

Preplanning v. Crisis Planning (with a little help from Frank Sinatra)

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*“That's life (that's life) that's what people say
You're riding high in April
Shot down in May
But I know I'm gonna change that tune
When I'm back on top, back on top in June”*

As an elder law attorney, these lyrics ring true every day. The song usually goes a little something like this: husband, wife, mom or dad have a health event that lands them in the hospital. Perhaps it is a fall, a newly diagnosed health condition, or the exacerbation of an existing diagnosis. The loved one receives treatment, completes rehab and returns home. Healthcare insurance and Medicare cover most of the medical bills. The family is scared, they vow to get their affairs in order, but then life improves and time marches on, the event doesn't result in significant out-of-pocket costs and the important affairs are placed back on the proverbial “avoidance shelf.” You certainly are not alone if you and your family are humming this tune. I could form an entire chorus of singers of this tune. “The Jennifer Rose Avoidance Shelf Singers.” I think it has a nice ring to it, but beware this song can turn a little dark in the final verse.

“Regrets, I've had a few”

Let us fast-forward five years. Your loved one's health has deteriorated and another catastrophic health event has occurred resulting in another extended hospital stay, followed by another stint of rehabilitation. Unfortunately, this time rehab is not so successful and your family receives terrible news that permanent placement is being recommended for your loved one as they cannot safely be discharged home. Medicare and healthcare insurance stop payment and you learn that the daily charge going forward will be \$350, i.e. greater than \$10,000 per month! Your family is in a panic and you finally decide to consult an elder law attorney.

On the day of the appointment, you are relieved to find out that not all is lost. You learn about Medical Assistance Benefits to cover long-term care costs. The attorney helps you to consider what I like to call “asset reallocation” options, which is commonly referred to as “spending down.” You discuss which assets are countable and which are exempt, you learn about estate recovery, you learn about spousal protections if the loved one is married, and you discuss other crisis planning options. You form a game plan to reduce countable resources below the threshold permissible for your loved one. This involves spending money to prepay for funerals, to improve exempt assets such as a primary residence and perhaps to reallocate funds to create additional income for the healthy spouse. Though assets are reallocated and Medical

Assistance Benefits are eventually received, the loved one's financial picture has changed substantially. The situation is greatly improved, but is far from ideal (and this is the best-case scenario in a crisis mode).

Worst-case scenario, your loved one no longer has capacity and there is no durable financial power of attorney in place. Your family meets with an attorney only to find that there is no one with legal authority to appropriately plan for your loved one. Legal guardianship proceedings must be initiated in order to appoint a guardian of the estate and from that point forward, a judge will oversee all financial decisions made by the appointed guardian for your loved one. There is a chance the appointed guardian might not even be a family member. The available planning options have significantly been reduced, and much, if not all, of the loved one's assets are spent to pay for care.

In either scenario, you ask, "what if we had planned sooner?"

*"I planned each charted course
Each careful step along the byway"*

Now, let us rewind back to five years ago. In this alternate universe, you made that appointment with an elder law attorney to get those affairs in order. Your loved one put both financial and healthcare powers of attorney in place to ensure they appointed someone to be in charge in the event of their incapacity and to avoid expensive and intrusive court intervention. They also learned about the five-year look-back period and what they could do to protect assets well in advance of a permanent nursing facility placement by using an irrevocable trust. As a bonus, they learned about other benefits available to provide healthcare services in their home such as Home and Community Based Services, the Living Independence for the Elderly Program and VA Pension Benefits, in addition to planning for the next generation, avoiding probate and reducing taxes and fees at death.

Over the course of the following five years, your loved one could have taken advantage of services recommended by the elder law attorney, which might have prevented the second catastrophic health event and were perhaps covered by an available public benefit, free of charge. Maybe your loved one could have used various programs that provided additional care, or even received up to \$2,120 from the Department of Veterans Affairs to reimburse for care costs expended.

Even if permanent nursing facility care still became an issue after five years (or even sooner), your loved one was prepared. In this new scenario, upon admission to the nursing facility five years later, every penny in the trust was protected and not subject to spend-down for eligibility for Medical Assistance Benefits. Agents under power of attorney were already in place to complete any necessary additional planning and the family was prepared for the next steps. In the end, thousands and thousands of your loved one's dollars were protected and your family's stress level during a time of crisis was greatly reduced, which brings a new tune to mind, a tune Old Blue Eyes himself would be proud of...

*"And more, much more than this
(you) did it (Jen's) way"*