

2025 National Conference on Special Needs Planning and Special Needs Trusts

Breakout Session #3

The Unseen Burden: Navigating Special Needs Planning for Solo Ager Caregiver

Presented by:

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- I. **Breakout Session #3: The Unseen Burden: Navigating Special Needs Planning for Solo Ager Caregivers (PPT)**
By: Eric J. Einhart, Esq.



The Unseen Burden: Navigating Special Needs Planning for Solo Ager Caregivers

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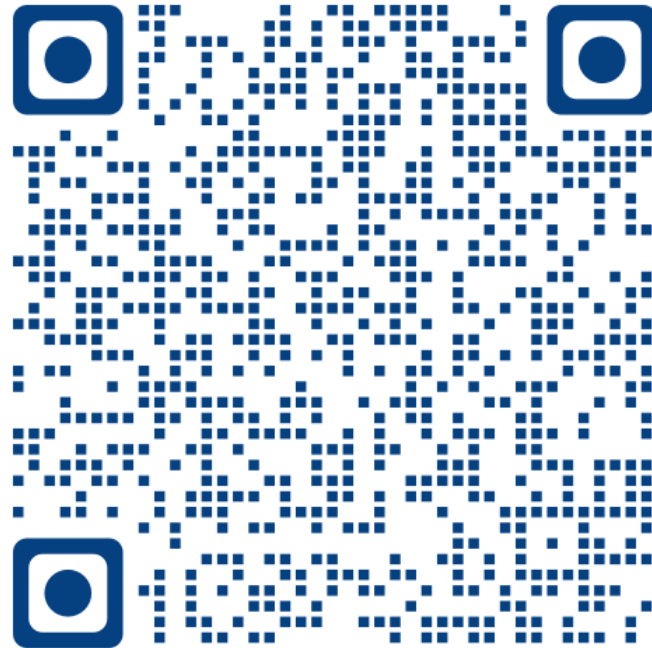


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We Will Cover...



- Who Are Solo Agers?
- Key Challenges
- Case Studies
- Practical Strategies
- Q&A



Who Are Solo Agers?

- Older adults living alone
- No spouse/partner
- No adult children or children unable to take on caregiving roles
- 22 million adults 55+ in U.S.

When Caregiving and Aging Collide



- Dual Planning: Caregiver and Dependent
- Outdated, missing, or insufficient estate planning

When Caregiving and Aging Collide



- Limited or no successor fiduciaries
- Isolation and lack of trusted network

Risk of Abuse

- Financial Exploitation
- Physical Abuse
- Sexual Abuse
- Psychological Abuse
- Self-Neglect



Housing

- Housing for children is a major concern for Solo Agers
- Pre-Crisis Planning (*start now*)
- Choosing & Structuring the Housing Options
- SSI & Medicaid Interactions
- Post-Incapacity / Death Workflow (*what actually happens*)



Common Planning Options

- Revocable Living Trust
- Medicaid Asset Protection Trust
- First Party Supplemental Needs Trust
- Third Party Supplemental Needs Trust
- Sole Benefit Trust

Case Study # 1

Frances & Wendy

- Frances (89) – widowed
- Wendy (49) – developmentally disabled
 - FPSNT – \$1.8M – Frances is sole Trustee (*no successor*)
 - Guardian is Frances (*no successor*)
 - SSI + Medicaid
- Estate Plan outdated (1990s)
- Assets and Income
 - Home - \$500k
 - CD & Savings Accts – \$200k
 - SSA + pension + Trustee commissions

Case Study # 1

Planning Opportunities

- Update Estate Plan
- Fiduciary selection
- Trust management
- Medicaid Exemptions
- Sole Benefit Trust
- Care coordination



Case Study # 1

What's the plan?

FRANCES

- ADVs
- LWT
- Revocable Living Trust
 - Supplemental Needs Sub-Trust
 - Deed Transfer
- Consider Sole Benefit Trust*

WENDY

- Guardianship – appoint Successors
- FPSNT – appoint Successors
- Housing

Case Study # 2

Raymond & Mark

- Raymond (72) – widowed, estranged from family
 - Active in their church
- Mark (39) – intellectually disabled
 - No benefits
 - No Guardianship
- Assets and Income:
 - Life insurance - \$500k death benefit
 - IRA – \$350k
 - Home – \$425k (*no mortgage*)
 - SSA benefits + Pension
- No estate or special needs planning



Case Study # 2

Planning Opportunities

- Update Estate Plan
- Guardianship
- Third Party SNT
- Sole Benefit Trust
- Long-term care planning
- Professional Fiduciaries

Case Study # 2

What's the plan?

RAYMOND

- ADVs
- LWT
- Revocable Living Trust
 - Supplemental Needs Sub-Trust
 - Deed Transfer
 - Update beneficiary designations
- Consider Sole Benefit Trust*

MARK

- Guardianship – establish and appoint successors
- Housing
- Medicaid + SSI/DAC

Case Study # 3

Todd, Stella, & Jack

- Todd (56) with stage 4 cancer – parents deceased; only sibling in jail
- Stella (54) – only child; parents deceased
- Jack (21) - autistic
 - Requires substantial support
- Assets – \$1.4M retirement, \$700k home (TBE), \$30k joint savings
- No legal documents, no financial plan, minimal family support

Case Study # 3

Planning Opportunities

- Todd
 - Urgent Estate Planning / update beneficiaries
- Stella
 - Estate and SN Planning
 - Fiduciary considerations
 - Structured financial planning
 - LTCI and Life Insurance
- Jack
 - Guardianship
 - SSI, Medicaid (DAC)



Case Study # 3

What's the plan?

TODD

- ADVs
- LWT
- Update beneficiary designations

STELLA

- ADVs
- LWT
- Revocable Living Trust (*could be joint*)
 - Supplemental Needs Sub-Trust
 - Deed transfer
- Funding mechanism for LTC

Case Study # 3

What's the plan?

JACK

- Guardianship
 - Successor Guardians
- Housing
- DAC/CDB
- Medicaid eligibility
- Supplementary services
 - Vocational rehabilitation
 - Social skills training
 - Adult day services

Resources

- National

- NAELA
- SNA
- NavigatingSolo.com
- NCOA



- State

- List of court approved fiduciaries

- Local



Key Takeaways

- Solo Ager exist across all demographics
- Assets do NOT equal security without planning
- Lack of support networks magnifies risks
- Professionals play a critical role in bridging the gap

QUESTIONS?



Disclaimer

This presentation, and any accompanying materials (including Q&A-related communications), are for informational purposes only and are not intended to provide, nor should they be relied upon as, legal advice.



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II. Solo Ager: Planning Strategies for Independent Older Adults Facing Unique Aging Challenges

By: Eric J. Einhart, Esq., from *NAELA Journal*, (Spring Edition, 2025, Vol. 21), 1-18

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**Solo Agers:
Planning Strategies for Independent Older Adults
Facing Unique Aging Challenges**

By Eric J. Einhart, Esq.

