

## November 2015

### Why use a care manager to help with caregiving?

#### 1—Time saver:

It is normal not to know where to turn when facing aging issues. It is hard to know what is best for your family regarding health care, health insurance, facilities, caregiver services, best time to make a move or long term care insurance. Using an expert care management team like ours can save you many hours in research and narrow the options.

#### 2 —Expertise:

Once, we thought we would take out an ad in the Boston Globe because three families with nursing or other professional backgrounds from the Boston area contacted us regarding issues with their aging loved ones. We then realized your intelligence, professional experience and Internet search capabilities do not adequately prepare you to care for an aging family member.

Care managers regularly visit facilities and know the quality of care. They attend doctor's appointments and care plan meetings with clients. They work with caregiver services, downsizers, medical equipment

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*In this edition, we take a look at "care giving," whether it is from a family member or from an outside-of-the-family organization. We know that twenty-nine percent (29%) of the U.S. population (65 million people) are involved in caregiving to persons age 50+. (Caregiving is at an average of 20 hours per week.). Furthermore, the average woman can expect to spend 17 years caring for a child and 18 years caring for an elderly parent.*

*The following article is by Christian S. Kelso, Esq.*

Fiduciary duties are easy to recite. Do put the principal's interests first. Don't self-deal. Do exercise loyalty. Don't profit or benefit without express consent. Do avoid conflicts of interest. Don't fail to exercise due diligence. Do keep the principal informed. I could go on.

The world, particularly in the context of elder care, is not black and white and when you think about implementing these rules, questions arise as to how they play out in practice. What if an action benefits both the principal and the agent? Does loyal mean following the principal's wishes, or looking out for their best interest, even if that means going against their wishes? Conflicts of interest between agents and principals are never fully avoidable. How much diligence is actually due to the principal? These various issues boil down to one question: How can a principal both care for a loved one and still avoid claims of fiduciary breach?

While every situation is different, a "typical" situation I might be asked to help out with looks a lot like this: A client calls in and says that they feel responsible for the wellbeing of a family member, we'll call her Grandma, who is declining mentally. Other



family members are in the picture, but for whatever reason, the client feels responsible for taking care of Grandma. What, they ask, should or can they do?

Generally, clients in this position should focus on three goals: First, keep Grandma safe. Next, they need to protect themselves, generally with my advice and counsel. Finally, they should try to preserve the principal's estate. Sadly, however, these goals often conflict. Almost always, "taking care of grandma" means acting as her fiduciary, whether as a formal guardian, trustee, attorney-in-fact, or under some other arrangement. Thus, covering the legal basics of fiduciary conduct (i.e. those rules at the beginning of this article) is a must. But going a step further, I have also come up with a set of

practical rules which is designed to help clients implement the legal rules reasonably and practically. Here are a few of those rules as they might apply to the hypothetical situation described above:

**DO put grandma's needs ahead of your own.** It may sound straightforward, but the single biggest problem that fiduciary clients tend to have is putting their own interests in the back seat. Taking care of grandma is not about the living in her house, driving her car, spending her money or protecting your interest in her estate. Taking care of Grandma is about making sure that she is able to live out her years in comfort and dignity.

**DO NOT feel (or appear) entitled.** Grandma's property belongs to Grandma. Period. Don't get fast and loose with her money or her things. Grandma's move to the nursing home is NOT an opportunity for you to get some new furniture or china. Remember that, despite your best intentions, family may perceive your actions as entitled. If Grandma's belongings must be moved because she can't take them all to the nursing home, address the situation equitably and be the first one to get the short end of the stick.

**DO know what you're getting into.** Taking care of Grandma is going to be hard and take a tremendous amount of time and energy if you do it right. If you do it wrong (or if you do it right and someone convinces a judge or jury otherwise), you may face ruinous civil suit, or even go to jail. In other words, this is really serious stuff! Also, your work and family life will suffer. Other family members may become jealous and accuse you of abuse. Grandma may not appreciate or understand your hard work and she may become unpleasant to be around. You will need to keep impeccable records to show what a good job you've done, so if you're not detail-oriented, you may want to let someone else take the reins.

**DO NOT go it alone.** There are quite a few professionals available to help you help Grandma. It goes without saying that good attorneys, accountants and financial advisors are an absolute necessity. Another very important advisor to find is a good "care manager" who can help you navigate the world you have landed in. A care manager may also be able to take the load off by doing some of the day-to-day tasks (like pay bills) and providing advice where more specialized knowledge is required (such as, researching elder care facilities, reviewing medications, etc...). If you are moving Grandma, be sure to consult with a competent senior care placement specialist, preferably someone local. Often, additional nurses, therapists, masseuses, hospice providers, religious advisors or other persons will be involved, so don't forget to use these people as additional "eyes and ears on the ground" to help you monitor facility staff, family members living with Grandma or anyone else who might be in contact with her. If they will agree to communicate with you via email, all the better because this will provide you with a written record of your effort. Finally, talk to friends and acquaintances who have been down the caregiver's path and learn from their mistakes. Note that, while some of these



people might help you for free, others will require compensation, so be prepared for these expenses. It may seem like a lot, but don't be penny smart and pound foolish.

**DO consider a well-drafted trust.** Put simply, trusts provide a better way to manage assets than as an agent under a power of attorney. Banks and other institutions impose fewer limitations on trustees than they do on attorneys-in-fact. Also, if Grandma has capacity to be involved, you and she can each be co-trustees initially. As Grandma's capacity declines over time, control will often transition naturally to you alone without Grandma feeling threatened or jarred by an abrupt and overwhelming change in circumstances. The key is a well-drafted and dynamic trust that

is tailored specifically to Grandma's needs by a seasoned professional.

