

October 2020 Newsletter

Korbitz Financial Planning Newsletter

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Clients and Friends:

My introductory message to you is simple: VOTE.

If you have already voted by mail or absentee ballot, like I did on October 1st, thank you. If you have not, I would ask you to determine if you are going to vote by mail, absentee ballot, or in person, and ensure that you are registered to do so, and then make it happen.

My ultimate wish for our country with regard to elections would be to have 100% of those eligible to vote actually vote. There can be no doubt about the will of the country if 100% of those eligible actually cast a ballot.

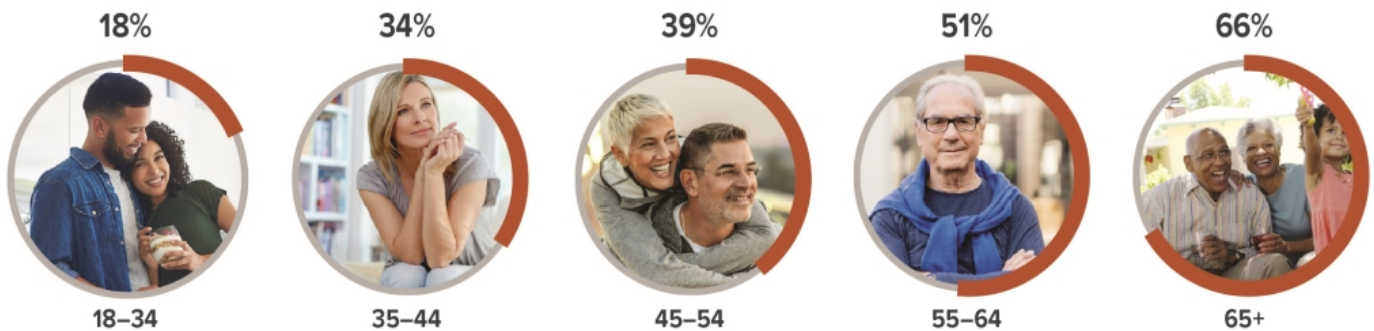
So please, make sure you vote.

Eric

Do You Have a Will?

Although 76% of U.S. adults say having a will is important, only 40% actually have one. The most common excuse is, "I just haven't gotten around to it." It's probably not surprising that older people are more likely to have a will, but the percentage who do is relatively low considering the importance of this legal document.

Percentage of U.S. adults who have a will, by age group



Source: Caring.com, 2019

Incapacity and Advance Medical Directives

At some point in your life, you may lose the ability to make or communicate responsible health-care decisions for yourself. Without directions to the contrary, medical professionals are generally compelled to make every effort to save and sustain your life. Depending on your attitude toward various medical treatments and your views on the quality of life, you may wish to take steps now to control future health-care decisions with one or more advance medical directives.

What Is an Advance Medical Directive?

The laws of your state may allow you to adopt one or more advance medical directives to manage your future medical care. There are three main types of advance medical directives: (1) a living will, (2) a durable power of attorney for health care, and (3) a do-not-resuscitate order. Each has unique characteristics and is useful under specific circumstances. You may find that one, two, or all three advance medical directives are necessary to express all your wishes regarding medical treatment.

Living Will

A living will is a legal document that specifies the types of medical treatment you would want, or not want, under particular circumstances. In most states, a living will takes effect only under certain circumstances, such as a terminal illness or injury. Generally, one can be used solely to decline medical treatment that "serves only to postpone the moment of death."

Durable Power of Attorney for Health Care/Health-Care Proxy

A durable power of attorney for health care (DPAHC), also known as a health-care proxy, is a legal document in which you appoint a representative to make medical decisions on your behalf if you become unable to make or communicate them yourself. It allows you to exercise control over your health care through this representative, who will have the authority to make most medical care decisions for you.

You may want to appoint such a representative to act on your behalf. If you don't, medical professionals will generally be compelled to do everything possible to save and sustain your life. A DPAHC can resolve conflicts and help ensure that your choices regarding medical treatment are respected. A DPAHC may not be practical in an emergency — your representative must be present to act on your behalf.

Do-Not-Resuscitate Order

A do-not-resuscitate (DNR) order is a legally binding order, signed by both you and your physician, that directs medical personnel not to perform cardiopulmonary resuscitation (CPR) or other invasive procedures on you if you stop breathing or your heart stops beating. A DNR is the only advance medical directive specifically intended for use in an emergency. There are two types of DNRs: One is effective only while you are hospitalized; the other is used by people outside the hospital. ID bracelets, MedicAlert® necklaces, and wallet cards are some methods of noting DNR status.

More to Consider

- The laws on advance medical directives vary considerably from state to state. If you spend a significant amount of time in a state other than where you live, you may want to research that state's laws as well.
- Review your advance medical directives periodically to ensure they reflect your current wishes and attitude.
- Discuss your advance medical directives with appropriate persons (perhaps your doctor, your DPAHC representative, your family, and your friends).
- If you have multiple advance medical directives, make sure your instructions are stated consistently throughout. In many states, the most recent document prevails in case of a conflict.

Incapacity and Advance Medical Directives

ADVANCE MEDICAL DIRECTIVE

Living will

Durable power of attorney for health care

Do-not-resuscitate order



USED TO

Decline medical treatment for terminal illness or injury

Appoint representative to make medical decisions for you

Direct medical personnel not to perform CPR

Could You Be Responsible for Your Parents' Nursing Home Bills?

