HSH C&D Newsletter

Newsletter | Estate Planning & Disability Advocacy | Winter 2005

In This Issue

Helpful Information on Medicare Prescription Drug Coverage Screening for Medicare Beneficiaries (are you tired of this yet?)

KEEP ALL CORRESPONDENCE regarding Medicare D

PRE-ENROLLMENT QUESTIONS

1. Do you currently have prescription drug coverage?
If YES, skip to Question #3.
If NO: You need to join a Medicare prescription drug plan when first eligible because Medicare prescription drug coverage will pay, on average, about 50% of drug costs yearly. Most people with Medicare need or will come to need prescription drugs to stay healthy. Medical practice has come to rely more on new drug therapies to treat chronic conditions. Medicare prescription drug coverage will protect you from high out-of-pocket costs. If you don't join when first eligible, you will pay a higher premium if you wait to join until later.
· You must sign up by May 15, 2006 to avoid paying a higher premium if you enroll later.
· You should contact one or more of the following resources to help evaluate which plan to select: SHIP/HICAP, 1-800-MEDICARE, www.medicare.gov

2. Are you single, with resources below $11,500 and annual income below $14,355? OR Are you married, with resources below $23,000 and annual income below $19,245? (Note: these are 2005 figures which will increase in 2006)
If YES, you should apply for "extra help" through SSA, (800) 772-1213 or www.socialsecurity.gov, unless you have already received a letter of automatic enrollment. If eligible for extra help, client should still choose and join a Medicare drug plan before May 15, 2006. "Extra help" means that the government will cover more of the costs of the plan, perhaps even all of the costs.

3. Do you have VA, TRICARE for Life, or FEHB?
If YES, you do not need to enroll in a Medicare drug plan and you will not be penalized if you join a drug plan after May 15, 2006, as long as you join within 63 days of losing TRICARE, VA or FEHB coverage. (If you have VA and pick up drugs at a private store (not at the VA facility) you should consider enrolling.)

4. Do you have prescription drug coverage through a former employer or union?
If YES, you should receive information from your employer or union by November 14, 2005 stating whether your coverage is at least as good as the standard Medicare prescription drug coverage ("creditable"). If you have not received your letter, contact your former employer/union to ask them to send you the letter. If the letter says that your coverage is "creditable", then you do not need to join a Medicare drug plan and will not be penalized if you join a drug plan after May 15, 2006, as long as you join within 63 days of losing your employer or union coverage. If your existing drug coverage is terminated or you are notified that it is not "creditable", you should join a Medicare drug plan.

5. **Do you have Medicaid?**
If YES, beginning January 1, 2006, you will receive drug coverage through Medicare instead of Medicaid. You should choose and join a drug plan. If you don't, Medicare will automatically enroll you in a drug plan. You will get a yellow letter from Medicare telling you the plan in which you will automatically be enrolled in. You do not choose a plan. You can change plans at any time, and the change will be effective on the first day of the month after you make the change.

6 Are you a member of a Medicare Advantage Plan (like a Medicare HMO)?
If YES, your plan will let you know about the prescription drug options they will offer. If you choose to remain in your Medicare Advantage health plan, you must receive your drug coverage through that plan, if it is offered.

7. Do you have a Medigap (Medicare Supplement) policy with prescription drug coverage (plans H, I or J)?
If YES, if your Medigap policy currently covers prescriptions, the insurer must send you a letter by November 14, 2005 telling you what your options are. In most cases, Medigap drug coverage is not considered "creditable" (as good as) Medicare's coverage, so you should join a Medicare drug plan; you will be penalized if you do not join by May 15, 2006. Your Medigap insurer should modify your policy to exclude drug coverage and/or tell you what other Medigap plans are available to you.

8. When are you able to enroll?
The initial enrollment period is November 15, 2005 to May 15, 2006. **The program begins January 1, 2006**

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CALL TO ACTION!!

Warning! Medicaid Estate Recovery Could Threaten Your Home!

SUPPORT A BETTER IDEA: ESTATE PRESERVATION

The State Legislature is currently debating whether to implement a program called Medicaid Estate Recovery. This program would allow the government to "recover" the estates of those Medicaid recipients who receive long term care (e.g. nursing home care) after they are deceased. Michigan citizens who have worked and paid taxes their entire lives to pay for a house to pass on to their children could lose everything if a long term illness forces them to enroll in the Medicaid program. Such a law could also be devastating.

IT IS IMPERATIVE THAT YOU WRITE TO YOUR STATE OF MICHIGAN REPRESENTATIVE and SENATOR NOW! Please do not Procrastinate.

