

# Cornelius & Talley, PC

ATTORNEYS AND COUNSELORS AT LAW

## Life Care Planning

Having a chronic, long-term, debilitating illness such as Alzheimer's Disease, Multiple Sclerosis, Parkinson's Disease, Stroke, or Arthritis can be extremely frightening and can create a great deal of uncertainty and insecurity for both the patient and his or her loved ones.

The fear associated with the loss of control over the mind and/or the body coupled with fears of financial ruin can result in all-consuming anxiety and depression for those involved.

It is important to realize that **there are things you can do** to restore some control over your life. With proper legal and financial advanced planning, you can ensure that those people you trust will carry out your plans for the future. Advanced planning can also ensure that the disease does not cause your financial ruin.

Additionally, by educating yourself regarding the services that are available in your community, you can begin to build the support system that you or your loved ones need to manage the effects of a long-term illness.

This booklet Life-Care Planning for the Aging and Those with Long-Term Illness and/or Special Needs is dedicated to providing information and answering some of the concerns you might have as you move through the process with a progressive debilitating illness. However, it is intended as an informational source and starting place only. It is not intended to be exhaustive legal information or advice, nor is it intended to be a listing of all the available resources.

Our clients have found this guide to be a valuable resource, and we hope you also will find it useful.

This Guide is brought to you as a service of

The Law Office of

**Cornelius & Talley, PC**

**Attorneys and Counselors at Law**

***"Specializing in Elder Law and Special Needs Planning"***

1512 Alex Drive  
Birmingham, Alabama 35210

Website: [www.corneliustalley.com](http://www.corneliustalley.com)  
Telephone: (205) 977-9911

*This booklet is not intended to replace legal advice from a competent attorney and no reference is intended that this information is better than that of any licensed attorney in the State of Alabama.*

## **IF YOU DO NOTHING ELSE...**

### **Questions:**

1. If you were unable to manage your financial and legal affairs on your own due to a debilitating illness, who should select the person to handle these matters for you.
  - YOU OR
  - THE COURT?
2. If you were unable to make your own health care decisions due to mental incapacity, who should select the person to make these decisions for you?
  - YOU OR
  - THE COURT?

### **Hint:**

If you leave the selection process up to the Court, it could cost you thousands more in attorney's fees and filing fees and result in unnecessary delays. Perhaps the most unfortunate result is that you would have no say in who is chosen to handle your affairs.

### **Answer:**

IF YOU DO NOTHING ELSE, it is vitally important to sign a Financial Power of Attorney for business and legal matters, a Health Care Power of Attorney for medical decision-making, and Living Will with a Healthcare Directive for end of life decisions. These relatively simple and inexpensive documents allow you to select the person(s) to watch over your health care needs and to manage your legal and financial affairs if you lose the capacity to act on your own.

There is no reason to leave the selection process up to a Court when you are in the best position to select the most trustworthy, levelheaded, and caring people to handle your affairs: Furthermore, if you become incapacitated, without the Power of Attorney and Health Care Proxy, many transactions would come to a standstill, while someone goes to court to request the authority to act on your behalf. Several weeks and thousands of dollars in fees later, someone would be appointed to act for you: not necessarily the person you would have chosen or even a person that you know.

## **FINANCIAL POWER OF ATTORNEY**

*A Financial Power of Attorney* is a document in which you select someone and at least one back-up person, to handle your business and legal affairs for you if you are unable to manage on your own. A properly drafted Financial Power of Attorney should include the authority to do long-term care planning.

## **HEALTH CARE POWER OF ATTORNEY**

*A Health Care Power of Attorney* is a document in which you select someone and at least one back-up person, to handle your health care decision-making before you become incapacitated if you are unable to make those decisions for yourself.

## **LIVING WILL with A HEALTH CARE DIRECTIVE**

*A Living Will with a Health Care Directive* is a document in which you state your wishes about end-of-life care and name someone and at least one back-up to insure that your wishes are followed. Many living wills specify that artificial medical intervention be avoided or discontinued where there is no hope of meaningful recovery from a vegetative state or terminal illness.

