer interested in finding out the truth. The bamboozle has captured us. It's simply too painful to acknowledge, even to ourselves, that we've been taken. Once you give a Charlatan power over you, you almost never get it back. *Carl Sagan.*

As always, if you have any questions about these or any other matters, do not hesitate to call us.