

**ALZHEIMER'S  
LEGAL SURVIVAL  
KIT**

**Provided courtesy of  
The Elder Law Office of  
James E Springer P.C.**

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*Leading the Way in Special Needs and Elder Law*

# **WELCOME**

Alzheimer's disease leads to a number of life adjustments, including the need to make a wide range of decisions that pose possible legal consequences.

This kit explains the major legal issues you may face over time and suggests ways to deal with them. Beginning with the first legal steps you should take, the kit gives information about long range financial planning, safe driving, health care services and government benefits, and the process of Medicaid planning and division of assets.

As you examine the contents of the kit, please keep in mind that each situation is unique. No single plan fits everyone. You're not likely to need every type of legal advice described here. And this kit is not intended as a substitute for a legal advisor. To ensure that you comply with the law and, at the same time, protect assets for your family, you'll want to get an overall legal review of your particular circumstances.

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**Seeking Legal Help**  
**Medicaid Planning & Division of Assets**  
**Continuing Care**  
**Safe Driving**  
**Planning Ahead**  
**First Legal Steps**

When the diagnosis is Alzheimer's disease, find out as much as you can about the disease. Then plan for the future. While the disease is in its early stages, you may be able to complete important documents that will give you peace of mind and save you and your family money. It's critical that you authorize another person (e.g. a spouse, adult child, or close friend) to make decisions for you. And you should take this step now, while you're still able, so that you, and not some judge, can select the person best-suited to carry out your wishes.

As a "first legal step" it's important to seek help from an attorney to put three documents in place:

- a. **Durable Power of Attorney** - This document grants legal rights and powers to another. Choose someone you implicitly trust, such as your spouse or adult child, to act as your agent (sometimes called your attorney in fact). If you become incapacitated, a durable power of attorney lets your agent act for you in financial and business matters.
- b. **Durable Power of Attorney for Health Care Decisions** - With this document, if you can't make health care decisions yourself, another person of your choice can make a broad range of decisions for you. These decisions cover virtually everything to do with medical matters, such as selecting doctors, hospitals, treatments, procedures or medications.
- c. **Healthcare Treatment Directive (Living Will)** - This document concerns whether or not life support should be withdrawn in the case of a patient who is terminally ill. It states your wishes regarding this issue.
- d. **Indiana Physician Order for Scope of Treatment (POST)**  
POST is a program aimed at creating consistency and insuring a person receives the exact type of care they want from the health care system for those approaching the end of life whether from old age or disease. The form is initiated by the patient, their named healthcare representative, and a physician who makes it an order to travel with the patient. It covers CPR, types of medical intervention, antibiotics and medication, and conditions under which artificial nutrition may or may not be used.

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Without these powers of attorney, you may need a court-appointed conservator to handle financial matter and a guardian to handle health care ones. In that event, a court would control you personal and financial life. A judge would have to approve your decisions and expenses. This situation can be easily avoided if you act now and put powers of attorney in place.

## **PLANNING AHEAD**

When the diagnosis is Alzheimer's disease, the ability to manage your own affairs will decrease over time. Making adequate, informed decisions about your personal business and your health care will become more difficult. *But early legal planning lets you choose a person to manage these things for you, according to your wishes.*

You can control, in advance, the way your affairs will be handled. However, if you don't plan early, a Court may eventually appoint a guardian or conservator to make these decisions for you. Act while you have the capacity to indicate your wishes and to understand and sign documents that ensure your wishes will be respected and carried out.

Depending on your specific situation, a host of legal issues related to your condition may arise. After you execute a durable power of attorney, a durable power of attorney for health care decisions, and a health care treatment directive (living will), consider other legal planning.

Simply stated, life care planning helps you understand how to position your resources to best serve your needs and those of persons dear to you. This kind of planning is highly individualized. Some of the issues you and your family may want to discuss with an attorney include:

### **Revising wills and trusts**

Whenever a major life event occurs, attorneys recommend you review your wills and trust. Your current legal documents may no longer be appropriate. You may want to make changes reflecting your new circumstances. A diagnosis of Alzheimer's disease is a major life event worthy of this kind of legal review.

### **Changing property titles**

The way real estate and other property is titled is important. In some cases, how your property is held means that selling it will require court intervention. Reviewing property titles is also an important part of planning to ensure that you and your family members are protected if you ever need long term care in a nursing home.

## **Strategies for financial or other gifts**

Consulting a knowledgeable attorney is especially important before you transfer any property or make gifts. The attorney can help you review your financial situation to determine whether a gifting program or other financial strategy is appropriate for your situation. Making gifts can protect your family and help save your estate. But, acting improperly can have severe legal implications, and can even make you ineligible for government benefits.

