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Legal Matters®

Estate planning and retirement considerations for late-in-life parents

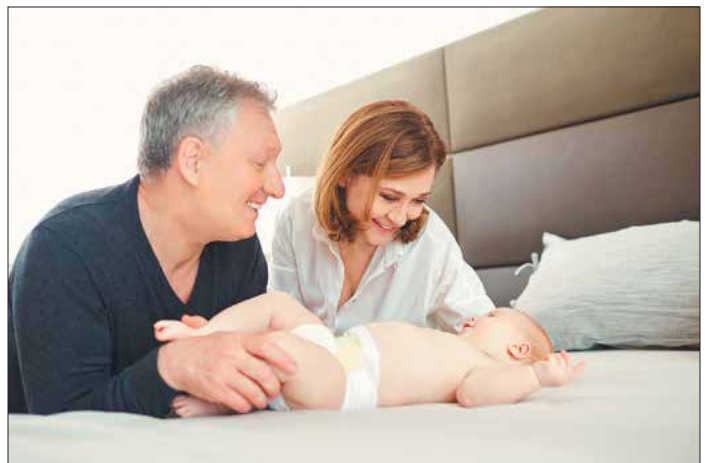
It is becoming more common for people to be parents at an older age, partly because of changing cultural mores and advances in fertility treatment.

Comedian and author Steve Martin had his first child at age 67. Singer Billy Joel, 70, welcomed his third daughter in 2017. Janet Jackson had a child at age 50. But later-in-life parents have some special estate planning and retirement considerations.

For older parents, the first consideration is to have an estate plan and to be sure that plan is up to date. One of the most important functions of an estate plan is to have a guardian designated in your will for your children. This goes double for a parent who has children late in life. If you don't name someone to act as guardian, the court will choose. Because the court doesn't know your kids like you do, the person it chooses may not be ideal.

In addition to naming a guardian, you may want to set up a trust for your children so that your assets are set aside for them for when they are older. If a child is the product of a second marriage, a trust may be particularly important. A trust can give your spouse rights, but allow someone else — the trustee — the power to manage the property and protect it for the next generation. If you have older children, a trust could, for example, provide for a younger child's college education and then divide the remaining amount among all the children.

Another consideration is retirement savings. Financial advisors generally



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recommend prioritizing saving for your own retirement over saving for college, because students have the ability to borrow money for college and it is tougher to borrow for retirement. One advantage of being an older parent is that you may be more financially stable, making it easier to save for both. In addition, if you are retired when your children go to college, they may qualify for more financial aid. Older parents should make sure they have a high level of life insurance, and they should extend term policies to last through the college years.

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Understanding Medicare's hospice benefit

Medicare's hospice benefit covers any care that is reasonable and necessary for easing the course of a terminal illness. It is one of Medicare's most comprehensive benefits and can be extremely helpful to both a terminally ill individual and his or her family, but it is little understood and underutilized. Understanding what is offered ahead of time may help Medicare beneficiaries and their families make the difficult decision to choose hospice if the time comes.



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The focus of hospice is palliative care, which helps people who are terminally ill and their families maintain their quality of life. Palliative care addresses physical, intellectual, emotional, social

and spiritual needs while supporting the terminally ill individual's independence, access to information and ability to make choices about health care.

To qualify for Medicare's hospice benefit, a beneficiary must be entitled to Medicare Part A, and a doctor must certify that the beneficiary has a life expectancy of six months or less. If the beneficiary lives longer than six months, the doctor can continue to certify the patient for hospice care indefinitely. The beneficiary must agree to give up any treatment to cure his or her illness and elect to receive only palliative care. This can seem overwhelming, but beneficiaries can also change their minds at any time. It's possible to revoke the benefit and re-elect it later, and to do so as often as needed.

Medicare will cover any care that is reasonable and necessary for easing the course of a terminal illness. Hospice nurses and doctors are on call 24 hours a day, seven days a week to give beneficiaries support and care when needed. Services are usually provided in the home. The Medicare hospice benefit offers:

- Physician and nurse practitioner services
- Nursing care

- Medical appliances and supplies
- Drugs for symptom management and pain relief
- Short-term inpatient and respite care
- Homemaker and home health aide services
- Counseling
- Social work services
- Spiritual care
- Volunteer participation
- Bereavement services

Services are considered appropriate if they are aimed at improving the beneficiary's life and making him or her more comfortable.

Because the beneficiary is electing palliative care over treatment, there are things the hospice benefit will not cover:

- Treatment to cure the beneficiary's illness
- Prescription drugs, other than those for symptom control or pain relief
- Care from a provider that wasn't arranged by the hospice team, although the beneficiary can choose to have his or her regular doctor serve as the attending medical professional
- Room and board. If the beneficiary is in a nursing home, hospice will not pay for room and board costs. However, if the hospice team determines that the beneficiary needs short-term inpatient care or respite care services, Medicare will cover a stay in a facility.
- Care from a hospital, either inpatient or outpatient, or ambulance transportation, unless arranged by the hospice team. The beneficiary can use regular Medicare to pay for any treatment not related to the beneficiary's terminal illness.

Medicare now has a Hospice Compare site that allows patients or their families to evaluate hospice providers according to several criteria. Visit the site at: <https://www.medicare.gov/hospicecompare/>

To download Medicare's booklet on the hospice benefit, go to: <https://www.medicare.gov/Pubs/pdf/02154-Medicare-Hospice-Benefits.PDF>

Estate planning and retirement considerations for late-in-life parents

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Social Security is another consideration. Children can receive benefits on a parent's work record if the parent is receiving benefits too. To be eligible, the child must be under age 18, under age 19 but still in elementary school or high school, or over age 18 but have become mentally or physically disabled prior to age 22. Children generally

receive an amount equal to half of a parent's primary insurance amount, up to a "family maximum" benefit. You will need to calculate whether the child's benefit makes it worth it to collect benefits early rather than waiting to collect at your full retirement age, or at age 70.

