

EDWIN LEE LAW

UNDERSTANDING YOUR PATIENTS' LONG-TERM CARE BENEFITS

A Guide for Nurse Case Managers, Discharge Planners and Social Workers

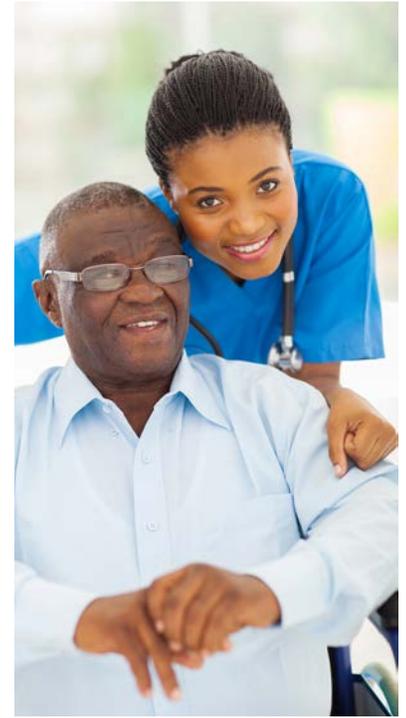


The Law Office of Edwin E. Lee

The aging of the population presents social, economic, and political implications for families, social workers, and the global community.

Patient needs, care management teams and the law can often be blurred and present an age-old ethical challenge for all involved. Attorneys and care teams share common interests and objectives, such as improving patients' quality of life, combatting social injustice, and promoting social well-being. Both face needs and issues that intersect and go beyond their respective scope of practice.

The challenge lies in handling these overlaps when they happen—particularly when mishandling these crossovers may mean a breach of ethics. Medical professionals cannot give legal advice to patients beyond their scope of knowledge and expertise. This is why the presence of a robust and two-way referral system is as vital to patients' well-being as it is to the integrity of the two professions.



Common Questions an Elder Law Attorney Can Answer for Case Managers / Social Workers in discharge planning

Q. Does my loved one qualify for government programs?

A. Government programs on federal and state levels may be available, depending on their unique qualification. But individual qualifications and the application processes can be complicated and confusing, especially when enrolling for the first time.

An elder law attorney can help families understand the eligibility requirements for Medicaid, Medicare, Long-term Care Insurance, and other programs available in Texas to help pay for nursing home or other long-term care.



Q. What do I do if my application is denied Medicaid? Can it be appealed?

A. Suppose your patient has been denied Medicaid coverage and is paying for nursing home care out-of-pocket. The high cost of nursing home care can quickly wipe out any assets or savings they may have collected during their lifetime. But there's good news. They may be able to save a significant portion of their assets by having their Medicaid application and assets reviewed by a Texas elder law attorney.

An elder law attorney will look at asset levels, monthly income amounts, prohibited gifts, or asset transfers to create a Medicaid qualification strategy. In many instances, changing their Texas estate plan or mounting a successful appeal to denied Medicaid benefits can give families the financial assistance they need. An attorney will analyze their unique Medicaid issues and help them overcome the Medicaid denial process in Texas.

Q. How can one qualify for government programs (Medicaid) without losing assets?

A. Each situation is unique and Medicaid qualification depends on the amount of their ‘countable assets’ considered in the Medicaid application process. To protect a patient’s hard-earned assets while still qualifying for Medicaid, there are several legal strategies an elder law attorney can execute on their behalf. Without the assistance of an attorney, your patient could face penalty periods before receiving Medicaid benefits or be denied and not realize that they can effectively appeal.

Some legal strategies include:

- Gifting or transferring assets
- Putting assets into an irrevocable trust
- Purchasing a qualified annuity
- Family care-giver compensation agreements

Q. What legal health care documents should patients establish?

A. When a medical crisis arises, many questions are asked about the potentially serious decision-making needs. Everyone should have health care documents that establish how those decisions should be made, and by whom. These documents serve three primary functions:

- Allowing others to receive confidential health and medical information about them.
- Determining who will make medical decisions if they is unable to do so.
- Which types of measures should or should not be taken to save their life.

Important legal documents include:

HIPAA Authorization

The Health Insurance Portability and Accountability Act, commonly known as HIPAA, was a law put into place to protect the privacy of American patients. The rule protects any “individually identifiable health information” held by a medical or insurance provider or any business that serves medical professionals and might have access to sensitive medical information.

