

Advocates and Guardians for the Elderly & Disabled

Guardianship and Long Term Care Insurance:
Understanding policies, claims and engaging experts

Attorney Steven M. Dunn and Attorney Kevin M. Dunn

Speaker Introductions

The Law Offices of Steven M. Dunn, P.A.

Attorney Steven M. Dunn

Attorney Kevin M. Dunn

- **The Law Offices of Steven M. Dunn, P.A is a law firm focused primarily on long term care insurance litigation and disputes.**
- **The firm transitioned to long term care after attorney Steven Dunn sued on behalf of his Father over a long term care insurance dispute.**
- **Since then the firm has been involved in thousands of long term care insurance cases.**
- **Some of the firms work has had profound effects on Florida long term care insurance law including arguing and winning a landmark long term care insurance case at the Florida Supreme Court.**

Types of Guardianships

Guardian of the person

The guardian of the person has the authority to exercise only the personal rights that have been removed from the ward by the court and delegated to the guardian.

The rights that may be removed from a person and delegated to a guardian include:

the right to contract,

to apply for government benefits,

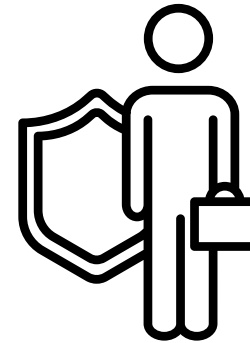
to sue and defend lawsuits,

to manage property or to gift or dispose of property,

to determine his or her residence,

to consent to medical or mental health treatment,

and to make decisions concerning his or her social environment.



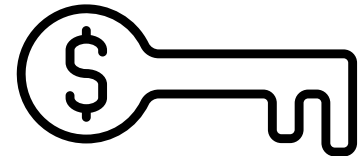
Types of Guardianships

Guardian of the property

A guardian of the property takes care of a ward's finances.

The guardian of the property manages the assets, bank accounts, real estate, and investment. This includes:

- **Paying bills**
- **Arranging to sell assets for the fair market value when necessary**
- **Maintaining real property**
- **Distributing the income**



Types of Guardianships

Guardian of Person and Property

The guardian of the person and property has been given the responsibility by the court to make decisions regarding both the personal and property rights of the ward.

This is the guardianship we will be focusing on today.

The Guardian responsibilities we will focus on today are;



