

# PLANNING FOR CARE AT HOME

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When given the choice, most people have a strong preference to be cared for in their own homes. Compared to a nursing facility, one's home environment offers some clear advantages. For instance, you have greater control over the menu. You aren't subjected to a roommate blaring game shows or soap operas over a shared television. You can select – and fire your caregiver.

Studies have shown that care in one's home can lead to better outcomes. This is especially true for people suffering from cognitive impairments such as dementia related illnesses.

Admittedly, there are times when care in a facility is unavoidable. When one requires rehabilitation following a hospitalization or ventilator care, a facility is probably better equipped to provide the care.

However, after having worked with thousands of families in my fifteen years as an elder law attorney, I believe that many nursing home residents could be better cared for at home.

It is the failure to arm oneself with information in advance of a crisis, that often leads to the “nursing home by default” selection in an emergency.

There are some relatively easy steps one can take in order to maximize the chances of receiving care at home. The first step is to inform your loved ones and Health Care Proxy agent. This can be done verbally but is more likely to be honored if in writing. This can be done within your Living Will. Sample language can be found at [www.myelderlawattorney.com](http://www.myelderlawattorney.com)

I also recommend that you make an annually updated list of professionals who make home visits. These include physicians, dentists, physical therapists, accountants, attorneys, and geriatric care managers.

Next, you should consider whether any physical modifications are necessary for the home. You may also investigate the new technologies that reduce feelings of isolation. We've come a long way from simple pendant buttons which alert the world of a fall. Currently available interactive technologies allow families to have visual and voice access to loved ones from anywhere in the world.

Your collection of home care information, together with your specific wishes, forms the basis of your personal home care plan. Once assembled, your home care plan should be kept in a folder in your home and a copy should be kept in your elder law attorney's file. Now, in the event of hospitalization, your loved ones will have some

concrete action steps to take. This will maximize your ability to receive your care in your home.

### Paying for Home Care

Contrary to popular belief, Medicare does not cover most long term home care. With the exception of a few weeks of part-time rehabilitation following a hospitalization, we are on our own when the bills come. Long Term Care insurance is not widely carried by those 65 and over because the premiums are unaffordable for most. For many of us this means that we will privately pay until our funds are exhausted and then Medicaid will kick in. Alternatively, we can legally protect some portion of our assets in advance of a possible need for Medicaid.

Medicaid will pay for a personal care assistant in one's home provided that one needs such help and is financially eligible. A Medicaid applicant may have no more than \$13,800 in countable assets or resources. Assets in a properly drafted trust will not be counted. The income threshold is \$767 per month. Most seniors have income in excess of this and incorrectly assume that they will not qualify for Medicaid. The applicant can qualify for Medicaid by spending down the excess income or contributing the overage to a pooled trust. The pooled trust can then be directed to pay for some monthly household expenses.

New York State does not currently impose a "look-back" or penalty calculation in advance of applying for Medicaid home care. This may well change in the near future given our budget constraints. However, from a policy perspective, it can be argued that home care Medicaid (no look-back) should be easier to qualify for than nursing home Medicaid (5 year look-back) because it costs NYS far less when we can delay or avoid nursing home admissions.

### Protecting the Home

Your home is considered an exempt resource in determining Medicaid eligibility, regardless of its value. This rule applies as long as the home serves as the "principal place of residence" of a Medicaid recipient and/or spouse.

Although exempt, NYS can recover to the extent of the services provided to you during your life from the value of your home. Therefore, it is important to explore various planning techniques in order to protect your home from any potential claims the state may have against your greatest asset.

An asset protection trust can be used to hold legal title to your home, which protects the house from exposure to future possible health care claims.