

Czepiga & Daly LLC

Planning today for your tomorrow

News You Can Use

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Czepiga Law Group becomes Czepiga & Daly. We are excited to announce we have changed our name to Czepiga & Daly. We bring the same great service with a new name and renew energy for our clients and our profession. We are also pleased to welcome D.J. Harry Webb as Counsel and Linda Worden as Geriatric Services Coordinator to our firm.

Congratulations to Brendan Daly on passing the exam to become Certified as an Elder Law Attorney .



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Medicare's Limited Nursing Home Coverage

Many people believe that Medicare covers nursing home stays. In fact Medicare's coverage of nursing home care is quite limited. Medicare covers up to 100 days of "skilled nursing care" per illness, but there are a number of requirements that must be met before the nursing home stay will be covered. The result of these requirements is that Medicare recipients are often discharged from a nursing home before they are ready.

In order for a nursing home stay to be covered by Medicare, you must enter a Medicare-approved "skilled nursing facility" or nursing home within 30 days of a hospi-

tal stay that lasted at least three days. The care in the nursing home must be for the same condition as the hospital stay. In addition, you must need "skilled care." This means a physician must order the treatment and the treatment must be provided daily by a registered nurse, physical therapist, or licensed practical nurse. Finally, Medicare only covers "acute" care as opposed to custodial care. This means it covers care only for people who are likely to recover from their conditions, not care for people who need ongoing help with performing everyday activities, such as bathing or dressing.

Note that if you need skilled nursing care to maintain your status (or



to slow deterioration), then the care should be provided and is covered by Medicare. In addition, patients often receive an array of treatments that don't need to be carried

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Lack of Power of Attorney Stops Daughter's Nursing Home Suit

A decision by Mississippi's highest court illustrates the importance of having a power of attorney. One of the most important estate planning documents, a power of attorney allows a person you appoint -- your

"attorney-in-fact" -- to make financial decisions for you should you be unable to make decisions yourself because of incapacity.

Bernadette Goodlett admitted her mother,

Sarah, to a nursing home. During her stay at the nursing home, Mrs. Goodlett developed two decubitus ulcers (bed sores), which required surgery. Bernadette informed the

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out by a skilled nurse but which may, in combination, require skilled supervision. For example, the potential for adverse interactions among multiple treatments may require that a skilled nurse monitor the patient's care and status. In such cases, Medicare should continue to provide coverage.

Once you are in a facility, Medicare will cover the cost of a semi-private room, meals, skilled nursing and rehabilitative services, and medically neces-



sary supplies. Medicare covers 100 percent of the costs for the first 20 days. Beginning on day 21 of the nursing home stay, there is a significant co-payment (\$128 a day in 2008). This copayment may be covered by a Medigap policy. After 100 days are up, you are responsible for all costs.

If you are in a nursing home and the nursing home believes that Medicare will no longer cover you, it must give you a written

notice of non-coverage. The nursing home cannot discharge you until the day after the notice is given. The notice should explain how to file an expedited appeal to a Quality Improvement Organization (QIO). A QIO is a group of doctors and other professionals who monitor the quality of care delivered to Medicare beneficiaries. You should appeal right away. You will not be charged while waiting for the decision, but if the QIO denies coverage, you will be responsible for the cost. If the QIO denies coverage, you can appeal the decision to an Administrative Law Judge (ALJ). It is recommended that a patient hire a lawyer to pursue an appeal. ■

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nursing home that she was planning to sue it for negligence and sent the nursing home a medical authorization giving it permission to release Mrs. Goodlett's medical records. Due to complications from a stroke, Mrs. Goodlett was unable to sign her own name to the medical authorization. The nursing home refused to release the medical records, claiming that because Bernadette did not have a power of attorney over her mother, only Mrs. Goodlett could authorize the release of the medical records.

Bernadette sued the nursing home on behalf of her mother for negligence. The nursing home argued

the lawsuit should be dismissed because Bernadette did not file a form required by state law. Bernadette argued she did not need to file the form because she had not received her mother's medical records. The trial court found that Bernadette had substantially complied with the law, and allowed the lawsuit to continue.

The Mississippi Supreme Court reversed, holding that because Bernadette did not have power of attorney

for her mother, she was not entitled to her mother's medical records. Therefore, Bernadette could not file suit without including the required form.

Had Mrs. Goodlett given Bernadette a power of attorney before Bernadette requested the medical records, the lawsuit

would have been able to proceed. It is not difficult to put a power of attorney things much in place, and it can make easier for your family if you are incapacitated. ■

“One of the most important estate planning documents, a power of attorney allows a person you appoint - to make financial decisions for you”

Lawsuits Claim Elderly Should Be Protected From Their Bad Decisions

Should the elderly not bear full responsibility for their poor choices simply because they are old?

In the last few years, according to a front-page article in the *New York Times*, thousands of older Americans have filed lawsuits arguing

that broadly-worded elder abuse statutes create special protections that shield them from their unwise decisions, even though those decisions were freely made.

The article focuses on the plight of Robert J. Pyle, who eight years ago

had more than \$1 million in assets and was looking forward to a comfortable retirement. Today, at age 81, Mr. Pyle has lost everything and is living in a small room in his step-daughter's house.