Acting in the best interest of the ward



Protecting the wards assets

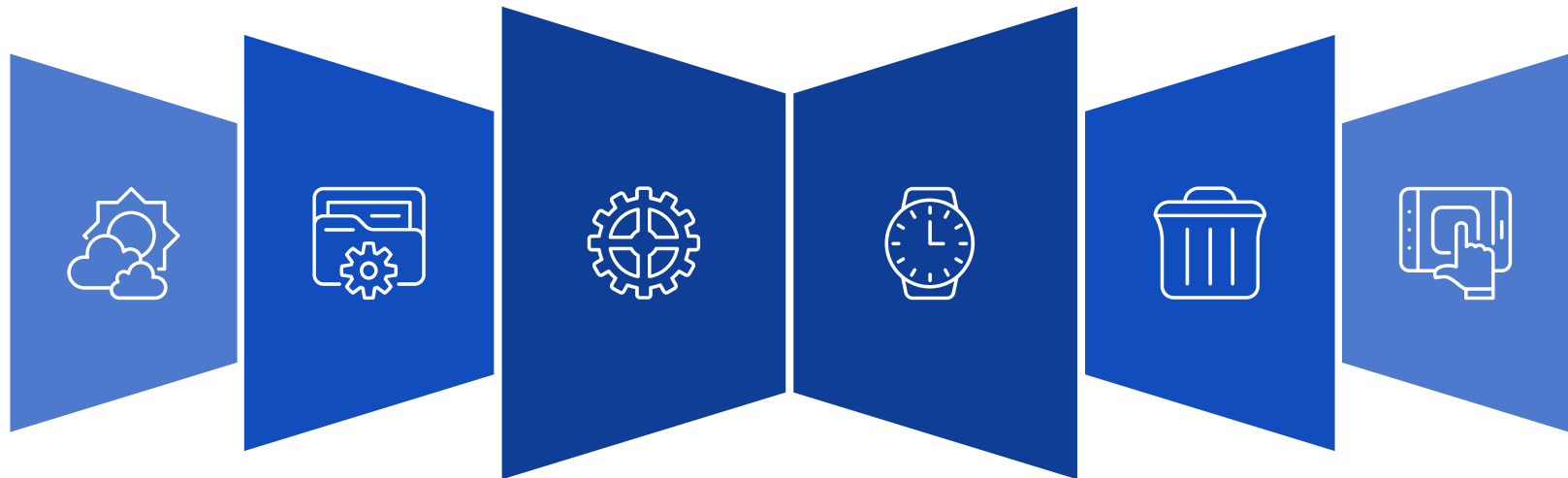


Understanding the different insurance policies a ward may own



Contracting / Hiring Attorneys

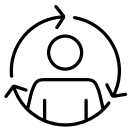
LONG TERM CARE INSURANCE



WHAT IS THE PURPOSE OF LONG TERM CARE INSURANCE?

01

Keep you independent for as long as possible



02

Keep you healthy and safe



03

Give your options for your care

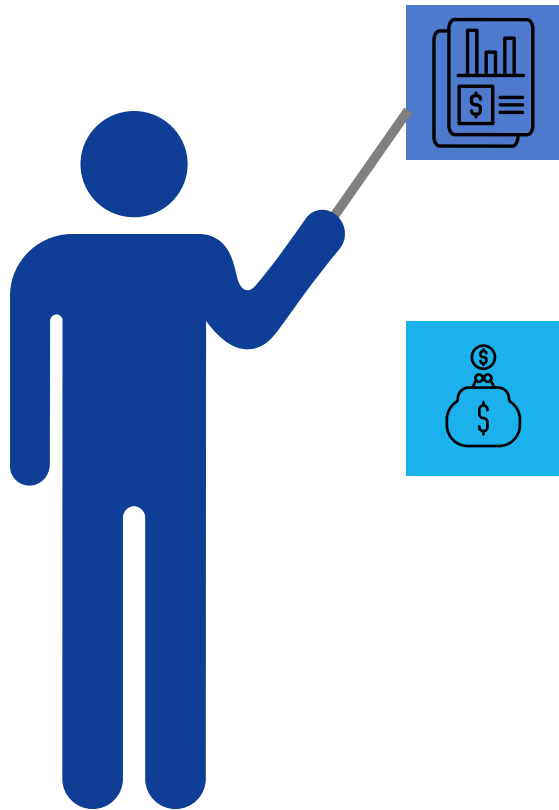


04

Protect your assets for your children and grandchildren



WHAT TYPE OF POLICY DO YOU OWN?



REIMBURSEMENT

This is the most common policy type. This type of policy will reimburse you up to your daily maximum amount.

INDEMNITY

These policies are like annuities. These policies will pay you the stated daily maximum amount regardless of how much you spend on care.

COVERAGES



Nursing Home Only

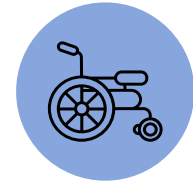


Home Care Only



Comprehensive Coverage

Assisted Living
Nursing Home
Home Care
Hospice



Ancillary Coverages

Durable Medical Equipment
Home Modification
Life Alert
Care Coordinator
Homemaker Services

THE ELIMINATION PERIOD



- The elimination period is a predetermined period of time in which you must **need and receive** covered care.
- You are responsible for paying for these services out of pocket.
- Almost all policies contain an elimination period.
- Length of the elimination period varies.
- The definition of the elimination period also varies.

