News and Information from the Law Firm of Levy & Droney, P.C.

INBrief

SUMMER/FALL 2001

Debate Over Use of Patient Information Resolved

by Joseph A. Vitale

Debate over the appropriate use of patient information by other than direct health care providers has heightened over the last year or so among regulators and health care providers. This debate has arisen, in part, because of the ease with which such data may be compiled, sorted and transmitted electronically. In response, the United States Department of Health and Human Services ("HHS") promulgated its final medical privacy rule (the "Rule") this Spring.

Formulated to prevent personal health information from being misused by health care businesses and their associates, the Rule protects "individually identifiable health information that is transmitted by electronic media, maintained in any medium that falls within the definition of electronic media, or transmitted or maintained in any other form or medium." Effectively, this makes all health information, paper, electronic or oral, subject to the Rule. The Rule creates a federal floor of privacy protection and does not supercede state laws that may be more stringent. Compliance with the Rule is required by April 14, 2003.

Those entities covered by the Rule include health plans, health care billing and other clearinghouses, and certain health care providers. A health care provider is defined, for the purposes of the Rule, as a person or entity who provides, bills, or is paid for health care services or supplies in the normal course of business and who transfers health information electronically in connection with any of ten types of transactions for which HHS has adopted a standard, to wit: (1) health care claims or equivalent encounter information, (2) health care payment and remittance advice, (3) coordination of benefits, (4) health care claims status, (5) enrollment and disenrollment in a health plan, (6) eligibility for a health plan, (7) health plan premium payments, (8) referral certification and authorization, (9) first report of injury, and (10) health care claims attachments.

The Rule also applies to a "business associate" or third party to whom a covered entity has disclosed personal health information, including persons or entities who process claims, analyze data, engage in utilization review, quality assurance, billing, benefit management, practice management or repricing. Also included are those providing legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation and financial services to a covered entity.

The Rule requires that a covered entity disclose personal health information to a business associate only after it obtains satisfactory assurance that the business associate will appropriately safeguard the information, and it makes the covered entity responsible for violations of the Rule by a business associate if the covered entity knows of such a violation by the business associate and does not take reasonable steps to cure the breach or terminate its agreement with such business associate. In addition, disclosures may be made to business associates only (1) if the individual involved consents to the use of the information for treatment, payment, or health care operations, (2) the consent includes a reference to any explanatory privacy notice, and (3) the disclosures are the minimal disclosures necessary to achieve the purpose of the disclosure.

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Levy & Droney Speaker's Bureau

If your organization would like an attorney to speak on a legal issue or topic, we would be pleased to offer the talents of an attorney of Levy & Droney. Topics are:

- Workplace Issues
- Family Issues
- Charitable Planning and Giving
- Estate Planning
- Automobile Liability
- Homeowner's Liability
- Condominium Issues
- First-Time Home Buyers

If interested, please contact Attorney Robert B. Levine at rlevine@ldlaw.com or (860) 676-3259.

(Privacy Debate, cont'd. from page 1)

Covered entities are also required to adopt written privacy procedures that outline who has access to protected information, how it will be used, and when it may be disclosed. They are required to train their employees in these procedures and to designate privacy officers to ensure compliance. As a result of the implementation of the Rule, patients will have a clearer expectation of exactly how their privacy will be guarded.

- Covered entities must give patients a clear, written explanation of how the covered entity may use and disclose their information.
- Patients will be able to see and get copies of their records and receive a history of non-routine disclosures.
- Health care providers will be required to obtain patient consent before sharing their information for treatment, payment, or health care operations. In addition, health care providers must obtain separate authorization for non-routine disclosures.
- Patients will have the right to file a formal complaint with a covered entity or with HHS in the event of violation.

In the event of noncompliance, a covered entity may be fined, and criminal penalties may be imposed for knowing violations of the Rule, including criminal penalties for obtaining or disclosing protected health information with the intent to sell, transfer, or use it for commercial advantage, personal gain, or malicious harm.

