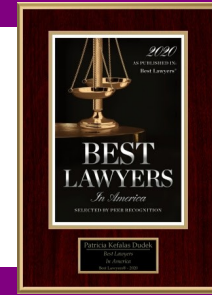


Patricia E. Kefalas Dudek & Associates

Passionate Advice and Advocacy for all
Stages of Life



October 2019



SSA Withdraws Alarming Fee Authorization POMS

Three months to the day after issuing it, the Social Security Administration (SSA) announced that it has archived POMS GN 03920.007, “Legal and Specialized Services Not Subject to Fee Authorization,” issued on June 25, 2019. “Archiving” means that the offending POMS has been removed and the rules revert to how they were prior to its issuance.

The move was in response to alarm and concern expressed by many practitioners and organizations regarding [interpretation of the new POMS](#), which attempted to clarify SSA’s policy regarding fee authorization for legal services. While intended to make the issue of when fee authorization is required clearer, the SSA’s guidance and the examples it provided actually created confusion, resulted in many more questions than answers and raised the specter that drafters of special needs trusts might be required to obtain the SSA’s permission to be paid or risk going to jail. Soon after the release of the new POMS, the National Academy of Elder Law Attorneys (NAELA) reported that it knew of at least two attorneys whose fees and retainer agreements for trust preparation had been requested by the SSA in the Chicago region.

NAELA convened a working group that included Kevin Urbatsch, David Lillesand, and Blaine Brockman of the Academy of Special Needs Planners (ASNP) to explore possible actions, including policy advocacy and litigation, and the group was involved in conversations with high-level SSA staff.

Although the POMS has now been archived, the SSA has stated that it is still working on the matter and it may issue new POMS in the future. ASNP will address those if and when they become available. Urbatsch, ASNP’s National Director, said that the SSA has indicated that it wishes to work with ASNP and other concerned organizations in developing any new policies, but that we are still unsure what type of input the SSA will allow.

NAELA has stated that “Based on [conversations with high-level SSA staff], if you submitted a fee approval to SSA under this archived POMS, it still will be processed by SSA.”

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NAELA Celebrates National Special Needs Law Month in October

The [National Academy of Elder Law Attorneys](#) (NAELA) established October as [National Special Needs Law Month](#) as a grassroots effort to help people with disabilities and their families understand special needs planning and the resources available to them.

Special needs law can involve special needs trusts, care management, advocacy to preserve educational or civil rights, public benefits such as Supplemental Security Income (SSI) and Medicaid, and other important issues.

Many NAELA members will be celebrating National Special Needs Law Month with activities in their communities covering topics such as:

- Financing long-term care,
- Care management,
- Special needs trusts, and
- SSI and Medicaid rules and regulations.

[Learn more about NAELA members.](#)

To receive a free NAELA brochure: "Questions and Answers When Looking for an Elder and Special Needs Law Attorney," contact Communications Manager Abby M. Reitz by email [amatienzo@naela.org] or phone at 703-942-5711 #230.

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Michigan budget bill draws fire for provision to increase privatization of mental-health services

Republican lawmakers inserted a last-minute provision in the 2020 state budget that could further privatize mental-health services, amid protests from some mental-health providers and advocates who say it benefits insurance companies rather than patients.

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How to Use a Trust in Medicaid Planning

The problem with transferring assets is that you have given them away. You no longer control them, and even a trusted child or other relative may lose them. A safer approach is to put them in an irrevocable trust. A trust is a legal entity under which one person -- the "trustee" -- holds legal title to property for the benefit of others -- the "beneficiaries." The trustee must follow the rules provided in the trust instrument. Whether trust assets are counted against Medicaid's resource limits depends on the terms of the trust and who created it.

[Click Here for More Information](#)

Beware of a Growing Medicare Scam: “Free Genetic Testing”

Over the past few years, DNA tests have become popular across the country. Unfortunately unscrupulous people are taking advantage of the buzz around these tests to scam Medicare beneficiaries.

Scammers will often target Medicare beneficiaries through telemarketing calls, booths at public events, health fairs, and door-to-door visits. They offer "free" genetic testing to help recipients avoid diseases or find the right medications.

The scammers claim that the testing is covered by Medicare, and therefore is free to the beneficiary. In reality, Medicare only covers genetic testing in limited situations, and only when ordered by the beneficiary's physician. If a company bills Medicare for genetic testing, and Medicare denies the claim, the beneficiary could be responsible for the entire cost of the test – which often totals around \$10,000.

