

Considerations for Seniors with Dementia

What is dementia?

Dementia is a decline in mental functions, like memory, decision-making, thinking, and behavior. It is common to experience these declines as a part of aging, but the decline is faster and more significant with dementia. Dementia can result from Alzheimer's disease, Parkinson's disease, stroke, head trauma, some medications, and many different illnesses. It is irreversible but can be slowed with medication and therapy. Alzheimer's alone is currently the sixth leading cause of death in the United States.

Why does dementia matter legally?

The onset of dementia presents two major legal problems:

- The first is “diminished capacity.” The worse the dementia is, the less capacity a person has to do things, like sign legal documents, hire an attorney, appoint financial or medical agents, or plan for the future. Capacity may diminish so much that a person can no longer legally make decisions. A judge, doctor, or nurse practitioner can declare someone to be “incapacitated,” and a lawyer can decline representation if they feel that capacity is too diminished.
 - The second is that dementia can cause major changes in judgment and personality. People can take advantage of this poor judgment, and personality changes can lead to legal or family problems.
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What are my legal considerations if I am diagnosed with dementia?

Because dementia is likely to lead to diminished capacity, you should try to handle any legal, medical, or financial affairs before you lose capacity. You should consider the high medical and financial costs of the diagnosis, and ask your doctor how severe the diagnosis is and how it will progress. You should meet with an estate planning attorney to discuss your options, or talk to a legal aid attorney.

What is supported decision-making?

Supported decision-making is a movement in disability and elder law to help people under a mental or physical disability remain as independent as possible. This could mean making important decisions ahead of time or helping a person with diminished capacity in making decisions, keeping in mind what they would personally want.

What are some actions I can take to protect myself after a dementia diagnosis?

Consider the following options after a dementia diagnosis:

- **Power of Attorney** - You can appoint one or more people to help you with financial or medical decisions. It can go into effect immediately or only upon your incapacity. You can assign only certain responsibilities and leave the rest up to you. A power of attorney can be easily exploited, so be extremely careful in who you appoint.
- **Advance Directive** - You can make end-of-life decisions, like whether you want life support or a feeding tube. You can also choose to donate organs in this document. You can appoint a person to carry out your healthcare decisions if you are not able.
- **Declaration for Mental Health Treatment** - This document allows a person who knows they may have a mental health crisis to list their wishes if this happens. You may list probable symptoms of your mental health crisis, preferred medications, treatment sites, types of treatment, and other preferences. These wishes must be followed to the greatest extent possible if you become unable to make your own decisions. The form can be found at:
http://www.tennessee.gov/assets/entities/behavioral-health/attachments/Declaration_for_Mental_Health_Treatment-Form.pdf

- Special Needs Trusts – This can provide supplemental funds to someone receiving public benefits, like Medicaid. Normally, receiving extra money could disqualify a person with low income and assets from receiving public benefits. Instead of leaving money in a will or giving it as a gift, a special needs trust can provide additional help while still allowing the disabled person to qualify for benefits.
 - Appoint other agents to help with your benefits - Social Security and the Veterans Administration have their own processes for appointing agents.
 - Conservatorship - A conservatorship can be used to protect you from yourself. For example, if you cannot control your spending, you may want a conservator to remove your ability to spend money. This is done through a court process and usually requires an attorney, which can be expensive.
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Can the Public Guardianship Program help if I am diagnosed with dementia?

The Public Guardianship Program is a state-funded program that can serve as an agent under a Power of Attorney or Healthcare Appointment or as a conservator. If you need an agent but have no trusted family or friends to act as your agent, the Public Guardianship Program could be an option. You must be over the age of 60 to qualify. For more information about the Public Guardianship Program, visit <https://www.tn.gov/aging/topic/public-guardianship>.

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