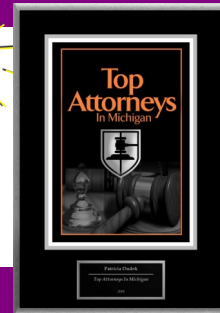


Patricia E. Kefalas Dudek & Associates



Passionate Advice and Advocacy for all
Stages of Life

June 2019



We've Lost A Strong and Gentle Warrior Hero – Bob Liston

Within three weeks of Not Dead Yet's beginning on April 27, 1996, [National ADAPT](#) held a series of protests for home and community based long term services. During a moment of down time, I sat with Bob Liston, Marsha Katz and several other ADAPT activists to plan for our first protest against "Dr. Death," Jack Kevorkian. (For those who don't know this, two thirds of his assisted suicide body count consisted of people with disabilities who were not terminally ill.)

Bob and Marsha lived in Michigan and helped in immeasurable ways to host both instate and out-of-state NDY activists. The first NDY protest was held on June 21, 1996, behind the lakeside cottage that Kevorkian was living in. NDY's first national press coverage was an Associated Press photo which prominently featured Bob, looking strong and determined, the perfect image of our fight for equal protection of the law.

During the years that followed, with Bob and Marsha's support, we returned to Michigan again and again to demand that the courts "Jail Jack," until Kevorkian was finally convicted and imprisoned for the lethal injection euthanasia of Thomas Youk. We also confronted a bioethics conference held in Lansing, and a pro-assisted suicide conference held in Ann Arbor by the Hemlock Society, which later helped fund Kevorkian's legal defense (and eventually morphed into "Compassion and Choices"). Bob and Marsha also helped defeat assisted suicide in the Michigan legislature.

[Click Here to Read the Entire Tribute to Bob
from Diane Coleman at Not Dead Yet](#)

Spousal Impoverishment Protections for Medicaid Home Care Allow Well Spouses to Keep Ill Spouses at Home

Spousal Impoverishment Protections for Medicaid Home Care Allow Well Spouses to Keep Ill Spouses at Home:

Don't Let Them Expire on September 30, 2019!

Ending Mandated Spousal Protections for Home Care Could Cause More Unnecessary Institutionalization.

Providing impoverishment protections for Well Spouses of Ill Spouses who receive care at home rather than in an institution makes it possible for families to remain together. If forced to choose between depleting all family resources to pay out of pocket for home care or placing an Ill Spouse in an institution to save their family from financial ruin, many families will choose the latter even if the Ill Spouse could safely remain at home—and even though home care costs Medicaid less than nursing home care. Congress must act now to prevent Well Spouses from being forced to choose between impoverishment and premature unwanted placement of their Ill Spouse in a nursing home. We urge Congress to make home care (HCBS) anti-impoverishment protections for Well Spouses a permanent feature of the Medicaid program before they expire on September 30, 2019. **An excellent way for Congress to achieve this goal would be for it to pass Rep. Debbie Dingell's H.R.1343 - Protecting Married Seniors from Impoverishment Act.**

[Click Here for More Information](#)

GAO Issues Report on Disaster Assistance for Individuals with Disabilities

The Government Accountability Office has issued a report on disaster assistance for individuals who are older or have disabilities. The report (GAO-19-318) is titled "Disaster Assistance: FEMA Action Needed to Better Support Individuals Who Are Older or Have Disabilities".

What GAO Found: "A range of officials from entities that partner with the Federal Emergency Management Agency (FEMA)--including states, territories, localities, and nonprofits)--reported challenges providing assistance to individuals who are older or have disabilities following the 2017 hurricanes.

Based on GAO's analysis of FEMA data and interviews with FEMA officials and stakeholders, aspects of the process to apply for assistance from FEMA after the 2017 hurricanes were challenging for older individuals and those with disabilities. According to stakeholders and FEMA officials, disability-related questions in the registration materials are confusing and easily misinterpreted.

[Click Here to Read More About the Report](#)

Medicare Launches App to Help Beneficiaries Find Out What's Covered

At the doctor's office and want to know if a procedure is covered by Medicare? There is an app for that. Medicare has launched a free app that gives beneficiaries a quick way to see whether the program covers a specific medical item or service.

The "What's Covered" app allows you to search or browse to learn what's covered and not covered under Medicare Parts A and B, how and when to get covered benefits, basic cost information and other eligibility details. You can also see a list of covered preventive services.

