

Estate Planning in a COVID-19 World

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Living in a post-pandemic world is a challenge for us all. In the estate planning arena, we continued to deal with the fall-out of this new way of life. Daily challenges remind us that it is critical to take measures to create security and to learn new ways to navigate the challenges this new way to life presents. As masks come off, booster shots are taken, and we return to lives less socially distant, a few significant changes have come to light that impact estate planning attorneys and our clients. Today I would like to share some insight into the biggest changes I've seen.

1. Healthcare is Changing

Over the course of 2022, staffing shortages have led to a reduction of available beds in nursing facilities across Western Pennsylvania. Facilities with a census of 160 are suddenly capped at 120. Over the course of the summer, several local, well-established facilities have announced the closure of their skilled nursing facility units and facilities. Area wide, the news has warned of strikes by healthcare workers at multiple facilities. This bed shortage has led to families taking family medical leave to care for their family members or placing them in locations far from home.

Your best bet for gaining admission to a skilled nursing facility is being admitted to one after a hospital admission for rehabilitation services. Admission directly from home is getting more and more difficult. Making smart decisions when discharged from a hospital is critical. It is important to consult with your attorney before this discharge occurs to ensure that: a) the nursing home accepts Medical Assistance; and b) you know your rights for long-term care post rehabilitation, and you are not classified as "observation status". Missing this critical opportunity for admission can result in months of waiting for an open bed at your chosen choice.

2. Home Care is Changing

Pennsylvania has a number of home care programs that cover skilled nursing care in the community. Unfortunately, like nursing facilities, home health agencies are also experiencing staff shortages. However, families are permitted to choose their own caregivers for home-based community health choices, even if these caregivers are related to them. Though current law prohibits spouses and those acting as an agent under general durable Power of Attorney from being paid caregivers through government programs, other family members, friends or previously hired caregivers can be paid under these programs and the managed care organizations are often happy for the assistance with staffing. If you or someone you know is caring for a loved-one at home, there may be help to compensate you for these services through government programs.

3. Advance Directives are more and more critical

Making your wishes known for end-of-life treatment, especially as it relates to life after Covid-19 is critical. Vaccination progression, reinfection potential, and long-haul symptoms resulting from COVID-19 continue to confound our scientific understanding. The world is forever changed, and so too is our need for advance planning.

A healthcare Power of Attorney/Living Will pertains to treatment and preferences and the designation of a surrogate decision-maker should you become unable to make medical decisions on your behalf.

Advance directives can include specific passages addressing COVID-19 and your wishes regarding medical treatment. Some advanced directives provide express authorization for surrogates or agents to communicate with providers remotely.

An advanced medical directive can outline end-of-life wishes that address the use or withdrawal of specific treatments, particularly intubation, as COVID-19 patients needing a ventilator often have low survival rates. In severe health situations that require intubation, appointed surrogates need medical access to advocate for their loved ones, even if they cannot be present due to not being local or because of visitor restrictions at healthcare institutions.

4. Remote is the New Normal

From executing documents to meeting with clients, virtual conferencing is the new normal. Even in the field of estate planning, local courthouses are allowing personal representatives to be sworn in remotely via video conferencing apps, attorneys are appearing at hearings virtually and more and more documents are being electronically executed. Embracing technology, establishing a plan to deal with your digital footprint and preparing to assist your heirs with locating your online accounts are just a few of the newest challenges on the horizon for estate planning attorneys. Embracing technology and the ways it can benefit clients in a time of safety concerns and isolation has enabled many vulnerable people to establish estate plans and advanced directive in a time of critical need.

The law is ever-evolving as is the job of an estate planning attorney. A lack of proper estate or long-term care planning exposes our loved ones to risk that is not a requirement of our lives. Advanced planning not only affords us peace of mind of knowing that we will receive proper care and that our assets will be distributed as we desire, but also provides us comfort in knowing that our loved-ones are far less likely to be burdened by anxiety of long-term care costs, estate disputes and the increased cost and burden of a poorly created, or nonexistent estate plan. Sound long-term care and estate planning can help you and your family, even in a Covid-19 world.