Power of Attorney

This legal document allows for someone to legally make healthcare decisions for a senior adult. A durable power of attorney will remain in effect for the senior if they become unable to make decisions.

Q. How can I help my elderly patients prepare for the possibility of illness, hospitalization, and death?

A. Proactive planning with an experienced elder law attorney can help your patient get the health care coverage needed without spending their assets on high nursing home costs. Medicaid planning involves several methods; the choosing of which can depend on many individual factors.

The earlier an attorney can get involved in the planning and Medicaid eligibility process, the easier it is for your patient to have peace of mind for future health issues. They can rest assured that their financial future is secure and the necessary legal documents are in order in the case of a medical emergency.



Advance Health Care Directive

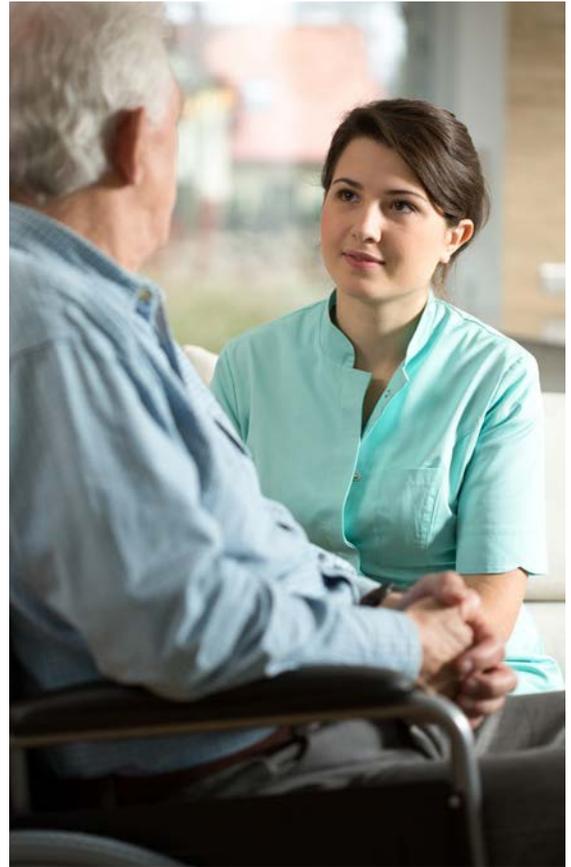
An advance directive is a legal document that explains how you want medical decisions about you to be made if you cannot decide for yourself. An advance directive lets your health care-team and your loved ones know what kind of health care you want or who you want to make decisions for when you can't.

These documents must be properly drafted, executed, signed, and sometimes witnessed and notarized to ensure they will serve their function should the need arise. A Texas elder law attorney can help you establish these documents and ensure the documents address their health care needs.

Q. What are one's rights once in a nursing home facility?

A. In 1987 the Nursing Home Reform Act was signed into law. This law helps to ensure that senior citizens in nursing home facilities receive the quality of care for their basic needs. Each nursing home resident is the beneficiary of the "Residents' Bill of Rights," including:

- The right to freedom from abuse, mistreatment, and neglect
- The right to freedom from physical restraints
- The right to privacy
- The right to accommodation of medical, physical, psychological, and social needs
- The right to participate in resident and family groups
- The right to be treated with dignity
- The right to exercise self-determination
- The right to communicate freely
- The right to participate in the review of one's care plan and to be fully informed in advance about any changes in care, treatment, or change of status in the facility
- The right to voice grievances without discrimination or reprisal



A Long-Term Care Planning Guide

Long-term care planning helps aging Americans plan for the high cost of different health care services as they age into their golden years of life. Proper long-term care planning can assist you, or a loved one avoid the worry and drain that the cost of health care will have on your savings and your hard-earned assets you may have planned to pass down to your family members.

Long-term care is designed to meet health needs for an extended time. These services help aging Americans live as independently and safely as possible when they can no longer perform everyday tasks and activities on their own.

Types of Long-Term Care Services Include:

- Home Health Care
- Homemaker and Personal Care Services
- Friendly Visitor and Senior Companion Services
- Senior Transportation Services
- Emergency Medical Alert Systems
- Community Care Facility
- Nursing Home Facility
- Adult Day Care
- Hospice Care
- Respite Care
- Assisted Living Facility

The Cost of Long-Term Care in Texas

The cost of long-term care often shocks retirees and can place an extreme burden on you or your family. Long-term care expenses are uncertain and can fluctuate from very little to over \$1 million. Attempting to plan for this yourself without a professional's help is dangerous, and even the most carefully thought-out retirement plans would not be able to handle this spending shock.