[Click Here to Read More About the App](#)

Medicare Beneficiaries Need to Know the Difference Between a Wellness Visit and a Physical

Medicare covers preventative care services, including an annual wellness visit. But confusing a wellness visit with a physical could be very costly. As part of the Affordable Care Act, Medicare beneficiaries receive a free annual wellness visit.

The confusion arises when a Medicare beneficiary requests an "annual physical" instead of an "annual wellness visit." During a physical, a doctor may do other tests that are outside of an annual wellness visit, such as check vital signs, perform lung or abdominal exams, test your reflexes, or order urine and blood samples. These services are not offered for free and Medicare beneficiaries will have to pay co-pays and deductibles when they receive a physical.

[Click Here for More Details](#)

Care Facility Resident's Estate Was Unjustly Enriched By Fraudulent Medicaid Application

An Oregon appeals court holds that an adult foster care facility could claim unjust enrichment against the estate of a former resident who obtained Medicaid benefits due to her son's fraud, resulting in the facility being paid less than it would have at its private pay rate. [*Larisa's Home Care, LLC v. Nichols-Shields*](#) (Or. Ct. App., No. 173, April 24, 2019). Isabell Prichard named her son as agent under a power of attorney, and he used the power to transfer funds to himself. Ms. Prichard's son then applied for Medicaid on her behalf, neglecting to mention the transfers in the application. The state approved Ms. Prichard's application and she moved into an adult foster care facility as a Medicaid patient. Ms. Prichard's son was eventually tried criminally for the fraudulent transfers and required to pay a compensatory fine to Ms. Prichard's estate.

[Click Here to Continue Reading About this Case](#)

Mandated reporters of child abuse, neglect can use online system

Mandated reporters who are legally required to report suspected child abuse and neglect can now do so online, strengthening efforts to keep Michigan children safe.

The Michigan Department of Health and Human Services (MDHHS) recently launched the Michigan Online Reporting System for use by mandated reporters such as physicians, teachers and clergy who have established relationships with children based on their professions. Previously, mandated reporters had to call to make an immediate verbal report to Children's Protective Services and follow up with a written report.

An amendment to Michigan's Child Protection Law allowed MDHHS to create an online reporting system for mandated reporters as an option for reporting non-emergency suspected child abuse and neglect. More than 15,000 mandated reporters have registered to use the online system since February 2019.

[Click Here for Additional Information](#)

Irrevocable Trust Belonging to Community Spouse Is Not Automatically an Available Resource, Michigan High Court Rules

Reversing an appeals court, Michigan's highest court holds that assets placed in an irrevocable trust for the sole benefit of a community spouse are not automatically considered countable assets for the purpose of an institutionalized spouse's initial eligibility determination for Medicaid long-term-care benefits. [Hegadorn v. Department of Human Services Director](#) (Mich., Nos. 156132, 156133, and 156134, May 9, 2019).

[Click Here to Read More about this Case](#)

Property in Revocable Trust May Be Excluded From Available Resources if Medicaid Applicant Signs Agreement to Sell

Nebraska's highest court holds that a Medicaid applicant may be able to exclude real property from his or her available resources by signing an agreement to sell the property within six months even if the property is held in a revocable trust. [Winslow v. State](#) (Neb., No. S-18-181, May 3, 2019).

[Click Here to Read More about this Case](#)

Casey and Toomey Secure Secret Document from Administration: List Includes Hundreds of Poorly Performing Nursing Homes Across the Country

Approximately 400 Nursing Homes Have Serious Health and Safety Violations / Casey and Toomey Release Report Detailing Scope of Problem Nationwide

Following an inquiry by U.S. Senators Bob Casey (D-PA) and Pat Toomey (R-PA) into under-performing nursing homes, the Centers for Medicare and Medicaid Services (CMS) recently handed over an unreleased list of facilities with a documented pattern of poor care.

CMS oversees a program for nursing homes that consistently underperform, called the Special Focus Facility program. The names of the facilities chosen to participate in the program are made public, however, the approximately 400 nursing homes that are not selected to participate are kept hidden from the public. In order to provide greater transparency to individuals and families, Senators Casey and Toomey requested the names of these additional facilities be made publicly available by CMS. After CMS chose not to release this list, Senators Casey and Toomey are releasing this information alongside a report with additional background and context.

