July 2026

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Protecting Your Online Legacy By Beth A. McDaniel, JD, CELA

Over the years, I have had the privilege and pleasure of serving many wonderful clients. There are some client meetings which are fixed firm in my memory. One such meeting was with a daughter who brought her late father's laptop to the meeting. She...

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Lifestyle Factors which Support Longevity

By Beth A. McDaniel, JD, CELA

Writing about Beverly's case for this newsletter was a little triggering for me as my mother-in-law died in a similar matter. Moreover, my paternal grandmother spent just shy of her final ten years in a skilled nursing facility. Skilled care is expensive and more skilled nursing facilities are owned by private equity firms which prioritize maximizing profits over quality of care.

My hope is that my loved ones and clients can avoid spending their final years—and resources—in such

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Justice for Beverly: Challenging a Care Facility's Mandatory Arbitration Clause By Beth A. McDaniel, JD, CELA

On June 29, 2026, the State of Washington Court of Appeals issued an unpublished opinion* involving a lawsuit filed against a Mercer Island nursing...

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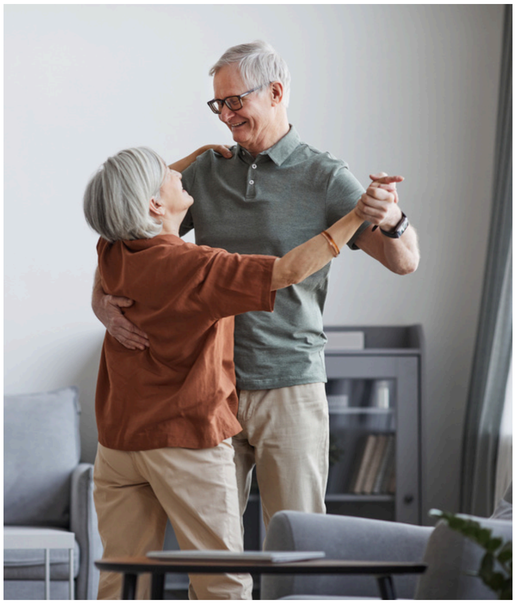
CONT: LIFESTYLE FACTORS WHICH SUPPORT LONGEVITY

facilities. Fortunately, experts say lifestyle choices account for about 80% of longevity, while genetics account for about 20%, meaning there are steps which can be taken to postpone —or possibly avoid — the need for such care.

According to a Harvard Study, if people follow five lifestyle factors starting by the age of 50, they can increase their life expectancies by 12-14 years. According to the study, women who did not follow the five lifestyle factors lived on average to age 79. The women who added the lifestyle factors at age 50, lived to age 93. Men who started the lifestyle factors at age 50 added almost 10 years on average, from age 75.5 to age 86. Here are the five lifestyle factors:

1. Developing a healthy lifestyle pattern, including enough daily servings of fruits, vegetables, and fiber, and getting adequate sleep
2. Not smoking
3. Doing 3 to 3.5 hours of moderate to vigorous exercise per week
4. No excess alcohol
5. Maintaining a healthy body mass index (BMI)

I hope you agree that implementing these lifestyle factors is worthwhile regardless of your current calendar age.



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CONT: PROTECTING YOUR ONLINE LEGACY

did not know her father's asset information -- let alone the login password to the computer -- and was frustrated with me for not knowing how to access her father's computer as this was something that I must 'deal with all the time.'

Indeed, as more financial records are electronic, it can be challenging for a trusted family member or fiduciary to access an incapacitated or deceased individual's online information, otherwise known as digital assets.

Digital assets include anything stored online or electronically including e-mail accounts, subscriptions, shopping accounts, social media profiles, domain names, websites you own, digital bank accounts, cryptocurrency, or cloud-stored documents like photos, videos and music files. Although these assets are not in a physical form, they can hold sentimental worth, financial value or personal information.

Unless you properly inventory these assets, they may become inaccessible, lost, or fall into the wrong hands. Here are steps to best ensure they will be managed in accordance with your wishes:

1. Inventory Your Digital Assets. Prepare a comprehensive list of your digital assets. Your list needs to be reviewed periodically as it will change due to new accounts, new subscriptions, new login information, or different cryptocurrencies. Periodically purge unused applications and electronically stored documents you no longer need or want. Routinely reviewing and updating your list of digital assets will save confusion and delays.