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I. Introduction

Independence is a theme deeply woven into the fabric of the American identity. In our culture, there is a strong emphasis on personal freedom, self-direction, and the power to shape one's own future. These principles are cherished by many throughout the nation. Unfortunately, life's hardships, like chronic illness, serious accidents, emotional trauma, and the natural effects of growing older, can lead to a loss, or even complete absence, of that independence.

Although many adults who are 65 and older experience a range of challenges as they age, those who lack the historically traditional support system of a spouse and/or adult children may face even greater challenges.¹ These older adults are commonly referred to as *solo agers*.

Elder law attorneys should have a comprehensive understanding of the unique challenges faced by solo agers and be equipped to provide the proper guidance to clients in this demographic. By understanding the specific difficulties encountered by solo agers, elder law attorneys can accomplish the following:

- Build stronger, more empathetic relationships with their clients.
- Proactively identify and address potential risks to their clients, prevent legal disputes, and ensure that clients' wishes are honored.
- Develop specialized knowledge on how to address the unique issues solo agers face and thus serve a signifi-

cantly growing segment of the older population.

II. Who Are Solo Agers?

For many who find themselves facing challenges due to chronic illness, traumatic events, injuries, or aging, the most common fallback for help is to rely on close family members, such as a spouse and/or adult children.² This fallback can help extend the personal autonomy of older adults. But what happens if someone does not have a close family member to rely on? Unfortunately, this is a common scenario for many older adults.

It is no secret that life expectancies have risen dramatically throughout the past century in the United States. In addition to increased life expectancy, social and cultural factors have led to greater numbers of older adults living alone, often without family support.³ Members of this rising demographic face many of the same challenges as all older adults but without the traditional support network that a close family can provide. This distinction creates additional difficulties that are unique to solo agers and must be taken into consideration by the solo agers themselves and the professionals they recruit as they plan for the future.

Many terms have been used to describe older community-dwelling individuals who are socially or physically isolated, are unmarried or unpartnered (whether wid-

1 Colette Thayer, *Solo Agers Are Optimistic About Quality of Life*, AARP (Feb. 2021), <https://doi.org/10.26419/res.00428.001> (accessed Oct. 30, 2024).

2 I-Fen Lin & D.A. Wolf, *Division of Parent Care Among Adult Children*, 75(10) J. Gerontology Ser. B Psychol. Sci. Soc. Sci. 2230 (2019).

3 KB Adams et al., *The Risk for Loneliness and Major Depression Among Solo Agers*, 42(5) J. Applied Gerontology 962 (May 2023), DOI: 10.1177/07334648221146770.

owed, divorced, or never married), and have no children or close family members available to serve as caregivers.⁴ Some of these terms include *elder orphans*, *adult orphans*, *kinless*, and *solo agers*.⁵

For purposes of this article, solo agers are defined as older adults who live alone, are not married or partnered in a long-term relationship, and have no children or whose children live far away, are estranged, or have special needs.⁶

Solo aging is not a unique phenomenon or statistical anomaly in a fringe demographic. According to a U.S. Census Bureau report released in 2021, approximately 22.1 million adults 55 and older live alone and 27.7% of older adults who live alone are childless.⁷

Although demographic statistics are important for a broader understanding of how to approach issues related to aging, solo agers are much more than just numbers. They are our clients, neighbors, family members, friends, fellow congregants at places of worship, and community members. Even some elder law attorneys are solo agers who can benefit from the services of qualified professionals. Solo agers have a wide range of backgrounds and

experiences and are found in every gender and ethnic, racial, political, and socioeconomic segment of the U.S. population.

Although everyone's background is unique, most solo agers have these two scenarios in common: (1) they live alone or expect to live alone at some point in the future and (2) they have few or no relatives to care for them as they age.

III. What Challenges Do Solo Agers Face?

Generally, making routine or major legal, financial, and health care decisions for adults who lack the requisite legal capacity to make these decisions themselves requires another person or entity to step into the shoes of the person who lacks capacity. This can be done through legal documents, such as durable powers of attorney or health care directives, or through surrogate consent statutes or guardianship proceedings.

Often an adult child takes on the role of making decisions and caring for older adults who need assistance or no longer have the capacity to make their own decisions. However, millions of older adults do not have children or close family members to help them. These older adults must plan accordingly or risk having their autonomy determined by circumstance or a court.

All older adults could face several essential challenges as they age, including those related to housing, the cost of long-term care, and risk of abuse. While solo agers also face these challenges, the lack of a traditional family support system can heighten concerns for these common issues and result in additional challenges, including identifying fiduciaries, identify-

4 MT Carney et al., *Elder Orphans Hiding in Plain Sight: A Growing Vulnerable Population*, Current Gerontology Geriatrics Research (2016), DOI: 10.1155/2016/4723250.

5 Adams et al., *supra* n. 3.

6 U. of N.C. Off. of Provost Partns. in Aging Program, *Solo Agers*, <https://partnershipsinaging.unc.edu/current-initiatives/solo-agers> (accessed Oct. 26, 2024).

7 U.S. Census Bureau, *First-Ever Census Bureau Report Highlights Growing Childless Older Adult Population* (Aug. 31, 2021), <https://www.census.gov/newsroom/press-releases/2021/childless-older-adult-population.html> (accessed Oct. 26, 2024).

ing caregivers, providing continued care for children with special needs, and obtaining assistance from professionals.

A. Housing

Older adults face distinct housing challenges, such as the affordability and physical accessibility of homes;⁸ the risk of social isolation and its impact on mental health;⁹ and the lack of access to health and long-term care provided either inside and outside the home.

Although the absence of adult children does not mean solo agers will not be able to live in safe and enriching environments during their later years, it does impact their housing options. Older adults who have adult children nearby often live with a child,¹⁰ receive financial assistance from adult children, or receive long-term and personal care services for free from adult children.¹¹ These options may be seen as backup plans but are not typically available to solo agers. Therefore, solo agers must carefully plan for the future.

Most older adults prefer to live and receive any ongoing assistance they need in their homes as they age.¹² This is common-

ly referred to as *aging in place*. Although aging in place is widely preferred by older adults, it may not be feasible given housing costs, the physical accessibility of their homes, and/or their care needs.

The increasing cost of essentials, such as food, energy, and utilities,¹³ and the already high cost of long-term care mean that many older adults who are living on a fixed income can be cost-burdened and unable to afford to age in place without the assistance of an adult child.¹⁴ Physical accessibility of the home also is a crucial component to safely aging in place, especially for solo agers who do not have children available to check on them frequently.

One out of four older adults fall each year, and a common cause for these falls is safety hazards in the home.¹⁵ A U.S. Census Bureau report states that most homes are not equipped to handle the needs of adults who have serious difficulty walking, climbing stairs, bathing, dressing themselves, or living on their own.¹⁶

8 J. Molinsky, *Housing for America's Older Adults: Four Problems We Must Address*, Jt. Ctr. for Hous. Stud. of Harvard U. (Aug. 18, 2022), <https://www.jchs.harvard.edu/blog/housing-americas-older-adults-four-problems-we-must-address> (accessed Oct. 26, 2024).

