

# Arizona Consumers' Guide to ALTCS & FINANCING LONG-TERM CARE

**2020 Edition Including:**

*ALTCS (Arizona Long-Term Care System)*

*Veterans Benefits*

*Advance Directives*

*Guardianships & Conservatorships*

*Estate Planning*



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# INTRODUCTION

## Help Is Available



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In 2016, 79% of ALTCS applicants were denied eligibility for long-term care coverage. Although this denial rate is disturbingly high, individuals might overcome eligibility issues by making simple preparations. To help with these preparations, we created this brief but informative guide on the ALTCS benefit. Remember that for every rule that is outlined in this guide, there are legal and ethical ways to help satisfy the rule in an expedited manner.

While this guide is for informational purposes only, a qualified Elder Law attorney might provide more concrete guidance on how you can accomplish your planning goals with as little delay possible. At JacksonWhite, you will find a team of Elder Law attorneys, social workers, and benefit processors who work together to satisfy whatever long-term health care needs you may have.

As a full service law firm, JacksonWhite is equipped to assist you with many other legal issues, ranging from estate planning to probate. We encourage you to call us for a free benefit analysis to help you identify what options are available to you.

Our website, [jacksonwhitelaw.com/ALTCS](http://jacksonwhitelaw.com/ALTCS), provides detailed information on ALTCS eligibility, Veterans benefits, estate planning, probate, special needs trusts, advance directives, guardianships, and conservatorships. In an effort to provide visitors with accurate and complete information, our website is regularly updated with blogs, newsletters, and answers to frequently asked questions.

With tools like this guide and our website, our hope is to provide you with access to the knowledge and answers you need to make this difficult process just a little bit easier. If you have more specific questions about the content in this guide or other Elder Law issues, please do not hesitate to contact the Elder Law department at JacksonWhite. Our qualified team is readily available to help you.

# ALTCS

## ALTCS Defined

Arizona Long-Term Care System, or ALTCS, is a branch of Arizona's Medicaid program that covers long-term health care for qualifying individuals. Despite the similarity in titles, Medicaid is very different from Medicare, and the two should not be confused. Above all else, ALTCS differs from Medicare because it is needs based, meaning that only those who meet strict eligibility requirements qualify for the benefit. Further, ALTCS can indefinitely cover long-term care, and Medicare only covers acute services for a limited period of time.

## ALTCS and Financing Long-Term Care

Transitioning a family member through levels of care presents a number of difficult decisions. The most common question that arises during this time is: How will we pay for long-term health care? With in-home care costing around \$20-\$30 per hour and skilled nursing communities costing as much as \$8,500 per month, it is no wonder so many people fear they will be unable to afford the care they need. Further, when looking into payment options, many individuals find their alternatives are quite limited. Understanding the limits of coverage with one's current benefits will help an individual identify the need for ALTCS.

1.

**Long-term care insurance:** Long-term care insurance can be quite helpful in limited situations. But because only healthy individuals who can afford premiums can obtain coverage, long-term care insurance is often not a viable option for people who need immediate care. ALTCS, on the other hand, may provide an excellent alternative to those who are in poor health or cannot afford the premiums. It is always important to confirm that the daily rate covers the anticipated costs.

2.

**Out of pocket:** Some people fear that their only option is to pay for long-term health care from their personal savings. While this may be true for some individuals, those who have moderate or limited funds should always consider other alternatives. Particularly for individuals with a well spouse or a disabled child, other solutions may be available. Individuals should seek help before they deplete all of their savings.

### 3.

Medicare: Medicare is the national health care entitlement program that insures people 65 years of age or older or those who have certain disabilities. While Medicare may cover nursing home costs for short periods of time, it never covers long-term health care. Individuals who need assistance with long-term health care should apply for ALTCS. The cost of long-term care is staggering, but understanding the benefits to help with those costs is vital to your receiving continued benefits.

It should be clear after reviewing these options that ALTCS can help those who need long-term health care avoid a gap in payments. ALTCS is not an entitlement program, so many applicants may not qualify for the benefit without making preparations. However, for those who meet medical and financial requirements, ALTCS is by and large the best way to pay for long-term health care. Jackson-White is available to help individuals become eligible for the ALTCS benefit. We help people make the preparations they need to qualify as quickly as possible, while also preserving resources in many cases.

## Services ALTCS Offers

The ALTCS benefit is unique to Arizona, and is based on a managed care concept that enables the state to pay for a variety of services. In addition to helping with skilled nursing and nursing home costs, ALTCS covers certain in-home services as well. These home and community services are less expensive for the state to provide and are oftentimes preferable to individuals as well. As such, it can be in everyone's best interest to give ALTCS members in-home care for as long as possible.

Unfortunately, many people wait too long to apply for the ALTCS benefit and end up jeopardizing their opportunity to take advantage of in-home care. Proactive individuals, on the other hand, might obtain in-home care that helps them postpone moving to a community or facility. Individuals should begin preparing for the ALTCS benefit at the first signs of needing long-term care. Put bluntly, individuals who start the planning process earlier generally preserve the most resources.



Benefits which may be available through ALTCS include:

- **Full Coverage of Acute Care Services:** This includes doctors, hospitalization, reduced prescription costs, lab work, x-rays, tests, and specialist treatments.
- **Home and Community Based Services:** This includes home day care, personal and respite care, medical transportation, mental health services, homemaker services, attendant care, and home health aides.
- **Alternative Facility Care:** This includes care provided in a licensed nursing facility, residential care facility, rehabilitation care facility, assisted living center, or group home.
- **Services for Developmentally Disabled Adults and Children:** This benefit includes specialized care for developmentally disabled adults and children.

## Why Plan For ALTCS?

It is particularly important to prepare for the future when it comes to health care. Planning for ALTCS eligibility is often the best way people can prepare to meet their long-term health care needs. First, long-term health care insurance can be difficult to obtain; second, Medicare only covers a limited amount of care in a skilled nursing facility; third, paying out-of-pocket is extremely expensive.

Each year, the majority of ALTCS applicants are denied eligibility for long-term care coverage because of poor planning. It can take roughly three to five months for ALTCS to process an application. Preparing for ALTCS in advance may be the best approach, but even those who have not prepared, and need immediate care, can become eligible for the ALTCS benefit if they meet strict medical and financial requirements. The JacksonWhite Elder Law Team is dedicated to helping our clients accomplish the twin goals of preserving resources and qualifying for healthcare.

JacksonWhite understands the fear of becoming impoverished by the cost of long-term care and is here to help.

## Medical Eligibility

To qualify medically for the ALTCS benefit, applicants must undergo a medical screening process known as the Pre-Admission Screen (PAS). Applicants begin by providing an assessor with personal information such as age, date of birth, living arrangements, and physician information. The assessor then evaluates the applicant's health by examining aspects such as continence, behavior, and whether the applicant requires assistance with daily activities. Finally, ALTCS determines medical eligibility by assigning a numerical score based on the PAS evaluation and previous medical records. In short, an applicant must demonstrate that he or she requires nursing home level care. It is helpful to prepare for the medical assessment with an individual who has attended these appointments before, of which JacksonWhite has many at the ready.

Prior to the PAS, most ALTCS applicants will meet with a hospital discharge planner, social worker, or other health care professional who can give them insight as to whether they qualify medically for the ALTCS benefit. In addition to seeking guidance from one of these professionals, applicants should describe symptoms and behaviors that occur on their worst days when speaking with their PAS assessor, as this will best illustrate their need for assistance.

As long as applicants genuinely need daily, hands-on assistance, they

should not have difficulty meeting ALTCS medical requirements. In short, an applicant must demonstrate that he or she requires nursing home level care.