**DO NOT withhold contact or information without good reason.** Keeping family members away from Grandma is a huge red flag. Obviously, any legitimate threat to Grandma's physical, mental or financial well-being must be mitigated, but access to Grandma should generally be allowed. Likewise, information about Grandma, and in particular her estate, should generally be shared with both family and Grandma herself. Privacy presents obvious issues, but speaking with family on general terms is usually sufficient to keep tensions low. Likewise, even if Grandma may not be able to comprehend the information, periodic letters regarding family, medical issues and finances will serve to document your best efforts as keeping her informed.

**DO establish clear goals and discuss them with family.** Should Grandma's care be restorative or merely palliative? Are Grandma's assets reasonably sufficient to provide for her care through the end of her life and if so, will her care necessitate a reduction in principal? If another family member is dependent on Grandma, what, if any, arrangements can be made to continue such care and should they be implemented? What expectations do other family members have with regard to Grandma's care and the maintenance of her estate?



**DO NOT be afraid to step back and let someone else take the reins.** A good client is prepared to admit that they might not be the best candidate for taking care of Grandma. Just asking the question (assuming they're serious about it) indicates that you're willing to think critically about the situation without letting emotion get in the way. If you decide to let another family member take care of Grandma, we will usually request that that person exercise transparency and make regular reports to you. Also, while another family member can be given general managerial control over Grandma's day-to-day activities, we would typically request that major decisions be made either with your express consent or after reasonable attempts have been made to consult with you. Such arrangements should be documented in a legally binding agreement.

At the end of the day, each of these rules may or may not apply in a particular case. Or, each may only apply after some modification. Clients may also resist the advice we lawyers

give them or they may not see a problem looming on the horizon. As their attorney *and counselor*, however, it's the lawyer's job to guide clients through this particularly precarious minefield, and these pointers will go a long way towards helping them get through it unscathed.

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**The views expressed by Christian, for which we are thankful, are his and not necessarily endorsed by AACM. We offer his somewhat unique perspective as a thought provoking endeavor. AACM's mission is to maximize the well-being of our clients regardless of their circumstances. So, ideas, approaches and alternative actions are useful to consider and discuss for the well-being of all.**

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companies, pharmacies, and other professionals to help tailor these many service offerings to the needs of the family.

### 3 – Value of the third party:

Family relationships are emotionally charged. A care manager is able to see things objectively and present issues, options or decisions without the many years of family based emotional history.

### 4 – Affirmation:

Some of the most difficult and complex family decisions develop in the aging process. Coaching, guidance, confirmation and support are key elements to the purpose of a care manager. We are most complimented when working with a family through difficult times and having the family confirm that the choices made were the best under the circumstances.

Our team loves the work we do. We are honored to assist the families we serve.

### Staff Changes at Accountable Aging Care Management

In our last newsletter we said good-bye to John Lloyd who we have recently found out is enjoying law school at The University of Texas At Austin. Shortly after saying good-bye to John we learned that our Dallas area care manager, Abbie Theobald Vogt, was moving because her husband was offered a wonderful position at the University of Georgia.

So in August/September, we said goodbye to Abbie, a care manager, Jenny, our Bill Paying Coordinator, and John Lloyd, our Client Coordinator. We wish all our former teammates great success and fulfillment in their new endeavors.

### Welcome Nicole!

Since our last newsletter, we've added a new care manager to the team in the Dallas area. Nicole is a confident public speaker with a special emphasis in advocating for the aging and veteran communities. She possesses an in-depth understanding of the processes, policies and procedures of direct community services obtained from an internship with the North Central Texas Area Agency on Aging/Aging and Disability Resource Center. Additionally, she is a certified Ombudsman. While she has a Master's degree in Long-term Care, Senior Housing and Aging Services, her unique contribution to the AACM team lies in her experiences in support of our military. Ask her if you want to know more about this topic.

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### Accountable Aging Care Management is on Facebook!

Please look for current AACM thoughts and information here.



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### Internet Learning Opportunity

mmlearn.org has been a friend of Accountable Aging Care Management for a long time. Their latest release pertains to awareness while visiting senior adults during the holidays. This learning experience can be found [here](#). However, there are many other learning experiences available at this site. You should check them out, frequently.

**Because referrals are the lifeblood of our business, the best way you can thank us is by referring a friend, neighbor or colleague to us! We appreciate all your referrals.**

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### Accountable Aging Care Management Team

**Mary Koffend**, President  
**Mick Koffend**, Director of Services  
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**Stephanie Cashion**, LMSW, Care Manager  
**Mary Cooper**, BS, RN, Care Manager  
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**Lessa Ennis**, Office Manager  
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**Lindsey Hazlewood**, Administrative Assistant  
**Nicole Kulas** MSG, Care Manager  
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Visit us online: [www.accountableaging.com](http://www.accountableaging.com)

Accountable Aging Care Management is an eldercare consulting and care management firm.

Accountable Aging is a single source for older adults and their families to attain knowledge, resources and on-going assistance with the challenges related to aging or caring for an elder loved one. We serve older adults in Austin, Bryan/College Station, Dallas, San Antonio and the surrounding areas.

With this newsletter, our aim is to provide a trusted conduit for eldercare information and resources and to highlight the services we offer that meet the needs of older adults and their families.

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