

much of what she was doing was perfectly legal, Strub told *Bottom Line Health*. A court-appointed guardian has the legal authority to control every aspect of your life:

- Determining where you live, including moving you into assisted living or a nursing home of their choice
- Controlling your finances, real estate, and other assets
- Making all of your health-care decisions and providing consent for medical treatments
- Placing restrictions on your communications and interactions with others, including family members
- Making decisions about your daily life, such as recreational activities, clothing, and food choices
- Making end-of-life and other palliative-care decisions

Perhaps one of the most disturbing aspects of guardianship cases, Strub adds, is that once a person has been assigned a guardian, it's extremely difficult to have the guardian removed—even if an illness was temporary or a family member tries to intervene. A study by the American Bar Association found that family members who try to fight against court-appointed guardians incur vast costs, even going bankrupt, and still often lose.

While the April Parks case has brought attention to the abuses

in the guardian system, it hasn't eliminated them. In fact, as the population ages and the court system struggles to keep up with its current load, it will only grow harder to provide proper oversight of the professional guardian profession, Strub warns.

Protect yourself now

Fortunately, you can protect yourself from falling prey to this broken system by creating a plan where you choose who will take care of you, she says. An “incapacity plan” or a “care-and-protection plan” will include some, or all, of the following documents:

- **Health-care power of attorney.**

This document grants an individual of your choice the immediate legal authority to make decisions about your medical treatment in the event of your incapacity.

- **Living will / advance directive for health care.** This provides specific guidance about how your medical decisions should be made during your incapacity.

- **Durable financial power of attorney.** Use this document to choose who will have the immediate authority to make decisions related to the management of your financial and legal interests.

- **A revocable living trust** transfers

control of all assets held by the trust to a person of your choosing to be used for your benefit in the event of your incapacity. The trust can include legally binding instructions for how your care should be managed and even spell out specific conditions that must be met for you to be deemed incapacitated.

- **Family/friends meeting.** Even more important than all of the documents listed here, the very best protection for you and the people you love is to ensure that everyone is on the same page. Set up a meeting with the attorney that you hire to prepare your documents and any people affected by your plan to explain to them the plans you've made, why you've made them, and what to do when something happens to you.

It could be a good idea (though not necessary) to name different people for each of the roles in your planning documents. In this way, not only will you spread out the responsibility among multiple individuals, but you'll ensure that you have more than just one person invested in your care and supervision.

How to get the documents

An experienced estate planning attorney who focuses his or her practice in this area can help you choose the plan that will work the best for your unique circumstances and prepare the needed legal documents. But this isn't a once-and-done process. You'll need to regularly review and update these planning tools to keep pace with changes in your assets, your life and relationships, and federal and state tax laws.

While you can't eliminate the risk of incapacity, you can use estate planning to ensure that you have some control over how your life and assets will be managed if it ever does occur. ■

Bottom Line Health interviewed **Rebecca Strub, JD, LLM (Tax)**, a personal family lawyer and the owner of Strub Law LLC. She is licensed in New Jersey, New York, and Pennsylvania.

Act Now!

No matter how old you are, these tools should be implemented immediately. It's important to note that any adult could face court-ordered guardianship if they become incapacitated by illness or injury. So it's critical that every person over age 18—not just seniors—puts these estate planning tools in place to prepare for potential incapacity.

The high-profile case of Terry Schiavo was a heartbreaking example of the need for planning ahead. In 1990, the 26-year-old went into cardiac arrest and entered a persistent vegetative state. Eight years later, her husband petitioned for her feeding tube to be removed, insisting that she would not have wanted to continue life-prolonging measures with no hope of recovering, while her parents argued that she would, in fact, want to be kept alive by any means necessary.

Because Mrs. Schiavo did not have a living will, her loved ones engaged in a high-profile legal battle that dragged on for seven years. The governor of Florida, Congress, and the U.S. president all got involved—as did the court of public opinion. Mrs. Schiavo's feeding tube was removed and replaced multiple times before her death.



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