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Tips for Preventing, Detecting, and Reporting Financial Abuse of the Elderly

It is hard to ascertain the exact numbers of people affected by elder abuse because studies show that elder abuse is underreported. However, one study found that financial loss from financial elder abuse could be close to \$3 billion a year.

While it is impossible to guarantee that an elderly loved one is not the victim of financial abuse, there are some steps you can take to reduce the chances. One option is to have more than one family member involved in caring for the loved one. You can also encourage the elder to get involved in community activities to ensure that he or she has a wide range of support. Using direct deposit as much as possible is also helpful. And of course you should always screen caregivers carefully and verify references.

Financial abuse can be very difficult to detect. The following are some signs that a loved one may be the victim of this kind of abuse:

- The disappearance of valuable objects
- Withdrawals of large amounts of money, checks made out to cash, or low bank balances
- A new "best friend" and isolation from other friends and family
- Large credit card transactions
- Signatures on checks that look different
- A name added to a bank account or newly formed joint accounts
- Indications of fear of caregivers

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What Is a Trust Protector and When Might You Need One?

Trust protectors -- long popular in offshore trusts set up by high rollers -- are growing more common in trusts established here in the U.S. by less affluent folks. A trust protector is someone who is appointed to watch over a trust that will be in effect for a long time and ensure that it is not adversely affected by any changes in the law or circumstances.

There are a number of reasons for appointing a trust protector. Having a protector allows a long-term trust to be more flexible and adapt to factual and legal changes. For example, beneficiaries may get divorced or die prematurely or the law may change. A protector can also be helpful if you believe there may be conflict among the beneficiaries and the trustee or if you don't fully trust the trustee to fulfill your wishes.

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Congress Takes Aim at Ending Subminimum Wages for Workers with Disabilities

More than 420,000 people with disabilities nationwide are being paid less than the federal minimum wage of \$7.25 per hour, [according to the Department of Labor \(DOL\)](#). Some of these workers have been performing the same routine tasks for decades, earning less than \$1 an hour.

And the practice is entirely legal.

[Click Here to Read the Full Article](#)



Funding a Special Needs Trust with Life Insurance: The Basics

The knowledge that we will eventually die is one of the things that seems to distinguish humans from other living beings. At the same time, no one likes to dwell on the prospect of his or her own death. But if you postpone planning for your demise until it is too late, you run the risk that your intended beneficiaries -- those you love the most -- may not receive what you would want them to receive whether due to extra administration costs, unnecessary taxes or squabbling among your heirs.

This is why estate planning is so important, no matter how small your estate may be. It allows you, while you are still living, to ensure that your property will go to the people you want, in the way you want, and when you want. It permits you to save as much as possible on taxes, court costs and attorneys' fees; and it affords the comfort that your loved ones can mourn your loss without being simultaneously burdened with unnecessary red tape and financial confusion.

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Family and Medical Leave (FMLA) Time Off for IEP Meetings

On August 8, 2019, Department of Labor (DOL) released an opinion letter on when parents can take Family and Medical Leave (FMLA) time off for IEP meetings.

https://www.dol.gov/whd/opinion/FMLA/2019/2019_08_08_2A_FMLA.pdf

This Guidance addresses what can be considered a “qualifying reason” for FMLA leave to attend school meetings, like IEP meetings.

This may not fit your family or work situation, but it could be another tool in your advocacy tool kit. The guidance provides:

- general legal principles of the FMLA
- questions presented to the DOL
- DOL response referencing care of children with special health care needs
- relevant precedents
- DOL’s opinion

You’ll find a link to the DOL Guidance and more information about FMLA on the Wrightslaw [Parental Protections](#) page.

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Disability Rights Groups Challenge New “Public Charge” Immigration Rules

New federal rules are likely to make it significantly harder for people with disabilities to obtain green cards, a change disability advocates fear is an attempt to reinstate exclusionary policies in federal immigration law.

So-called “green cards” are permits that allow people from other countries to live and work permanently in the U.S. As recently as 1990, the federal Immigration Code permitted the government to deny green cards to “aliens who are mentally retarded” or who are “afflicted with . . . a mental defect.” Although the rules are less blatantly exclusionary now, federal officials have retained the right to deny green cards to people on the basis that they are “likely to be a public charge.” New regulations from the Department of Homeland Security (DHS), set to go into effect October 15, 2019, significantly expand what DHS can take into consideration when determining whether a person meets the “public charge” definition.

Federal guidance issued in 1999 defined a “public charge” as a person “primarily dependent on the government assistance.” As such, the federal government could consider if a person needed Supplemental Security Income or long-term institutional care, but not most other programs.

