LNP 262 Elder Law and Estate Planning

Christine Brown Murphy

Kelly: Hi, and welcome back to the Legal Nurse Podcast. This is your co-host Kelly Campbell. Our guest today is Christine Brown Murphy. We're in for a treat; today's topic is "Elder Law and Estate Planning."

Welcome Christine.

Christine: Thanks, Kelly, for having me. I'm excited for this next half-an-hour.

Kelly: It's going to be great. A little bit about our guest today, Christine Brown Murphy is a Partner of Zacharia Brown Elder Law Firm. She provides advice and counsel to families in the areas of asset protection planning, Medicaid and Veterans' benefit eligibility, estate planning and estate administration. Christine lectures on elder law topics to professionals and community groups. She can be heard on KDKA radio.

Thank you so much for joining us today.

Christine: It's a pleasure to be here.

Kelly: You and I first met at a legal nurse business Pittsburgh conference, and as soon as I heard you speaking, I knew that we needed you on this podcast. You are a wealth of information.

Christine: A great fate.

Kelly: In fact, after this podcast and probably within the next week, I also will become a client of yours.

Christine: I'm looking forward to it.

Kelly: I realized that I am behind the curve. There's a lot of things I need to do. I guess to get started, I guess the very first thing is "Power of Attorney." Can we get started with that?

Christine: Absolutely, the "Power of Attorney." I know that when I was speaking in Pittsburgh, I really centered the conversation around "Power of Attorney" and the importance of "Power of Attorney." In our office, doing what we do as elder law attorneys, helping folks who are concerned about the possibility of needing long-term care, really dealing with folks when they're in their most troubled times in life a "Power of Attorney" is by far the most important document you can have.

Now a lot of people think "Power of Attorney," that sounds kind of scary. "Am I giving an attorney some kind of power to act over myself?" . That is not what a "Power of Attorney" is. What a "Power of Attorney" is, is a legal document in which you appoint another person or persons to act on your behalf in the event you are unable to do so for yourself.

So, I fall ill, I go into the hospital, and for whatever reason I have a bank account on my own, and my husband needs to access money to pay our bills from our bank account. The only way he would be able to do that is by utilizing or having "Power of Attorney" over me so that he can then go to the bank, write checks on my behalf, sign checks on my behalf, and do what he needs to do to be able to properly handle our financial matters.

What "Power of Attorney" gives to people or the person you trust most in your life is the ability to make financial and healthcare decisions for you if you need that kind of help at some point in your life.

Kelly: That's so important. Most of us are nurses obviously and we instantly think of "Power of Attorney" being for healthcare decisions, but it is also for financials, and that was very enlightening for me. What is the difference between a will and a trust?

Christine: A will and a trust function differently. They have different purposes. The purpose of utilizing a will or a trust, especially in Pennsylvania, can vary.

A will, a last will and testament, is a document that allows for you to identify where you want your things to go upon your passing. It also allows for you to appoint who your executor should be. That will be the person who's going to be responsible for administering your estate upon your passing, so paying your last expenses, your taxes, putting the home on the market, preparing it for sale. The will allows for you to identify the executor as well.

The will also allows for you to think about what if you have minor children and you need to appoint a guardian for those minor children. "Who's going to step into your shoes should you and your spouse be incapacitated or pass away and no longer be able to be here to care for your children?"

It allows you to appoint the folks you think are best capable of taking care of your children. It allows for you to create a trust within your will that will designate assets to be held in trust for the benefit of your children. It could even be grandchildren if you want to leave something to grandchildren.

It allows for the trustee to utilize those assets for the benefit of those young children, and then the trust is dissolved when those children reach an age that you think they are most capable of being able to responsibly handle their affairs.