This is a kit to make this task as simple as 1-2-3.

1. Read the information.
2. Send the attached letter to your state representative and senator and fill in the heading, sign and print your name, address and phone number. If you prefer I can email you the letter all you have to do is ask and provide your email address.

Letters to state representatives use this address:

The Honorable first name, last name
State Representative
P.O. Box 30014
Lansing, MI 48909

Letters to state senators use this address:

The Honorable first name, last name
State Senator
P.O. Box 30036
Lansing, MI 48909

3. Find your Representative: CALL 1-517-373-0135 or use your computer.
   - go to www.house.michigan.gov
   - move mouse over the Representative button
   - click on find a representative
   - enter your zip code.
4. Find your Senator: CALL 1-517-373-2400 or use your computer.
   - go to www.senate.michigan.gov
   - click on find your senator
   - click by address and enter your zip code

See page 3 for a sample letter

KEEPING CURRENT

Hafeli Staran Hallahan Christ & Dudek, P.C. recommends that you have your estate planning documents reviewed regularly, at least every three to five years. Why? Your circumstances and the laws change. Further, many folks forget to complete funding of their revocable living trusts. Without a regular professional review, your documents may become ineffective or fail to accomplish your objectives. This can cause severe difficulty for your family if the problem is discovered only after the your disability or death.

Some of the recent changes we have informed you about in past newsletters are:

First, the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations that went into effect on April 14, 2003. These rules restrict access to medical records and health information by third parties. Generally, these regulations state that a healthcare provider may release an individual's medical records and health information only to the individual or to the individual's personal representative who is specifically authorized to make healthcare decisions for the individual. In light of these regulations, we recommend that clients amend their advance medical directives to designate a "personal representative" to whom a healthcare provider is authorized to disclose the client's medical records and health information. We also now include this information in the form of a "HIPAA waiver" in all of its advance medical directives.

Second, in 2001, the Internal Revenue Code was amended to increase the estate tax applicable exemption amount to $1.5 million in 2004, to $2 million in 2006, and to $3.5 million in 2009. The estate tax is scheduled to be repealed in 2010, but reinstated in 2011. The future of the estate tax is uncertain, but many wills and trust agreements contain outdated estate tax planning provisions. If your will or trust agreement contains estate tax planning provisions and was drafted prior to 2001, we recommend that you have an attorney review these estate planning documents to ensure that they are flexible enough for the tax planning to work despite changes in the law.

Third, the State of Michigan now allows for citizens to appoint a Patient Advocate for not only end of life medical decisions but to include mental health treatment as well. This allows for maximum privacy for clients, and could potentially avoid the need for guardianship or judicial order for treatment.

Besides these changes that may impact your estate planning documents and decisions you make concerning funding of your revocable living trust(s). We are also happy to answer questions about Medicare Part D, and the ever changing laws, and regulations governing Medicaid estate and trust administration, and especially administration of Special Needs Trusts.

Sample Letter

Dear ____________________:

I am writing to urge you to oppose SB 820, a bill introduced by Senator Switalski to implement Medicaid Estate Recovery. Such a program would allow the state to recover homes and family farms from the estates of people over the age of 55 who, through illness, were forced to enroll in Medicaid for long term care or home based community care. I am writing to encourage you to support, instead, estate preservation, which is a way to meet Michigan's budgetary needs and federal obligations without resorting to taking private properties.

I understand that the federal government has mandated that states implement some type of Medicaid Estate Recovery program, and that Michigan is the only not to have done so. However, many of Michigan's seniors have worked their entire lives with the goal of leaving their home or farm for their families. Medicaid Estate Recovery would put that in jeopardy and cause many seniors not to seek nursing or home care, even when it may be in their best interest. Furthermore, implementing this policy will create problems for local government, because how many people are likely maintain properties or to pay taxes on properties that will revert to the state at the time of their parents' deaths?

Some supporters of Medicaid Estate Recovery claim that having the government confiscate the home of the deceased Medicaid long term care recipients is fair compensation for government services. However, there is another way to look at it: Seniors who enroll in Medicaid usually have already spent the majority of their assets to become eligible. The homestead is one of the only large assets that they are entitled to keep; and very often, the only thing they have left to show for a lifetime of work and paying taxes. The impact of Medicaid Estate Recovery on family farms could even be more devastating. And it is a myth that wealthy people routinely engage in "Medicaid" planning to cover their nursing home care. Which of us who can afford an alternative would choose to have our choice of nursing homes or other long-term care option dictated by Medicaid?