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DOT Issues New Guidance for Travelers with Support Animals

As the number of passengers traveling with service and emotional support animals continues to increase, the federal government has provided some much-needed guidance on airlines' responsibilities to accommodate people with disabilities.

Under [new guidance released in August](#), airlines may no longer reject breeds of service and emotional support animals without an individualized assessment of whether the animals pose a safety threat.

In a [summary of the new guidance](#), the DOT explains that airlines may prohibit animals if they are too large or heavy for the plane. While prohibitions on animals less than four months old are permissible, limits on the number of service animals are not allowed. When flights are more than eight hours long, airlines can require travelers to provide proof that the animal will not have to relieve itself mid-flight.



[Click Here for Additional Information](#)

Providing for Your Pet with a Trust

Beezer the cat can be a member of the family, but what happens to Beezer or [insert your pet's name] after you are gone? How can you ensure your pet will be cared for? One option is to create a pet trust. While you can give directions in your will to leave your pet to a caretaker, there is no guarantee that the caretaker will continue to care for your pet. A pet trust can provide a little more security for the pet because a third party -- the trustee -- is obligated to ensure the pet is cared for.

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Most Are Taking Social Security at the Wrong Time

A new report finds that almost no retirees are making financially optimal decisions about when to take Social Security and are losing out on more than \$100,000 per household in the process. The average Social Security recipient would receive 9 percent more income in retirement if they made the financially optimal decision.

When claiming Social Security, you have three options: You may begin taking benefits between age 62 and your full retirement age, you can wait until your full retirement age, or you can delay benefits and take them anytime up until you reach age 70. If you take Social Security between age 62 and your full retirement age, your benefits will be reduced to account for the longer period you will be paid. If you delay taking retirement, depending on when you were born, your eventual benefit will increase by 6 to 8 percent for every year that you delay, in addition to any cost-of-living increases.

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Denying a Patient Access to Their Records Can Cost You

([Frost Brown Todd LLC](#) - [Brian F. Higgins](#))

In a first of its kind enforcement action, the Office of Civil Rights at the Department of Health and Human Services ("HHS") entered into a resolution agreement with Florida-based Bayfront HMA Medical Center, LLC ("Bayfront") pursuant to its Right of Access Initiative for failing to provide timely access to a patient's protected health information.

Bayfront is a Level II trauma and tertiary care center licensed as a 480-bed hospital with over 550 affiliated physicians. Bayfront has agreed to pay HHS \$85,000 to resolve the issue and has entered into a corrective action plan that will last one year. Pursuant to the corrective action plan, Bayfront must update its policies and procedures regarding a patient's right to access their protected health information and have all members of its workforce and business associates certify that they will abide by the updated policies. HHS' Right of Access Initiative aims to put individuals "in the driver's seat" to help move toward a more patient-centered health care system.

Bayfront failed to provide a mother with timely access to fetal heart monitor records about her unborn child. Bayfront responded that it could not find the records. The patient then had a lawyer request the records from Bayfront on two separate occasions, and Bayfront failed to provide a complete response to the lawyer until seven months after the lawyer's initial request was made. The government initiated its investigation of Bayfront after receiving a complaint from the mother about the lack of access to the records. As a result, Bayfront finally provided the mother with the requested health information more than nine months after her initial request.

[Click Here to Access the Entire Article](#)

Who Can Serve as Executor?

One important reason to have a will is to be able to name your executor (also called a personal representative). An executor is the person responsible for managing the administration of your estate after you die. If you don't choose an executor, the court will choose one for you.

If you die without a will or the person named in the will can't serve as executor, the probate court will choose an executor. State law dictates who has priority to serve. The surviving spouse usually has first priority, followed by children. If there is no spouse or children, then other family members may be chosen. If more than one person is has priority and the heirs can't agree on who should serve, then the court will choose.

[Click Here for the Full Article](#)

What to Look for When Buying an Annuity

An annuity can be a useful tool for long-term care planning, but annuities are also complex financial products that are hard to understand. If purchasing an annuity, you need to consider your options carefully.

An annuity is a contract with an insurance company under which the consumer pays the company a certain amount of money and the company sends the consumer a monthly check for the rest of his or her life, or for a certain term. Annuities come in many flavors. They can be deferred (begin paying out at a later date) or immediate (begin paying out right away). They can pay a fixed amount each month or pay out a variable amount based on how the money is invested. While a fixed immediate annuity can be a good Medicaid planning option for a married couple, other annuity products can be quite complex and confusing and are not right for everyone.

If you have decided an annuity is the right choice for your long-term care or retirement plan, you need to shop around to find the right product. The following are some purchasing tips:

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