Now a lot of people assume that everything passes through your will. When we have folks come into our office, we sit down and they just assume that by preparing the will that they have dotted their I's and crossed their T's, and that is not the case. If you have assets which you jointly own with another person, or investments or assets in which you have a beneficiary designation listed, your will does not control any of those things. A lot of people are really surprised to learn that the will doesn't actually control as much as they think it does.

Kelly: This was the big surprise to many of us.

Christine: I can see it on your face that you're surprised.

Kelly: Yes, and I think you recall that there ended up being so many hands being raised. It's finding the correct executer of the will. I don't want to interrupt you because there's more that I know you need to cover, but if you don't mind, the executor of the will and defining that a trust is not for silver spoons as I recall you saying that.

Christine: A lot of people assume. There are pros and cons to trust. In Pennsylvania… Well, what I should just say is what a trust is first.

A trust has its purpose. Typically, we are utilizing the trust in our office for folks who have property in another state than just Pennsylvania. Maybe they're on their second marriage, maybe have an heir or a spouse who's unable to properly manage money. In those circumstances, a revocable living trust may be appropriate because what we don't want to do is to have to probate in Pennsylvania as well as another state. A revocable trust does in a second marriage will allow you to plan to make sure that if you were to pre-decease your spouse, your children from your prior marriage can in fact actually inherit something from you.

If you have a spouse or a loved one who is unable to manage money and you pass away, a trust will allow for you to appoint a trustee to manage that money for that surviving spouse. In our office surprisingly, we don't utilize revocable trust all that often because they're just not as necessary unless you fall into one of those categories in the Commonwealth of Pennsylvania.

In our office, because of the type of lawyers that we are, is we utilize something called an irrevocable trust. The purpose of the irrevocable trust is more along the lines of asset protection planning. As we age, folks become more and more concerned about the possibility of needing nursing home care. With you being in the healthcare industry and all of the nurses we're speaking to in the healthcare industry, I think that some of us, maybe many of us and maybe all of us have had some exposure to what happens, and the cost associated with nursing home care.

In Pennsylvania, the average cost of nursing home care exceeds $10,000 a month. It's very expensive, and there's very little insurance that actually pays for it. When folks are coming into our office and we're talking about estate planning and how can we be sure to maximize our estates and see as much as possible pass on to our heirs, really, we're looking more toward the lines of irrevocable trust for the purpose of asset preservation planning. The real threat against our estates isn't really taxes, and it's not probate, but the real threat really does become long-term care the longer we live. That threat is real. It’s real against the estate.

Does that answer your question?

Kelly: Yes, and so that leads me to think do you believe long-term care insurance is a good idea?

Christine: I don’t sell insurance. That’s not what we do, but I do think that it is a discussion that you should have if you have a financial planner or a financial advisor. The older we get, the more difficult it becomes for us to become insured and to be able to attain long-term care insurance. I do think depending on the circumstances it may be appropriate. I don’t think across the board it’s something that everyone needs to have, but I definitely think it is a discussion that should be part of your estate. If we’re only blindly thinking about how we save up to the point of retirement, and then how do we pass things on to our heirs, we’re failing to really think about what can happen post retirement, which is we get sick and need nursing home care. Long-term care insurance should be part of that discussion.

Kelly: Again, thank you.

Christine: You’re welcome.

Kelly: When do you think we should start considering?

Christine: A great question and we get that question a lot. I think that if you’re considering the long-term care insurance path, it should be in your 40s and 50s when you’re healthy, when you’re insurable, when you’re able to get the coverage at a fairly reasonable premium. I think that is when that discussion should be had.

Now do most people do it?

No. It’s very obvious that most people don’t do it. We know nobody wants to pay money for something that might happen or might not happen 30 years or 40 years down the road. That discussion should be had in your 40s and 50s, and sometimes in your 60s if you’re still fairly healthy.

As far as doing estate planning, we always say that everyone regardless of age should have a basic estate plan. You should have your will. You should absolutely have your "Powers of Attorney," your Financial Power of Attorney, your Healthcare Power of Attorney, and your living will. That is the foundation.