## Financial Eligibility

ALTCS applicants must meet the following general criteria before ALTCS will begin the financial assessment:

- Applicants must be a U.S. citizen or a legal alien
- Applicants must be an Arizona resident, with the intent to stay in Arizona
- Applicants must have a Social Security number
- Applicants must make an effort to secure potential primary benefits
- Applicants must reside in a medical institution, approved home and community based setting, or at home in need of care
- Applicants must be cooperative and provide verifying documents to ALTCS, which can be a long process

The financial requirements are much more complex than the general eligibility criteria, and it is not uncommon for applicants to struggle with this portion of the eligibility process. Applicants who pay strict attention to detail and successfully demonstrate that they do



not exceed the income and asset limits, however, may complete this portion of the process on their own. Nevertheless, many applicants reach out to professionals who can help them arrange their financial affairs. This is a good time to remind the reader that this guide provides the rules in a stark manner, but for every rule that exists there is a legal and ethical way to work with that rule.

The financial assessment involves a close inspection of applicant's income and assets, both of which must fall below a specified amount. Importantly, income and asset limits are based on an applicant's marital status. Rules are quite different for married and single applicants.

## Income

Whether applicants are married determines the amount of income they can receive under ALTCS rules. Single applicants cannot have monthly income of more than \$2,349.

Likewise, married applicants applying for the benefit alone are limited to \$2,349 monthly income, and their spouse's income is not considered. In the event an

ill spouse is over the income limit, ALTCS will add the income of both spouses and divide it in half. If the "half" is less than \$2,349, they are still within the income limit. These limitations are effective for and are reviewed each year.

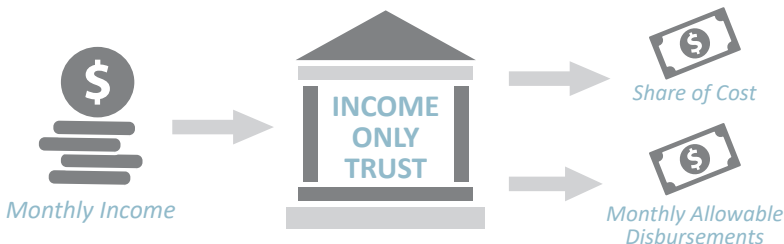
An ALTCS-experienced Elder Law attorney should be able to help individuals successfully apply for ALTCS and obtain eligibility.

## Over Income

Individuals who would like to apply for the ALTCS benefit, but whose income is too high, might be able to establish a Miller/Income-Only Trust to help them qualify. Like other types of trusts, Miller/Income-Only Trusts must comply with strict legal formalities to be valid. Applicants whose income exceeds the limit ought to consult with an attorney about whether this strategy could help them qualify.

The fear of being over the income limit shouldn't keep individuals from applying for ALTCS. There are ways to help. The Miller/Income-Only Trust is a prime example to a work-around for a hard-and-fast rule.

### MILLER TRUST – also known as – INCOME ONLY TRUST



\* As of January 2020

## Resources

An applicant's marital status impacts the total amount of resources ALTCS allows them to have. Single applicants can have no more than \$2,000\* in countable resources. Married couples can have more. Importantly, ALTCS looks only at countable resources when determining eligibility, which means that the following types of assets are excluded:

- One home: The home, located in Arizona, must be the applicant's principal place of residence, and cannot have equity value exceeding \$580,000. Applicants living in a nursing home when they apply may have to demonstrate their intent to return home.
- One vehicle: Applicants, married or single, are allowed to have one primary transportation vehicle of any value.
- Burial plots
- Irrevocable prepaid funeral plans
- U.S. savings bonds
- Retirement accounts, including IRA, 401K, and TSA
- Nursing home accounts
- Revocable prepaid funeral contracts
- Assets held in trust
- Real estate, other than the primary residence
- Additional cars
- Boats and recreational vehicles
- Stocks, bonds, and mutual funds
- Promissory notes
- Cash value of life insurance policies if it exceeds the resource limit of \$2,000 for a single person

Countable assets, on the other hand, include all money and property that can be valued and converted into cash. More specifically, countable assets include:

- Cash, checking and savings accounts
- Certificates of deposit

Married couples might be able to arrange their affairs to minimize their countable resources. Doing so can help them keep more assets for the well spouse, while helping the other qualify for the ALTCS benefit. The time for couples to make these arrangements is well before the financial assessment, as this could minimize potential delays in eligibility. **Married applicants who engage in good planning should not be concerned about impoverishing the well-spouse.**

While ALTCS rules are complex, single applicants with less than \$2,000 in

\* As of January 2020

countable resources and less than \$2,349 of monthly income generally qualify for the benefit, so long as they also meet the medical requirements. Of course, the case for eligibility is not always clear and simple, so many applicants can benefit from seeking professional guidance with their ALTCS application. One should not spend down to their \$2,000 resource limit before beginning the planning process. Here again, those who start planning sooner can preserve more and prevent coverage gaps from arising.

## Financial Relief Available For Well Spouses

Spouses of ALTCS applicants obviously need to keep enough resources to remain financially secure. And, to further this interest, ALTCS allows for a Community Spouse Resource Deduction (CSRSD), which essentially sets a portion of a couple's assets aside for a well spouse. If not for the CSRSD, spouses would be forced into poverty before their husband or wife could qualify for the ALTCS benefit.

The CSRSD allows well spouses to keep one-half of the couple's countable resources, up to a certain amount. As such, a couple with \$100,000 in countable resources could keep about \$50,000 for the well spouse. There is a minimum and maximum threshold, however, so the CSRSD has certain guarantees and limitations. The minimum CSRSD is \$25,728\*, meaning that a couple with \$35,000 in countable resources could keep about \$25,728 for the well spouse because half of \$35,000 falls below the minimum threshold. On the other hand, regardless of how many assets a couple has, the maximum CSRSD is \$128,640\*. The rules state well spouses cannot keep more than this amount even if it is less than half of the couple's total assets. An Elder Law attorney, however, can use policy and federal regulation to protect assets. To be clear, many married couples are able to preserve closer to all of the assets than just one-half of the assets.



\* As of January 2020

## Spend Down

It is not uncommon for ALTCS to deny benefits to applicants on account of having too many resources. ALTCS applicants whose resources exceed the limit are not precluded from qualifying at a later date. Rather, they might be able to spend down their countable resources and qualify for the benefit once they satisfy the financial requirements. Of course, prospective ALTCS applicants should never spend frivolously just to satisfy ALTCS requirements. Neither should they give their resources to family members in an attempt to meet ALTCS requirements, as gifts are penalized with a period of ineligibility.

Instead, prospective ALTCS applicants should strategize with an Elder Law attorney who can prepare them to meet the ALTCS resource requirement with as little delay as possible.

ALTCS applicants can sometimes expedite their eligibility by spending excess countable resources on certain exempt resources, a process known as spend down. Because ALTCS penalizes applicants for making uncompensated transfers, however, they should be extremely cautious here. ALTCS currently looks back five years from the date of application, and questions any transfers without value, or gifts.

Applicants who make gifts within this five-year window are likely to be penalized with a period of ineligibility. In short, applicants cannot simply give away excess resources in an effort to become eligible for the ALTCS benefit. This being said, remember that “spend down” is merely a term of art, and it can mean a variety of legal and ethical means by which to preserve assets.

## Once Approved for the Benefit— The Redetermination Process

The ALTCS benefit does not last indefinitely, so members must undergo a redetermination process every year. In essence, this requires them to prove their medical and financial circumstances still satisfy ALTCS requirements. While a redetermination is not as complicated as an original application, it nevertheless requires ALTCS members to produce verifiable documentation that they meet financial perimeters. ALTCS members can lose eligibility at the redetermination for a variety of reasons. For instance, an inheritance or a settlement, or the selling of one’s house might push assets above the allowable limit, and cause ALTCS to discontinue the benefit. Just as with initial applications, proper planning can many times help members who receive substantial assets remain eligible for the benefit.

*\* As of January 2020*

## Coordinating Benefits

As we have previously mentioned, ALTCS is only available to those who meet both income and asset requirements. So, if at any time members receive an increase in either, they may be in jeopardy of losing the benefit. ALTCS is also a payer of last resort, so applicants must make sure other sources of assistance are not available by applying for other benefits before applying for the ALTCS benefit. Unless applicants make careful plans for additional income that other benefits may bring them, they could very easily be disqualified from the ALTCS benefit.