Finally, the amount of money recovered through Medicaid Estate Recovery will be minuscule. Estate Recovery has a poor record of raising significant amounts of money in states that have implemented it. Actual collections from estate recoveries nationwide pay for only 1/10 of 1% of the Medicaid program. The majority of money collected goes to the federal government, and a significant portion of the remainder goes to the costs of administering the program. Although proponents of estate recovery predicted that it would produce about $1 billion annually, actual collections from estate recoveries nationwide pay for only 1/10 of 1% of the Medicaid Program, while generating substantial political ill-will.

Fortunately, the Governor's bipartisan task force on Medicaid long-term care developed a creative alternative to estate recovery. This plan known as **Estate Preservation** would establish a statewide insurance-style program. This plan has the advantage of lower administrative costs and can raise as much or more money than could be raised by a traditional Medicaid Estate Recovery program, while ensuring that the government will not claim the property of a deceased recipient's estate. I urge you to talk to the people you serve in your district, and I am sure you will find little or no objection to the concept of a modestly priced insurance program if it saves their own or their parent's home or family farm.

I understand that Medicaid spending is a large contributor to Michigan's budget woes. However, Medicaid Estate Recovery is not the answer. It will provide very little relief to the budget pressures, while causing great harm to the well-being and security of Michigan's senior citizens. I urge you to reject SB 820 and any proposals to implement Medicaid Estate Recovery in Michigan and support instead an alternative plan such as Estate Preservation. I would appreciate hearing your views on this issue as soon as possible.

Sincerely,

Capturing Life's Stories: Preserving the Character of Our Families

By Dennis Stack

America's Life Stories, LLC is an Arizona-based company in business to assist the elderly to easily record the important events and experiences of their life for the benefit of their future generations.

Our product, "Capturing Life's Stories," is a simple to use inexpensive kit that guides the user through the process of telling their story and preserving their legacy.

The genesis of this product was from my own personal experience of having lost both my parents and ever having asked the questions that I wished I had. I originally created this kit as a "Thank You" gift for my clients. At that time I was working as a Sr. Vice President for a major wire house and had concentrated my business in the Estate Planning area. The message that I sent to my clients along with this kit was that they should provide more than just financial security to their children, they should provide them with their experience and wisdom. They should impart to their heirs the values and work ethics that created this wealth, in the hope that they will better appreciate the gift the are to receive.

The stated mission of my company is: To Preserve the Past, Enrich the Present, and Strengthen the Future of American Families.

We have found that this process provides other ancillary benefits to the elderly user. Too often the elderly in our nation suffer depression stemming from the loss of a meaningful role to play in their family. The time when their health declines to a point that they need to be placed in a care facility, they simultaneously lose their identity as a provider, a homeowner, a teacher, a driver, a caregiver . . . .The roles they played, the things that showed they were of value are summarily taken from them. Helpless and hopeless is no way to finish a well-lived and honorable life. The time that remains can be put to productive use. The telling of one's story allows the elderly to gain perspective from their experiences. They have a chance to accomplish goals previously unfinished. Reminiscing and preserving the lessons in life gives them the one thing we all need, a purpose. For more information:

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Mesa, AS 85215

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Katrina Emergency Relief Act of 2005

As the end of 2005 approaches, taxpayers should review their tax situations and take advantage of year-end tax planning. One new tax planning tool that is available for 2005 is the Katrina Emergency Tax Relief Act of 2005 (KETRA). KETRA was signed into law on September 23, 2005, in the wake of the gulf coast hurricanes.

This Act provides special income tax incentives for gifts of cash to public charities. Normally, charitable cash gifts are deductible up to 50% of the taxpayer's adjusted gross income (AGI). Donors of new individual cash gifts made between August 28 and December 31, 2005, may now deduct these gifts up to 100% of AGI on their 2005 individual income tax returns by making a special election. The 3% phase-out of itemized deductions that normally applies to taxpayers with an AGI of $146,000 has also been suspended for such charitable contributions. The gifts to which the new law applies are all public charities, not just hurricane relief organizations. Cash gifts to create charitable gift annuities may qualify, but donations to Sec. 509(a)(3) supporting organizations or contributions to donor advised funds do not qualify. The new law does not apply to charitable remainder trusts and pooled income funds, or property gifts such as stock or real estate. Corporate gifts to non-Katrina related agencies also do not qualify.