The value to you and your family of these three documents cannot be overestimated. Because they are so crucially important and any mistakes or omissions could be extremely costly, it is vitally important that you consult an Elder Law attorney to draft these documents for you or to review your existing ones.

## **IS IT TIME FOR YOUR LEGAL CHECK-UP?**

Most people think it prudent to have a medical check-up at least once a year in order to have a competent professional evaluate their medical health. Having professionals check your legal and financial health is equally important and becomes imperative when you or a loved one is faced with the challenges of a long-term debilitating illness. Just as an annual physical is recommended after age fifty (50), a legal check-up is also recommended at a minimum of every three to five years.

## **A PROPER LEGAL CHECK-UP INCLUDES the following:**

### **REVIEW OF ESTATE PLAN**

Everyone has a plan in place whether they have consciously crafted it or not. Alabama has a plan for your assets even if you do not have a will. Are you aware of who will get your assets if you fail to put your wishes down on paper? Do you realize that your family could be faced with unnecessary taxes and expenses without the proper plan in place?

### **REVIEW OF LEGAL DOCUMENTS**

This includes the Last Will and Testament, Financial Power of Attorney, Health Care Power of Attorney, Living Will with a Health Care Directive, and/or a Living Trusts. Sometimes documents have errors. Sometimes changes in life circumstances, such as births, deaths, and marriages, or changes in health or net worth make revisions to these documents advisable.

## **REVIEW OF TAX IMPLICATIONS**

Every plan has tax consequences. There are legitimate means to limit or avoid these taxes.

## **REVIEW OF LIQUIDITY PLANNING**

A proper plan ensures sufficient liquidity to finance long-term care. It also ensures that after death there is enough money to pay for taxes, expenses, and fund the wealth succession plan.

## **REVIEW OF PROBATE**

Often Probate is an avoidable expense causing unnecessary delays.

## **REVIEW OF DISABILITIES PLANNING**

Discuss options of self-insuring, long-term care insurance, or asset protection.

## **BUILD A SUPPORT NETWORK**

### **ELDER LAWYER**

Find a knowledgeable attorney who specializes in Elder Law. An Elder Law attorney is uniquely qualified to guide you through the complex maze of public entitlements, estate and trust planning, tax law, probate, incapacity planning, and long-term care in your home and even nursing homes if that becomes necessary.

### **PHYSICIAN**

The physician is an integral part of the care management team. Choose a physician who shares your and your loved one's values regarding health care and someone with whom you feel comfortable. It is important that you give a copy of the Health Care Power of Attorney and your Living Will to each physician.

### **FINANCIAL ADVISOR**

A financial check-up is advisable when faced with illness. Have a qualified financial advisor review all investments to ensure that any financial plan takes into consideration your health needs for the coming years.

### **CARE MANAGER**

This professional (often a social worker, registered nurse, or psychologist) coordinates services that **help people remain in their homes for as long as possible**. This professional is equipped to assess the needs of the elderly; arrange for services; review

legal, financial and medical issues to avoid problems and unnecessary expenses; coordinate the various government, private, and community services available; offer counseling; and act as liaison for distant families.

### **SUPPORT GROUPS**

Support groups for caregivers and those with illnesses are an invaluable source of information and community networking. While you can get sympathy from your family and friends, you can get true empathy from others who are experiencing similar problems. By sharing with others, you get real-life solutions to your real-life problems.

### **ADULT DAY CARE**

Adults with mental or physical limitations can spend the day in a supervised environment that offers recreation, meals, and other services. Having a safe place for the ailing person to go can provide the care-giving family member with much-needed respite. Transportation to and from the site is usually provided.

