

# Protecting Your Access to Health Care

2024

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## **ADVANCE DIRECTIVES**

Get documents in order depending on the existing capacity of a person with dementia.

Possible Documents needed:

- Durable Power of Attorney (DPOA) for Financial Decision-making
- Health Care Directive (through DPOA, separate Healthcare POA or Advance Directive for Healthcare)
- End of Life Directive (through DPOA or Advance Directive for Healthcare)
- Last Will and Testament/Trust/proper beneficiary designations
- Trust
- Affidavit for Disposal of Remains

What these documents have in common is they are documents a person can execute to select the individual(s) who will have authority to act for him or her when, or if, he or she becomes unable to make decisions.

Resources at [www.janneallaw.com](http://www.janneallaw.com):

e-book entitled Guide to Alabama Advance Directives

e-book entitled Guide to Planning for Death

The most flexible and least expensive way to obtain authority to conduct financial business for another during his or her lifetime is to be named as agent in a durable power of attorney created by the person who will need his or her business conducted by another. In a power of attorney the person making the document (known as the principal) may make all the following appointments:

- an attorney in fact (agent) to conduct business and handle financial affairs
- a health care power of attorney (agent) to make routine health care decisions
- a health care surrogate (agent) to make end of life decisions.

These powers can only be given while the principal is still competent to give that authority to another person. In this way powers of attorney require pre-incapacity planning. Once a person is suffering from significant incapacity, a power of attorney cannot be signed, and, if one is, the power given can be challenged by others who may not want the power to be given to the agent.

The capacity needed to create a power of attorney is the same level of capacity needed to sign a contract because the maker of the directive must decide if he or she wants the agent to have highly specific powers.

## FACING UNAFFORDABLE AND PROBLEMATIC MEDICAL BILLS

Make sure you have the right coverage

- Open Enrollment 10/15 – 12/07

Check Formulary for next year to see if your drugs are going to be covered

Drugstore is a preferred pharmacy

Doctor takes plan

A recent survey conducted by the Healthcare Financial Management Association (HFMA) found that “19% of health systems have stopped accepting a Medicare Advantage plan [and] 61% are planning to or are considering.” So you could end up being out of network for routine health care.

Beware “ghost networks”. *It’s hard to know if your health insurance plan is as good as advertised. You pay a monthly premium to access a network of health providers. But call the numbers in your provider directory, and you’re bound to find ones who can’t — or won’t — see you.*

*These errors are at the heart of a ghost network. Some providers have moved, retired or even died; [others left insurance networks because of low pay and intense scrutiny](#). Even though these providers no longer accept your insurance, their names may remain in the directory.*

MA co-pays

SHIP Program

- IRMAA – Medicare Income-Related Monthly Adjustment Amount higher premiums for higher earners based on earnings shown on taxes 2 years earlier
  - If income changes can file SSA-44 to report Life Changing Event
- B & D penalties are for life
  - B is 10% increase in premium for every 12 months eligible and did not sign up
  - D is 1% of the national base beneficiary premium (\$34.70 this year) for every month eligible and did not sign up

## Self advocacy can make a big difference

The Journal of The American Medical Association (JAMA) published a study from on 08/30/24 concerning how people handle troublesome medical bills. The survey consisted of 1,233 people who received medical bills they disagreed with or could not afford to pay.

Of those who **reached out to the medical provider** One-third had a bill corrected and 23.2% reported a better understanding of their bill. Many received financial relief in the forms of bill cancellation, financial assistance, price reduction, and/or setting up a payment plan. These outcomes are not mutually exclusive; many respondents reported multiple outcomes.

## **OBTAINING MEDICAL RECORDS**

The cost of reproduction shall not exceed what is authorized under state and federal law. (Ala. Code § 12-21-6.1 provides for not be more than one dollar (\$1) for each page of the first 25 pages, not more than 50 cents (\$.50) for each page in excess of 25 pages. If the medical records mailed to the person making the request, reasonable costs shall include the actual costs of mailing the medical records. A person may charge in addition to the fees allowed the actual cost of reproducing X-rays and other special medical records.)