“Choosing a nursing home is a difficult, and often painful, decision to make. Individuals and families deserve to have all the information available to choose the facility that is right for them. “When a family makes the hard decision to seek nursing home services for a loved one, they deserve to know if a facility under consideration suffers from systemic shortcomings. While the vast majority of nursing homes provide high-quality care, there are some that are consistently failing to meet objective standards of adequacy. To date, CMS has arbitrarily excluded from public disclosure a subset of these underperforming nursing homes. Moving forward, I hope CMS will give the public this particular list, as well as all relevant information about nursing home quality,” Senator Toomey.

[Click Here for the Full Article](#)

Nursing Home Resident's Representative Liable for Nonpayment Claim Even Though She Didn't Sign Admission Agreement

Reversing a lower court, an Ohio appeals court rules that the fact that a nursing home resident's representative did not sign the nursing home admission agreement is not reason enough to grant her summary judgment because the nursing home's claims against her for nonpayment were not based on theories of liability under the agreement. [Montefiore Home v. Fields](#) (Ohio Ct. App., 8thDist., No. 107359, May 23, 2019).

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Be 'biggest advocate': Parents plan future for adult children with special needs

If nothing quite prepares one for parenting, it's even more daunting when a child has special needs. Parents sink or figure out how to swim in uncharted waters. It's not just a matter of getting through day by day: Parents need the foresight to plan for their child's future — especially for when they will no longer be around.

“As an adult child with disabilities ages, eventually they will have medical issues. Who will make medical decisions for them? Where will they live, who will take care of them emotionally and see to any financial needs?” asks Craig Marcott, author of “The Art of Advocacy” and a consultant with Special Needs Life Services in Melville.

There are a lot of questions and concerns that need answering.

It's best to get a lawyer who concentrates in special-needs and elder law. The law in these areas is complex and always changing. “You want someone who specializes in these areas. They shouldn't be one of 10 areas they practice,” said Stephen J. Silverberg, an estate tax and elder law attorney with the law office of Stephen J. Silverberg in Roslyn Heights. For help finding an attorney, he recommends the National Academy of Elder Law Attorneys (naela.org) and the National Elder Law Foundation (nelf.org).

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May a Medicaid Applicant Freely Transfer Assets to a Disabled Child of Any Age?

Question:

I have read that a Medicaid applicant won't be penalized for making transfers to a disabled child during the look-back period, but I would like to know if there is an age limit for the child. My mother has Alzheimer's disease, and I am her agent under a power of attorney. I am considered permanently disabled by Social Security and collect Social Security disability benefits. Can my mother transfer assets to me without being penalized by Medicaid? I have been taking care of all her affairs for the past six years, and she agreed (in writing) to pay me \$300 a month for these services but I have never cashed the checks. If I can't transfer the money because of my disability, can I do it because of the agreement? I am now in need of this money because of my own medical bills.

Answer:

Yes, there is an exception to the usual Medicaid transfer restrictions for gifts to disabled children of the Medicaid applicant. Your mother can freely transfer assets to you at any age. The fact that you are receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) is sufficient proof of your disability. Fortunately, this means that we don't have to get to your second question...

[Click Here for the Entire Answer](#)

State's Medicaid Lien Has Priority Even Though It Was Filed After Recipient Died

An Ohio appeals court rules that the state has priority over a nursing home in a claim for Medicaid recovery against the estate of a nursing home resident even though the state did not file a lien against the resident's property until after the resident died. *Wiesenmayer v. Vaspory* (Ohio Ct. App., 2ndDist., No. 27931, May 10, 2019).

Nursing home resident Margaret Edwards received Medicaid benefits for five months before she died. After she died, the state recorded a lien on her property in order to recover Medicaid benefits it paid on her behalf.

The probate court appointed R.C. Wiesenmayer administrator for Ms. Edwards' estate, and he requested authority to sell Ms. Edwards' property. The nursing home filed a claim against the estate for unpaid bills. The state also filed a claim to recover Medicaid benefits. The trial court ruled that the state's lien was valid and had priority. The nursing home appealed, arguing that the state's lien was not valid because it was not recorded before Ms. Edwards died.

The Ohio Court of Appeals, Second District, affirms, holding that the state's lien is valid and has priority over the nursing home's claim. Noting that "the estate recovery program contemplates the recovery of Medicaid costs from the assets of deceased recipients," the court rules that the state's Medicaid lien law "does not apply exclusively to living, permanently institutionalized recipients of Medicaid benefits, and consequently, that [the state] was not required to record its lien against [Ms.] Edwards's property before she died."

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