## Wartime Pension/Aid & Attendance

A perfect example of when coordinating benefits comes into play is that of

a wartime veteran or widowed spouse of a wartime veteran. The Veterans Administration offers a pension benefit to eligible veterans, and those who qualify typically receive a lump sum retroactive payment for their first installment. Because the VA application process tends to take longer than the ALTCS application process, this payment might come well after a veteran has been approved for the ALTCS benefit, which could cause problems if it pushes him or her over ALTCS income and asset limits. Veterans should work with a professional who understands both VA and ALTCS to prepare a plan by which they can receive both without creating eligibility problems for either. JacksonWhite has helped a multitude of veterans optimize their pension benefit to work quite well with ALTCS.



## Third Party Payer

Another example of how a sudden increase in income or assets can cause problems with ALTCS eligibility is when an ALTCS member receives a personal injury settlement. In addition to ALTCS considerations, Medicare recipients who receive such a settlement should be careful that a third-party liability insurer does not try to negotiate and pay Medicare directly, effectively depriving the Medicare recipient of the settlement to which he or she was entitled. An Elder Law attorney with experience handling these situations can help accident victims receive the settlement to which they are entitled to and coordinate that settlement with the ALTCS benefit so as to preserve ALTCS eligibility.

Talking to an attorney soon after an accident is important in the success of coordinating all of one's benefits.

## Estate Recovery

Will I lose my home? Applicants should not allow the fear of losing their home to delay them from accessing the ALTCS benefit. Applicants who do have this fear should speak with an Elder Law attorney about whether they qualify for one of the exemptions.

Of the many issues surrounding the ALTCS benefit, estate recovery is perhaps the most commonly misunderstood. Because of this common misunderstanding, many would-be

applicants forego even applying for the benefit. In essence, ALTCS has two tools at its disposal to recover benefits paid to ALTCS members, the Estate Recovery Act and the Tax Equity and Fiscal Responsibility Act (TEFRA) lien. Under the Estate Recovery Act, ALTCS can assert liens on deceased members' estates to recover benefits paid during their lives. Similarly, ALTCS can assert TEFRA liens on ALTCS members' homes after they have spent 90 consecutive days in a skilled nursing facility. Neither of these liens can exceed the amount that ALTCS provided to the member in benefits.

While these liens allow ALTCS to recover benefits in certain situations, there are several possible exemptions to this rule. Those who meet one of the following exemptions should speak with an Elder Law attorney about protecting their estate from recovery:

- A well spouse lives in the home: Federal rules protect this spouse from impoverishment. With proper planning, ALTCS members may avoid estate recovery even if the well spouse dies first. To be perfectly clear, with proper planning, a spouse should never have to fear losing his or her home.
- A disabled child lives in the family home: Federal rules protect the home from

recovery. With proper planning, applicants may preserve the home for a disabled child who receives Social Security disability income.

- **Planning Ahead:** Proper planning may preserve the home for an adult child who cared for the applicant in the applicant's home for two or more years prior to institutionalization.
- **Hardship:** Individuals who do not satisfy any of these exemptions, but who live in the home, may still request a hardship hearing under certain circumstances.

## Pre-Planning

Applying for ALTCS before there is an actual medical need for long-term care is challenging. For those who are concerned about future long-term care costs, however, empowerment strategies can be implemented ahead of time to cover costs and perhaps bypass the ALTCS process altogether.

By planning ahead, it is possible to protect resources and gain confidence that coverage will be in place regardless of medical need and whether the political landscape alters the contours of our existing ALTCS program.



## Frequently Asked Questions

### 1.

### How does ALTCS differ from Medicare?

Although people sometimes confuse Medicare and Medicaid, it is important to understand that these are two distinct programs. These programs have major differences which make them each beneficial in their own right.

Medicare is a federally-funded health insurance program which provides health care primarily to individuals 65 years of age and older. Although Medicare's range of benefits has recently been expanded, long-term care costs are still not covered.

In most instances, Medicare provides the following assistance for individuals needing long-term care if they had a three night stay in the hospital:

- 100% coverage for the first 20 days in a skilled nursing facility.
- Coverage for up to the next 80 days of nursing home care, but with a significant daily deductible of more than \$175 per day. This only applies if the individual qualifies medically for this coverage. This may be covered by the Medicare supplement.
- Individuals who are enrolled in a managed Medicare plan and meet strict requirements may have different coverage. It is important to check one's plan.
- Individuals who receive treatment and recover may become eligible for additional Medicare skilled nursing benefits.

Because Medicare rarely provides coverage for the full 100-day maximum, it is not uncommon for people to panic when their coverage is discontinued and they still require around-the-clock care. When faced with this problem, they must find another way to pay for long-term care, and ALTCS might provide a workable solution. This is where speaking with an Elder Law Attorney can prove very beneficial.



**2.****Can I give my assets away in order to qualify for ALTCS?**

Some ALTCS applicants mistakenly believe they can reduce their countable resources to qualify for the ALTCS benefit by giving away \$15,000 per year to any number of people. However, they are confusing federal tax rules with ALTCS rules and should know that this type of gifting will render them ineligible for the ALTCS benefit for a period of time. The IRS has a reporting requirement of \$15,000 per year, although federal gift taxes do not apply unless an individual has given away more than \$11.58 million or a couple has given away more than \$23.16 million. Although the federal tax code does permit gifting of up to \$15,000 per person each year without tax consequences, the tax code and ALTCS rules are two very different bodies of law. There are limited circumstances in which ALTCS allows gifting, but only if it is done in strict compliance with ALTCS rules. Applicants should never give away their assets without the guidance of somebody familiar with these rules.

**3.****Since my child's name is on my bank account, will those assets still count against me for purposes of ALTCS eligibility?**

Simply placing a child's name on a bank account does not transfer complete ownership of the account to that child, even after he or she has been a joint owner on the account for several years. Rather, ALTCS generally counts the entire amount as belonging to the applicant unless there is proof that the child funded the account. This rule applies to savings and checking accounts, credit union and share draft accounts, certificates of deposit, and other similar financial accounts.



**4.****Are assets held in a revocable living trust excluded in an ALTCS financial assessment?**

Assets held in a revocable living trust are counted for purposes of ALTCS eligibility. Even a home, which is normally deemed unavailable, becomes available when placed in a trust. As such, anybody who might need long-term health care should be extremely careful when establishing a trust, as it could impact their prospective eligibility for the benefit. There is a misconception that a trust protects one's assets from ALTCS. A trust protects assets from probate, not Medicaid. If a trust is in place, one shouldn't panic because there are planning strategies JacksonWhite can use to help. Do not revoke a trust until you have spoken to an Elder Law attorney.

**5.****I am 60 years old and relatively healthy, but I want to protect myself against the prospective of long-term care costs. Is there anything I can do to qualify for ALTCS now?**

While it isn't possible to qualify for ALTCS unless an actual long-term care need already exists, there are planning strategies that might be implemented. A thorough review of your existing estate plan, with focus on protection from long-term care costs is often recommended. Thorough planning might offer protection from ever needing ALTCS, but it is important to implement this kind of strategy with the assistance of an attorney well-versed in the long-term care landscape to explore the most secure options.



## Case Studies

### Case Study #1: ALTCS planning for a married couple

Shortly after celebrating 50 years of marriage to Mary, James Smith suffered a stroke and has been hospitalized ever since. The hospital discharge planner informed Mary that James' now requires around-the-clock care and should not return home. Care in a skilled nursing facility exceeds \$7,000 per month, for which Medicare will not provide coverage. Upon reviewing the couple's assets, Mary found \$100,000, plus the family home, divided as follows:

- Savings account: **\$8,000**
- CD: **\$45,000**
- Money Market: **\$35,000**
- Checking Account: **\$12,000**
- Home (no mortgage): **\$110,000**

Regarding income, Mr. Smith receives \$600 per month from Social Security, along with a small pension of \$300 per month. Mrs. Smith receives a Social Security check each month in the amount of \$300.

Mrs. Smith spoke with her children and determined that the family cannot afford \$7,000 per month. If the Smiths used their savings to pay for James' care, Mary would run out of money within two years and lose the ability to support herself. Further, the Smiths do not have enough income to cover James monthly expenses.