In 26 states (and Puerto Rico), laws generally hold children financially responsible for certain debts of their parents. These laws are referred to as filial responsibility laws (or filial support or filial piety laws).

The details of filial responsibility laws vary by state. Most require that a parent must be deemed unable to pay for the costs of basic care and support before a child may be held responsible. And most states consider the child's ability to pay before holding the child liable for the cost of a parent's health care.

Filial responsibility laws are generally not enforced. But one 2012 case out of Pennsylvania may provide an example of how these laws might be used. *Health Care & Retirement Corporation of America v. Pittas* addressed the question of whether a child can be held responsible for the health-related debts of a parent.

The court found an adult son responsible for \$93,000 in nursing home costs incurred by his mother. The court also ruled that there was no duty to consider the parent's other possible financial resources for payment, which included her husband and two other adult children, or the fact that an application for Medicaid assistance was pending at the time of the claim against the child. The court found that the plaintiff had met its burden under the law by proving the child had the financial means to pay the outstanding bill.

As the Pennsylvania case illustrates, filial responsibility laws may come into play in situations when a parent incurs expenses for long-term care and lacks the financial means to pay them. This is not an issue when someone becomes eligible for Medicaid, because Medicaid pays for most long-term care services and does not require the recipient's children to contribute funds toward the parent's care; later, funds can be recovered through the Medicaid estate recovery process. In addition, federal law bars a nursing home from requiring a third-party guarantee of payment as a condition for either admission (or expedited admission) or continued stay of a patient.

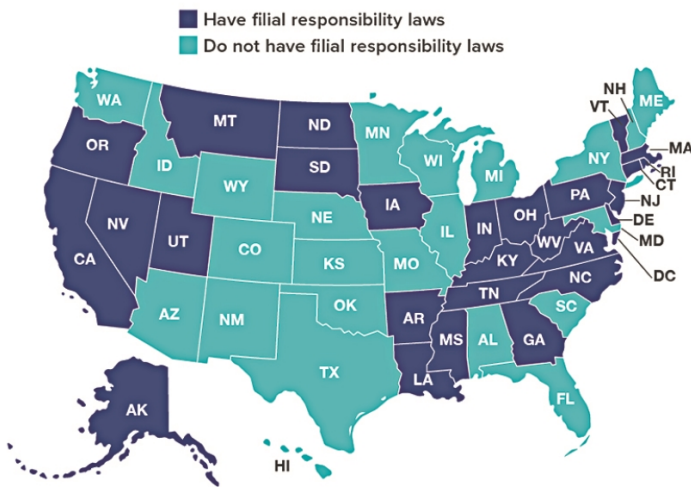
What happens when a person admitted to a skilled nursing facility doesn't qualify for Medicaid but lacks the financial resources to pay the bill? For example, it's not uncommon for aging parents to gift assets to their children in order to qualify for Medicaid.

Under current rules, there is a five-year look-back period from the time the application for Medicaid is made. Gifts made during this look-back period may disqualify an applicant from receiving benefits for a certain period, which could be up to several months. In Connecticut, for example, nursing homes have the right to pursue claims against children of patients who made disqualifying transfers of assets (gifts) within two years of applying for Medicaid benefits.

Even though filial responsibility laws haven't been prevalent, soaring long-term care costs could continue to place a growing burden on Medicaid, pushing federal and/or state government budgets higher. More of the cost of health care could shift to patients and their families, giving nursing homes and other health-care providers more incentive to pursue claims against children for the unpaid costs of care provided to their parents.

In any case, filial responsibility laws provide yet another reason for families to plan for long-term care. Talk to a qualified attorney if you have concerns or need more information regarding your specific situation.

States with Filial Responsibility Laws, 2019



Medicaid May Pay You as a Family Caregiver

Each day, parents, children, siblings, and spouses selflessly sacrifice their time and energy to care for family members affected by illness, injury, or disability.

According to the Department of Health and Human Services, about 80% of care at home is provided by unpaid caregivers and may include an array of emotional, financial, nursing, social, homemaking, and other services. More than half (58%) have intensive caregiving responsibilities that may include assisting with a personal care activity, such as bathing or feeding.¹

Caregiving can exact an emotional and physical toll. It can be financially draining, too. However, if you are a caregiver of a loved one, you may be able to be paid for your services by Medicaid.

Each state and the District of Columbia have programs that allow qualified individuals to manage their own long-term care services, including the selection of a caregiver.

Many states' Medicaid programs allow the participant to hire relatives or friends to provide needed assistance. But Medicaid services are different in each

state, and states generally have more than one Medicaid program that may offer caregiver benefits.

For instance, some state programs may pay for family caregivers but exclude spouses or in-laws. Others may only provide compensation if you do not live in the same house as the person in your care.

There are a few things to note. Generally, Medicaid looks at the applicant's financial situation (income and assets) as well as his or her functional ability. Once approved, the applicant can apply for a specific Medicaid program that allows for the applicant to manage their own care, including selection of a caregiver who may be paid, directly or indirectly, by Medicaid.

Contact your state Medicaid office to learn about their specific programs and respective eligibility requirements. Also, some states have programs in addition to Medicaid that may pay for family caregiver services.

¹ Department of Health and Human Services, [longtermcare.acl.gov](https://www.longtermcare.acl.gov)

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