9 Adams et al., *supra* n. 3.

10 SR Lee & LS Kim, *Coresidence of Older Parents and Adult Children Increases Older Adults' Self-Reported Psychological Well-Being*, *Intl. J. Alzheimer's Disease* (Jan. 27, 2022), DOI: 10.1155/2022/5406196.

11 Lin & Wolf, *supra* n. 2.

12 Associated Press—NORC Ctr. for Pub. Affairs Research, *Long-Term Care in America: Americans Want to Age at Home* (May 2021), https://apnorc.org/wp-content/uploads/2021/04/LTC_Report_AgingatHome_final.pdf (accessed Oct. 26, 2024); Natl. Inst. on Aging,

Aging In Place: Growing Older at Home (reviewed Oct. 12, 2023), <https://www.nia.nih.gov/health/aging-place/aging-place-growing-older-home> (accessed Oct. 26, 2024).

13 U.S. Bureau of Labor Statistics, *TED: The Economics Daily—Prices for Food at Home Up 13.5 Percent for Year Ended August 2022* (Sept. 15, 2022), <https://www.bls.gov/opub/ted/2022/prices-for-food-at-home-up-13-5-percent-for-year-ended-august-2022.htm> (accessed Oct. 26, 2024).

14 Sen. Comm. on Banking, Hous. & Urb. Affairs, *Affordability and Accessibility: Addressing the Housing Needs of America's Seniors*, 117th Cong., 4 (Mar. 31, 2022) (testimony of Jennifer Molinsky, Ph.D.).

15 B. Moreland et al., *Trends in Nonfatal Falls and Fall-Related Injuries Among Adults Aged ≥65 Years—United States, 2012–2018*, 69 *Morbidity & Mortality Wkly. Rpt.* 875 (2020).

16 J. Vespa et al., *Old Housing, New Needs: Are U.S. Homes Ready for an Aging Population?*

For solo agers, the risk of falls and lack of physical accessibility in their homes can be a major impediment to aging in place. Ensuring that the living environment has the proper design, function, and layout is essential to ensuring the solo ager's independence, comfort, and safety. Even if solo agers can afford to age in place safely, their health or long-term care needs may eventually render this option impossible. In that case, some alternative housing options, such as assisted living facilities¹⁷ and nursing homes, are available.

Some solo agers who are concerned about the risk of isolation may prefer more social environments, such as continuing care retirement communities,¹⁸ independent living facilities, and shared housing. These living environments can be attractive alternatives to aging in place for solo agers since they provide safe housing and opportunities for social interaction. Solo agers should consult with an experienced elder law attorney who can advise them on housing options and their rights as residents and consumers.

B. Cost of Long-Term Care

Long-term care generally involves the provision of services designed to meet a person's health or personal care needs during a short or long period of time.¹⁹

Depending on a person's needs, long-term care can be provided in different environments and by different caregivers.²⁰

Given that individuals who turned 65 in 2020 have an estimated 70% chance of needing some type of long-term care services and supports in their lives, the cost of this care is not only relevant to planning but also essential to their plans.²¹ Long-term care can be expensive and varies greatly depending on the type of care received and in what setting and state it is provided.

The average cost of assisted living in the United States is \$54,000 annually,²² and the annual median cost of employing a home health aide to provide hands-on assistance with activities of daily living is \$75,504.²³ The annual median cost of a semiprivate room in a nursing home facility is \$104,025 and \$116,800 for a private room.²⁴

In addition to the current cost of care, solo agers must factor inflation into their plans. Solo agers must be financially prepared to cover the cost of their care out of pocket or through a long-term care insurance (LTCI) policy or a plan to become eligible for a means-based public assistance program, such as Medicaid.

(P23-217) (U.S. Census Bureau 2020).

17 Social Security Program Operations Manual System (POMS) SI 00520.510.

18 Y. Troya, *Exercising Control or Giving It Up? What Elder Law Attorneys Should Know About Continuing Care Retirement Communities*, 18 NAELA J. 61 (2022).

19 Natl. Inst. on Aging, *What Is Long-Term Care?* (reviewed Oct. 12, 2023), <https://www.nia.nih.gov/health/what-long-term-care> (accessed Oct. 26, 2024).

20 *Id.*

21 LongTermCare.gov, *How Much Care Will You Need?* U.S. Dept. of Health & Human Servs. (last modified Feb. 18, 2020), <https://acl.gov/ltc/basic-needs/how-much-care-will-you-need> (accessed Oct. 26, 2024).

22 Kate Van Dis, *How Much Does Assisted Living Cost?* Natl. Council on Aging (June 14, 2024), <https://www.ncoa.org/adviser/local-care/assisted-living/costs> (accessed Oct. 26, 2024).

23 Genworth, *Cost of Care Survey* (Apr. 30, 2024), <https://www.genworth.com/aging-and-you/finances/cost-of-care> (accessed Oct. 26, 2024).

24 *Id.*

For many older adults, the need for professional care is mitigated or eliminated by the efforts of unpaid family caregivers, significantly reducing the cost of long-term care. However, many solo agers do not have this option and often are themselves providing unpaid care to a family member, such as a parent, spouse, or adult child with special needs.²⁵

Although a variety of public and private sources finance long-term care services and supports, public sources pay for most of these. Medicaid is the first and largest public payer of long-term care services and supports in the United States; Medicare is the second-largest payer.²⁶ Medicaid is a means-based public assistance program, which requires that to qualify for benefits, an applicant's income and assets cannot exceed a certain amount.

Although Medicaid coverage is governed by federal statute and regulations, it is administered at the state and local level and subject to state eligibility rules.²⁷ All states require a 60-month look-back period for Medicaid eligibility for nursing home care, and many states require a look-back period for Medicaid eligibility for home care.²⁸ These requirements can result in penalties for transfers of assets to nonexempt transferees during the look-

back period and create a period of ineligibility for coverage of services.

Some important long-term care planning strategies involve taking advantage of the ability to transfer the Medicaid recipient's assets to exempt transferees.²⁹ These strategies can help older adults preserve their assets and still qualify for Medicaid long-term care coverage. Most of these strategies, however, are not available to solo agers who do not have close relatives, such as spouses, children, and siblings, to rely on.

For instance, federal law allows a parent seeking Medicaid coverage for nursing home care to give or sell his or her home for less than fair market value to a child who has lived with and cared for the parent in the home for the past 2 years. The care provided to the parent must have allowed him or her to stay in the home immediately prior to being institutionalized.³⁰ This is commonly known as the Caregiver Child Exemption. Medicaid applicants can also transfer their home to a child who is under age 21.³¹

Another exemption available to parents is to transfer any type of asset in any amount to a child or a trust for the benefit of a child who is blind or permanently and totally disabled.³² This includes any child who receives Social Security Disability Income (SSDI) or is defined as disabled under state law.³³ Therefore, if a solo ager who does not have any children but perhaps does have a niece or nephew who receives SSDI or who has lived with and cared for the solo ager for 2 years prior to the solo ager's admission to a nursing

25 U.S. Dept. of Health & Human Servs., Administration for Community Living, *2021 Profile of Older Americans* (Nov. 2022), https://acl.gov/sites/default/files/Profile%20of%20OA/2021%20Profile%20of%20OA/2021ProfileOlderAmericans_508.pdf (accessed Oct. 26, 2024).