There is good news for the Smiths.

Although the Smiths probably cannot resolve their dilemma at the ALTCS eligibility worker level, a trained professional might very well help them. With the guidance of an Elder Law attorney, James might qualify for the ALTCS benefit; and Mary, in addition to keeping all of her personal income, might be able to keep most of the couple's assets for her support.

The exact amount can vary, but ALTCS allows well spouses, such as Mrs. Smith, to keep income of up to \$3,216\* per month for monthly maintenance needs. Further, Mrs. Smith could keep at least half of the couple's resources under the CSRD; with planning, possibly even more than half, plus the family home. Of course, the Smiths must proceed carefully, in order for Mary to keep all of the resources the law allows.

\* As of January 2020

## Case Study #2: Special Needs Trusts for disabled children

William and Sherry Allen have a daughter with special needs, June, who has never left home. Although June does not work, she receives SSI each month, which she relies upon for support. Several years back, Mr. Allen was diagnosed with dementia, and he has since moved into a group home that costs \$4,000 per month. Mrs. Allen is concerned that this expense will eventually drain their savings and leave no money to care for June, who may live long after Mr. and Mrs. Allen pass away.

Faced with this dilemma, Mrs. Allen submitted an ALTCS application to cover the costs of Mr. Allen's group home, but it was denied on account of the couple having too many assets. An ALTCS representative informed Mrs. Allen that they would have to spend down a good portion of their assets before Mr. Allen could qualify for the benefit.

There is a solution that allows the Allens to save money for their daughter.

An Elder Law attorney can help the Allens establish a special needs trust, in which they can set assets aside for June. And unlike other types of trusts, special needs trusts do not count against trust beneficiaries for purposes of public benefit eligibility. As such, if the Allens fund a special needs trust for June, the assets in the trust will not jeopardize June's eligibility for SSI. Further, establishing such a trust will help Mr. Allen qualify for the ALTCS benefit with as little delay as possible. As long as the Allens are careful to abide by strict rules, they can accomplish both their goals of helping their daughter and qualifying Mr. Allen for the ALTCS benefit.

## Case Study #3: Single individual

Jane Cox, a widow, suffered a stroke last year and has required constant care ever since. After spending 16 months in a nursing home, Jane is now well enough to return home.

When she suffered the stroke, Jane had \$30,000 in savings and a home worth \$70,000 that was mortgage and lien free. To pay for her nursing home care, however, Jane had to sell her home and deplete nearly all of her savings. Of course, the problem now is that Jane is healthy enough to leave the nursing home, but she has no home to which she can return, and is nearly impoverished. Due to Jane's failure to plan, her only option is to ask her children to take her in.

Unfortunately, situations like Jane's are much too common. Elder Law attorneys handle these issues on a daily basis, however, and can help families find workable solutions.

Although ALTCS rules are more protective of couples' resources, even single applicants can find some relief. Had Jane sought legal counsel early on, she could have arranged to save her home and avoid impoverishment. It is always a good idea for those entering a long-term care facility to speak with a professional before they impoverish themselves paying for their care. Individuals should not wait until they have only \$2,000 to ask for help. JacksonWhite can help these individuals preserve resources, and most times preserve substantially more than \$2,000.



## Selecting an Attorney

Families amidst a long-term care crisis can be quite vulnerable, and in need of assistance. Speaking with a professional, however, may remove some of this pressure. For instance, an Elder Law attorney can provide families with answers to questions such as:

- How can we pay for long-term health care?
- How do we preserve our assets?
- How do we prepare an ALTCS application?
- What legal documents must we get to ensure ALTCS eligibility?

Furthermore, many families need help protecting their rights and their resources. To accomplish these goals, families might seek out a professional who can thoroughly examine the situation and find the best result for everybody involved. While financial planners, insurance salesmen, social workers, and CPAs may all claim to have this ability, unqualified professionals all too often overlook important legal issues. Even attorneys without ALTCS experience are unlikely to provide families with a complete

range of options. To ensure the best professional counsel possible, families should speak with an Elder Law attorney who has extensive ALTCS experience.

Elder Law includes a broad range of legal issues that specifically affect seniors, including long-term care planning, ALTCS planning, guardianships, conservatorships, trust creation, and estate planning.

Also importantly, Elder Law attorneys can represent applicants in fair hearings or court if necessary. Effective Elder Law attorneys rely on their understanding of the law and years of experience to create individualized plans that fit their clients' specific needs.

While most Elder Law attorneys belong to the National Academy of Elder Law Attorneys (NAELA), membership in this organization does not guarantee that the attorney is familiar with ALTCS planning. As such, prospective ALTCS applicants might consult with organizations such as the Alzheimer's Association, the Area Agency on Aging, or local senior centers for recommendations on qualified Elder Law attorneys. Further, they should consider the following issues before hiring an attorney:

### What specific areas of law does the attorney or firm practice?

Firms that handle guardianships, conservatorships, ALTCS applications, probate matters, estate planning, and powers of attorney should be well equipped to handle long-term care planning.

**Has the attorney undergone training in Elder Law issues?**

Generally speaking, Elder Law attorneys who regularly attend NAELA seminars to remain current with laws and regulations are most qualified to assist ALTCS applicants with planning.

**How many long-term care plans, ALTCS applications, guardianships and conservatorships does the firm handle each month?**

As with other professions, experience plays a big role in an attorney's ability to perceive and consider all of the issues relevant to long-term care planning.

**Has the attorney authored any literature on long-term care planning?**

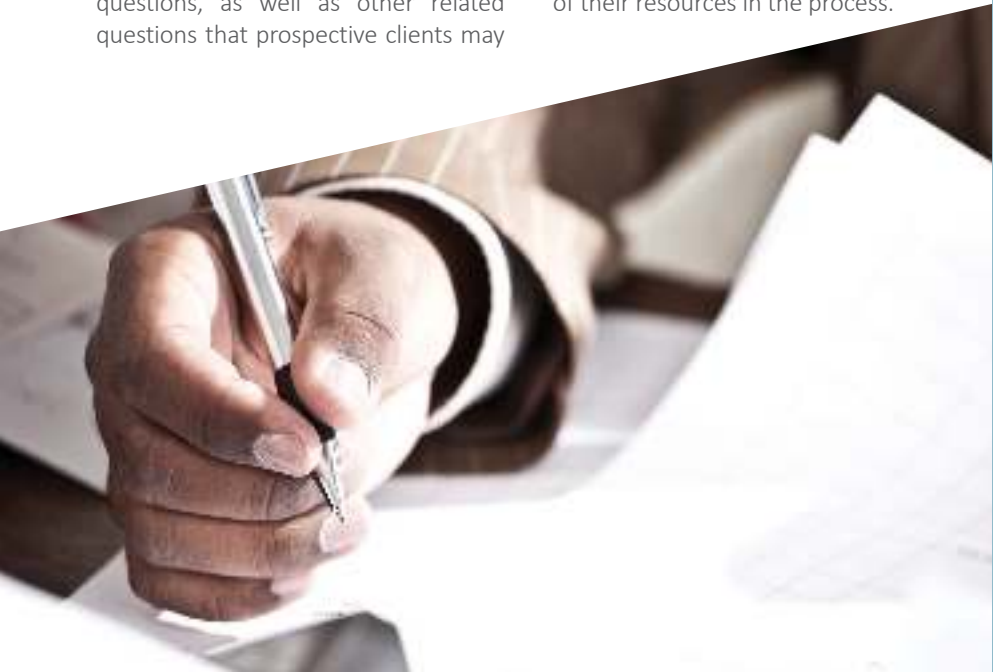
Literature should demonstrate a thorough understanding of the issues discussed in this guide.

**Is the individual handling the matter even an attorney at all?**

There are many outfits out there that attempt to handle ALTCS without a law degree. There are many problems with this, primarily that they do not have the authority to handle hearings, appeals, guardianships, or conservatorships.