The Rule effectively imposes a whole new regulatory system on health plans and hospitals, requiring that they audit their prior policies and procedures for compliance with the Rule, revise and/or adopt new policies and procedures, retrain their employees, and revise their existing contracts with third parties. The most significant affect on health care providers other than hospitals is the requirement that providers examine their consent forms to determine whether they comply with the Rule's mandates on obtaining explicit authorization before disclosing protected health information to those outside of the health care provider. The conditions governing these authorizations differ depending on the situation involved, requiring such health care providers to become familiar with the specifics of the Rule or to have immediate access to someone who is familiar with such specifics. L&D

Client Alert — Underground Storage Tank Amnesty and Refund Programs

The State of Connecticut's Underground Storage Tank (UST) Amnesty and Refund Programs are set to end on December 31, 2001. Homeowners wishing to take advantage of these incentive programs should take note of changes made to the programs in July of this year. Under the new refund guidelines, State reimbursement for remediation costs completed between July 2, 2001 and December 1, 2001 are now subject to a sliding scale deductible based on the homeowner's adjusted gross income. Another change made to the UST programs is that the homeowner, *not* the contractor, is now responsible for the direct application to the State UST programs. The deadline for submitting reimbursement requests for costs associated with UST remediation is November 1, 2001.

Levy & Droney, P.C. retains copies of all of the necessary UST Amnesty and Refund Forms and will make them available upon request. Please call Janet Dziedzic at (860) 676-3925 for further assistance. L&D

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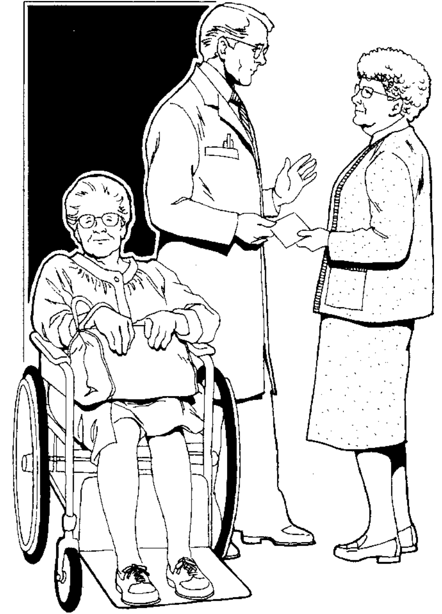
Long-Term Care and Medicaid Planning

by George A. Baker



One of the most important issues facing our elderly population is the prospect of requiring long-term care. The costs associated with placement in a skilled, long-term care facility could easily be $85,000 to $90,000 a year. Statistically, approximately 50 percent of all individuals who enter a nursing home deplete their assets within one year, and 90 percent deplete all their assets within two years.

There are basically three ways to pay for the cost of long-term care: (1) self pay, (2) long-term care insurance, or (3) medicaid (or Title XIX). The purpose of this article is to discuss how people facing the possibility of needing long-term care can legally transfer assets in order to qualify for Medicaid, thereby preserving assets for their family.

While Medicaid rules have different eligibility provisions for individuals and married couples, this article will focus strictly on the rules applicable to individuals.

Individuals are eligible for Medicaid if they own less than $1,600.00 in non-excluded assets.

The following is a list of the excluded assets:

1. One home (unlimited value) if:
    a. The individual resides in the home or is expected to return to the home (reasonable expectation);
    b. A minor child (under age 21) resides in the home;
    c. A disabled or blind child (any age) resides in the home; or
    d. A sibling co-owner resides in the home.
2. One automobile with $4,500.00 or less equity, or one vehicle of any value if:
    a. The vehicle is needed for employment;
    b. The vehicle is needed for medical transportation (minimum of four times per year);
    c. The vehicle is specially equipped for a handicapped individual.
3. All personal belongings (excluding valuable collectibles).
4. Life Insurance
    a. Term insurance — excluded if there is no cash value;
    b. Up to $1,500.00 in face value if the policy has cash value. If cash value policies exceed the face value of $1,500.00, then all the cash value is included.
5. Prepaid funeral contract
    a. Up to $1,200.00 if the contract is revocable; or
    b. Up to $5,400.00 if the contract is irrevocable.
6. Burial plot

In order for individuals to qualify for Medicaid, they must reduce their non-excluded assets to $1,600.00. This may be accomplished by converting non-excluded assets into excluded assets. For example, an individual may purchase an irrevocable funeral contract for $5,400.00.00. After exempt assets have been acquired, an individual must reduce all non-exempt assets to $1,600.00.