ELIMINATION PERIOD STRATEGY

Start with home care: this allows you to economize, and familiarize yourself with getting care.

Be cognizant of what counts as covered services for elimination period satisfaction.

Stays in rehab paid by medicare can often be counted towards the elimination period.



POLICY TRIGGERS

Are you eligible for benefits?

01 Require assistance (hands on or standby) with at least two activities of daily living, or



ADLS

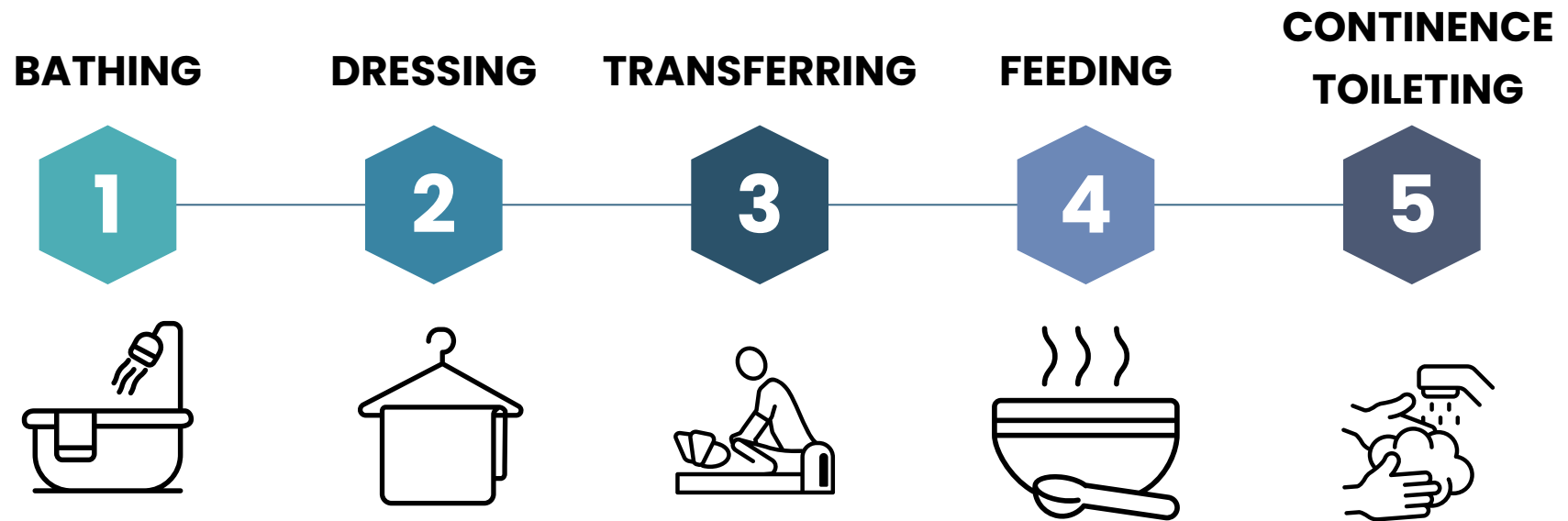
02 Require supervision due to a cognitive impairment.



**Cognitive
Impairment**

POLICY TRIGGERS

THE ACTIVITIES OF DAILY LIVING



**Hands on versus
standby assistance**

COGNITIVE IMPAIRMENT TRIGGER



STANDARD IN MOST POLICIES

The standard in most policies is “you must suffer from a severe cognitive impairment” in order to trigger benefits. However, the real standard is the Florida law standard below.

FLORIDA LAW STANDARD

The Florida law standard is that the impairment must be such that you are a risk of harm to yourself or others.

PREMIUM INCREASES

Increases are becoming more common

Increases range from 50% - 100% over three years.

Insurance companies are being required to offer options to keep cost of premiums down.

These options include reducing benefit amounts, reduction in coverage, longer elimination period etc.



What can you do?