## **Long term care strategies**

Now is the time to consider what changes in living arrangements you might need over time. Those arrangements can include independent living, assisted living, an assisted living/nursing home combination for you and your spouse, or nursing home placement. Check provisions of any long term care insurance you have in effect. (If you don't already have this kind of coverage, you probably won't be able to qualify for it once you've been diagnosed with Alzheimer's disease. Still, it may be an option for your spouse.) You'll want to review this and other possible strategies with your legal advisor.

## **Medicaid Planning**

Medicaid, a federal/state program administered by the states, pays for health care when eligible patients cannot. Many people think they won't need Medicaid or won't qualify for it. But Alzheimer's disease is the third most expensive illness in the United States, after heart disease and cancer. The average lifetime cost per patient is \$174,000.00.

Many people simply can't manage these costs on their own. Others are afraid to deplete their resources and impoverish their families. Medicaid planning addresses this issue. Proper planning lets you retain as much of your resources for your family as possible while ensuring that you get the benefits you're entitled to.

Preplanning and crisis planning for Medicaid are two ways to accomplish these goals. Preplanning involves things you can do over time. If you're an Alzheimer's patient in the early stages, you'll be able to participate in this type of planning. But even in the later stages, crisis planning can allow your family to protect you and them from financial disaster. An attorney experienced in this aspect of elder law can help you comply with the law, while taking full advantage of options open to you.

## **SAFE DRIVING**

If you have Alzheimer's disease, you may someday be faced with a recommendation that you restrict your driving privileges. Your doctor may write a prescription that says, "Do not drive." Or, family members may begin to notice effects the disease has on your memory, judgment and attention—effects you are unaware of.

Those mental abilities are critical for driving. If you have recently been diagnosed with Alzheimer's disease, you might not have a problem with driving for a while. At some point, however, you may begin to notice that you lose your way, misjudge the speed of oncoming traffic or fail to notice stop signs or other signals. You may be driving legally—that is you have a valid driver's license—but you might not be driving responsibly. The last thing you'd want is to cause an accident. And liability for one could cause legal problems and financial burdens for you and your family.

The independence that driving affords isn't easy to give up. Some people even feel lowered self-esteem when they can no longer drive. We have all grown up in a culture where driving is important to us. And, no one wants to be a burden on others for transportation. So it's common for Alzheimer's patients not to admit difficulty behind the wheel.

However, people with Alzheimer's disease and their families and doctors have a responsibility to balance patients' convenience and safety along with the safety of other drivers and their passengers. Studies have found that, particularly in later stages of Alzheimer's disease, you are twice as likely to cause or be involved in motor vehicle accidents as drivers of the same age without the condition.

Recently published American Psychiatric Association (APA) guidelines for restricting driving privileges of patients with Alzheimer's disease say that all severely impaired Alzheimer's patients pose unacceptable risks on the road. So do people with moderate impairment who cannot cook or perform simple household tasks. In early stages of the disease, some people can drive safely for as long as two or three years after diagnosis. Others, however, cannot drive even short distances without endangering themselves or others. Discuss this issue openly with your family members and doctor. Trust them to tell you when to turn over your car keys.

### **Indiana Drivers**

Indiana laws and practices provide for retesting of drivers whose mental or physical impairments may prevent them from driving safely.

In Indiana, the law explained in Indiana Statute 9-24-10-6, Unsafe Drivers - Examination - provides that ...the bureau, before issuing a license, may examine or cause to be examined whenever it appears from: (1) the face of the application; (2) the apparent physical or mental condition of the applicant; or (3) any information that has come to the attention of

the bureau; that the applicant does not apparently possess the physical, mental or other qualifications to operate a motor vehicle in a manner that does not jeopardize the safety of individuals or property.

And in Indiana Code 9-24-10-4 Examination components Sec. 4 provides in part ...all other examinations must include the following: ...(1) A test of the following of the applicant; (A) Eyesight, (B) Ability to read and understand highway signs regulating, warning and directing traffic; ( C ) Knowledge of Indiana traffic laws.

The examination may include further physical and mental examination that the bureau finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon Indiana highways.

A person may have come impaired due to any physical and mental condition which would jeopardize the safety of individuals or property.

If the examiner of the BMV branch office notices such conditions or a family member, neighbor, police officer or stranger notices what appears to be an unsafe driver, they report it to the BMV. The BMV then proceeds as follows:

1. A ten page physical and mental examination form is sent to the driver to be filled out by a doctor and returned within five days.
2. The doctor completes the examination and form along with his or her recommendation to the BMV.
3. The report and recommendation are reviewed by the BMV doctors on the Medical Review Board.
4. The doctors make a determination whether the driver is safe or not.