26 Kirsten J. Colello & Isobel Sorenson, *Who Pays for Long-Term Services and Supports?* (Rpt. IF10343), Cong. Research Serv. (updated Sept. 19, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF10343> (accessed Oct. 26, 2024).

27 42 U.S.C. § 1396-1; 42 U.S.C. § 1396a.

28 42 U.S.C. § 1396p(c)(1)(B).

29 *Id.* at §§ 1396p(c)(2)(A), (B).

30 *Id.* at § 1396p(c)(2)(A)(iv).

31 *Id.* at § 1396p(c)(2)(A)(ii)(I).

32 *Id.* at § 1396p(c)(2)(B)(iii).

33 *Id.* at § 1382c(a)(3)(F).

home, the solo ager cannot take advantage of these exemptions.

C. Fiduciary Identification

The term *fiduciary* means different things to different people. The term originates from the Latin word *fidere*, which means “to trust.” A fiduciary relationship exists when a person places trust and confidence in someone else and relies on that person to help in some manner; for example, when a principal of a health care proxy is confident that the agent will honor his or her health care wishes, or a beneficiary of a trust relies on the trustee to prudently manage trust property.

The ability of older adults to identify trusted individuals or legal entities to handle their legal, financial, and health care decisions if they are no longer able to do so is crucial to planning for loss of capacity and estate and long-term care planning. Most experienced elder law attorneys suggest that clients have a durable power of attorney, health care proxy, HIPAA authorization, last will and testament, and perhaps a living trust. All these documents require clients to appoint or nominate someone to make legal, financial, or health care decisions on their behalf.

Although elder law attorneys can provide advice about the legal responsibilities associated with various fiduciary roles and make suggestions about the practical qualities a fiduciary should have, the client must decide who will fill these roles. Solo agers often have trouble identifying appropriate individuals or legal entities to serve as fiduciaries, which can thwart the implementation of their plans.

In some cases, solo agers have a relative, such as a cousin, niece or nephew, or

stepchild, who is trustworthy and able to help. In other cases, solo agers may have nonrelatives, such as trustworthy friends and confidants, who can fill various fiduciary roles. This group of people is sometimes referred to as the solo ager’s *family of choice*.³⁴

If solo agers do not have trustworthy relatives or members of their family of choice to serve as fiduciaries, they can hire professional fiduciaries to fill the void. Sometimes solo agers prefer to hire professional fiduciaries, such as trust officers at a bank, certified public accountants, attorneys, or certified care managers. Solo agers may not want to burden relatives or friends or do not want the fiduciary role to impact their relationships with them. Whatever the rationale for not selecting a relative or friend, professionals have the time and expertise to make important legal, financial, and health care decisions as prescribed in solo agers’ legal documents.

D. Caregiver Identification

In addition to identifying fiduciaries, many solo agers must identify the people who will help them with personal everyday activities, or activities of daily living (ADLs). These activities include eating, toileting, grooming, dressing, and transferring (e.g., moving to and from a sitting position, lying down).³⁵ Many also need assistance with activities related to living independently in the community. These activities, called instrumental activities of daily living (IADLs), include planning

³⁴ Carol L. Marak, *Solo and Smart: The Roadmap for a Supportive and Secure Future* (Carol Marak LLC 2022).

³⁵ 42 C.F.R. § 441.505 (2024).

and preparing meals; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; and traveling around and participating in the community.³⁶

Many solo agers do not have children nearby to provide this care. Instead, these solo agers may need to hire professionals, such as home care attendants, housekeepers, or geriatric care managers, and use livery or rideshare services such as taxis, Uber, or Lyft for transportation.

E. Risk of Abuse

Elder abuse is the physical, sexual, psychological, or financial abuse or neglect of older adults who may be unable to defend or fend for themselves.³⁷ Approximately 5 million older adults experience some form of abuse every year.³⁸ This abuse happens in many different settings. Although most victims of elder abuse tend to cohabitate with their abuser,³⁹ perpetrators of elder abuse can be family members, strangers, health care providers, caregivers, or friends.⁴⁰

A common form of abuse impacting solo agers is self-neglect. Self-neglect in older adults threatens their health or safety and generally manifests itself by failure to provide themselves with adequate food,

water, clothing, shelter, personal hygiene, medication, and safety precautions.⁴¹ Self-neglect — one of the most common nonfinancial forms of elder abuse — may be subtle and require more awareness to detect.⁴²

For many solo agers who do not have the benefit of family members who can provide consistent wellness checks, the risk of abuse is a serious concern. These wellness checks are especially important if the abuser is a paid caregiver or friend whom the solo ager relies on.

F. Continued Care for Adult Children With Special Needs

Many older adults who provide care for adult children with special needs are concerned about what will happen to their children when they are no longer able to care for them. For solo agers, this can be especially concerning. The threat of a prolonged absence from their children due to illness or injury can make solo agers uneasy, which may deter them from seeking health care or investigating more appropriate living arrangements for themselves. Also, their concern about what will happen to their adult children with special needs when they die can be a constant source of stress and anxiety in solo agers' lives, which can adversely impact their health.

Working with solo agers to create a plan for themselves and a special needs plan for

³⁶ *Id.*

³⁷ GAO [U.S. Govt. Accountability Off.], *Elder Abuse*, <https://www.gao.gov/elder-abuse> (accessed Oct. 26, 2024).

³⁸ Julie Rivers, *Nursing Home Abuse Statistics*, Nursing Home Abuse Ctr., <https://www.nursinghomeabusecenter.com/nursing-home-abuse/statistics/> (accessed Nov. 2, 2024).

³⁹ Natl. Ctr. on Elder Abuse, *Risk Factors & Protective Factors*, <https://previwncea.acl.gov/riskfactorsandprotectivefactors#gsc.tab=0> (accessed Mar. 14, 2025).

⁴⁰ Natl. Inst. on Aging, *Elder Abuse*, <https://www.nia.nih.gov/health/elder-abuse> (accessed Oct. 26, 2024).

⁴¹ U.S. Dept. of Health & Human Servs., *How Can I Recognize Elder Abuse?* (last reviewed Dec. 9, 2022), <https://www.hhs.gov/answers/programs-for-families-and-children/how-can-i-recognize-elder-abuse/index.html> (accessed Oct. 26, 2024).

⁴² David Godfrey, ABA Commn. on L. & Aging, & Eileen Dacey, N. Shore Ctr. for Hoarding & Cluttering, Webinar, *Self Neglect and Hoarding Disorders* (Nov. 12, 2019), <https://vimeo.com/372725309> (accessed Nov. 18, 2024).

their adult children with special needs can help alleviate solo agers' stress and ensure the continuity of care for their children.

G. Recruitment of Professional Help

A significant part of caregiving is helping recognize the need for professional help, researching appropriate professionals, and coordinating their services. This can be an overwhelming process for anyone, let alone an older adult with little or no familial support.