The time for applicants to ask these questions is before they hire an attorney to help with an ALTCS application. A qualified Elder Law attorney should have no problem answering these questions, as well as other related questions that prospective clients may

have. Applicants who seek out an attorney with competence and experience in this area of law tend to qualify for the ALTCS benefit much quicker than those who do not, and save much more of their resources in the process.



## Pre-screen First!

It is not uncommon to be denied Arizona Long-Term Care coverage when applying on your own. In fact, 79% of all applicants were denied in 2016, but rest assured that those who work with qualified professionals do not face this degree of risk. Additionally, the process is lengthy – on average 3-6 months per application – and the stakes are high. This creates a frustrating and daunting situation for those in need of long-term care solutions.

We're here to help. JacksonWhite offers a free pre-screening service to help you navigate the ALTCS process and understand your best options for long-term care. By screening for eligibility issues prior to applying, you can help steer clear of common misconceptions and pitfalls that hold up the process and cause additional cost and stress.

Our goal is to identify any issues that may cause ineligibility and offer solutions to get them fixed before they cause a problem.

Pre-screen first to:

- Avoid denial, penalties, or gaps in payment to health care facilities.
- Avoid problems with overlapping benefits such as VA Wartime Pension.
- Avoid unnecessary spend down.
- Protect the well spouse.
- Protect your assets.
- Understand financial AND medical eligibility requirements.

The top reasons for ALTCS denial are:

- Over the income limit
- House is in a trust
- Over resource limit
- Married couples spending down
- Transferred or gifted items in the last five years
- Does not meet medical criteria
- Applicant became overwhelmed with the process and quit

There are solutions to overcome ineligibility. If you or your loved one needs assistance with this process or has already been denied, do not give up. Let one of our experienced Elder Law advisors help assess your situation and offer solutions to get you on course for approval. And importantly, there is no charge for a pre-screen. The team at JacksonWhite is built on a foundation of giving to the community, and we have guided countless individuals through the ALTCS application process, many of whom found that direction during the free pre-screen.



*For a FREE pre-screen with a  
JacksonWhite Elder Law Advisor,  
please call*

**1.800.243.1160**



## ALTCS Resource Worksheet

### STEP #1: LIST ASSETS

Bank Accounts/Savings (Checking, Money Market, CDs)	\$	
Investment Accounts (brokers)	\$	
Stocks	\$	
Bonds	\$	
Pension Plans (IRAs)	\$	
Other Real Property	\$	
Primary Home	\$	
Household Items	\$	
Primary Vehicles	\$	
Life Insurance/Annuities	\$	
Prepaid Burial Plans/Plots	\$	
Promissory Notes	\$	
Other Vehicles/Boats/Trailers	\$	
<b>TOTAL ASSETS</b>		<b>\$</b>

### STEP #2: LIST EXEMPTIONS

Primary Home	\$	
Household Items	\$	
Primary Vehicle	\$	
Prepaid Burial Plans	\$	
Burial Plot	\$	
<b>TOTAL EXEMPTIONS</b>		<b>\$</b>

### STEP #3: CALCULATE NET ASSETS

Total Assets	\$	
Less Total Exemptions	\$	
<b>TOTAL NET ASSETS</b>		<b>\$</b>

### STEP #4: CALCULATE SPEND DOWN

Net Assets	\$	
Less Asset Allowance	\$	

### ASSETS SUBJECT TO SPEND DOWN \$

*\*This total is what an Elder Law attorney will work to protect.*

## JacksonWhite ALTCS Tools

*Determine if the applicant needs the assistance of an Elder Law attorney to proceed with the ALTCS application by answering the following questions:*

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### Y N

- Is the applicant single, having gross income over \$2,349\* each month?
  - Is the applicant single, having more than \$2,000 in assets?
  - Is the applicant married, having more than \$25,728\* in assets?
  - Does the applicant's assets include any of the following: Trust, life insurance, annuities, long-term care insurance, interests in real property (including a residence), time shares, promissory notes, loan agreements, personally held stocks/bonds, multiple vehicles, business property, and/or a life care contract?
  - Has the applicant or the applicant's spouse gifted or transferred any cash, bank accounts, real property, or personal property (i.e. something other than typical birthday and holiday presents) to another person or entity within the last 60 months? (This would include placing another's name on any accounts and/or property.)
  - If the applicant has enough income and assets to currently pay for his/her care needs, is the applicant, due to a chronic, long-term illness, going to be paying for long-term care longer than a period of two months with private funds?
  - Does the applicant need a guardian, conservator, or fiduciary to assist with the application?
  - Has the applicant recently been diagnosed with a chronic illness and must financially plan for future medical needs?
  - Does the applicant want to legally protect assets for a spouse and/or children?
- 

*If **YES** was checked on one or more of the above questions, it is in the best interest of the applicant to pre-screen with an Elder Care Advisor before applying for benefits.*

\* As of January 2020

## Document Checklist

**Note:** This list is a suggested starting point and does not include all the documents needed to apply for ALTCs.

- Proof of U.S. Citizenship, one of the following: U.S. Passport, U.S. Naturalization Certificate, birth certificate(s), or alien ID card(s)
- Proof of identity, one of the following: driver's license, state issued ID, tribal government ID, or U.S. Military ID
- Marriage certificate, divorce decree, and/or death certificate
- Military discharge papers
- Medicare card(s) & Social Security card(s)
- All other health insurance/prescription drug card(s) & premium bill(s)
- Long-term care insurance policy & premium bill
- All pages (even if blank) of all financial statement(s) for the month in which the need for long-term care started
- All pages (even if blank) of all current account statements for checking, savings, money market, credit union, cds or time deposits, investments, IRAs, mutual funds, 401(K), HSA and FSA, etc.
- All stocks, bonds, and savings bonds
- All promissory notes, loans, or property agreements (ones that you receive payments from)
- All documents for items sold within the past five years (property, cars, homes, etc.)
- All pages of all life insurance policies including current cash surrender value (you may need to call the company)
- All pages of all prepaid burial plans or burial funds
- All deeds to property owned or mobile home titles, including timeshares
- Copies of receipts and other expenses for items that appear on the bank statements
- Property tax valuation notice(s) & home property tax bill
- Most recent rent bill or mortgage bill/space or lot rent bill
- Most recent utility bill(s)
- Homeowner's insurance bill
- Homeowner's association fee bill/ community recreation fee bill
- All vehicle titles or registrations (cars, golf carts, trailers, boats)
- Social Security award letter(s)
- Check stubs from any other type of income you receive including pension letters, veterans benefits award letter(s), or railroad retirement award letter(s) (you may need to call company and request income verification statement)
- Self-employment business documents (current tax return with schedules)
- Living trust
- Financial power(s) of attorney
- Health care power(s) of attorney
- Living will(s)
- Last will & testament
- All ALTCs correspondence (if an application has ever been submitted)

## Care Covered by ALTCS

The ALTCS benefit provides members with coverage for the following types of living arrangements.

### In-Home Care

In-home care can be a wonderful option for patients who are not yet ready to move into an in-patient or assisted living facility. A variety of in-home services are available, including personal care, pain management, daycare, delivered meals, homemaker services, and rehabilitation.

Those who go this route can rely on one company to handle the entire spectrum of in-home care, obtain services from several providers, or even rely on a family member to act as caregiver. In addition to ALTCS, privately paying and using insurance are options to pay for home care.

### Adult Day Health Care

Adult day health care centers provide a daily routine and a sense of belonging that most patients find comforting. As an added benefit, these centers also provide respite to caregivers so they can handle other responsibilities. Some of these facilities even provide activities and supervision for up to 12 hours per day.

While adult day health care centers generally do not have a full medical staff on site, many of them do have trained nurses.

### Group Homes

Group homes or assisted living homes provide around-the-clock care for patients in a home-like setting but admit only a handful of residents at a time. As such, they provide a good option for people who do not like crowds.

Group homes are typically located in a residential neighborhood, and residents are encouraged to participate in daily activities, although they are not required to do so. They are regulated by the Department of Health Services and must adhere to specific regulations.