When imaging tests such as MRIs, CT scans, or mammograms exist many doctors prefer to see the actual images in addition to the radiology reports. Some specialties such as oncology, orthopedics or neurosurgery require patients to submit their records and images on CD to the office for review before scheduling an appointment for a new patient consultation for a second opinion.

HIPAA Privacy Rule requires a covered entity to respond to a patient's request for access within 30 calendar days of the request. It is important to make sure that the request is made in whatever manner required by the facility (some have their own medical records request form). Many facilities allow the requestor to pay for expedited shipping of requested images on CD to the location of their choice.

## **Retention**

Records must be retained for at least seven years from the physician's (and/or other providers within the practice) last professional contact with the patient.

Exceptions:

- Immunization records not transmitted to the state board of health immunization registry: retain for at least two years after the minor reaches the age of majority or seven years from the date of the physician's (and/or other providers within the practice) last professional contact with the patient, whichever is longer
- X-rays, radiographs, and other imaging products shall be retained for at least five (5) years after which if there exist separate interpretive records thereof, they may be destroyed. However, mammography imaging and reports shall be maintained for ten (10) years.
- Medical records of minors shall be retained for a period of not less than two (2) years after the minor reaches the age of majority or seven (7) years from the date of the physician's (and/or other providers within his or her practice) last professional contact with the patient, whichever is longer.

No medical record involving services which are under dispute shall be destroyed until the dispute is resolved, as long as the physician has formal notice of the dispute prior to the expiration of the retention requirement.



## **AVOID MEDICAID MISTAKES**

- Selling property for less than the tax assessor's appraised value
- Enriching someone else's property
- Paying back someone without a promissory note
- Family members being paid to provide care without a caregiver agreement
- Thinking that a living trust will protect property from counting for Medicaid purposes
- Confusing Medicaid Penalties (1 month for every \$7300 five years prior to application) with gift tax exclusion of \$18,000 per year
- Thinking a prenuptial agreement will shield assets from having to be spent down when applying for Medicaid

### Example to avoid transfer penalty

A person gives away \$350,000 in March 2019. He has a stroke in January 2024 and is placed in a nursing home. If he applies for Medicaid in January 2024, a 47.94 month penalty will be assessed, and he won't be eligible for Medicaid until approximately 02/01/28. If he had waited until April 2024 to apply he would have qualified with no penalty because he was past five years from when he gave away the money. By privately paying for about 4 months and waiting to apply he could have avoided having to privately pay for nearly 4 years.

Remember this rule to get outside the transfer penalty: 5 years + the first of the next month.

## LONG-TERM CARE CHECKLIST

- If the care recipient is competent, get a power of attorney prepared naming a financial agent, medical health care agent and end of life health care proxy. This is essential to have the authority you will need to work through the placement process.
- Learn about the levels of care provided by different long-term care facilities/services (e.g. home and community based services vs assisted living vs special needs assisted living vs nursing home vs memory care facility). Find out which level of care is being recommended by the person's doctor based on his or her individual needs.
- Find available care facilities in your area. Go to Nursing Home Compare at <https://shorturl.at/Dr6yU> to find available resources in your area, and visit facilities to see them yourself. Check out VA facilities for veterans at <https://shorturl.at/x4ACk>
- Locate and organize business papers to fill out applications. Locate deeds, military papers, insurance coverage, burial policies, sources of income, all bank accounts and other resources. Keep in mind that if you apply for Medicaid to pay for nursing home care you may have to produce five years of all financial records, so begin working through how you would accomplish that.
- If the care recipient has long-term care insurance, review the policy to see how much coverage is available.
- If Medicaid will be needed to pay for care get an application to start working on before you need it so you can see ahead of time all the information you will be required to provide. The application can be found at <https://shorturl.at/t7psv>

## LTC Checklist (Continued)

- Obtain information about any gifts the care recipient has given away during five years prior to filing a Medicaid application. This would include selling property for less than the tax assessor's appraised value which would be treated by Medicaid as a gift.
- Get competent advice regarding which assets can be preserved and which assets will need to be liquidated. Home and Community Based Services and Older Americans Act Legal Assistance through Northwest Alabama Council of Local Governments, Area Agency on Aging is available. Call (256)389-0500 or 800-838-5845.