As we progress along, as we age, we want to revisit long-term care planning as far as asset preservation planning with us as elder law attorneys really into your 60s. If you're healthy, we typically say the age of 70 is a good time to maybe begin planning beyond just the basic estate plan, beyond the will and Powers of Attorney. We then maybe want to start thinking about the irrevocable trust. If you are someone who has been diagnosed with a dementia and Alzheimer's, Parkinson's or those types of illnesses that we know are progressive, we can be sick for a very long period of time, and that can be very costly, then you need to start planning as soon as you get that diagnosis.

Kelly: Okay that's obvious. It's obvious.

Christine: Yeah, but it's not surprisingly. It's obvious to us, not to many others.

Before we continue with the show, this is Pat Iyer to share with you one of my online trainings that I think will really help you with the financial aspects of your business. It is called **Smart Money Management.**

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Kelly: We hear a lot about the five-year look back. I say that, but I've never heard of the five-year look back until your first presentation. Can you tell us a little bit about that?

Christine: If you've never heard of it, then you've probably been fortunate enough to not have to have someone that is so seriously ill that they had to reside in a nursing home. That's really where that five-year look back becomes a significant issue.

When someone gets sick, they have a hospitalization, and they are discharged from the hospital to a nursing home for therapy, that's typically what the purpose of the admission to the nursing home is. It's to get some kind of therapy to see if they've regained enough strength and get back to a baseline that will allow for them to go and reside back out into the community.

The clients who come through our door are folks who are not able to get strong enough to go back out into the community, so they end up having to reside in a nursing home. When you're discharged from that hospital into the nursing home for that therapy, your insurance is covering potentially up to 100 days. Now most folks never get 100 days of coverage. It really would be more in the lines of between 20 to 40 days of insurance coverage.

It's unfortunate, but when you get that notice of Medicare Noncoverage, within two days you are terminated from your insurance. If you're not able to go home, you then become a long-term care resident at the nursing home on a rate of $10,000 a month. Families are then either writing a check to the nursing home every month until they become impoverished, or many families come in to see us and they say, "Mom and Dad or my spouse and I worked so hard to accumulate the savings, the little nest egg that we have and now I'm being told I have to write a $10,000 check per month toward the cost of care. Is there any other option? Is there something else that we can do so that we don't become impoverished just because my parent is so sick, or my spouse is so sick, and they need long-term care?" That's where we come in.

Medicaid is the primary payer of long-term care. Medicaid does not actually require you to become impoverished in order to be eligible for Medicaid to pay for the cost of care, but you have to meet the financial criteria. What we are doing helping folks devise plans to become eligible for Medicaid without losing their family home and financial assets. When we're preparing this Medicaid application, Medicaid wants to know what you have done with your assets five years prior to applying for Medicaid to pay for the cost of care.

When you submit that application, you have to supply five years of all of your financial information because basically they are auditing your information. They want to know if you've given away your assets in an attempt to impoverish yourself so that Medicaid would pay for the cost of care. If you have, then Medicaid says, "We're not paying for the cost of your care for a period of time." That period of time is based on how much money you've given away and they divide it by the average monthly cost of nursing home care.

If there are people out there who have a loved one who needs nursing home care, it doesn't mean that you can't preserve your estate. You have to make sure that you do things properly, or else you can have a significant issue with Medicaid eligibility. That's really where that 60-month, five-year look back is. They want to know have you given anything away in an attempt to impoverish yourself to become eligible for Medicaid.

Kelly: Right, I recall that now. I look back and I recall. "Look back," see its pun.

Christine: Exactly.

Kelly: A disclaimer here to the audience, I'm 45. I just turned 45 last week, and it is time for me to start planning. Why should I see an elder law attorney versus an estate attorney?