### **IN-HOME CARE**

In-home care encompasses a wide range of health and social services delivered at home. These services include skilled nursing care, rehabilitative care, custodial care, hospice, and housekeeping services. In the appropriate case, services in the home can be supplemented by community services such as adult day care, where a person can be picked up and brought to an adult center for supervision, recreation, meals, and community.

## **HOUSING OPTIONS**

### ***When living alone is no longer a viable option...***

#### **ASSISTED LIVING FACILITIES**

Assisted Living Facilities are non-institutional facilities designed for those unable to live independently, but who do not need daily nursing care. Meals, housekeeping, medication management, and custodial care are usually provided.

#### **NURSING HOMES**

Typically, there are two types of Nursing Homes: Skilled and Custodial. Skilled Nursing Homes provide skilled nursing and rehabilitative care. Alabama does not have custodial nursing homes that would provide only assistance with activities of daily living (i.e., bathing, dressing, eating, etc.) but do not provide specific or ongoing skilled nursing services or rehabilitative care.

#### **LIFE CARE COMMUNITIES**

Residents in Life Care communities are offered a full range of housing options from independent living to assisted living and memory care, to a full-service nursing home, in order to accommodate changing medical and custodial needs. This option is excellent for those who “sign up” before there is ever a diagnosis of illness and who can afford the private pay expenses.

## **YOUR HOUSING DECISION MAY BE LIMITED BY ONE OR MORE OF THE FOLLOWING:**

1. Available funding sources (private funds, long-term care insurance, Medicare, Medicaid, Veterans benefits, etc.);
2. The level of assistance needed and the nature, and progression, of the illness;
3. Availability of family member to provide care;
4. Preference.

## **HOW ARE WE GOING TO PAY FOR THIS?**

One of the most frightening parts of dealing with a debilitating illness is the fear of financial ruin.

If my husband has to go to a nursing home, will I have enough money to live on? Will we outlive our savings? Will there be any money left for our children and grandchildren?

**These fears are based upon a real fact: long-term care is very expensive.**

- Nursing homes in Jefferson County and surrounding area range from \$----- to \$----- a year.
- Assisted living facilities in Jefferson County and surrounding area range from \$----- to over \$----- a month, or approximately \$----- to \$----- per year.
- In-Home Care costs depend on the amount of time and skills needed, but an average of 40 hours per week could run from \$----- to \$----- a week.

## **WHERE WILL THE MONEY COME FROM?**

### **PRIVATE FUNDS**

If you are fortunate enough to have significant private funds, then most housing options are available. Tapping into the equity in your home through the use of home equity loans and mortgages can be considered when liquid resources start to dwindle. There is also the possibility of selling your life insurance policy for less than the death benefit through viatical and life settlements.

### **LONG-TERM CARE INSURANCE**

Long-term care insurance is the best choice if you can afford the premiums and you are insurable. Although premiums are prohibitively expensive for some, the annual cost of

premiums pales when compared with the annual cost of a nursing home. Long-term care policies vary considerably in terms of cost and coverage.

It is advisable to review the decision to purchase a long-term care insurance policy with a qualified Elder Law attorney. It is also advisable to review any existing policy to ensure that you are adequately protected.

#### **MEDICARE PAYS FOR THE FOLLOWING:**

- Skilled Nursing Home for skilled or rehabilitative care for the first 20 days in full and up to 80 days at a co-pay.
- Hospice Services
- Durable medical equipment (wheelchairs, cane, etc.)
- Hospital and doctor's services – Part A & B Coverage
- Prescription drugs – Part D Coverage

Medicare has co-payments, deductibles, and time limitations. Medigap insurance policies can cover these additional amounts. Not all Medigap policies are equal. Have your policy reviewed to determine the extent and adequacy of your coverage.

