

ELDERLAW

NEWS

Legal News For Older Americans *April 1997*

STOP GUESSING!

Questions about protecting your assets against catastrophic illness and nursing home costs, Social Security, Medicare, Medicaid, Managed Care, Elder Injury Litigation, Grandparent Visitation conflicts, Estate Planning, Guardianships, Pension and Health Benefits or Probate?

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Answers in upcoming editions. Special offer for readers: No charge for initial phone consultation.
A PUBLICATION OF

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*Other Conference
Locations Available*

CAREFUL
PLANNING
MAKES
A
DIFFERENCE

A Nursing Home Cannot Force a Resident's Family or Friends to Become Financially Responsible For Payment of Nursing Home Costs.

Admission to a nursing home is a traumatic event for all concerned: the incoming resident, family members and friends. Nursing homes sometimes take advantage of the situation by requiring friends or family members to co-sign the admission contract and thereby assume personal liability for costs and expenses. A nursing home can use such financial guarantees to collect thousands of dollars from friends or family members if, for example, a resident's Medicaid application is mishandled or denied.

In 1987, Congress banned nursing home guarantees. In the Nursing Home Reform Law of 1987, Congress stated that a "nursing facility must ... not require payment ... as a condition or admission (or expedited admission) to, or continued stay in, the facility". 42 U.S.C. §§1395i-3(c)(5)(A)(ii) and 1396(c)(5)(A)(ii).

Despite the law, some nursing homes have continued to seek and obtain financial guarantees from residents' family members and friends, ignoring the federal prohibition. By and large, those guarantees are illegal and/or unenforceable.

Report finds HMO's illegally limit the appeal rights of elderly patients.

Investigators from the US Department of Health and Human Services recently reported that many health maintenance organizations illegally limited the ability of the elderly to appeal decisions denying, reducing or terminating medical treatment. Thus, many elderly people in HMO's often find that they cannot obtain the medical services they need. HMO's illegally curtailed appeals by (1) failing to inform elderly patients of their appeal rights, (2) misinforming the elderly by telling them that they had no right to appeal when appeals were permitted, (3) failing to make treatment decisions promptly, and (4) failing to continue services while the elderly pursued appeals. The government says that it plans to issue new rules to clarify appeal rights. To date, however, no new rules have been issued.

The National Association of Elder Law Attorneys ("NAELA") has designed

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nated the week of May 18th through May 24th, 1997 as National Elder Law Week. NAELA has requested that members participate by conducting public seminars, holding elder law clinics and writing articles for publication. For further information on activities in your community, call your county Office on Aging, or the Elderlaw News at 908-232-7400 or 908-580-0400.

Publisher of the Elderlaw News Elected Chair of Committee Focusing on the Legal Needs of the Elderly.

Donald D. Vanarelli, Esq., an attorney with offices in Westfield and Warren, NJ and the publisher of the Elderlaw News, was elected Chair of the newly-formed Elder Law Committee of the Somerset County Bar Association. Mr. Vanarelli is also the founder of the Committee.

The Elder Law Committee is comprised of attorneys who either live or work in Somerset County and who focus on the legal needs of the elderly in their law practices. Lawyers who practice elder law handle a wide range of issues but have a specific type of client – seniors. Elder law involves estate planning and probate, Social Security, Medicare and Medicaid, planning for nursing home care and guardianships, etc.

Mr. Vanarelli also serves as the Secretary of the New Jersey Chapter of the National Academy of Elder Law Attorneys. He is also an active member of the Union County Elder Law Committee.

Medicaid Planning: Bill to Repeal Criminal Penalties for Medicaid Transfers Gains.

H.R. 216, introduced in January 1997, which would repeal the criminal penalties for Medicaid planning, has gained many important supporters. At this time, there are 36 U.S. Representatives sponsoring the bill. In addition, more than 30 national organizations have also signed-on to the repeal efforts, including the American Association of Retired Persons, the American Bar Association and the Alzheimer's Association, among others. Most recently, the Clinton Administration urged Congress to repeal the law. Moreover, high-level officials of the Health Care Financing Administration, which supervises Medicaid, have said that Congress ought to repeal the criminal penalties, and have indicated that the federal government would not encourage the states to enforce the provision.

Workshop: How To Protect Your Assets From Nursing Home Costs.

A *FREE* Hands-On Workshop, sponsored by the Elderlaw News, will be held on May 12, 1997 at 7:00 p.m. in Westfield and on May 13, 1997 at 7:00 p.m. in Warren. The topic is asset preservation strategies in long-term care/nursing home planning. All attendees will receive a free 50 page booklet covering legal issues in elderlaw. Free Parking-Refreshments. Limited Seating-Advanced Registration Required. Call for Information (908) 580-0400. June Workshop: Guardianships (6/16 and 6/17).

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