Indiana Code 9-24-10-7 Licensed Operators and Chauffeurs; examinations; bureau actions; appeals provides in Section 7, (a) If the bureau has good cause to believe that a licensed operator or chauffeur is (1) incompetent; or (2) otherwise not qualified to be licensed; the bureau may, upon written notice of at least five (5) days, require the licensed operator or chauffeur to submit to an examination. (b) Upon the conclusion of an examination under this section, the bureau: (a) shall take appropriate action; and (2) may: (A) suspend or revoke the license of the licensed operator or chauffeur; (B) permit the licensed operator or chauffeur to retain the license of the licensed operator or chauffeur; or ( C ) issue a license subject to restrictions considered necessary in the interest of public safety. ( c ) If a licensed operator or chauffeur refuses or neglects to submit to an examination under this section, the bureau may suspend or revoke the license of the licensed operator or chauffeur. (d) A licensed operator or chauffeur may appeal an action taken by the bureau under this section to the circuit court or superior court of the county in which the licensed operator or chauffeur resides.

## **CONTINUING CARE**

As Alzheimer's disease progresses, the care you need increases. In the early stages, you may be able to continue living independently at home or with help from family members or home health aides. Other possibilities include adult day care or respite care. With adult day care, you are in a supervised program during the day, then return home at night. Respite care programs provide substitute care givers to temporarily relieve family members or others who usually help you with daily activities.

Another possibility is the need for a nursing home. That's because Alzheimer's disease is the leading diagnosis requiring nursing home admission. You and your family should be aware of the following legal issues concerning the continuing care of an Alzheimer's patient:

- Guardianship
- Conservatorship
- Legal rights of a nursing home resident.

### **Guardians of Person & Estate**

By the time you need nursing home care—if ever—you'll likely be unable to make decisions about financial matters or health care. If you have not executed a durable power of attorney and a durable power of attorney for health care decisions, you'll need a Court-appointed guardian of your person and your estate. The guardian of your estate will manage your financial business; while the guardian of your person will make personal and medical decisions for you.

### **Legal Rights of a Nursing Home Resident**

Each nursing home resident has a right to personal and appropriate care, which is guided by the resident's care plan. The care plan is a contract created by a "team," that includes you, the nursing home staff and anyone else you want to involve. The plan should detail your current medical, psychological and social needs and spell out what will be done to maintain or, when possible, improve your health. Because the care plan creates a contract, getting legal assistance with this document is advisable.



## SEEKING LEGAL HELP

When a person is diagnosed with Alzheimer's disease, family members face unique legal issues, including asset distribution, property disposition, Social Security, durable power of attorney, establishing guardianship, etc.

Each of the attorneys listed below is a member of the National Academy of Elder Law Attorneys; however, the Alzheimer's Association makes no recommendation of any attorney and is not responsible for the nature or quality of the service provided.

<b>James E Springer</b>	<b>Fort Wayne, IN 46899-9329</b>	<b>(260) 747-7224</b>
Stephen W Adair, CELA	Fort Wayne, IN 46802	(260) 426-9706
Heidi Adair	Fort Wayne, IN	(260) 426-9706
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Joseph Bonahoom	Fort Wayne, IN	(260)420-4055
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Timothy J Bloom	Columbia City, IN 46725	(260) 248-9100
Chad Rayle	Auburn, IN 46706	(260) 925-2300
Daniel R Gordon	Bluffton, IN 46714	(260) 824-9377
Teri A Pollett	Marion, IN 46953-1961	(260) 662-7777
Thomas A Hardin	Fort Wayne, IN 46807	(260) 745-1970
Keith P Huffman	Bluffton, IN 46714	(260) 824-5566
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Michael M Yoder	Kendallville, IN 46755	(260) 347-9400



**MEMBER**  
**National Academy of**  
**Elder Law Attorneys, Inc.**

## **MEDICAID PLANNING & DIVISION OF ASSETS**

Medicaid, a federally funded program administered by the states, pays some health care costs (assistance with bathing, light housekeeping, cooking and laundry) while an eligible patient remains at home, as well as nursing home costs for qualified individuals.

You may not want to think about using Medicaid benefits. But most families are financially unprepared to pay for health care costs for an Alzheimer's patient. Over a patient's lifetime, those costs average \$174,000. Even if you enter a nursing home as a "private pay" resident (paying your own way), you may eventually exhaust personal funds and need Medicaid assistance. And even if you can manage the costs, you may worry about depleting your assets and impoverishing your family.