### Assisted Living Centers

Assisted living centers tend to be a good fit for patients in the early to middle stages of their progressive illness because residents are encouraged to maintain a certain level of independence. These facilities typically have many private rooms offered and can serve a large number of residents.

They also offer a wide range of services, including assistance with grooming, medication administration, meal reminders, and cleaning services.

## Skilled Nursing Facilities

Skilled nursing facilities seem to work well for patients in the later stages of their progressive illness. In this setting, patients who do not require full hospitalization can nevertheless receive routine medical supervision. These facilities typically provide skilled medical care provided by a staff of registered nurses, physical therapists, occupational therapists, on-call physicians, and custodial care that assists with activities such as eating, walking, dressing, bathing, and using the restroom.

## Questions? We're here.

JacksonWhite has over 35 years of experience protecting Arizona seniors while securing the long-term care benefits they need. We are committed to empowering our community with as many tools and resources as possible. If you have questions about the information in this guide or about a specific scenario, please contact us for a free pre-screen at **1.800.243.1160** or visit **[jacksonwhitelaw.com/ALTCS](http://jacksonwhitelaw.com/ALTCS)**.



## VETERANS BENEFITS

The Veterans Administration offers two benefits; two of which are VA Pension and Aid & Attendance. These two benefits can be particularly helpful to veterans in need of long-term health care. In addition to being a wartime veteran, applicants must also have limited income and resources to qualify for these benefits. What many veterans do not understand, however, is that they might reduce their countable income by taking approved medical deductions. In other words, even veterans who earn a significant income each month may qualify for these benefits if they also have substantial medical expenses. Veterans who served in any of this nation's armed forces should speak with a veterans benefit planning attorney about potential eligibility for these benefits.

### Veterans Pension Benefit

Veterans Pension is a cash benefit that is available to veterans who meet strict eligibility requirements. Like the ALTCs benefit, VA Pension is needs based, so income and resources are key determinants in whether veterans qualify. Before the VA will even look at finances, however, veterans must meet the following general criteria:

- Veterans must have been discharged from service under other than dishonorable conditions.
- Veterans must have served at least 90 days of active military service, at least one day of which was during a wartime period.
- Veterans must be age 65 or older or permanently and totally disabled.



## VA Benefits & ALTCS

Individuals can have both ALTCS and VA Wartime Pension. In fact, all ALTCS applicants must first apply for VA benefits, whether or not they end up qualifying for a VA benefit. The coordination of these two benefits is crucial to the success of your applications.

### Resource Requirements

To qualify for VA Pension, veterans must meet financial requirements. Currently, a VA's household can have no more than \$127,061. Veterans considering applying for VA Pension should consult with a veterans benefit attorney to determine whether their resources may raise an issue with the VA, so that they can prepare for the application if needed.

### Income Requirements

The VA also limits the amount of income veterans may earn and still qualify for VA Pension. Veterans applying for VA Pension must meet the applicable income requirements (effective 2020):

- Single veterans without children cannot have annual income exceeding **\$13,748**.
- Veterans who are housebound without dependents cannot have income exceeding **\$16,801**.
- Veterans with one dependent cannot have annual income exceeding **\$18,005**.
- Veterans who are housebound with one dependent cannot have income exceeding **\$21,059**.

Veterans can exclude some forms of income and take certain deductions to help meet the income requirement. Also, veterans may deduct a portion of their unreimbursed medical expenses from their income. Veterans applying for VA Pension should make these preparations with a veterans benefit attorney in order to fully reduce their countable income. Beyond helping them obtain eligibility, taking the proper deductions can even increase the amount of VA Pension veterans are eligible to receive.

## Medical Expense Deductions

Veterans who apply for VA Pension should work with a veterans benefit attorney to calculate their medical expense deductions. In many instances, this type of planning qualifies veterans who would not otherwise be eligible for VA Pension. Even those who would already qualify for the benefit could increase their monthly VA Pension amount by taking the proper deduction. Because of the significant impact that medical expense deductions can have on a VA Pension amount, veterans should never submit an application for VA Pension without carefully reviewing their medical expenses.

The medical expense deduction is by no means an easy calculation to make. First, veterans may only deduct unreimbursed medical expenses, and only after those expenses exceed a certain limit. Further, veterans cannot deduct medical expenses covered by insurance, although they can deduct premiums and copays.

These complexities make it quite easy to make an accounting error when calculating the deduction, which could lead the VA to deny a veterans application. To protect against this, veterans should consider seeking professional guidance to help them take a proper deduction.

## Additional Support from the VA – The Housebound and Aid & Attendance Benefits

Veterans with medical issues may qualify for assistance beyond that which VA Pension provides. This assistance comes in the form of two benefits: the Housebound benefit and the Aid & Attendance benefit, each of which effectively increase the amount of VA Pension a veteran may receive each month. To qualify for one of these benefits, veterans must show not only that they qualify for VA Pension, but that they also have a medical issue that gives cause for additional support. Veterans who qualify may receive either of the benefits, but cannot receive support from both simultaneously. Of the two benefits, Aid & Attendance is the greatest, and it is also the most difficult for veterans to qualify for.



*For a free pre-screen regarding VA benefits and long-term care options, call JacksonWhite at*

**1.800.243.1160**



## Qualifying for the Aid & Attendance Benefit

Only veterans who first qualify for VA Pension may qualify for Aid & Attendance, and only by satisfying certain medical requirements. Specifically, to qualify for the Aid & Attendance benefit, a veteran must meet at least one of the following conditions:

- Require another person's assistance to perform activities of daily living, such as bathing, feeding, and dressing
- Be bedridden
- Be in a nursing home due to mental or physical incapacity
- Suffer from blindness

## Qualifying for the Housebound Benefit

As with the Aid & Attendance benefit, only veterans who qualify for VA Pension are eligible for the Housebound benefit. In addition to meeting VA Pension's financial requirements, veterans must also meet one of the following requirements to qualify for the Housebound benefit:

- Qualifying veterans must have a single permanent disability that is 100% disabling and confines them to their immediate premises, OR
- Have a single permanent disability that is 100% disabling and another disability or disabilities that is 60% disabling.

## Applying for the Housebound or Aid & Attendance Benefit

Veterans can apply for the Housebound or Aid & Attendance benefit when they first apply for VA Pension, or at any time thereafter if their health deteriorates. When applying for either of these benefits, veterans must supply a written report from their physician that thoroughly describes their medical condition. The report should clearly illustrate the veterans difficulty tending to activities of daily living and describe any mobility issues that the veteran may have. The letter should make it adequately clear that the veteran suffers from the conditions required to obtain the benefit for which he or she is applying.

## The Approval Process

The VA receives a substantial number of benefit applications each month, and veterans can thus expect to wait for quite some time before their application is fully processed. In some instances, it takes the VA even as long as a year to respond, although the VA may pay VA Pension benefits retroactively upon approval. One thing that veterans should be aware of when applying for VA benefits is that they may have to begin the application process anew if they are denied, even if the eligibility issue can be resolved easily. For this reason, veterans ought to consider undertaking the application process with a veterans benefit attorney who can help them avoid missing benefit payments to which they are entitled.

## Monthly Pension Limits

The primary goal of VA Pension is to provide veterans with enough monthly income to cover their needed care related expenses. VA Pensions have capped rates, however, to provide assistance to veterans without being excessive.

For 2020, Pensions are capped at the following amounts:

- Single veteran: **\$1,146** per month
- Married veteran with Aid & Attendance: **\$2,266** per month
- Single veteran with Aid & Attendance: **\$1,911** per month
- Widow without dependents: **\$768** per month
- Widow with Aid & Attendance: **\$1,228** per month



# ADVANCE DIRECTIVES

## Preparing Advance Directives

### Using Advance Directives to Plan for Mental Incapacity

First, individuals should appoint an agent that they trust to act on their behalf so that important decisions are not left in the wrong hands. Second, they should outline health care wishes in case they lose capacity to communicate such wishes personally. With only minimal effort, a handful of documents can be executed that can prevent many difficulties from arising in the future. In short, this type of planning can prevent invasive legal interventions and save substantial sums of money.