KETRA may also offer an opportunity for individuals 59 ½ years of age or older with significant individual retirement accounts (IRAs) to make withdrawals from those accounts and contribute cash to charities. These individuals can make a lifetime distribution from a retirement account by December 31, 2005. Some high income donors withdrawing from IRAs or selling appreciated securities to donate cash may see an indirect increase in the federal tax of approximately 1% as a result of the interplay between the increased reportable income and the 3% reduction applicable to noncharitable deductions. Taxpayers should to consult their tax advisers before accelerating their giving under KETRA.

HELPFUL RESOURCES

Our firm often assists clients at a time of great stress or after the loss of a loved one. Coping with confusing and complex legal issues is never easy, but it becomes an even greater challenge when a client is stressed or grieving. We have found the following resources to be helpful for our clients at such times:

1. After the loss of a loved one – a Guide to Legal and Emotional Concerns – This simple and quick reference guide was created by The Legal Hotline for Michigan Seniors. The hotline is always available to help people age 60 and older, and you can contact them with questions or to request this helpful guide at 1-800-347-5297 or at www.legalhotline.org.

2. Caring connections: A Hope and Comfort in Grief Program, through the University of Utah College of Nursing. Contact their Grief Line: 1-801-585-9522 or visit their website at: www.nurs.utah.edu/caringconnections/index.html.

Top 10 Reasons that Medicaid Estate Recovery is Bad Public Policy

Adapted from testimony provided by Patricia E. Kefalas Dudek and other members of the Elder Law Section of The State Bar of Michigan

Since the state only seeks reimbursement for Medicaid long term care expenses after the recipient has died it may seem that estate recovery is a relatively harmless way to help reduce the overall cost of the Medicaid program. So why is estate recovery bad public policy?

1. It sends a disturbing message to elderly persons and people with disabilities with modest incomes and savings. Estate recovery sends a message to elderly persons that even though they worked all their life, paid off their mortgage, and saved their money so they could have a modest retirement nest egg and something to pass on to their children, if they are unfortunate enough to need help from the state to pay for nursing home care, the state will take their home and whatever else is left after their death. It is devastating enough for an elderly person to give up their independence, privacy, and familiar surroundings to move to a nursing home. The realization that their estate will be confiscated and they will not be able to pass on anything to their children, grandchildren, special friends, or favorite charities only adds to their emotional trauma.

2. It is an estate tax on modest estates while the tax on multimillion dollar estates is being eliminated. Congress recently enacted tax cuts that include a phase out of the estate tax by 2010. With good estate planning advice wealthy senior can pass on multi million dollars estates with little or no tax. In contrast estate recovery will take up to 100% of a Medicaid recipient's estate.

3. The savings to the state are miniscule compared to total Medicaid spending. The average recovery among all the states is one tenth of one percent of total Medicaid spending. There are many other ways to raise the same amount of money that are more fair to elderly Medicaid recipients. One option is to increase the state's effort to reduce fraud, abuse, and mismanagement in the Medicaid program. The federal government recently collected a fine against a single drug company for overbilling Medicaid that exceeded the entire amount recovered by all the states in their estate recovery program.

4. It makes the Medicaid program more complicated. Medicaid is an extremely complex program. Many attorneys and most financial planners do not understand it. Legislators and other policy makers should be trying to simplify the program, not making it more complex.

5. It makes the Medicaid program more arbitrary. Persons who get good estate planning advice before or at the time they apply for Medicaid will be able to maximize the amount of their assets that they can protect from estate recovery. Persons who get no estate planning advice or (worse) get bad advice, will be left with little or nothing to pass on to their heirs or intended beneficiaries.

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Medicare Screening cont.

POST ENROLLMENT QUESTIONS

1. How do I switch plans?
   - If you are in a PDP you can switch plans once between January 1 and May 15, 2006.
   - If you are in an MA-PD you can switch one more time until June 30, 2006. After that you must wait until the next annual enrollment period, which will be November 15- December 31, 2006.
   - You will be able to switch plans if you move out of the plan's service area or move in to or out of a nursing home.
   - You can switch any time if you are eligible for Medicare and Medicaid or if Medicaid pays your Part B premiums.
   - You can switch plans by enrolling in a new plan or by calling 1-800-Medicare.