Other than converting non-excluded assets into excluded assets, there are generally two ways for individuals to reduce their assets: (a) spend down by paying for their long-term care, or (b) transfer assets to their children or other family members.

However, an individual transferring assets in order to be eligible to receive Medicaid must satisfy the transfer of assets rule contained under Medicaid provisions. The rule states that an individual transferring assets for less than fair market value within 36 months (five years for transfers to a trust) from the date of application for Medicaid benefits will be assessed a penalty period prior to becoming Medicaid-eligible.

A shorter penalty period may be imposed depending on the value of the asset transferred.

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YOU CAN LEGALLY TRANSFER ASSETS IN ORDER TO QUALIFY FOR MEDICAID, THEREBY PRESERVING ASSETS FOR YOUR FAMILY

Come in and talk with one of our estate planning attorneys if you or a loved one is contemplating the possibility of long-term care.

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(Long-Term Care, cont'd)

The penalty period is computed by using the following formula:

PP = number of months penalty period
V = value of asset transferred
A = average cost of care in a skilled care facility in the State of Connecticut (as of July 1, 2001, average cost equals $6,779.00)
PP = V ÷ A

For example, if Mr. Smith transfers (outright and not in trust) an asset equal to $135,500.00 to his son, his penalty period would be computed as follows:

PP = 135,500.00 ÷ 6,779.00
PP = 19.988 months

Therefore, a 19.988-month penalty would be imposed upon Mr. Smith. Even if Mr. Smith has to apply within 36 months of making the transfer, he may still be eligible for Medicaid, provided he applies *after* the 19.988-month penalty period has expired.

At worst, Mr. Smith should be able to retain a minimum of one-half of his total assets. He can transfer $135,500.00 to his son and retain the balance of $140,000.00. The transfer would impose a 19.988-month penalty period. If Mr. Smith were to enter a nursing home the day after the transfer, and if the monthly cost at the nursing home was $7,000.00, he will have retained enough assets to pay the cost of the nursing home for the 19.988 months of penalty (19.988 x $7,000.00 = $139,916.00). Once the penalty period expired, Mr. Smith would have spent down his assets below $1,600.00 and would then be eligible for Medicaid. The important factor is that Mr. Smith must retain enough of his assets to sustain him beyond the penalty period.

As highlighted by this article, in order to properly plan for Medicaid qualification, it is vitally important to coordinate the transfer of assets with the retention of sufficient assets to pay nursing home expenses during the penalty period. L&D

Firm Happenings

KENNETH J. LEVINE was reappointed to the Executive Committee of the Workers Compensation Section of the Connecticut Bar Association and the Connecticut Trial Lawyers Associations' Membership Committee.

MARVIN H. LAPUK AND DANIEL E. KLEINMAN were featured in television documentaries celebrating the 50th Anniversary of the Canon Greater Hartford Open golf tournament. They are both past chairmen of the tournament. Attorney Kleinman currently serves as Legal Counsel and Chairman of the tournament's Management Committee.

DANIEL E. KLEINMAN has been elected Vice President of the Farmington Chamber of Commerce. He was also named to the Town of Farmington's Public Participation Steering Committee to study the Town's Plan of Conservation and Development.

LAWRENCE J. MARKS spoke at a National Business Institute seminar in Cromwell on August 2 entitled "Tax Aspects of Limited Liability Companies in Connecticut."

WILLIAM C. STOKESBURY has been appointed as Co-Chairman of the Hartford County Bar Association's Real Property/Transactions Committee. He also moderated an HCBA Seminar in June on The Greater Hartford Board of Realtors form contract and the HCBA Closing Customs. Attorney Stokesbury has also been reappointed to the Executive Committee of the Connecticut Bar Association's Real Property Section, and was recently reelected as the President of the Avon Historical Society.

JOEL MANDELL was a featured speaker at the 32nd Annual New England Land Title Convention in Chatham, MA and the Conference of the American Congress of Surveying and Mapping in Providence, RI. Attorney Mandell has also been elected as an Emeritus Member of the Real Property Executive Committee of the Connecticut Bar Association.

HOWARD I. GROSS was recently honored by the Connecticut Bar Association for 50 years of distinguished service to the Bar. L&D