To make a plan for late-in-life parenthood, contact your attorney.

Getting paid as a family caregiver through Medicaid

Caring for an ailing family member is difficult work, but it doesn't necessarily have to be unpaid work. There are programs available that allow Medicaid recipients to hire family members as caregivers.

All 50 states have programs that provide pay to family caregivers. The programs vary by state, but are generally available to Medicaid recipients, although there are also some non-Medicaid programs.

Medicaid's program began as "cash and counseling" but is now often called "self-directed," "consumer-directed" or "participant-directed" care. The first step is to apply for Medicaid through a home-based Medicaid program. Medicaid is available only to low-income seniors, and each state has different eligibility requirements. The Medicaid application approval can take months, and there may be a waiting list for benefits.

The state Medicaid agency usually conducts an assessment to determine the recipient's care needs, e.g., how much help the Medicaid recipient needs with activities of daily living, such as bathing, dressing, eating and moving. Once the assessment is complete, the state draws up a budget and the recipient can use the allotted funds for goods or services related to care, for example by paying a caregiver. Each state offers different benefits coverage.

Recipients can choose to pay a family member as a caregiver, but states vary on which family members are

allowed. For example, most states prevent caregivers from hiring a spouse, and some states do not allow recipients to hire a caregiver who lives with them. Most programs allow ex-spouses, in-laws, children and grandchildren to serve as paid caregivers, but states typically require family caregivers to be paid less than the market rate, to prevent fraud.

In addition to Medicaid programs, some states have non-Medicaid programs that allow self-directed care. These programs may have different eligibility requirements than Medicaid, and they are different in each state. Family caregivers can also be paid using a "caregiver contract," increasingly part of Medicaid planning.

In some states, veterans who need long-term care also have the option of paying family caregivers. In 37 states, veterans who receive the standard medical benefits package from the Veterans Administration and who require nursing home-level care may apply for Veteran-Directed Care. The program provides veterans with a flexible budget for at-home services that can be managed by the veteran or the family caregiver. In addition, if a veteran or surviving spouse of a veteran qualifies for Aid & Attendance benefits, he or she can receive a supplement to their pension to help pay a caregiver, who can be a family member.

Contact your attorney to find out what is available in your state.



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Maximizing Social Security survivor's benefits

Social Security survivor's benefits provide a safety net to widows and widowers. But to get the most out of the benefit, you need to know the right time to claim.

While you can claim survivor's benefits as early as age 60, if you claim benefits before your full retirement age, your benefits will be permanently reduced. If you claim benefits at your full retirement age, you will receive 100 percent of your spouse's benefit or, if your spouse died before collecting benefits, 100 percent of what your spouse's benefit would have been at full retirement age. Unlike with retirement benefits, delaying survivor's benefits beyond your full retirement age will not increase the benefit. (If you delay taking retirement benefits past your full retirement age, depending on when you were born your benefit will increase by 6 to 8 percent for every year that you delay up to age 70, in addition to any

cost of living increases.)

You cannot take both retirement benefits and survivor's benefits at the same time. When deciding which one to take, you need to compare the two benefits to see which is higher. In some cases, the decision is easy: one benefit is clearly much higher than the other. In other situations, the decision can be a little more complicated, and you may want to take your survivor's benefit before switching to your retirement benefit.

To determine the best strategy, you will need to look at your retirement benefit at your full retirement age, as well as at age 70, and compare that to your survivor's benefit. If your retirement benefit at age 70 will be larger than your survivor's benefit, it may make sense to claim your survivor's benefit at your full retirement age. You can then let your retirement benefit continue to grow and switch to it at age 70.

Guns and dementia: Dealing with a loved one's firearms

Having a loved one with dementia can be scary, but add in access to a firearm and things can become especially dangerous.

Research shows that 45 percent of all adults aged 65 years or older either own a gun or live in a household with someone who does. For someone with dementia, the risk of suicide increases; firearms are the most common method of suicide among people with dementia. In addition, someone with dementia who has a gun may put family members or caregivers at risk if the person with dementia gets confused about people's identities, or if they think someone is an intruder. A 2018 Kaiser Health News investigation looked at news reports, court records, hospital data and public death records since 2012 and found more than a hundred cases in which people with dementia used guns to kill or injure themselves or others.

The best thing to do is talk about guns before they become an issue. When someone is first diagnosed with dementia, there should be a conversation about gun ownership similar to the conversation many health pro-

fessionals have about driving and dementia. Framing the issue as a discussion about safety may help make it easier for the person with dementia to acknowledge a potential problem.

A conversation about guns can be part of a larger long-term care planning discussion with an elder law attorney, who can help families write up an agreement that sets forth who will determine when it is time to take the guns away and where they should go. Even if the gun owner doesn't remember the agreement when the time comes to put it to use, having a plan in place can be helpful.

Deciding what to do with guns is difficult. One option is to lock a weapon or weapons in a safe and store the ammunition separately. However, having guns in the house, even if they are locked away, can be risky.

Another option is to remove the weapons from the house altogether. However, in some states rules about transferring gun ownership are strict. Families should talk to their attorney and familiarize themselves with state and federal gun laws before giving away guns.



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