You may share the frequently expressed fear among potential Medicaid applicants, "I'm afraid I'm going to lose everything." However, with legal assistance and proper Medicaid planning, you can typically save at least half—and frequently all—of your assets.

Medicaid planning uses legal strategies to maximize the amount of money your family can keep for their care while qualifying you for government benefits. Consult an elder law attorney to help you with this planning process. It's like asking a certified public accountant (CPA) to prepare your income tax forms to be sure that you are taking all legal deductions the tax code makes available. Don't apply for benefits before making sure you've taken all the steps possible to protect yourself and your family.

### **Medicaid Application and Division of Assets**

Applying for Medicaid is a complicated process. You may need legal assistance to be sure you complete forms accurately and completely. Incomplete forms and other errors can delay or jeopardize benefit payments. Married couples go through a process called division of assets. An elder law attorney can help you list and review your assets and income sources in terms of what you can keep (called exempt assets), what you can't keep, and what's at risk.

While you are expected to pay as much as you can toward the cost of your care, Medicaid law does not require your spouse to live in poverty while you live in a nursing home. Division of assets, in general, means dividing your and your spouse's assets in half after deducting exempt assets from the total.

Your spouse keeps his or her half (up to a maximum of approximately \$115,920.00), but you, must "spend down" your half until your assets total no more than \$1,500 in Indiana. (Single applicants must meet the same low limits on countable assets to qualify for Medicaid.)

Exempt assets (those you can keep without affecting Medicaid eligibility) include your residence, one motor vehicle, furniture and household belongings, personal jewelry and clothing, prepaid funeral plans, and whole life insurance with a death benefit of \$1,500 or less.

Non-exempt assets (assets that DO affect Medicaid eligibility) include checking and savings accounts, 401(k) plans and individual retirement accounts (IRAs), and stocks, bonds and mutual funds.

You should consult an attorney experienced in Medicaid matters before giving away money or property to family members or others. Transferring assets during a “look back” period of five years prior to making Medicaid Applications can create periods of ineligibility for benefits. (In Indiana you’ll be ineligible for benefits for one month for every \$4,826.00 you give away.)

Your individual situation affects decisions about how to accomplish the division of assets. You or your spouse can “spend down” your half of the assets to:

- *pay nursing home bills*
- *pay off outstanding debts (like credit card bills)*
- *prepay an outstanding mortgage, property taxes, and estimated income or capital gains taxes.*
- *make home repairs or buy household furnishings*
- *prepay funeral expenses*
- *buy clothing*
- *travel*
- *pay legal and medical bills*
- *buy an annuity (Consult an attorney before purchasing an annuity to be sure you’re complying with recent changes in the law.)*

*Important note: Be sure to map out your spend-down plan in advance and coordinate it with your Medicaid application before you move into a nursing home.*

The community spouse can often increase the amount available to him or her by working with an advisor skilled in this area.

Additional rules exist concerning income for you and your spouse. Generally, your spouse may keep his or her income. However, your income, except for \$52.00 per month, must go to the nursing home for your care. If your spouse’s needs exceed his or her income, some or all of your income may be used to make up the difference. But proper planning and knowledge of applicable rules are important to guarantee compliance with the law. Consult a professional.