Waiver of premium

Most policies will waive premiums if you start receiving covered care. A little help a few days a week is enough for the waiver to kick in.



Talk to the experts

Speak to a long term care attorney to understand exactly what your current policy offers and what a compromise would mean for you.

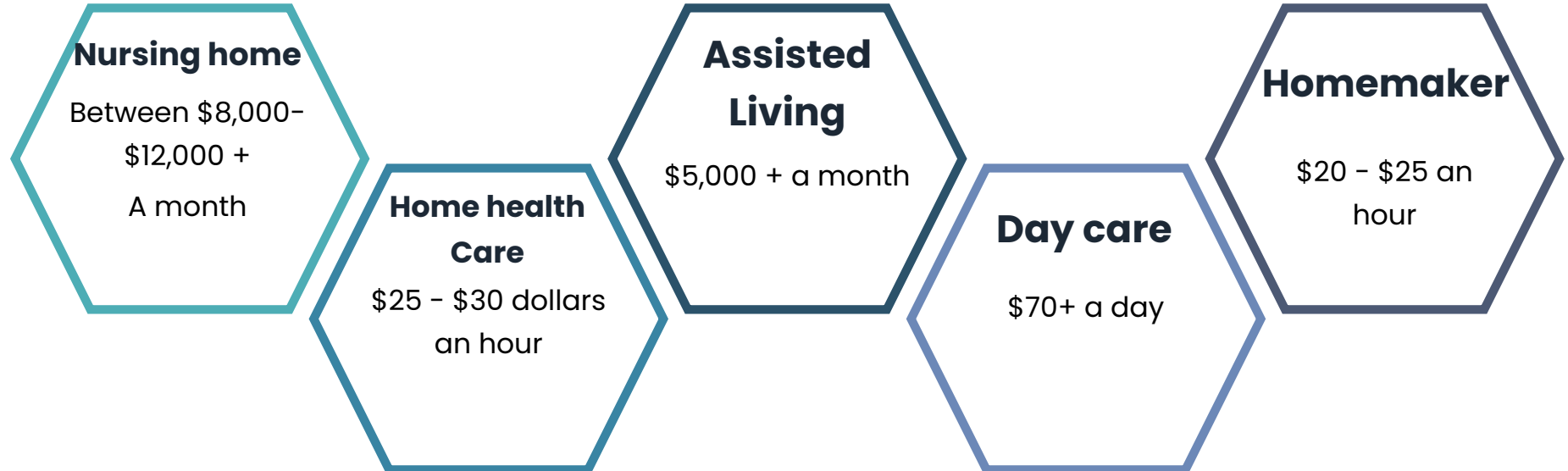


Speak to a financial planner to determine if you can:

1. Keep paying your premiums, or
2. Come up with a plan to pay for future care another way



COST OF CARE



Importance of engaging experts

- **Policies are complex legal contracts**
- **Policy language may not necessarily conform to state law**
- **Policies are complex financial instruments – values can exceed one million dollars**
- **Claim delay and denials can be catastrophic**

Engaging attorneys on behalf of a ward

Florida Statute 744.441 & 744.447

- **744.441 outlines the powers of a guardian upon court approval**
- **The most relevant for today are sections K, O, U**
- **K: Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties.**
- **O: Exercise any option contained in any policy of insurance payable to, or inuring to the benefit of, the ward.**
- **U: Enter into contracts that are appropriate for, and in the best interest of, the ward.**

Engaging attorneys on behalf of a ward

Florida Statute 744.441 & 744.447

- **744.447 outlines the process for seeking court approval for the actions articulated in the prior slide.**
- **The Guardian must submit their petition to the court**
- **Petition must include the facts and circumstances that give rise to the need for attorney intervention**
- **Petition must also include information about the retention agreement, i.e the price / terms / scope etc**
 - **In the past the firm has submitted our retainer agreement in it's entirety for review by the court.**



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Policy Reviews and Consultations

Policy Activations

Claim Denials

Policy Lapses