Legal Matters®

Elder Law
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# Big changes come to retirement plans

The Setting Every Community Up for Retirement Enhancement (SECURE) Act changes the law surrounding retirement plans in several important ways:

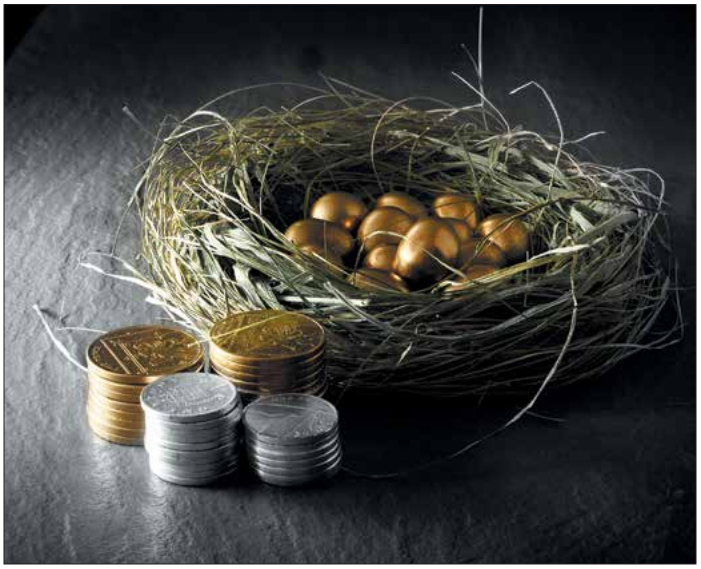
• **Stretch IRAS**. The biggest change eliminates "stretch" IRAs. Under the previous law, if you named anyone other than a spouse as the beneficiary of your IRA, 401(k) or other tax-favored retirement plan, the beneficiary could choose to take distributions over his or her lifetime and to pass what is left on to future generations (called the "stretch" option). The SECURE Act requires nonspouse beneficiaries of an IRA to withdraw all money in an IRA within 10 years of the IRA holder's death. In many cases, these withdrawals would take place during the beneficiary's highest tax years, meaning that the elimination of the stretch IRA is effectively a tax increase on many Americans. This provision applies to those who inherit IRAs as of Jan. 1, 2020.

• **Required minimum distributions.** Previously, people had to begin taking distributions from IRAs at age 70 1/2. Under the new law, individuals who were not 70 1/2 at the end of 2019 can now wait until age 72 to begin taking distributions.

• **Contributions.** The new law allows workers to continue to contribute to an IRA after age 70 1/2, which is the same as rules for 401(k)s and Roth IRAs.

• **Employers.** The tax credit businesses get for starting a retirement plan is increased and the new law makes it easier for small businesses to join multiple-employer plans.

• **Annuities.** The SECURE Act removes roadblocks that made employers wary of including annuities in 401(k) plans by eliminating some of the fiduciary requirements used to vet companies and products before they can be included in a plan.



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• **Withdrawals.** The new law allows an early withdrawal of up to $5,000 from a retirement account without a penalty in the event of the birth of a child or an adoption. Currently, there is a 10 percent penalty for early withdrawals in most circumstances.

Consult with your attorney to determine if you need to make changes.

# Important to know how Medicaid could treat your home

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Nursing home residents do not automatically have to sell their homes in order to qualify for Medicaid, but that doesn't mean the house is completely protected. The state will likely put a lien on the house while the resident is living and attempt to recover the property after the resident has passed away.

Medicaid (known as MassHealth in Massachusetts and Medi-Cal in California) will not count a nursing home resident's home as an asset when determining eligibility for Medicaid as long as the resident intends to return home. (In some states, the nursing home resident must prove a likelihood of returning home.) In addition, the resident's equity interest in the home must be less than $595,000, with states having the option of raising the limit to $893,000 (Figures are adjusted annually for inflation. These are for 2020.)

Even if a state does not place a lien on a home during a Medicaid beneficiary's life, the home may still be subject to estate recovery after the Medicaid recipient's death, again depending on the state.

The equity value of a home is the fair market value minus any debts secured by the home, such as a mortgage or a home equity loan. Your equity interest depends on whether you own the home by yourself or with someone else.

The home equity rule does not apply if the Medicaid applicant's spouse or a child who is under 21 or is blind or disabled lives in the home.

State Medicaid agencies will likely place a lien on any real estate owned by a Medicaid beneficiary during his or her life. The state cannot impose a lien if a spouse, a disabled or blind child, a child under age 21, or a sibling with an equity interest in the house is living there.

There are steps you can take to protect your home. Contact your attorney to learn more.

When a lien is placed on the property and the property is sold while the Medicaid beneficiary is living, not only will the beneficiary cease to be eligible for Medicaid due to the cash from the sale, but the beneficiary will have to satisfy the lien by paying back the state for its coverage of care to date.

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There are steps you can take to protect your home. Contact your attorney to learn more.

# Understanding how assets are distributed in a will

When creating an estate plan, the main decision is how your assets will be distributed after you pass away. The terms "per stirpes" and "per capita" become important when your descendants include children and grandchildren. In a will, these terms are often written as "I leave my [fill in the blank] to my descendants, per stirpes (or per capita)."