TEXAS ANNUAL MEDIAN COST OF CARE (2020)

IN-HOME CARE	COMMUNITY/ASSISTED LIVING	NURSING HOME FACILITY
Homemaker Services \$50,336	Adult Day Health Care \$8,447	Semi-Private Room \$60,225
Home Health Aide \$50,336	Assisted Living Facility \$47,970	Private Room \$76,650

Resource: <https://www.genworth.com/aging-and-you/finances/cost-of-care.html>

How to Pay for Long-Term Care?

Understanding how to pay for long-term care can be overwhelming. Depending on your individual care needs, there are some options to consider for paying for long-term care services.

Some of these options include:

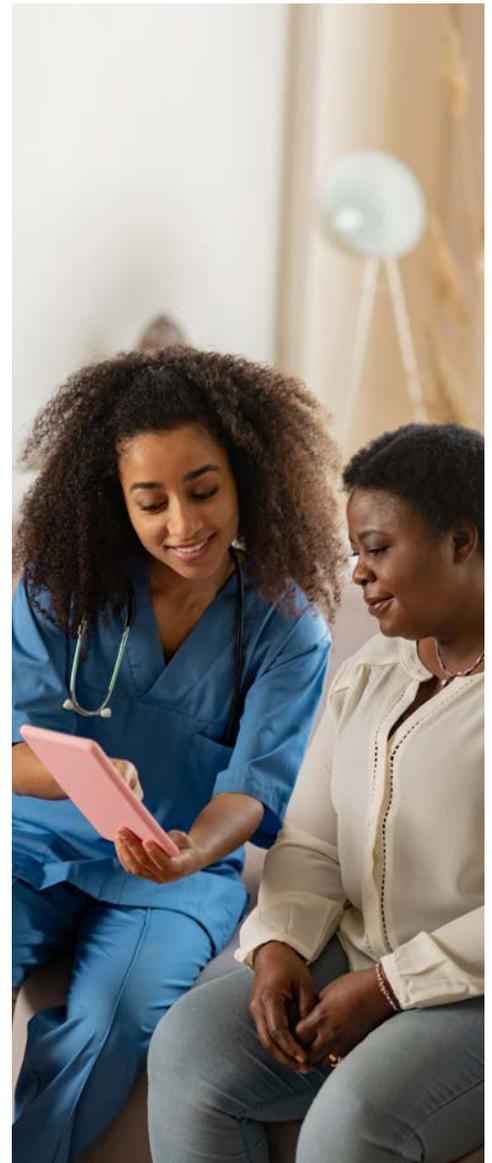
- Medicaid Coverage
- Medicare Coverage
- Long-term Care Insurance

Each option holds its eligibility requirements and drawbacks depending on what type of services you may need.

What is Medicaid Coverage?

Medicaid is a Federal and State program that helps individuals cover the high cost of long-term care, including inpatient and outpatient hospital services, care in a nursing home or assisted living facility, doctor's appointments, laboratory testing and x-ray services, and home health services, among others.

The rules for Medicaid vary from state to state. If you reside in Texas and need Medicaid, then Texas's Medicaid rules apply. If you or a loved one are concerned with the high cost of long-term care and qualifying for Medicaid, an elder law attorney can help. An elder law attorney who understands Texas's specific Medicaid rules can legally navigate you in the application and approval process.





How to Qualify for Medicaid Coverage

Texas Medicaid gives individuals and families access to health care resources that they may not have otherwise. If you or a loved one need Medicaid benefits, specific eligibility requirements need to be met in the state of Texas.

To qualify for benefits, you must:

- Be over the age of 64; or
- Be pregnant or have a child 18 or under; or
- Be blind or disabled; or
- Have a child, parent, or spouse in your household who is blind or disabled
- Include an annual household income below a determined amount.

The Medicaid application process can be complicated, and some families worry that they do not meet the household income level to qualify for care. Without the aid of Medicaid, the cost of a Texas nursing home can wipe out your family's savings, retirement funds, and an inheritance for your loved ones or result in the loss of your home. Edwin Lee Law is on your side. We can help you navigate the complexities of Medicaid and create a plan that works best for your health care needs.

What is Medicare Coverage?