### Living Wills

A living will is important to have in place. Individuals can use a living will to provide health care instructions in case they become unable to communicate those wishes personally. A living will can be either very specific or very general, such that it can merely decline life-sustaining treatment in the event of a terminal diagnosis, or provide specific instructions as to pain relief, antibiotics, hydration, feeding, and cardiopulmonary resuscitation. Even those with a health care power of attorney should also have a living will, since an agent under a power

of attorney may not know precisely what type of health care the principal wishes to receive.

### Health Care Powers of Attorney & Mental Health

With some frequency, the court has to appoint guardians to act for individuals who lose capacity to make important health care decisions personally.

Because guardianship proceedings can be both time consuming and expensive, every person should try to avoid this scenario by establishing powers of attorney while he or she has the capacity.

In simple terms, a power of attorney allows a person, called the principal, to authorize an agent to make legally binding decisions on his or her behalf. It is important to establish both a health care power of attorney and a mental health care power of attorney, as an agent cannot have a principal admitted to an inpatient mental health facility without the latter in Arizona.

Unfortunately, the mental health care power of attorney is often overlooked, but it is very important in the planning process because it can help avoid a great deal of cost if the principal ever loses capacity.

A principal under a power of attorney can either appoint the same person to act as agent under both the mental health care power of attorney and the health care power of attorney, or select two different agents altogether. Either way, a principal must appoint an agent or agents in whom he or she has absolute trust and confidence. When establishing a power of attorney, a principal can give the agent immediate authority, or grant authority that springs into effect if and when he or she loses capacity. Every principal must comply with the following statutory requirements to make sure that the power of attorney is valid and binding:

- The principal must clearly declare his or her intent to delegate authority to make health care decisions to a specific agent.
- The principal must be of sound mind and free from duress.
- The principal must have one witness and a notary present when he or she signs the power of attorney. The witness cannot be the agent, a relative or heir of the principal, or directly involved with providing the principal's health care.

## Financial Power of Attorney

In the same way that individuals should appoint an agent to handle medical decisions, they should also

appoint an agent to handle financial affairs. With a durable financial power of attorney, individuals can appoint an agent to make financial decisions, and the agent's authority can take effect immediately or only if and when the principal loses capacity to act for him or herself. To establish a valid financial power of attorney, a principal must:

- Understand the nature and effect of signing a power of attorney
- Sign the power of attorney willingly
- Initial any paragraph in the power of attorney that benefits the agent
- Have a notary and witness other than the agent, the agent's spouse, or the agent's children sign the power of attorney

Under Arizona law, a principal can give an agent limited authority to act on his or her behalf even after the principal is deceased. This way, the agent can rely on the power of attorney to arrange payment for funeral services and burial expenses. The document otherwise loses validity after the principal passes away, which is why it is so important to execute a valid last will and testament or revocable living trust. By appointing an agent to handle these types of issues, individuals can relieve a great deal of pressure from their family members at what will be an already trying time.

## A Note About Financial Management & Fraud Protection

Even in the very early stages of progressive diseases such as Alzheimer's, dementia, Parkinson's, and MS, many people suffer a diminished capacity to properly manage their finances. Oftentimes, this begins to happen even before they have been diagnosed with the disease, which makes them particularly susceptible to financial mismanagement and certain types of fraud.

When an individual cannot handle their day-to-day finances or becomes

more vulnerable to financial abuse, the consequences can be severe.

Individuals who forget or are unable to pay bills could get evicted from an apartment, lose their home to foreclosure, risk utility shut-off, or damage their credit. Those who fall victim to scams might get cheated out of large amounts of money or lose their home or assets. Sometimes individuals are taken advantage of before their family members know their health is declining.

These issues raise questions as to how to protect a loved one from these types of risks. There are several things that can be done.

1.

Encourage your loved one to establish a Financial Power of Attorney as early as possible.

2.

Assess the situation to determine if help is needed – look at their checkbook, talk with their doctor, take inventory of their bills. You should know relatively quickly if assistance is needed. Some individuals will welcome the help and others will insist they can handle their own affairs.





3.

Some older people need someone to handle every aspect of their financial affairs, while others only need help in certain areas. If possible, pinpoint exactly where the difficulties lie and then provide help only where necessary.



4.

Establish advance directives, as discussed previously in this guide. Having these documents in place helps create a safety net of sorts, such that the appointed agent can provide protection against mistakes or poor decisions that can begin to arise when an individual loses capacity.



5.

Opening a smaller checking account for which they retain responsibility, but moving the bulk of their assets to another account under the control of a spouse, family member, or appointed supervisor can prevent the inadvertent mismanagement of their assets. Be aware, though, that outright gifting can create unintended consequences in the event that your loved one ever applies for long-term care assistance. To this end, any funds moved out of your loved one's name will likely need to be returned in full if he or she applies for ALTCs. To prevent complications, you should seek counsel before transferring assets from your loved one's name.



6.

Joint checking accounts serve as another option that can allow an account supervisor to keep an eye on things and/or pay bills, while allowing your loved one to maintain some control. Before you set up joint accounts or move the bulk of assets be sure to consider all aspects including the fiscal responsibility of new account holders.



7.

And finally, you and your loved ones should become familiar with scams targeting the elderly and/or ill. Look for warning signs that your older loved one has been the victim of elder financial abuse, and help them take measures to protect themselves in the future.

It is important to broach the subject of financial assistance with sensitivity. Many people are embarrassed by their inability to handle their financial affairs or fear losing their independence. Together with other strategies specifically tailored to meet an individual's circumstances, this type of planning could be very beneficial.

*JacksonWhite offers free resources online including advance directive packets and power(s) of attorney forms. Visit [jacksonwhitelaw.com/ALTCs](http://jacksonwhitelaw.com/ALTCs) to download.*

# GUARDIANSHIP & CONSERVATORSHIP

## Applying for Guardianship or Conservatorship

Powers of attorney can be quite effective at allowing individuals to designate somebody else to make their medical and financial decisions. Powers of attorney cannot override a person's financial and placement decisions, however, and sometimes a person becomes unable to exercise sound judgment when it comes to such decisions.

Family members presented with this type of a dilemma can protect their loved one by applying for a guardianship or a conservatorship. A guardian is appointed by the court to oversee another person's medical decisions. Likewise, a conservator is appointed by the court to oversee another person's financial decisions. A variety of circumstances may lead families to apply for a guardianship or conservatorship. For instance, families may consider pursuing this course if their loved one:

- Is unable to make medical and/or financial decisions
- Is unwilling or unable to sign a power of attorney
- Becomes easily agitated, aggressive, or combative
- Gets lost or disoriented, but refuses to give up driving
- Is being exploited by a family member, friend, or scam artist
- Cannot control spending
- Is not safe to live at home, but refuses to move
- Has changed powers of attorney numerous times
- Has given power of attorney to an untrustworthy person
- Needs treatment in a mental health facility

The process of applying for a guardianship or conservatorship can be somewhat complicated, and it typically takes about eight weeks to complete. In certain situations, however, the court will appoint a temporary guardian or conservator to act while the process is underway. Because applying for a guardianship or conservatorship always requires court involvement, it is typically best for an attorney to handle the matter. Early intervention with designating powers of attorney can help avoid the need for guardianships or conservatorships, and is highly recommended.

# ESTATE PLANNING

Estate planning is the process of anticipating and arranging for the management of one's estate upon the end of their life or the loss of decision-making capacity.

The primary goal of estate planning is to protect, preserve, and manage an estate should a person pass away or become disabled and unable to make decisions. Creating an estate plan offers the chance to ensure that money and assets are distributed as their owner would prefer. Estate plans can also diffuse conflicts over the distribution of assets, minimize estate taxes, and help avoid the costs and delays of probate.

## What is Estate Planning?

Estate planning is often viewed as the way to leave the greatest inheritance for future generations; but, a comprehensive estate plan should also include management strategies for end-of-life issues.

A purposeful estate plan goes beyond organizing the transfer of assets at death. It also provides security and stability in life. Ultimately, with the assistance of an estate planning attorney, a person can create a customized estate plan that meets his or her specific needs.