Christine: That's a great question. I always tell people we are estate planning attorneys on steroids. I know that's kind of cheesy and corny or whatever you want to call it, but we really are. The reason for that is estate planning attorneys have truly one objective or maybe a couple of objectives. The primary objective being, when you die where do your things go and how can we make sure you pay as little as possible in taxes? They're missing such a huge, significant portion of protecting and planning for your estate, which is the potential disability.

With the federal estate tax rules now, unless you have an estate in access of $11 million, $22 million for married couples, we don't really need to worry about doing much tax planning. Most average people don't have to worry about how they are going to pass on their $22 million estate for your federal estate taxes. People like me and the other folks in my office, and maybe you, we work and we're trying hard to accumulate some things, pay off our homes, maybe put some kids through college, put some money in the bank, and hopefully retire someday.

The reality is that if you just do an estate plan that fails to address the possibility of disability, then you are selling yourself short. You will have to redo your estate plan as you age frankly because your documents can't ignore the very real possibility of how to protect your estate not only from taxes when you pass away but something that's going to be much more impactful on your estate, which is nursing home care.

If you're paying $120,000 a year for long-term care cost, you may have nothing left to pass on to your children. When you're sitting down thinking about your wills and Powers of Attorney, you need to be thinking about whether these documents address the possibility of needing nursing home care.

Kelly: Right or even an unexpected injury, or unexpected diagnosis.

Christine: Absolutely and how can you be at home? I think that is one thing that I do want to emphasize. Our office is not only thinking about how we get somebody in a nursing home. Truly, the primary goal of our office is to allow folks to age in place without becoming impoverished.

There are so many programs out there that allow for us to assist in accomplishing that with our clients, but the basis of being able to accomplish any of those goals is having a solid estate plan done. It's having the estate planning documents that allows for us to engage in the planning that needs to be done in order to take advantage of those programs that do exist.

Kelly: For me it's a no-brainer, obviously I'm making an appointment with you. I guess this 'on steroids' totally makes sense.

Christine: Does it make sense? Okay.

Kelly: It does to me.

Christine: At 45 years old, I'm sure you're not really excited about coming to see an elder law attorney, but it's just a term of art. We're estate planning attorneys as well.

Kelly: Here's the thing, you have to be prepared and that's what it's all about.

Christine: It really, really is.

Kelly: We in the legal nurse consulting field and life care planning field, we know all too well that an unexpected accident, malpractice, personal injury just flips your life or your client's life upside down.

Christine: It does.

Kelly: One has to be prepared.

Christine: Just within the last two weeks I had a 42-year-old in a severe accident, no documents, and no Power of Attorney. She has a retirement account. This is a family that's still trying to build something. At that age, you're working, and you have small children. You don't have a huge nest egg to rely upon should something like this happen. Her spouse without a Power of Attorney has no ability to access any retirement funds that they may need to access to be able to continue to keep their family afloat. I had a 52-year-old who was very similar. He's not incapacitated, but he has a mass, and it has progressed to the point where he cannot be home any longer, and he has to be placed in a nursing home.

These are things that we don't want to happen, God forbid, and we don't foresee these things happening, but they can happen even if you’re not an 80-year-old individual. It happens when you’re young too, unfortunately.

Kelly: Just full disclosure, my audience has heard this before, but you haven’t. When I was 30, I had surgery for a simple ganglion cyst removal. I woke up and they had operated on the wrong side, and my ulnar nerve was severed. I do not have full function of my left arm and my left hand. I used to be a perfusionist, heart-lung bypass surgery, and you have to have both hands. Things happen, life altering.

Christine: I hope you got a good settlement.

Kelly: You know what, I would take anything to have my life back. I’m in a great field helping other people and pay it forward because prior to this I had no idea legal nurse consulting existed, nor life care planning. That’s the most rewarding part of this career is helping the people on the other side whether it’s doing plaintiff or defense, and I’m talking to the audience now, you’re always helping a person who is going through something and that’s what you guys are doing.