2. How do I question a plan's decision?
   - If you disagree with a plan's decision you should contact the plan and ask them to issue a "coverage determination" that explains plan's reasons and how to appeal. If you think the plan should pay for a drug that is not on the formulary, or you think they you should pay a lower co-payment for a drug you will need to ask the plan for a special type of coverage determination called an "exception." You will need to include a statement from your doctor explaining why you cannot take a similar drug to your drug that is on the formulary

Useful CMS Web links:
www.medicare.gov- the website developed by CMS for the general public regarding Medicare D. "Medicare and You, 2006" can be down-loaded from the site.
www.cms.hhs.gov - the website that includes information for Medicare professionals, governments and others. It provides information that is more technical in nature.
www.cms.hhs.gov/medicarereform/pdbma/StateMedicaidAgencyFactSheet.pdf State Medicaid Agencies Medicare Modernization Act —Final Rule Fact Sheet
www.cms.hhs.gov/medicarereform/key_dates_for_beneficiaries_with_lower_incomes.pdf - Key Projected Dates for People with Medicare who Qualify for the Low Income Subsidy (LIS)

CMS has compiled information about the availability of plans for each state. The information can be found at either www.CMS.gov (Excel spreadsheet) or www.Medicare.gov (PDF). There was some criticism that the information is not detailed enough; that enrollees will make decisions based on the information on the chart alone. The officials acknowledged that some people may not want to do additional research, but they thought it important to have an accessible tool for enrollees to make simple comparisons. CMS is in the process of developing a drug comparison tool that will be available on its web site.

Web Links from Other Organizations
www.medicareadvocacy.org - From Center for Medicare Advocacy, with excellent educational materials available to down-load.
www.ssa.gov/prescriptionhelp
www.familiesusa.org/issues/prescription-drugs/www.nsclc.org

Top 10 Reasons cont.

6. It will be used as a scare tactic to sell overpriced and unnecessary financial planning products. Seniors and their families are bombarded with invitations to retirement and estate planning seminars that promise to reduce estate taxes, avoid probate, and protect assets from Medicaid. In many cases these are simply vehicles to sell overpriced and unnecessary annuities, trust kits, and life insurance. The threat of estate recovery will be another scare tactic that can be used to take money from seniors, and people with disabilities.

7. It will have unintended consequences on the housing stock in older neighborhoods. For most Medicaid recipients the only significant asset that will be left after their death is their home. Many of these homes will be quite modest and located in older neighborhoods. If the recipient's family knows that the state will eventually seize the home they will have no incentive to maintain the property. Even if they wanted to maintain the property they would have difficulty obtaining financing. Once the state acquires the property it is likely to be sold at auction to the highest bidder, who may be a slum landlord. We encourage the use of special needs will to avoid this result if estate recovery is passed.

8. It could result in the loss of the family farm. After the recipient's death his/her farm would be subject to estate recovery. Unless the heirs were able to reimburse the state for the recipient's Medicaid costs, the farm would have to be sold to recover the costs**.**

9. It may deter some people from seeking needed long term care or mental health services. The realization that the state will take their home after their death may deter some older persons from seeking necessary care, which could aggravate their problems, and putting them in crisis could cost the system more money in the long run.

10. It provides a windfall for Elder Law Attorneys and other advisors that can assist people with preserving their estate.

The Powley Elder Law Award

Congratulations to Patricia E. Kefalas Dudek, this year's winner of The Powley Elder Law Award. This award is intended to be presented to a National Academy of Elder Law Attorneys (NAELA) member who has demonstrated a commitment to promote, in the minds of the general public, a greater understanding of the rights and needs of the elderly and how elder law attorneys advocate for those rights. The award is established in the memory of Wes and Helen Powley, grandparents of NAELA Member Tim Takacs. Both Wes and Helen were active in civic affairs all of their lives and Wes practiced dentistry well into his 80s. The award is funded by a grant from the Takacs Family Foundation. The recipient of the Powley Elder Law Award was announced at the NAELA Institute (www.naela.org) on December 9, 2005 and a $1,000 cash grant will be made in the recipient's name to the non-profit organization of choice.

Two wonderful advocacy organizations are splitting the donation made in Patti's name. The first is United Cerebral Palsy Association of Metro Detroit (UCP) (www.ucpdetroit.org). Patti has served as a Board Member and Chair of the agency's Governmental Affairs committee for over a decade. Advocates and staff have zealously worked for the right to self-determination and independence for all people, regardless of any physical, mental or emotional limitations that society calls a disability.

The second organization is Community Housing Network, Inc. (CHN) (www.chninc.net). Patti has requested the donation go to support the efforts of the Housing Resource Center, which provides information and technical assistance to people with disabilities, their aging family members, and community housing organizations. The Housing Resource Center was a creative way to connect people with disabilities and their families struggling to address the supportive housing needs of their loved ones. The idea grew our of the need Patti experienced working with her aging clients who could no longer care for themselves, let alone their loved one with a disability. Patti and other advocates drafted the original concept paper which led to CHN and the Housing Resource Center securing funding through the local Community Mental Health Authority.

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Happy Holidays!