**Per stirpes**

Distributing your assets per stirpes (sometimes called "by right of representation") means that your assets will be divided evenly among your children, but if one of your children predeceases you, their children (your grandchildren) will inherit their parent's share.

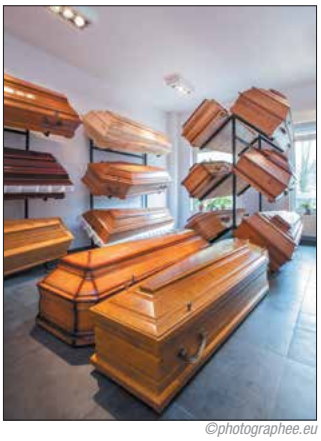
Generally, the terms per stirpes and "by right of representation" are used interchangeably. However, a variation on "right of representation" is used in some states if two or more children predecease you.

**Per capita**

When you distribute your assets per capita and a child predeceases you, your living children and grandchildren will inherit equally.

These terms can make a big difference in how an estate is distributed, and states have differences in how they interpret the terms. Make sure your property is being distributed the way that you want by consulting with your attorney.

# What to look for in a prepaid funeral plan



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In addition to making things easier for your family during a difficult time, prepaid funeral plans can also be a good way to spend down money in order to qualify for Medicaid. But the plans come with risks.

Consumers lose millions of dollars every year when prepaid funeral funds are misspent or misappropriated. A funeral provider could mishandle, mismanage or embezzle the funds. Some go out of business before the need for the prepaid funeral arises. Others sell policies that are virtually worthless.

Customers are not always entitled to refunds if they change their minds, and some funeral homes sell policies that require additional payments, or that can't be transferred if the customer moves.

Prepaid funeral contracts are governed solely by state law, and protections vary widely from state to state. Some states require the funeral home or cemetery to place a percentage of the prepayment in a state-regulated trust or to purchase a life insurance policy with the death benefits assigned to the funeral home or cemetery. Other states offer buyers of prepaid plans little or no effective protection.

If you decide to go ahead with a prepaid funeral plan, consider the following:

• **Shop around**. It is a good idea to check with a few different funeral homes before settling on the one you want. The Federal Trade Commission's Funeral Rule requires all funeral homes to supply customers with a general price list for all possible goods or services. The rule also stipulates the kinds of misrepresentations that are prohibited and explains which items consumers cannot be required to purchase, among other things.

• **Make sure you have a reputable funeral home**. There have been cases of unscrupulous funeral providers taking advantage of customers.

• **Read the contract carefully**. Can you cancel the plan and get a refund? Is the plan transferrable if you move to another area? Are you paying just for merchandise, or for funeral services as well? If prices for funeral merchandise and services rise, will your estate be responsible for paying additional costs?

• **Find out where your money goes**. The prepaid plan should provide information on what the funeral home will do with the money you pay. Some states have protections in place to make sure the money is safeguarded, but other states offer no protections. Is the money put into a trust account? What happens to the interest income? Is there a plan if the funeral home goes out of business? What happens to any money left over?

• **Make sure the plan won't affect Medicaid benefits**. If you are buying the policy as part of Medicaid planning, you must purchase an irrevocable plan, which means you can't cancel or change it once it is bought.

If you run into problems or have questions about your state's laws, most states have a licensing board that regulates the funeral industry.

After purchasing a plan, be sure to tell your family about the plan, and let them know where the documents are. If your family isn't aware that you've obtained a plan, the plan is useless.


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# Know the difference between wellness visit and physical

Confusing a wellness visit with a physical could be very costly.

As part of the Affordable Care Act, Medicare beneficiaries receive a free annual wellness visit. At this visit, your doctor, nurse practitioner or physician assistant will generally:

- ask you to fill out a health risk assessment questionnaire;
- update your medical history and current prescriptions;
- measure your height, weight, blood pressure and body mass index;
- provide personalized health advice;
- create a screening schedule for the next 5 to 10 years;
- screen for cognitive issues.

You do not have to pay a deductible for this visit. You may also receive other free preventative services, such as a flu shot.

The confusion arises when a Medicare beneficiary requests an "annual physical" instead of an "annual wellness visit." During a physical, a doctor may do other tests that are outside of an annual wellness visit, such as check vital signs, perform lung or abdominal exams, test your reflexes, or order urine and blood samples. These services are not offered for free and Medicare beneficiaries will have to pay co-pays and deductibles.

Adding to the confusion is the fact that, when you first enroll, Medicare covers a "welcome to Medicare" visit with your doctor. To avoid co-pays and deductibles, you need to schedule this visit within the first 12 months of enrolling in Medicare Part B. The visit covers the same things as the annual wellness visit, and it covers screenings and flu shots, a vision test, review of risk for depression, the option of creating advance directives, and a written plan, letting you know which screenings, shots, and other preventative services you should get.

When you contact your doctor's office to schedule an appointment be sure to request an "annual wellness visit" instead of asking for a "physical." The difference in wording can save you hundreds of dollars. In addition, some Medicare Advantage plans offer a free annual physical, so check with your plan if you are enrolled in one before scheduling.