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Is 'aging in place' realistic? Factors to consider

Few people hope to move to an assisted living facility or nursing home when they're older. Instead, studies show that the vast majority of people over 50 prefer to "age in place." Aging in place refers to the ability to live in your own home safely, independently and comfortably without regard to age, income and ability level.

Ideally, people who wish to age in place will be able to do so, but there are physical, psychological, financial, logistical and even legal considerations that factor into whether this is the right option.

It's true that being able to age in place eliminates the physical and emotional stress of moving to a senior living community. The thought of leaving behind a lifetime of memories in the family home can be too much to bear. The anticipation of life in a senior living community can be stressful too. There's the fear of whether you will be able to forge new friends and connections, whether you'll be able to sleep and relax in uncertain surroundings and what the food will be like. Additionally, you may be leaving behind long-time healthcare providers for unfamiliar providers in your new community.

Meanwhile, if you've been in your home for a long time, you've probably paid off your mortgage, meaning that your living expenses may be lower than the cost of living in a senior community. Plus, many of us treasure the idea of our kids and grandkids coming "home" to visit us.

On the other hand, you need to consider your long-term physical outlook.

For example, do you have any existing health or mobility issues that will make it harder for you to remain in your home over time? Aging in place could be dangerous if, for example, you get to the point where you can't navigate the stairs but you don't have bedroom and bath facilities on your first floor.

Another factor to consider is whether you have a sufficient support system. Are your longtime friends still nearby and do they plan to stay nearby? Do you have close family that lives locally? If you don't, are there other ways to connect to people in order to maintain the social interactions you'll need to remain physically and emotionally health – particularly once you reach the stage where you

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Supreme Court case addresses rights of nursing homes patients

When you or a loved one moves into a nursing home, you expect that that personnel will provide care that is competent, caring and respectful of your dignity. Unfortunately certain legal traps can make it hard to hold a facility accountable in court when it fails to do so. However, the U.S. Supreme Court recently issued a decision that should make it easier to clear one such obstacle, at least with respect to public nursing homes paid for by Medicaid.

In that case, patient Gorgi Talevski was living in an Indiana nursing home operated by a municipal corporation that was an entity of the state.

According to Talevski's family, the facility used psychotropic drugs to chemically restrain him and other patients. The facility also allegedly tried to transfer him to a dementia facility involuntarily and without advance notice.

In a federal lawsuit, the family claimed this violated the Federal Nursing Home Reform Act (FNHRA), which establishes minimum standards of care that nursing homes have to adhere to in order to participate in the Medicaid program. The Talevskis sued under Section 1983, a federal law that allows private citizens to sue public entities for violating their federal rights.

A lower court threw out the case, finding that Medicaid recipients cannot individually enforce the FNHRA through lawsuits. A federal appeals court reversed, however, and the Supreme Court upheld that decision.

Medicaid ensures that people of modest income and assets can access residential long-term care. The quality of that care should not correlate with the person's ability to pay privately, and patients should be able to hold a facility accountable if it fails to provide proper care. If you have a loved one in a public long-term care facility and you have concerns about the quality of their care, set up an appointment with an elder law attorney where you live.

Structuring an estate plan around problematic beneficiaries

The purpose of putting together an estate plan is to ensure your assets are distributed as you wish once you've passed on. This means figuring out who your beneficiaries will be and what they'll each receive.

This also may mean dealing with two categories of troublesome beneficiaries.

The first category encompasses loved ones who, because of substance abuse issues, a gambling addiction, mental health problems or general irresponsibility, can't be relied on to handle assets responsibly. You will want to ensure these "problematic" beneficiaries are provided for without the assets going to waste.

An elder law attorney can help you by identifying tools, like setting up a trust, to distribute your assets in the soundest possible manner.

A trust is a legal instrument in which an appointed "trustee" manages the assets you plan on leaving to a particular beneficiary. The trustee invests the assets so they will grow and distributes the income in a manner best suited to protect the beneficiary's interest while keeping him or her from wasting the assets.

The trust's terms can even be drafted in a way that incentivizes the beneficiary to address underlying issues. For example, the trust may state that distributions

are to be used to pay for therapy or substance abuse treatment.