## ALZHEIMER NURSING HOME CARE AVAILABLE IN OUR AREA

**Provena Sacred Heart Home**  
515 N. Main St., Avilla, IN 46710  
(260) 897-2841

**Regency Health & Rehab**  
6006 Brandy Chase, Fort Wayne, IN 46815  
(260) 486-3001

**Saint Anne Home**  
1900 Randalia Drive, Fort Wayne, IN 46805  
(260) 484-5555

**Swiss Village**  
1350 West Main St., Berne, IN 46711  
(260) 589-3173

**University Park Nursing Center**  
1400 Medical Park Dr., Fort Wayne, IN 46825  
(260) 484-1558

**Canterbury Nursing & Rehab Center**  
2827 Northgate Blvd., Fort Wayne, IN 46835  
(260) 492-1400

**Coventry Meadows**  
7843 W Jefferson Blvd, Fort Wayne, IN 46804  
(260)432-4848

**Golden Years Homestead, Inc.**  
3136 Goeplein Rd, Fort Wayne, IN 46815  
(260) 749-9655

**Heritage Park**  
2001 Hobson Rd., Fort Wayne, IN 46805  
(260) 484-9557

**Lutheran Life Villages**  
6701 S. Anthony Blvd, Fort Wayne, IN 46816  
(260) 447-1591

**Lutheran Life Villages**  
351 N Allen Chapel Rd, Kendallville, IN 47655  
(260) 347-2256

**Markle Health Care**  
170 N. Tracy St., Markle, IN 46770  
(260) 758-2131

**Meadowvale Health & Rehabilitation Cntr**  
1529 W. Lancaster St., Bluffton, IN 46714  
(260) 824-4320

**Englewood Health and Rehab Center**  
2237 Engle Rd., Fort Wayne, IN 46809  
(260)747-2353

**Bethlehem Woods Nursing & Rehab Center**  
4430 Elsdale Dr., Fort Wayne, IN 46835  
(260)485-8157

**Glenbrook Rehab & Skilled Nsg Center**  
3811 Parnell Ave, Fort Wayne, IN 46805  
(260) 482-4651

**Christian Care Retirement Community**  
720 E Dustman Rd, Bluffton, IN 46714  
(260) 565-3000

**Life Care Center of Fort Wayne**  
1649 Spy Run Ave, Fort Wayne, IN 46805  
(260)422-8520

**Woodview Healthcare**  
3420 E State Blvd, Fort Wayne, IN 46805  
(260) 484-3120

**Heritage Pointe**  
801 Huntington Ave, Warren, IN 46792  
(260) 375-2201

**Emeritus at Fort Wayne**  
4730 E State Blvd, Fort Wayne, IN 46815  
(260)484-0308

Source: Senior Life, Vol 25, No4

## ADDITIONAL RESOURCES

Aging & In-Home Services (For pre-admission screening)	260 - 745-1200
Veteran's Affairs Information	1-800-827-1000
Allen County Council on Aging	260 - 426-0060
Alzheimer's Association Greater Indiana Chapter	260 - 420-5547
Allen County Office of the Division of Family & Children Services (Medicaid Application)	260 - 458-6200
Allen County Bar Association	260 - 423-2358
Allen County Adult Protective Services	260 - 449-7989

### Websites

Alzheimer's Association	<a href="http://www.alz.org/indiana">www.alz.org/indiana</a>
Council on Senior Services	<a href="http://www.councilonseniorservices.org">www.councilonseniorservices.org</a>
Elder Law Answers	<a href="http://www.elderlawanswers.com">www.elderlawanswers.com</a>
Elder Care Facilities	<a href="http://www.positivelights.org">www.positivelights.org</a>

## BOOKS

***Alzheimers*** by Howard Grudjur  
***The 36 Hour Day*** by Nancy L. Mace, Peter R. Abes  
***Alzheimer's Early Stages*** by Donald Kuhn & David Bennett  
***Alzheimer's Activities*** by B.J. Fitzray  
***There's Still a Person In There*** by Michael Castleman  
***The Alzheimer's Sourcebook for Care givers*** by Freda Gray-Davidson  
***Talking to Alzheimer's*** by Claudia J. Strauss  
***The Complete Guide to Alzheimer's Proofing Your House*** by Mark L. Warner  
***Elder Rage, Or Take My Father Please,*** by Jacqueline Marcell  
***Mayo Clinic on Alzheimer's Disease*** by Ronald C. Peterson, M.D.  
***Caregivers Can Survive, Even with Alzheimer's Patients*** by Dr. Joe Gellys

## ALZHEIMER SUPPORT GROUPS

### *Decatur*

Adams Memorial Hospital, Monroe Classroom  
1100 Mercer Avenue  
3rd Thursday of the month at 6:30 pm

### *Fort Wayne*

Risen Savior Lutheran Church  
8010 W. Jefferson Blvd.  
2nd Thursday of the month at 6:30 pm

### *Fort Wayne*

1st Presbyterian Church  
300 W. Wayne Street  
3rd Thursday of the month at 10:30 am

### *Fort Wayne*

Abundant Life Church  
3301 E. Coliseum Blvd.  
Hobson Road, Entrance 4, Rm 141  
2nd Monday of the month at 6:00 pm

### *Fort Wayne*

Robinson United Methodist Church  
12707 Tonkel Road  
2nd Monday of the month at 9:00 am

### *Fort Wayne*

Trinity English Lutheran Church  
405 W. Wayne Street  
2nd Thursday of the month at 10:00 am

### *Waynedale*

Waynedale Public Library  
2200 Lower Huntington Road  
1st Thursday of the month at 10:00 am

### *Auburn*

Heimach Center  
1800 E. 7th Street  
3rd Thursday of the month at 2:00 pm

### *Huntington*

Parkview Hospital  
2001 Stults Road  
2nd Wednesday of the month at 10:30 am

### *Columbia City*

Columbia City United Methodist Church  
605 N. Forest Parkway  
2nd Monday of the month at 6:30 pm

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