



## ROLE REVERSAL: CARING FOR AGING PARENTS

*By Cindy J. Ackerman*

As baby boomers age, they are faced with both the prospect of caring for aging parents and the possibility that they will be those needing care. The Family Caregiver Alliance estimates that the number of unpaid family caregivers will reach 37 million by 2050, an 85% increase from the year 2000. Family caregivers, as well as those who may be subject to such care, can reduce some of the burdens and complexities of these arrangements by taking advantage of available legal tools and professional advisers.

### **BUILD A LEGAL TOOLKIT**

Unfortunately, a family caregiver has no authority to manage a parent's health care or finances unless the parent or a court grants such authority. Various legal documents and proceedings are available to provide the family caregiver with such authority when the parent is no longer able to make health care and financial decisions for himself or herself. These include health care directives, powers of attorney, and revocable trusts. Each of these must be prepared when the parent is able to make decisions for himself or herself. If a parent is no longer able to make health care or financial decisions and has not prepared a health care directive, power of attorney, or revocable trust, a guardianship or conservatorship proceeding is required in order to give the caregiver (or someone else) authority to make medical and financial decisions.

**Health Care Directive** – Federal law prohibits a health care provider from releasing information to a patient's family without consent. In a health care directive or durable health care power of attorney, a parent can appoint an agent to make health care decisions for the parent whenever the parent is unable to make or communicate the parent's health care decisions. These documents also authorize the agent to make decisions regarding the parent's abode and grant the agent full access to the parent's medical records. A health care

directive may also include provisions usually found in living wills regarding desired treatment (or no treatment) for a patient whose condition is terminal.

**Power of Attorney** – Privacy laws prohibit financial institutions from releasing a customer's financial information to an unauthorized person. A power of attorney can authorize the caregiver ("attorney-in-fact") to receive such financial information and authorize the attorney-in-fact to transact business for the parent. A durable power of attorney is effective when signed and continues to be effective after the parent becomes incapacitated. Parents may be hesitant to grant a power of attorney while they are still able to manage on their own. In such a case, the parent may grant a "springing" power of attorney, which does not become effective until the parent becomes incapacitated. Springing powers of attorney present a practical problem of determining a parent's incapacity. To avoid this problem, a parent may place a power of attorney for safekeeping with his or her attorney and leave instructions for use of the power of attorney with the attorney. An attorney-in-fact should always sign documents in his or her capacity as attorney-in-fact to avoid assuming a parent's liability. This is especially true when a parent enters a nursing home and a child is asked to sign the nursing home agreement.

**Guardianship/Conservatorship** – If a parent is no longer able to manage his or her finances and has not executed a power of attorney, family members may petition a court to appoint a conservator to manage the parent's assets. If a parent is no longer able to manage his or her health care, a court may appoint a guardian to manage the health care and general wellbeing of the parent, including making decisions regarding the place where the parent will live. Because a guardianship or conservatorship proceeding requires a court hearing with notice to all family



*Cindy J. Ackerman represents individuals and business clients in the areas of estate planning, probate and trust administration, taxation and non-profit organizations. She may be reached at [AckermanC@moss-barnett.com](mailto:AckermanC@moss-barnett.com) or 612.877.5330.*

### Helpful Web Sites

- National Association of Professional Geriatric Care Managers  
[www.caremanager.org](http://www.caremanager.org)
- Caregiver MN  
[www.caregivermn.org](http://www.caregivermn.org)
- Caregiving.com  
[www.caregiving.com](http://www.caregiving.com)
- Administration on Aging  
[www.aoa.dhhs.gov](http://www.aoa.dhhs.gov)
- Metropolitan Area Agency on Aging  
[www.tcaging.org](http://www.tcaging.org)
- Minnesota Board on Aging  
[www.mnaging.org](http://www.mnaging.org)
- Courage Center  
[www.courage.org](http://www.courage.org)
- Sister Kenny Rehabilitation Institute at Allina Hospitals & Clinics  
[www.allina.com](http://www.allina.com)

members, there could be significant delays before someone is authorized to make decisions for the parent.

**Revocable Trust** – If a parent uses a revocable trust as a primary estate planning document and all of the parent's assets are held in the trust, the successor trustee appointed in the trust instrument has the power to manage the trust assets if the parent is no longer able to act as trustee. An attorney-in-fact or a conservator appointed by the court does not have control over the trust assets.

### **BUILD A TEAM OF PROFESSIONAL ADVISERS**

Caring for a parent can be a daunting task. Fortunately, professional advisers are available to help address issues that arise in caring for a parent.

**Financial Adviser** – When a caregiver assumes responsibility for managing a parent's finances, the caregiver is acting as a fiduciary and, consequently, is held to a higher standard of care in managing the finances of another than he or she might be in handling his or her own affairs. This standard is referred to as the "Prudent Investor Rule," which requires the caregiver to invest and manage the parent's assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances relevant to the decision. To satisfy this standard, the caregiver must exercise reasonable care, skill, and caution and must never commingle a parent's assets with the caregiver's assets. A competent financial adviser can assist the caregiver in meeting his or her fiduciary duty, as well as with budgeting to meet the parent's ongoing financial needs.

**Accountant** – A caregiver must keep detailed records of receipts and disbursements of the parent's funds. A court appointed conservator is required to file an annual account with the court. A successor trustee has a duty to account to the beneficiaries of the parent's trust. An attorney-in-fact may also be required to provide a formal accounting to a person designated by the parent to review the accounting or to family members who demand an accounting. The caregiver may also be responsible for filing the parent's income tax returns. An accountant can assist the caregiver in meeting his or her tax reporting and accounting obligations.

**Attorney** – An estate planning or elder law attorney can assist the parent in designing the parent's estate plan and designating the fiduciaries who will assist the parent if the parent becomes

incapacitated. An attorney can also provide assistance with (i) seeking a court appointed guardian or conservator, (ii) meeting the caregiver's accounting and tax obligations, (iii) dealing with the parent's debts, and (iv) handling other issues that may arise when caring for an aging parent.

**Occupational Therapist** – Because we associate our cars with our independence, one of the most difficult decisions facing a caregiver is when to take away the car keys. If a parent is having trouble driving, e.g., failing to observe traffic signals, making slow or poor decisions, driving at inappropriate speeds, stopping for no reason, or confusing brake and gas pedals, family members may need to intervene. Several programs provide assessment of driving skills and training programs for seniors, including Courage Center, Sister Kenny Rehabilitation Institute, and AAA Minneapolis. Such an assessment does not necessarily mean the loss of the car keys. Sometimes adjustments in driving habits, such as restricting highway or nighttime driving, are sufficient to enable a parent to drive safely.

**Case Manager** – A case manager can provide an assessment of a parent's needs, such as medical care, assistance with activities of daily living, or physical therapy, and then coordinate and supervise the service providers retained to meet those needs. For example, the case manager may arrange for in-home housekeeping and nursing assistance to enable a parent to remain in his or her home.

### **BUILD A SUPPORT SYSTEM FOR YOURSELF**

**Support Group** – Given the time and emotional demands of caring for others, a caregiver may neglect herself or himself. A support group provides a connection to others facing similar circumstances, who can offer suggestions, solutions, or just listen.

**Adult Day Care** – Programs are available to provide a parent with day care, which will give caregivers time to attend to their personal needs.

Caregivers face a daunting task when caring for a parent. Many resources are available to assist the caregiver. However, some require that a parent take action before the need for a caregiver arises. Starting a discussion with the parent as early as possible will enable the parent and caregiver to acquire the tools and resources necessary to provide the parent with the best possible care before an emergency situation arises.