The second category of beneficiaries is those who are likely to be unsatisfied with what they receive. They may even raise legal challenges, causing family tension after your passing.

While there's no silver bullet for avoiding this situation, an elder lawyer can help you identify potentially troublesome beneficiaries and structure an estate plan in the fairest possible manner and execute it in a way that will protect against challenges. An attorney can also help strategize how to have conversations to head off such conflict before it's too late.

Medicare and Medicaid in the long-term care context: what's the difference?

Medicare and Medicaid have similar sounding names, which can lead to confusion. They are also broadly similar in that they are both federal programs provide government-funded healthcare benefits to particular populations.

But they serve different people and purposes, and it's good to understand both when planning for long-term care.

Medicare, simply put, is government health insurance for seniors. It's an "entitlement" program in that anyone 65 or older who is also entitled to receive Social Security receives. Traditional Medicare (Parts A and B) covers hospital and doctor bills, respectively. Medicare Part C ("nontraditional" Medicare) is run through private, government-approved programs that replace traditional Medicare and may include vision, dental and hearing coverage. Part D helps cover prescription drug costs.

Medicaid on the other hand, helps cover healthcare costs for those of limited income and assets. It's also a joint state-federal program, under which each state operates its own system within federal guidelines using federal money. That money covers half the costs, and the state kicks in the other half.

With respect to long-term care, it's important to know that Medicaid covers nursing home care for those over 65 while Medicare Part A only covers up to 100 days of care at a skilled nursing facility in response to a particular illness following a hospital stay.

But in order to have Medicaid cover your long-term care, you need to meet federal eligibility requirements as well as those in your state. In many cases, this means you can expect to pay out of your own pocket until your income and assets are low enough to qualify.

It should also be noted that not all assets are counted toward Medicaid's asset limits. For example, the value of your home isn't counted until it reaches a particular threshold (usually between about $700,000 and $1 million as long as you live in the home or plan to return to it). Additionally, your spouse's income isn't counted toward your own eligibility.

"Spending down" your assets can be an important strategy in obtaining Medicaid eligibility for long-term care purposes. There are a number of vehicles by which you can "spend down" while protecting your estate for your spouse, heirs and beneficiaries. Reach out to an elder law attorney for assistance with this.

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Is 'aging in place' realistic? Factors to consider

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can't drive yourself places anymore?

There are also legal and financial considerations. If you decide to age in place, you need to make specific provisions for costly home repairs that may arise, such as a new roof or heating and air conditioning system. But as you age, it may be more difficult to select and supervise contractors to do the work.

Additionally, as you age, you may experience cognitive decline that causes you to forget to take medications or stop cooking and eating healthy meals. And if you're aging in place alongside your spouse or partner and they pass away, the surviving spouse may not be capable of handling the resulting new responsibilities.

These are all considerations that you should discuss with an elder law attorney, who can help you figure out whether aging in place is realistic and help you put together a plan to make it work. If you decide it's not realistic, an elder law attorney can help you plan for long-term care in the most effective possible way.

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Benefits and drawbacks of 'tenancy by the entirety' ownership

Many co-owners of property hold it as a "joint tenancy," where one owner's interest passes to the other owner when they die. A "tenancy by the entirety," which is limited in many states to married couples, is very similar to a joint tenancy in that if one spouse dies, their interest passes to the surviving spouse. The key difference, however, is that if the deceased spouse left behind debts, the surviving spouse's interest is protected from the deceased spouse's creditors as long as the property remains their primary residence.

However, a recent Massachusetts case illustrates the limits of this form of ownership in warding off creditors. In that case, a couple purchased a home as a tenancy by the entirety. 20 years later, the husband borrowed $200,000, putting up the home as collateral. He was the only one that signed the loan documents, though both spouses signed the mortgage that secured it.

When the husband defaulted, a dispute arose as to whether the bank could foreclose against the wife as well as the husband, since she was not the one who borrowed the money.

The Massachusetts Appeals Court ruled that it could. Specifically, it found that by signing the mortgage, she put her interest at risk too.

Though the law may vary from state to state, the ruling suggests that while a tenancy by the entirety can offer one spouse a degree of protection from the other spouse's debts, it may be of limited value when borrowing money on property. Talk to an elder law attorney to learn more.