Consider an older adult who needs the services of an elder law attorney. To ultimately get help, the older adult must recognize the need for legal services, differentiate an elder law attorney from a general practice attorney, contact the attorney to schedule a meeting, provide the attorney with information necessary for a productive meeting, coordinate meeting attendance, retain the attorney, and actively participate in the representation.

For older adults who experience functional limitations, taking these steps can be almost impossible and may be exceptionally more difficult without the help of adult children.

IV. What Planning Options Are Available to Solo Agers?

The thought of becoming incapacitated and eventually dying can be frightening to anyone. However, facing these life events alone can create an overwhelming sense of anxiety for solo agers. Sometimes the best way to work through such fear and anxiety is to come up with a plan.

Proper planning can help reduce fear and anxiety about the future, mitigate challenges, and in many cases avoid disaster. Simply put, preparation breeds suc-

cess; it is no different when dealing with aging, retirement, and long-term care. Solo ager clients can help ensure that their needs will be met by identifying their income, assets, and expenses; anticipating their potential long-term care needs; establishing appropriate plans; and updating their plans when needed.

The most fundamental elements of planning for older adults are as follows:

- Planning for loss of capacity
- Long-term care planning
- Estate (legacy) planning

A. Planning for Loss of Capacity

Solo agers, like all adults, should always consider who will make decisions on their behalf if they become incapacitated or need assistance. The thought of losing capacity may be overwhelming and even frightening, but it is important for clients to address this possibility as soon as possible. For solo agers, it is extremely important to carefully consider the options available to them should they lose capacity — under the guidance of an experienced professional who can provide thoughtful insights, such as an elder law attorney.

1. Advance Directives

An experienced elder law attorney can recommend which legal documents are necessary to allow trusted relatives, friends, or professionals to make important financial and health care decisions for clients should they lose capacity. These documents typically consist of a durable power of attorney for financial and legal decisions, a durable power of attorney for health care, or health care proxy; HIPAA authorization; and a living will — often collectively referred to as advance direc-

tives.⁴³ The names of these documents, fiduciaries appointed for each, and laws governing their applicability vary among states.

For solo agers, the identification and selection of agents under advance directives may be challenging, especially if they do not have a family member or trusted friend to help. However, the importance of solo agers having advance directives in place cannot be overstated. If solo agers become incapacitated without these documents in place, they could be subject to state default surrogate statutes or the decisions of a court-appointed conservator or guardian.

The solo ager client also should be advised that it may be necessary to update the documents in the future, and informed about the process for revoking or revising advance directives if circumstances change.

2. Fiduciaries

The elder law attorney should underscore the importance of a solo ager client appointing appropriate fiduciaries and preparing a list of successors who can take on fiduciary roles if necessary. The attorney should research professional fiduciaries and compile a list of qualified professionals for solo ager clients who cannot identify someone to fill those roles.

Several nonprofit organizations, such as the Aging Life Care Association, Sage National Resource Center on LGBTQ+

Aging, National Guardianship Association, Professional Fiduciary Association of California, and some state and local government agencies can help the elder law attorney in conducting this research. Additionally, many states offer fiduciary training programs, and some states and local court systems have a list of professionals who have completed fiduciary training and are qualified to be appointed as fiduciaries by the office of court administration. This list can be a good starting point for identifying qualified professional fiduciaries.

It is not unusual for a solo ager client to ask an elder law attorney to serve as a fiduciary. The attorney, however, should weigh several ethical and practical considerations and best practices before accepting such a role. Under American Bar Association (ABA) Model Rules of Professional Conduct, the attorney must first assess whether acting as a fiduciary creates a conflict of interest that could materially limit his or her ability to provide objective legal advice.⁴⁴ If the attorney reasonably believes that taking on the dual role of legal counsel and fiduciary is appropriate, he or she must obtain the client's informed consent in writing, as required by the relevant rules,⁴⁵ and should consult the ethics rules in his or her jurisdiction.

The elder law attorney should draft clear and protective provisions in the legal documents and carefully explain these provisions to the client.⁴⁶ The attorney should also take the necessary precautions

⁴³ Natl. Inst. on Aging, *Advance Care Planning: Advance Directives for Health Care* (reviewed Oct. 31, 2022), <https://www.nia.nih.gov/health/advance-care-planning/advance-care-planning-advance-directives-health-care#directives> (accessed Oct. 26, 2024).

⁴⁴ Model R. Prof. Conduct 1.7: Conflict of Interest: Current Clients cmt. (ABA 2019).

⁴⁵ *Id.* at R. 1.8: Current Clients: Specific Rules.

⁴⁶ *Restatement (Third) of Trusts* § 96 (2012).

to obtain informed consent from the client and provide the client with detailed written disclosures about potential conflicts of interest,⁴⁷ legal fees,⁴⁸ fiduciary commissions, and the terms of the fiduciary appointment.⁴⁹ Depending on state law, the attorney may also be required to obtain a surety bond when serving as an executor or trustee in order to provide additional protection for the estate or trust beneficiaries.⁵⁰

It is also important for attorneys who are considering serving as a client's fiduciary to take the necessary steps to ensure that their malpractice insurance covers fiduciary roles and confirm whether additional coverage is needed to address potential liability. Balancing these considerations with the ethics rules in the attorney's jurisdiction is essential for safeguarding both the client and the attorney.

B. Failure to Plan for Loss of Capacity

1. Default Surrogate Consent Statutes

Although default surrogate consent statutes are helpful in some situations, they do not replace well-thought-out and properly executed advance directives. Surrogate consent laws, which exist in 46 states, provide guidance and authorization for certain adults to make health care decisions on behalf of adults who cannot give informed consent to medical care and

have no advance directives or an appointed guardian.⁵¹

These statutes, however, often are only applicable in certain settings, such as a hospital or nursing home, and they usually create a hierarchy of potential surrogates that is limited, at least initially, to close family members. Some state default surrogate consent laws authorize distant family members and nonrelatives, such as health care providers, to make decisions as well. But this is usually only after immediate family members have been considered.

Although default surrogate consent statutes can help ensure that the wishes and values of an older adult are followed, the value of these laws is limited for solo agers. For solo agers who are estranged from close family members, empowering estranged family members with making health care decisions not only is inappropriate but also could be contrary to their wishes.

2. Guardianship/Conservatorship

If solo agers have not established advance directives and lose capacity to manage their property or personal needs and health care decisions, the courts could appoint a guardian or conservator for them, which can be an expensive, time-consuming, and emotionally draining experience. Although guardianships/conservatorships may be the best solution, by their very nature, they diminish, or even eliminate, a solo ager's autonomy.

⁴⁷ *Aspirational Standards for the Practice of Elder and Special Needs Law* § D: Conflicts of Interest (2d ed., NAELA 2017).

⁴⁸ Model R. Prof. Conduct 1.5: Fees (ABA 2020).

⁴⁹ Formal Ethics Op. 02-426 (ABA 2002).

⁵⁰ Unif. Prob. Code §§ 3-603, 3-604, 5-415 (2019); Unif. Trust Code § 702 (2023).