2. Securely Store Log In Information. Consider using a password manager like Last Pass, 1Password, or Keeper to store your digital assets' login credentials. The password manager can safely keep

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CONT: Protecting Your Online Legacy

track of usernames, passwords, and other sensitive information. Many allow sharing your information with trusted individuals upon your death. Should you not wish to utilize a password manager, your list should be safely stored with your original estate planning documents.

3. Determine Who Will Manage Your Digital Assets. It is important for your agent under a general durable power of attorney or your personal representative or trustee to be able to manage your digital assets upon your incapacity or death. Your fiduciary can be a trusted family member, friend, or professional. They should be tech-savvy and understand the importance of these assets. Know, however, that even with a trusted fiduciary, unless you provide clear instructions, your digital assets may not be accessible.

4.Specify Instructions in Your Estate Plan. Some online accounts will require action to shut them down or transfer ownership. Otherwise, these accounts may remain open indefinitely or be permanently deleted and lost forever. Under Washington state law, if you have not provided directions to your fiduciary or the designated recipient, the applicable terms of service control what happens to your online accounts.

Here are considerations when providing instructions:

<u>Social Media Accounts:</u> Do you want them to be deleted, memorialized, or transferred to someone else?

<u>E-mail Accounts:</u> Do you want your e-mail accounts to be closed, forwarded to someone, or preserved?

<u>Cryptocurrencies:</u> If you hold such assets, you must provide clear instructions on how to access your cryptocurrency wallet(s), including any passwords or private keys. Failure to plan for cryptocurrency can result in the permanent loss of these assets.

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CONT: Protecting Your Online Legacy

5. Stay Updated. It is important to be familiar with your digital assets' terms of service and the evolving state and federal laws which will control how your digital assets can be transferred.

By making a list of your digital assets, applicable usernames, passwords and answers to identifying questions available to your trusted agent, you can save your agent or estate a significant amount of time, frustration, and expense.

CONT: Justice for Beverly: Challenging A Care Facility's Mandatory Arbitration Clause

care facility by the personal representative of an estate. This case (Parker v. Aegis Senior Communities, LLC and Home Care Company, LLC) raises issues regarding the importance of carefully reviewing an arbitration agreement prior to signing to determine whether signing the agreement is in the resident's best interest.

In January 2020, 90-year-old Beverly became a resident at Aegis Living. As part of the admissions process, Beverly's son Robert executed several documents on Beverly's behalf as Beverly's agent under her medical power of attorney. According to the court record, Robert had little experience with contracts and rarely executed documents on Beverly's behalf. More typically, Christie, Beverly's daughter and agent under her General Durable Power of Attorney, signed documents on Beverly's behalf. This time, Robert signed the documents due to urgency.

Five months after Beverly's admission, Robert signed Aegis Living's Arbitration

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CONT: JUSTICE FOR BEVERLY: CHALLENGING A CARE FACILITY'S MANDATORY ARBITRATION CLAUSE

Agreement. Per his testimony, Robert did not remember reviewing or signing the document. Under the terms of the Arbitration Agreement, any claims between Beverly and Aegis . . shall be arbitrated.

Arbitration is an alternative to court in which conflicting parties agree to have their case decided by a neutral third party (arbitrator). By signing an arbitration agreement, parties waive their right to file a lawsuit in court. Nursing homes favor arbitration over litigation because arbitrators often grant lower awards than juries.

In January 2021, Beverly fell and hit her head. Within the next five months, Beverly fell two more times. She also sustained a "skin tear" on her elbow and a cut, swollen finger. On July 8, 2021, Beverly fell again. This time, she fractured her neck and was in the hospital for nine days. On July 23, 2021, Beverly sustained another severe fall when the caregiver assigned to constantly monitor Beverly overnight left her unattended. She was found on the floor, was lifted back onto her bed, and provided with Tylenol and ice. When Beverly complained of groin and hip pain, Aegis diagnosed her with a vaginal infection. When the pain worsened, Aegis advised Christie to contact Beverly's physician for additional pain medication. By July 30, 2021, Beverly had not improved and so Aegis ordered x-rays, which showed she had sustained a hip fracture during her most recent fall. As a result of the falls, Beverly permanently lost the ability to walk and experienced cognitive decline. Beverly was subsequently transferred to hospice care and died January 3, 2023.