Medicare is a Federal program that you pay into throughout your life through the Social Security Administration, guaranteeing your access to these funds. There are various qualifications for being able to access these funds, including being aged 65 or older.

Medicare will pay for medically necessary acute care services and some long-term care services that meet specific criteria. Most long-term care non-medical services are not covered by Medicare, such as nursing home expenses or the services provided in the home for custodial-type care.

There are four specific types of long-term care services, listed below that Medicare will pay for,

though certain conditions apply for most services to be covered:

- Care in a skilled nursing home facility for up to 100 days per benefit period
- Services to treat medical conditions
- Services to prevent further decline due to medical conditions
- Hospice care

Medicare has its limitations and may or may not be the best option for your health care needs. Our firm can help you or your loved ones understanding Medicare coverage or other options available to you for paying for long-term care.



What is Long-term Care Insurance?

Long-term care insurance is a type of insurance that you can buy in advance of needing the care to help offset the costs. Long-term care insurance can help avoid depleting your life savings to pay for nursing home care in Texas.

Long-term care insurance can be a quick fix for paying for long-term care. This insurance will help cover the risk that you may at some point in your life be placed into a nursing home by paying for some or all the expenses associated with nursing home care. It also frequently covers assisted living care or care in your home.

As with any insurance policy, you will have to pay for the insurance policy for many years. There may be options to reallocate your assets that help avoid that expense.

A Two-Way Street for Care Teams and Elder Law Attorneys

Care team - attorney relationships are the path of the future. It's not a matter of where one service ends and the other begins but how the two can work together collaboratively.

A lawyer can be a legal resource for medical professionals and ensure that your patient arrives at the intended destination within parameters they feel comfortable with and benefit from. With this partnership, it's critical for both attorneys and care teams to establish an open, respectful relationship, assisting each other in understanding the family's needs and wants.

On the other side of the equation is the attorney-client relationship, which in many instances benefits from adding the informed perspective of an experienced nurse case manager, discharge planner and/or social worker. In the client's best interest, it is wise for lawyers to see how a licensed professional in a related field handles an issue.

Many eldercare issues lay at the core of ethical caregiving. Care teams and elder law attorneys should not ignore various solutions simply because a subject is beyond their realm of knowledge.

How Edwin Lee Law Can Help Nurse Case Managers, Discharge Planners and Social Workers

I've built a Houston law firm practicing solely in Texas elder law and related issues. My firm believes that by helping the Texas elderly and their families with critical legal issues, our clients can have peace of mind about their loved ones' care. At Edwin Lee Law, I can guide social workers who need help understanding the complexities of Elder Law, Medicaid, and long-term care planning.

MY PROCESS

1. Initial Consultation.

I can make home, hospital, or nursing home visits in Houston and the surrounding area when necessary. And in some cases, I can provide many legal services over a video conference or telephone for my clients' convenience.

2. Understand Your Needs.

I help families work through difficult times to get mom the care she needs and the quality of life she deserves without losing everything.

3. Make a Plan.

I can prepare specific recommendations for protecting homes, income, life savings, and other property. The earlier I can get involved in the long-term care and Medicaid eligibility process, the easier it is to give clients peace of mind.

4. Take Action.

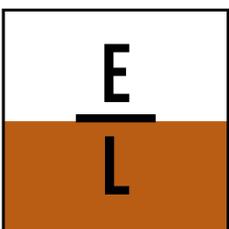
With the right plans in place, I can help put legal strategies to meet immediate long-term care goals.

LEGAL SERVICES

- Prepare for the financial costs of long-term care
- Protect your money from being spent on nursing home care
- Protect your home from being spent down on long-term care
- Help submit a Medicaid application
- Navigate the nursing home admissions process
- Engage in Medicaid and long-term care planning
- Create Powers of Attorney
- Create Health Care Directives
- Conduct the probate process
- Ensure your loved ones are protected in their golden years of life

BENEFITS & RESOURCES CHECKLIST

- Medicaid Benefits for Long-term Care
- Home & Community-based Services
- Benefits for Assistive Technology
- VA Benefits
- Medicare Days-Available / Remaining Benefits
- Social Security Income
- Social Security Disability Insurance
- Social Security Retirement & Medicare Benefits
- Short- and long-term disability benefits from employer insurance policies
- Life Insurance, various other policies
- Disability Rights under the Americans with Disabilities Act
- Affordable Care Act Provisions
- Powers of Attorney (Medical and Financial)



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