⁵¹ Marlene Arias, *Recent Updates to Default Surrogate Statutes*, 44(3) *Bifocal* 54 (Jan. 12, 2023), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol44/bifocal-vol-44-issue3/recent-updates-to-default-surrogate-statutes (accessed Oct. 26, 2024).

Elder law attorneys should explain not only the guardianship/conservatorship process to solo ager clients but also the impact such a proceeding could have on their autonomy. Attorneys should also explain their clients' rights in such a proceeding.

C. Long-Term Care Planning

Another important consideration in lifetime planning is long-term care. Long-term care can be extremely expensive, and the payment options available to solo agers are usually limited to using LTCI coverage, paying privately (out of pocket), or using benefits from means-based public assistance programs. At first glance, the most cost-effective option to pay for long-term care may appear to be LTCI coverage or public assistance program benefits; however, for many solo agers, private payment offers them the most financial independence.

Private payment of long-term care for an extended period usually requires considerable financial assets or significant income. But careful financial planning and LTCI coverage can help. Some resources that are commonly used to cover the cost of long-term care are income, personal savings, qualified retirement savings, payments from tenants of rental property, and equity in a primary residence.

Ideally, solo agers use their qualified retirement savings to pay for their long-term care as a last resort because those savings can grow tax-deferred until they are distributed to the recipient⁵² and the principal may be exempt for Medicaid eligibility purposes.⁵³ Older adults who have equity in their homes can pay for long-term care by getting a reverse mort-

gage, which allows homeowners to borrow money using their home as security for the loan. These loans do not require the borrower to make monthly mortgage payments, and the principal and interest is repaid after the borrower no longer lives in the home.⁵⁴ Reverse mortgages involve significant costs, so it is necessary for clients who are considering such mortgages to proceed with the advice of counsel.

LTCI is designed to cover long-term care services and supports, including personal and custodial care in a variety of settings.⁵⁵ A policy may cover ADL assistance, skilled nursing care, homemaker services in conjunction with personal care, and other services and supports. LTCI policies can be purchased from insurance agents, employers, and membership associations.⁵⁶

LTCI policy premiums are cost-prohibitive for many older adults, and premium increases could force some individuals who initially could afford a policy to terminate coverage. Even if a policy is affordable, it may limit the conditions covered, require a waiting period for filing claims, and may set a cap on per diem and lifetime coverage. Eligible premiums for qualified LTCI policies may

52 26 U.S.C. § 408(d).

53 7 C.F.R. § 273.8(e)(2).

54 Consumer Fin. Protec. Bureau, *What Is a Reverse Mortgage?* (last reviewed Aug. 28, 2023), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/> (accessed Oct. 26, 2024).

55 LongTermCare.gov, *What Is Long-Term Care Insurance?* U.S. Dept. of Health & Human Servs. (last modified Feb. 18, 2020), <https://acl.gov/ltc/costs-and-who-pays/what-is-long-term-care-insurance> (accessed Oct. 26, 2024).

56 NAIC [Natl. Assn. of Ins. Commrs.], *Long-Term Care Insurance* (last updated May 9, 2024), <https://content.naic.org/insurance-topics/long-term-care-insurance> (accessed Oct. 26, 2024).

be tax deductible.⁵⁷ Usually, an LTCI policy mitigates the cost of long-term care and serves as a bridge from private payment to coverage from a public assistance program, such as Medicaid, and/or from benefits provided by the U.S. Department of Veterans Affairs (VA).

Medicaid is often referred to as the payer of last resort because eligibility requires that the recipient exhaust most other payment options. In addition to financial eligibility, the recipient also must have pursued long-term care coverage from other public assistance programs, such as Medicare, or from the VA.

Older veterans who are sick or disabled may qualify for VA health care benefits such as 24/7 nursing and medical care, physical therapy, ADL assistance, comfort care, and pain management. Other benefits include support for caregivers who need skilled help and caregiver respite care. Services are provided in settings such as private homes where a caregiver supports a small group of individuals, assisted living facilities, adult day health care centers, veteran-owned homes, and nursing homes.⁵⁸

Veterans and surviving spouses who need assistance with everyday functioning may be eligible for VA Aid and Attendance benefits, which provide additional monthly payments on top of monthly VA pensions. The requirements for eligibility are based on the veteran's wartime service, age, disability, income, and assets.⁵⁹

Not only is Medicaid the most-used public assistance program for paying for long-term care services and supports, but it also is the largest single payer of these services and supports in the United States. In 2021, an estimated \$467.4 billion was spent on long-term care services and supports, of which Medicaid paid \$207 billion (44.3% of the overall cost).⁶⁰

Despite Medicaid's large-scale spending on long-term care services and supports, many older adults who need long-term care may not be eligible for Medicaid. This is in part due to Medicaid's financial eligibility requirements, which vary from state to state. For many, the only path to Medicaid eligibility is to either divest themselves of their hard-earned assets and wait out a 60-month look-back period or spend down their income and assets until they qualify. Given these choices, solo agers may be limited to the latter option.

Successful Medicaid planning requires the involvement of reliable individuals to act in a fiduciary role and receive and manage an older adult's assets and income. This is where children can be helpful. However, this loss of control and reliance on others can be a bridge too far for many solo agers, who are left with the option of spending down their assets until they meet Medicaid's financial eligibility requirements. Therefore, it is important for solo agers to plan to have the resources necessary to maintain their financial independence.

57 26 U.S.C. § 213(d)(1)(D).

58 U.S. Dept. of Vets. Affairs, *Nursing Homes, Assisted Living, and Home Health Care* (last updated May 3, 2024), <https://www.va.gov/health-care/about-va-health-benefits/long-term-care> (accessed Oct. 26, 2024).

59 U.S. Dept. of Vets. Affairs, *VA Aid and Atten-*

dance Benefits and Housebound Allowance (last updated July 18, 2024), <https://www.va.gov/pension/aid-attendance-housebound/> (accessed Oct. 29, 2024).

60 Colello & Sorenson, *supra* n. 26.

D. Estate (Legacy) Planning

Estate planning, also known as legacy planning, requires clients to think about what is important to them and how they want to be remembered. Estate planning should be effectuated with the help of appropriate counsel. Clients should continuously update their estate plans as their desires and situations change. It is advisable for clients to update their plans regularly or when a major life event occurs, such as marriage, birth of a child, death of a spouse or partner, terminal illness, divorce, loss of income, or financial windfall.

The foundation for any estate plan is a last will and testament (will), which allows the person who establishes the document, commonly called the testator, to direct who will receive the testator's assets after his or her death and who will be responsible for distributing the assets to the beneficiaries. Although a will should be part of all estate plans as a safety net, it may not be the best vehicle for administering the assets of solo agers. This is because the will must be authenticated in a probate proceeding before a judge can appoint an executor or personal representative to act on behalf of the estate. Although each state's probate laws are different, the process can be lengthy and expensive. Also, there is no guarantee that the proceeding will be successful in honoring the testator's wishes.