Christine: Yes. I think that every day, my partners and I, and the other attorneys in the office, we can truly feel that we are helping people who are in the direst situations in their life. Not only are they dealing with their loved one who can’t come home, who is sick and doesn’t know who they are maybe even in some cases because of dementia or Alzheimer’s, now they’re fearful they’re going to lose everything they have, and how is the spouse who is healthy at home going to be able to pay their bills? Are they going to lose their home? Are they going to lose everything that they worked so hard and they done really all those right things in life? They paid off their bills and put some money in the bank to be able to not rely upon anyone and then unfortunately one of them gets sick.

We get to have the honor of being able to help these folks figure out how to give them some piece of mind and allow them to put all that energy into caring for their loved one. We handle how to keep them afloat and preserve their estate. It’s just so rewarding. It really is.

Kelly: I picked up on that when I met with you in person.

Christine: Good, I'm glad. I'm glad because this is how I feel.

Kelly: Before we close, what would you say is your best advice for someone to make sure their elderly or sick loved one is taken care of?

Christine: Don't be afraid to come in and see an elder law attorney. I think so many folks are afraid of what we charge. The reality is that I've already said over and over again: $10,000 a month is real. That is not inflated. That is not a pretend cost. That is real. I'm telling you that the cost associated with long-term care far surpasses what we ever would charge to help put you in a place that gives you the financial confidence to know that you won't lose everything you have. Don't be afraid to seek an elder law attorney. There are a lot of folks out there who are calling themselves elder law attorneys, but don't necessarily do what it is that we do.

Number one, I would say contact Zacharia Brown, but for whatever reason that's not who you are going to call make sure that the attorney that you do call that you inquire "How many Medicaid applications have you handled" because in our office it's thousands of applications. "How many attorneys devote their practice to elder law?" "What other areas of law do you practice?" because you can't do it all especially when you're doing elder law.

I think the most important thing for folks who are going through this is to first make sure you have your basic estate plan. We need to have Powers of Attorney in place to ever be able to help. That's the reality. You need to get those done.

Number two, as I just went on that recitation there, is to make sure you are seeking an elder law firm for help.

Kelly: How do we contact you?

Christine: We have a lot of ways. Actually, we are out in the community all the time. We have two radio shows, so we do a radio show on KDKA one Tuesday per month. It's the third Tuesday at 7:00 on 1020 AM. We also have a radio show every Sunday morning on 94.5 at 7:30 am. We have a really great website. The website is www.PittsburghElderLaw.com. We have a ton of information on there. We have very easy access for people to send in an email if it's a question or if you would like to schedule an appointment you can just access our email directly from the front page.

Kelly: Say your website again one more time so people won't have to hit the rewind or back button.

Christine: Absolutely. It's www.PittsburghElderLaw.com and it is all spelled out. The number to make an appointment is (724) 942-6200. We have a really fantastic intake secretary, Marie, and everyone who calls loves her. She will do a really great job preparing people and describing what it is that we do in our office.

We also have four office locations. We have one where I'm at right now, which is McMurray, south of Pittsburgh. We also have one in Wexford, as well as in the McKeesport area in the east part of the city. We also are licensed to practice in Florida, so for those snowbirds and folks who kind of spend some time in Pennsylvania and those winter months in Florida, we also have an office in Florida.

We have a lot of ways that you can contact us. A quick way is www.PittsburghElderLaw.com all spelled out. We're also on Facebook, Twitter and Instagram.

Kelly: How about LinkedIn? Are you on LinkedIn at all?

Christine: We are on LinkedIn as well.

Kelly: That's my favorite social media, so I'll be contacting you on that too.

Christine: Wonderful.

Kelly: Well thank you so very much. I had more questions addressed again today.

Christine: Good I'm glad. I'm glad to be helpful.

Kelly: All right audience, join us next week. I'm most certain you learned something today, so join us again next week. Bye-bye.

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