## Who Should Have an Estate Plan?

Estate planning is not just for people with sizeable estates. Rather, even an individual with only a modest estate has much to gain from developing a purposeful estate plan. Preparing for the future can help a person preserve assets, no matter the size of his or her estate. The benefits of estate planning are not simply limited to the wealthy – virtually everyone can benefit from making simple preparations while they have time to do so.

Because no two people have the same exact life situation, estate plans vary from person to person.





## What Does an Estate Entail?

An estate consists of all of the property a person owns or controls. The estate property may be in his or her sole name, held in a partnership, in a joint ownership arrangement, or through a trust. This includes:

- Real Estate
- Cars
- Jewelry
- Household Goods
- Bank Accounts
- Life Insurance
- IRAs and ROTHs
- Annuities
- Stocks
- Bonds
- Limited Partnership Interests

## Types of Estate Planning

### Will

Generally speaking, a will is the single most important document that a person can include in an estate plan. At a minimum, everybody should at least prepare a simple will that:

- Designates a personal representative to handle his or her estate
- Designates a personal guardian for any minor children he or she may have

- Designates a property guardian to manage property for any minor children he or she may have
- Designates to whom his or her assets should be distributed

Often, executing a will is the simplest way to handle certain matters, however wills do have limitations. To begin with, assets such as pension plans, stocks, life insurance policies, jointly held property, trust assets, and payable on death accounts all prevail over a will, meaning that if one of these assets conflicts with a will by naming a beneficiary different than the beneficiary named in the will, the asset passes to that beneficiary without regard to the will instructions. Also, assets passed under a will must go through probate, which costs money and can be time consuming and invasive of one's privacy. Lastly, wills are intrinsically limited when it comes to leaving conditional gifts and funeral instructions.

With proper planning, however, a person can effectively deal with each of these issues in advance.

### Trust

An individual with a sizeable estate may need to take special precautions to avoid probate, to minimize tax liability, or to leave conditional or staged inheritances. There are a variety of estate planning strategies available that can help a person accomplish these goals, trusts being the most effective.

## Revocable Living Trust

Revocable trusts are created during the lifetime of the trustmaker and can be altered, changed, modified, or revoked entirely. Often called a living trust, these are trusts in which the trustmaker transfers the title of a property to a trust, serves as the initial trustee, and has the ability to remove the property from the trust during his or her lifetime. Revocable trusts are extremely helpful in avoiding probate. If ownership of an asset is transferred to a revocable trust during the lifetime of the trustmaker so that it is owned by the trust at the time of the trustmaker's death, the assets will not be subject to probate.

## Irrevocable Trust

An irrevocable trust is one which cannot be altered, changed, modified, or revoked after its creation. Once a property is transferred to an irrevocable trust, no one, including the trustmaker, can take the property out of the trust without meeting very specific requirements.

While revocable and irrevocable trusts are the most commonly used trust estate planning tools, many other types of trust can be utilized when appropriate, including:

- Asset Protection Trusts
- Charitable Trusts
- Constructive Trusts
- Special Needs Trusts
- Life Insurance Trusts
- Dynasty Trusts

## Estate Planning for Long-term Care

In addition to the basic assurances typical estate planning offers, supplemental layers of security can be implemented to cover events such as unexpected medical crises and long-term health care needs.

Estate planning facilitates the smooth transition of property from one generation to the next. The very nature of estate planning assumes that there will be an estate to divide and distribute, however nothing can wipe out an estate faster than the cost of long-term care. Those who fail to plan often find themselves at the mercy of government assistance.

While this is not always a bad alternative, it is ever-changing and there is little certainty about what government programs will look like in coming years. To this end, a comprehen-

sive estate plan should consider the possibility of long-term care, and should have safeguards in place to protect and preserve resources in the event that a need for long-term care arises.

## Other Estate Planning Considerations

### Updating an Estate Plan

An individual who already has an estate plan would be mistaken to believe that there is no reason to think about estate planning issues now or in the future. Nonetheless, this is a common mistake, and it could leave a person with an incomplete plan that ultimately fails to accomplish his or her most current goals. To get the most from an estate plan, it is important for a person to keep the plan current. There are several reasons why a person should regularly review his or her estate plan:



Estate  
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- The laws regarding estates and taxes change frequently.
- Family circumstances change, which can cause any number of changes to an estate plan.
- An individual may decide to change beneficiaries or allocations for a number of reasons.
- Original documents may be outdated or created in a state where the laws differ from Arizona's laws.
- An individual may acquire more assets that should be transferred to his or her trust or allocated in their will.

## Appointing a Personal Representative or Trust Administrator

Given the importance of deciding who gets what, it can be easy for a person

to overlook the significance of yet another decision he or she must make when creating a will or a trust – that of determining who will handle the probate estate or administer the trust. Even after a person leaves an inheritance, the gift cannot be completed unless somebody actually transfers the property from the estate to the beneficiaries. With wills, this person is known as the personal representative; and, with trusts this person is known as the trustee.

Neither the role of personal representative nor the role of trustee is easy to fill. These jobs are typically time-consuming and demanding, and they require a great deal of attention. When considering whom to appoint, an individual should select somebody that will understand his or her legal duties, and that will carry out his or her obligations to the estate. Selecting just the right person to act in this capacity can spare future complications to both the estate and to the family.



Call **1.800.243.1160**  
to set up your estate planning consultation.

## Why Create An Estate Plan Now?

There are a variety of reasons individuals do not get around to creating an estate plan. The most common excuses we see include:

- Never getting around to it/ thinking there is plenty of time to do it
- Avoiding it- not wanting to think about what would happen in the event of incapacity or death

- Thinking that the process is too complicated or expensive
- Assuming that estate plans are only for the wealthy

The truth is, an individual may have to confront many tough questions as he or she makes these important legal and financial preparations. But with an affordable, qualified estate planning attorney that can answer questions and develop strategies that are best suited for a person's particular situation, he or she will find a sense of security that comes from having a purposeful plan.

If you or your family still need to establish or update an estate plan, **JacksonWhite** is ready to help.

**Call 1.800.243.1160**





## **Our Long Term Care plan is for people of all ages who need ongoing care.**

**Coping with a long-term illness or disability isn't easy. We can help.**

As a Mercy Care member, you get a personal case manager who will:

- ▶ Meet with you, your caregiver and your doctor to create a plan to help you stay healthy
- ▶ Work with your health care provider when medical questions come up

We have over 5,000 providers and specialists in **Gila, Maricopa, Pima and Pinal** counties. We can help you find a doctor to meet your needs.

**Call us today.** Our Member Services Representatives can help you Monday through Friday, 7 a.m. to 6 p.m. Please call **602-263-3000** or **1-800-624-3879** (TTY: **711**).

Contract services are funded under contract with the State of Arizona.

[www.MercyCareAZ.org](http://www.MercyCareAZ.org)



## **Nuestro plan de atención a largo plazo es para personas de todas las edades que necesiten atención continua.**

**No es sencillo lidiar con una enfermedad o discapacidad a largo plazo. Nosotros podemos ayudarlo.**

Como miembro de Mercy Care, se le asignará un administrador de casos personal que hará lo siguiente:

- ▶ Se reunirá con usted, su cuidador y su médico para crear un plan para ayudarlo a mantenerse saludable
- ▶ Trabajará con su proveedor de atención médica cuando surjan preguntas médicas

Contamos con más de 5,000 proveedores y especialistas en los condados de **Gila, Maricopa, Pima y Pinal**. Podemos ayudarlo a encontrar un médico que satisfaga sus necesidades.

**Llámenos hoy.** Nuestros representantes del Departamento de Servicios para Miembros pueden ayudarlo de lunes a viernes, de 7:00 a. m. a 6:00 p. m. Llame al **602-263-3000** o al **1-800-624-3879** (TTY: **711**).

Los servicios del contrato son financiados de conformidad con el contrato con el estado de Arizona.

[www.MercyCareAZ.org](http://www.MercyCareAZ.org)

JACKSON WHITE  
ATTORNEYS AT LAW  
Elder Law Attorneys

*Offering Statewide Service*

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