In most states, the solo ager's heirs, or next of kin, must receive notice and have an opportunity to object to the will, which can result in lengthy and expensive litigation. If the existence, name, or whereabouts of an heir are unknown, another court proceeding may be needed to determine his or her heirship.

A better approach for solo agers may be to establish a revocable living trust and

fund the trust with their assets. The solo ager can be the trustee of the trust during his or her lifetime, and all the assets can be used for the solo ager's benefit. Upon the solo ager's death, the successor trustee(s) can collect and administer the trust assets according to the solo ager's wishes that are spelled out in the trust — without any court intervention.

Solo agers can also establish beneficiary designations on all their financial accounts, retirement accounts, and insurance policies, which allows the balance of the accounts to pass automatically to the designated beneficiaries.

In 2023, charitable bequests, which are gifts made from an estate or trust, accounted for approximately 8% of the total \$557.16 billion in estimated charitable gifts made in the United States.⁶¹ Many solo agers are charitable minded and want to make charitable giving a part of their estate planning. This can be done in several ways through various distribution methods during or after the solo ager's lifetime.

In order for a solo ager's estate or trust to receive a tax deduction for a gift, the solo ager should be familiar with the recipient organizations and confirm their tax-exempt status.⁶² If a charitable organization is named as a beneficiary, the elder law attorney should inform the client about the state's statutes that require the attorney general to be notified of the gift.⁶³ The purpose of this advice is not to

61 Ind. U. Indianapolis Lilly Fam. Sch. of Philanthropy, *Giving USA: U.S. Charitable Giving Totaled \$557.16 Billion in 2023* (June 25, 2024), https://philanthropy.indianapolis.iu.edu/news-events/news/_news/2024/giving-usa-us-charitable-giving-totaled-557.16-billion-in-2023.html (accessed Oct. 26, 2024).

62 26 U.S.C. § 642(c)(1).

63 Cindy M. Lott et al., *State Regulation and En-*

dissuade solo agers from naming a charitable organization but rather to ensure that they understand the rules, regulations, and potential challenges the fiduciary may have when administering the estate or trust. The attorney should also explain the potential additional cost and time delay in administering the trust or estate.

The elder law attorney should not underestimate the importance of a solo ager client's legacy and should carefully take detailed notes about the client's testamentary plans. These notes may be necessary to support the client's plan in the event a trust or will are contested after the client's death. It is also advisable to establish a family tree or heirship affidavit with the client during the planning process to identify heirs. Ideally, the client will be able to provide a complete list of heirs along with their contact information, but even having an incomplete list may help the fiduciary after the solo ager's death.

V. Opportunities for Advocacy

Advocacy is a learned skill. Many solo agers are battle-hardened advocates who have honed their skills while caring for parents, spouses, or children with special needs. Others learned to advocate for themselves over the course of their lives as members of marginalized communities, such as the LGBTQIA2S+ or disability communities.

For solo agers who are concerned they may not have the skills or confidence needed to effectively advocate for themselves,

professional advocates are important. Although there are organizations that teach these skills, solo agers can also retain an experienced elder law attorney and other professionals to advocate for them in many aspects of their lives, such as health care, long-term care, self-determination, and abuse prevention.

For many reasons, people put off seeking the professional services of an elder law attorney. Many are not aware of the value of these services; others believe they cannot afford them. It is understandable why many older adults, especially those living on a fixed income and facing rising housing and long-term care costs, are concerned about affording the services of an elder law attorney. But often these services help older adults avoid disastrous consequences and save them money.

It is important for elder law attorneys to educate their clients and the public about their services, the value of their services, and the options available to pay for them.

A. Health Care

Health care advocacy by elder law attorneys often involves advising clients of their rights as patients and Medicare beneficiaries whether they are in hospitals, undergoing hospice care, or in rehabilitation facilities; helping clients get the health care they need; appealing premature hospital discharges; handling Medicare appeals; and ensuring that clients' wishes regarding end-of-life care are honored.⁶⁴

Solo agers also should consider hiring an independent patient and health care ad-

forcement in the Charitable Sector, Urban Inst. (Sept. 2016), <https://www.urban.org/sites/default/files/publication/84161/2000925-State-Regulation-and-Enforcement-in-the-Charitable-Sector.pdf> (accessed Oct. 26, 2024).

⁶⁴ T. Berthelot, *Medicare Appeal Navigation*, 16 NAELA J. 1 (2020).

vocate to help them make informed health care decisions and navigate the health care system.⁶⁵ Board Certified Patient Advocates, who are certified by the Patient Advocate Certification Board, are professionals who have specialized training and are skilled in understanding medical terminology, advocating for patients' rights, managing care coordination, and communicating with health care providers.⁶⁶

In addition, most states have enacted model legislation that ensures that caregivers, whether relatives, friends, or professionals, have the right to be informed about a patient's hospital discharge and to receive training to enable them to provide ongoing medical treatment for the patient at home after discharge.⁶⁷

B. Long-Term Care

Advocacy related to long-term care can involve advising clients about eligibility requirements for Medicaid and VA health care benefits and representing clients in appeals of adverse decisions by local social services departments, the VA, or Medicare.⁶⁸ It can also involve helping clients select a home care agency or reviewing contracts and disclosures prior to relocating to a nursing facility, assisted liv-

ing facility, or continuing care retirement community. Solo agers may also need help understanding their rights under an LTCI policy and fighting claim denials.

C. Self-Determination

The issue of self-determination in the practice of elder law is a matter of whether clients have the legal capacity to make decisions for themselves, and if they do not, to what extent they need assistance. The ABA Model Rules of Professional Conduct and NAELA's Aspirational Standards for the Practice of Elder and Special Needs Law provide useful and reliable guidance when the question of capacity is involved.

ABA Model Rule 1.14 directs, "When a client's capacity to make adequately considered decisions in connection with a representation is diminished ... the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."⁶⁹ The NAELA Aspirational Standards call for the attorney to continue to respect the right to self-determination and confidentiality of a client with diminished capacity.⁷⁰ The NAELA Aspirational Standards also state that the attorney should (a) make and document a preliminary assessment of a client's capacity to undertake the specific legal matters at hand and (b) make appropriate accommodations in order to maximize, in light of the client's capacity and circumstances, the client's ability to understand and participate in the representation.⁷¹

In some cases, the client may be the subject of a guardianship or conservatorship

65 Johns Hopkins Med., *The Power of a Health Care Advocate*, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/the-power-of-a-health-care-advocate> (accessed Oct. 26, 2024).

66 Patient Advoc. Certification Bd., *Empower and Advocate: PACB Board Certification for Professional Patient and Health Care Advocates*, <https://www.pacboard.org> (accessed Oct. 26, 2024).

67 AARP, *State Law to Help Family Caregivers* (May 18, 2022), <https://www.aarp.org/politics-society/advocacy/caregiving-advocacy/info-2014/aarp-creates-model-state-bill.html> (accessed Oct. 27, 2024).