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Medicaid Proposes Allowing Recipients to Direct Own Home Care

Medicaid beneficiaries who need help living at home could soon choose to receive a cash allowance to hire their own home care workers or even pay a family member to deliver their care.

Currently Medicaid beneficiaries who need help with activities of daily living like bathing and dressing must work with personnel employed by a home-care agency. But beneficiaries often have limited choices about how and when their care is provided, especially since agencies generally do not provide care on weekends or outside normal business hours.

Now, the Centers for Medicare & Medicaid Services (CMS) has proposed new rule that would give beneficiaries a cash allowance to hire, direct, train or fire their own personal care workers to help with things like preparing meals, household chores and other related services that help a person to live independently. Beneficiaries could even hire qualified family members who may already be familiar with the individual's needs to perform personal assistance (although not

medical) services.

In addition, the allowance could be used for assistive technologies or home modifications that could reduce dependency on human assistance, such as a wheelchair ramp or microwave oven. The beneficiaries also have the option to have their cash benefit allotment managed for them.

"This proposal would give Medicaid beneficiaries significant new freedom to determine how their personal assistance services are delivered and by whom," said Kerry Weems, CMS acting administrator. "As health care is not simply an economic transaction, this proposal represents a fundamental shift that restores a person's ability to improve their overall health by taking greater control of his or her own decisions."

ElderLawAnswers reported in 2003 that the innovation, called Cash and Counseling, was being field tested in three states -- Arkansas, Florida and New Jersey. A study done at that time found that disabled Medicaid recipients living at

home who were allowed to direct their own care were more satisfied with their care and spent less money on nursing homes than those using Medicaid's traditional agency-provided services. (See "[Consumer-Directed Medicaid Home Care Shows Promise](#)".)

The proposal would put into place a provision of the Deficit Reduction Act of 2005 that allows states to elect a state plan option to provide care in ways that previously required "waivers" of Medicaid laws. States must apply for approval of this state plan option in order to be able to provide these self-directed services. Enrollment in the new state plan option is voluntary and the state must also provide traditional agency-delivered services if the beneficiary wishes to discontinue self-directed care.

States choosing the option must have necessary quality assurances and other safeguards in place to assure the health and welfare of participants. States must also train potential participants in ways to manage their budgets and assess their personal care needs. ■

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Mr. Pyle, a retired aerospace engineer, willingly gave away hundreds of thousands of dollars to a woman whom he believed would eventually pay him back. Then, in increasingly desperate attempts to right himself financially, he took out a series of loans on his home that he could ill-afford, finally selling the house for much less than its market value.

Mr. Pyle is now suing, contending that mortgage brokers and banks defrauded him by helping him take out loans they knew he could not repay, and that the buyer of his home deceived him by paying far

less than it was worth. Mr. Pyle, does not claim that he should be compensated because he was not in his right mind at the time he made these decisions, but simply because he is old.

"These lawsuits raise controversial questions," the article states. "In the eyes of the law, should the elderly be treated like adolescents, who are not entirely responsible for their poor decisions, but are also barred from making certain choices on their own? Or should they have autonomy, and therefore be accountable for their blunders?"

The article quotes [A. Kimberley Dayton](#) of the Center for Elder Justice and Policy at the William Mitchell College of Law in St. Paul, Minnesota. "We know that, statistically, seniors are at enormous risk for fraud," says Prof. Dayton. "It's foolish to ignore that. But there's also a huge dilemma in determining when someone is just being eccentric, versus someone who is a victim of undue influence." ■



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Firm News

Czepiga & Daly is pleased to welcome to the firm D. J. Harry Webb as Counsel and Linda Worden, BSN, MPH as Geriatric Services Coordinator.

Harry Webb attended Wesleyan University and graduated from the University of Connecticut in 1953 and its law school in 1956, where he was a member of the Law Review. In addition, he received a Master of Laws degree from New York University in Taxation. He has practiced law in New Britain since 1960, specializing in trusts, estates, probate, and tax matters.

Harry has been a member of the probate and tax sections of the Connecticut Bar Association for many years and was a Director of the Connecticut Estate and Tax Planning Council.

In the greater New Britain community, Harry has been active in such organizations as the YWCA as Chairman of its Board of Trustees and the United Way of Greater New Britain both as Chairman of the Allocation Committee and as President. He was instrumental in reactivating the New Britain Foundation for Public Giving. He has represented the Jerome Home throughout its expansion from a small home for the aged in 1970 to a facility that offers a full continuum of care with 66 units of assisted

living – the first in New Britain – to be ready for occupancy this summer.

Linda G. Worden has a RN diploma from St. Francis Hospital School of Nursing, a Bachelors Degree from St. Joseph's College and a Master's in Public Health from the University of Connecticut. She has over 25 years of experience working with the elderly in long term care, home care and hospice. She is a member of the National Association of Professional Geriatric Care Managers and the Connecticut Association for Home Care.

Linda has been active statewide in elderly issues. She has served on the Connecticut Home Care Board of Directors and Visiting Nurses Association of New England Board of Directors. She is a member of the Advisory Council for Senior Resources Area Agency on Aging and the Middlesex County Elderly Services Committee.

Linda's hands on approach and expertise in eldercare services ensure that her clients receive competent and compassionate assistance and guidance to meet their individual care needs. We are pleased to have Linda join our team.