On May 10, 2024, Christine, as

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CONT: Justice for Beverly: Challenging A Care Facility's Mandatory Arbitration Clause

court-appointed personal representative of Beverly's estate, sued Aegis and asserted claims for negligence and violation of state vulnerable adult statutes. On October 23, 2024, Aegis asked the court to compel arbitration under the arbitration agreement. Christie responded and argued that the Arbitration Agreement was unenforceable because it was substantially and procedurally unconscionable. On December 10, 2024, the trial court denied Aegis's motion to compel arbitration. On December 20, 2024, Aegis asked the trial court to reconsider its ruling. The trial court declined to reconsider its ruling and thus Aegis appealed.

The appellate court considered several factors before affirming the trial court's ruling against Aegis including that the agreement would not give Christie the opportunity to conduct discovery; thus, she would not have access to Aegis's employees and documents necessary to develop sufficient facts to prepare for arbitration. As a result, the agreement's unreasonable discovery limitations favored Aegis.

There are many opponents of the use of arbitration agreements in care admission contracts including congressional representatives and the American Arbitration Association which believes that many nursing home residents are not in the appropriate state of mind to properly evaluate arbitration agreements especially as admission to a care facility is an emotional experience often in response to an urgent and sudden need. Moreover, care facilities and residents have unequal bargain power because care facilities can

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CONT: Justice for Beverly: Challenging A Care Facility's Mandatory Arbitration Clause

draft terms to their advantage and such terms are typically un-negotiable.

Some mandatory agreements identify 'industry-friendly' arbitrators or hold proceedings in locations which are inconvenient for residents. Some agreements may include a shorter time limit for filing a complaint versus the applicable statute of limitations. In addition, arbitration agreements may cap the damages or make it hard to appeal. A resident may find difficulties in obtaining counsel to represent them in an arbitration because a lower recovery in arbitration may not adequately compensate an attorney who takes the case on a contingency.

It is recommended that a resident or their agent should review the agreement with their attorney prior to signature to ensure it does not contain a provision that the agent may be responsible for the bill.

<u>Requirements for an Arbitration Agreement under Federal Law.</u> Under federal law, if a facility chooses to ask a resident or their representative to sign an agreement for binding arbitration, the facility must comply with all the following requirements:

1. The facility must not require signing of an arbitration agreement as a condition of admission or a requirement to continue to receive care at the facility and must explicitly inform the resident or the resident's representative of their right not to sign the agreement.
2. The facility must ensure that the agreement is explained in a form and manner that is understood

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and that the resident or their representative acknowledges that they understand the agreement.

3. The agreement must explicitly grant the right to rescind the agreement within 30 calendar days of signing it.
4. The agreement must explicitly state that neither the resident nor their representative is required to sign the arbitration agreement as a condition of admission to the facility or a requirement to continue to receive care.
5. The agreement may not contain language that prohibits or discourages communications with federal, state, or local officials, including federal and state surveyors, other federal or state health department employees, and representatives of the Office of the State Long-Term Care Ombudsperson.

<u>Arbitration Agreements are not a Condition of Admission to a Care Facility under Washington State Law.</u> The most important takeaway is that under Washington state law, a care facility cannot force a resident to sign an arbitration agreement as a condition of admission.

It is important that every aspect of care facility's admission agreement be carefully read prior to signing. If the resident or agent is unfamiliar with reviewing contracts, it is advisable for the agreement to be reviewed by an elder law attorney prior to signature. Again, arbitration agreements are not required under Washington law as a condition of admission to a care facility and arbitration agreements must fully

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comply with federal law.

*An unpublished opinion resolves the dispute for the immediate parties but does not establish law that courts are obligated to follow; however, an attorney may ask the court to consider an unpublished case's reasoning if the attorney believes the case is on point.