#### **MEDICARE DOES NOT PAY FOR THE FOLLOWING:**

- Skilled Nursing Homes after 100 days
- Assisted Living Facilities
- Independent Living Facilities
- Continuing Care Communities
- Boarding Homes
- In-Home Care

#### **MEDICAID PAYS FOR THE FOLLOWING:**

- Skilled Nursing Homes
- Prescription drugs (on the basis of qualified schedule of listed drugs)

- Medical Equipment
- Eye Care
- Hospital and Doctors' services
- Deductibles, coinsurance, and premiums for Medicare Part A & B
- Dental Care (under certain circumstances)

Medicaid is a federally funded health insurance program for low-income families that is managed by each state. There are certain income and resource threshold requirements which must be met before a person can qualify for Medicaid.

**MEDICAID DOES NOT PAY FOR THE FOLLOWING:**

- Independent or Assisted Living facilities
- Life Care Communities
- Boarding Homes

**VETERANS BENEFITS**

**VETERANS ADMINISTRATION MAY COVER THE FOLLOWING:**

- Out-patient medical visits
- Hospital care
- Nursing home care at a VA Home
- Assisted Living Facilities
- Home care
- Pharmaceuticals
- Psychological assistance
- Dental treatment

Eligibility for veterans is based on various factors including income and asset levels, whether the disability is “service-connected,” POW status, and/or the severity of the disability. These are only a few of the factors considered for eligibility.

**CARE GIVER SUPPORT**

## *Steps to Take After a Diagnosis*

### **STEP ONE: Become informed by reading**

- Books and Internet sites on the illness.
- Books and Internet sites on care-giving.

### **STEP TWO: Contacting the nearest chapter of associations relating to the illness**

- Helps you to stay current with treatment options.
- Provides education about the illness.
- Provides education about different ways to cope.
- Provides support groups and other caregiver services.
- Helps you to identify resources in the community providing support.

### **STEP THREE: Joining a support group**

- Gives you the opportunity to share your experience and feelings with others in similar situations who can understand your frustrations and sadness
- Gives you the opportunity to learn from others' experiences about how to cope
- Helps you to identify resources in the community providing support

### **STEP FOUR: Talk to the doctor to**

- Make sure the doctor has the patient's Health Care Power of Attorney and Living Will with a Health Care Directive on file.
- Make sure the doctor shares your loved one's philosophy about health care.
- Make sure the doctor is aware of the patient's wishes regarding end-of-life matters.

### **STEP FIVE: Meet with an experienced Elder Law attorney.**

- Long-Term Care Planning is very time sensitive. The earlier planning is begun, the more options are available.
- Estate plans may need to be updated in light of the diagnosis. Advance directives are essential.
- Make sure that the attorney you select devotes his or her practice to Elder Law and Special Needs Planning.

### **Professionals and Agency's**

*The following list is intended to be a representation of potential resources and not in anyway intended to be an exclusive list of services, a recommendation of the listed*

*resources, or a guarantee of the quality of services provided. The most efficient way to navigate your best options is simply to phone our office.*

**Elder Law Attorneys:**

Robert D. Cornelius  
Matt Talley  
Cornelius & Talley, PC  
1512 Alex Drive  
Birmingham, Alabama 35243

Office No. (205) 977-9911  
[www.corneliustalley.com](http://www.corneliustalley.com)

**Community Services**

Alabama Disabilities Advocacy Program (ADAP)	(205) 348-4928
Jefferson County Office of Senior Citizen Services	(205) 325-1416
211 Information & Referral Services	211 or (888) 421-1266
Crisis Center	(800) 273-TALK (8255)
Senior Talk Line	(205) 328-TALK (8255)
Jefferson County Ombudsman	(205) 327-8282

**National Organizations**

American Cancer Society	(205) 879-2242
American Heart Association	(205) 510-1500
Alzheimer's of Central Alabama	(205) 871- 7970
National Stroke Association	(800) 787-6537
Muscular Dystrophy Association	(205) 823- 8191
Parkinson's Association of Alabama	(205) 444-0047

**Cornelius & Talley, PC**

ATTORNEYS AND COUNSELORS AT LAW