68 Berthelot, *supra* n. 64.

69 Model R. Prof. Conduct 1.14: Client With Diminished Capacity (ABA 2019).

70 NAELA Aspirational Stand. § G: Client Capacity.

71 *Id.*

proceeding. To the extent that the client can provide direction and participate in the representation, the attorney should represent the client and advocate on his or her behalf in the proceeding. The attorney can also advise clients of their rights and make recommendations about executing advance directives to ensure that someone is available to help honor their wishes if they lose legal capacity to make decisions.

D. Abuse Prevention

If the elder law attorney suspects elder abuse or “reasonably believes that the client has diminished capacity [or] is at risk of substantial physical, financial or other harm,” the attorney “may take reasonably necessary protective action.”⁷² Such action includes reporting the abuse to legal authorities, such as the police, the district attorney’s office, adult protective services, and the U.S. Department of Justice.

In some states, attorneys are mandated reporters of elder abuse,⁷³ and the NAELA Aspirational Standards call on elder law attorneys to take action to help prevent current and future financial exploitation, abuse, and neglect of clients.⁷⁴ Attorneys can speak with their clients privately to discuss their elder abuse concerns. Attorneys can also show how prevalent elder abuse is to help victims avoid feeling ashamed and alone. This can be done by offering educational opportunities, such

as seminars, webinars, and written materials, on the topic of elder abuse to the community.

Attorneys can also regularly talk with clients about various types of scams and provide educational materials on the subject.⁷⁵

VI. Conclusion

Solo agers face distinct challenges that underscore the urgent need for tailored planning strategies and advocacy on their behalf. The absence of a traditional support network creates significant hurdles for solo agers in securing adequate housing, paying for long-term care, and identifying fiduciaries and caregivers. These challenges are compounded by the risk of abuse, the complexities involved in caring for adult children with special needs, and the recruitment of professional help, such as that provided by elder law attorneys.

As explored in this article, solo agers can adopt proactive planning strategies to mitigate these challenges, from creating legal documents to engaging in comprehensive planning for loss of capacity and estate and long-term care planning. Moreover, robust advocacy efforts are essential to helping solo agers address these challenges. Advocates such as elder law attorneys must focus on (a) ensuring that solo agers assert their legal rights, (b) expanding access to solo agers’ health care and long-term care, (c) promoting solo agers’ self-determination, and (d) preventing elder abuse. By addressing these areas, elder

72 Model R. Prof. Conduct 1.14: Client With Diminished Capacity (ABA 2019).

73 ABA Commn. on L. & Aging, *Adult Protective Services Reporting Chart* (Apr. 2022), https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-elder-abuse-reporting-chart.pdf (accessed Oct. 29, 2024).

74 NAELA Aspirational Stand. § A: Holistic Approach.

75 S. Polur, *A Practical Approach to Addressing Fiscal Exploitation of Our Elderly*, 33(4) NAELA News 16 (Dec. 2021).

law attorneys can work toward a more inclusive and supportive framework for solo agers, ensuring that they receive the care and respect they deserve.

III. Sample Care Planning Checklist for Solo Ager Clients with Children with Special Needs

Care Planning Checklist for Solo Ager Clients with Children with Special Needs

For Elder Law & Special Needs Planning Attorneys Working with Solo Agers who are Caregivers for Adult Children with Special Needs

Section 1: The Solo Ager Client

A. Personal & Health Care Planning

- ☐ Assess capacity and discuss future risks of incapacity.
- ☐ Prepare/review Advance Directives: Durable Power of Attorney, Health Care Proxy, HIPAA Authorization, Living Will.
- ☐ Discuss guardianship/conservatorship contingencies if no fiduciaries are available.
- ☐ Identify standby or successor agents (professional fiduciaries if necessary).

B. Housing & Long-Term Care

- ☐ Discuss preferences: aging in place, shared housing, independent/assisted living, CCRC, nursing care.
- ☐ Review physical accessibility and affordability of current residence.
- ☐ Discuss long-term care costs and funding sources (LTC insurance, reverse mortgage, Medicaid planning).
- ☐ Explore professional caregiver and care manager resources.

C. Financial & Legal Planning

- ☐ Identify impact of income on Medicaid eligibility, long-term care planning, and potential spend-down strategies.
- ☐ Assess income sufficiency for current and future housing/care expenses.
- ☐ Review Solo Ager's income streams: Social Security, pension, employment, investments, annuities.

C.1 Income & Benefits Review

- ☐ Review current income, assets, and expenses.
- ☐ Ensure estate plan is in place: Will/Revocable Living Trust, updated beneficiary designations.
- ☐ Identify trustworthy fiduciaries (executor, trustee, POA)—consider professional fiduciaries.
- ☐ Address financial exploitation/abuse risks; put safeguards in place.

D. Contingency Planning

- ☐ Develop a 'crisis packet' (key contacts, documents, care plans, benefits list).
- ☐ Create a Letter of Intent outlining personal wishes, values, and preferences.
- ☐ Ensure an advocacy plan for health care, long-term care, and abuse prevention.

Section 2: The Adult Child with Special Needs

A. Legal Authority & Advocacy

- ☐ Confirm current legal authority: guardianship, supported decision-making, POA (if appropriate).
- ☐ Identify standby or successor guardian/decision-maker for continuity of care.
- ☐ Ensure representative payee or trustee succession plan is in place.

B. Housing Options

- ☐ Review current living arrangements and future housing preferences.
- ☐ Explore housing options: family/friends, SNT home ownership, SNT paying rent, group home, supportive housing, assisted living, skilled nursing, Section 8.
- ☐ Place child on appropriate waitlists early (*group home, supportive housing, Section 8*).
- ☐ Ensure housing provisions in SNT align with SSI/Medicaid rules.

C. Benefits & Financial Planning

- ☐ Determine how child's income interacts with SNT and ABLE account planning.
- ☐ Evaluate impact of earned income on SSI/Medicaid eligibility and reporting requirements.
- ☐ Confirm child's income sources: SSI, SSDI, employment, child support, or other benefits.

C.1 Income & Benefits Review

- ☐ Confirm eligibility and enrollment in SSI, SSDI, Medicaid, Medicare, Medicaid waivers.
- ☐ Establish/review Supplemental Needs Trust (SNT): housing support, case management, extras.
- ☐ Explore ABLE account coordination with SNT.
- ☐ Ensure life insurance/retirement assets designate the SNT, not child directly.

D. Transition & Continuity of Care

- ☐ Develop a Letter of Intent for the child: routines, preferences, medical/social needs.

- ☐ Identify and fund professional support (care manager, advocates).
- ☐ Create a transition plan for incapacity/death: interim care, permanent housing, professional network.

E. Safeguards & Oversight

- ☐ Establish monitoring system for trustees, guardians, caregivers.
- ☐ Address risks of abuse/neglect with oversight (visits, audits, technology supports).
- ☐ Ensure coordination among fiduciaries, case managers, and service providers.

Disclaimer: These materials are for informational purposes only and are not intended to provide, nor should they be relied upon as legal advice. The checklist is designed as a general planning tool and is not state-specific. Attorneys should consult and apply the statutes, regulations, administrative guidance, and practices of their own jurisdiction before advising clients or implementing any strategies.