

PLANNING *For Your* FUTURE

A newsletter about important estate planning and elder law issues

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As the seasons change, we are reminded of how quickly time passes. The future will be here sooner than we think, and that is why we encourage you to plan for the future today. Advance planning can bring you peace of mind ensuring that your wishes are known and carried out.

In this issue, we review the options available in New York State regarding Medicaid's Home Care Program – getting proper care doesn't have to mean leaving your home. This issue also addresses the impact of the new HIPAA rules regarding patient privacy – I encourage each of you to read this and act now to ensure that you and your loved ones have access to each other's health care information.

I hope this issue finds you and your loved ones in the best of health!

Bernard A. Krooks, Esq.

Managing Partner, Littman Krooks LLP

BUT I STILL WANT TO LIVE IN MY OWN *Home*

By Robin Freimann, Esq.

The Situation:

Nancy, a 48-year-old working mother of 3 teenage children, recently came to see us about her 80-year-old Mom. Nancy is concerned about her Mom, an independent woman who is living on her own since the death of her husband five years ago. While Nancy is happy to help with balancing the checkbook and doing the grocery shopping, it is becoming increasingly evident, from visit to visit, that Mom needs help getting in or out of the bath, going to the

toilet, preparing simple meals, and knowing that it is time to take her medicine. Understandably, Nancy feels responsible for her Mom's well-being and safety. Nancy realizes that she cannot afford to give up her job nor is it realistic to think that she will always be available at the times that her Mom needs her help in the home.

The Advice:

After listening to Nancy and learning more about her Mom's financial and medical situation, we determined that Mom is eligible

FIRM NEWS

We are pleased to announce that *Peter A. Perlman, Esq.* has joined Littman Krooks LLP as head of our Litigation Department. *Mr. Perlman* has extensive experience in all aspects of litigation, including Will contests, contested guardianships, commercial and insurance company disputes. Additionally, he has represented securities and commodities industries in a wide variety of litigated matters.

Bernard A. Krooks, Esq. has recently passed the Certified Elder Law Attorney re-certification exam. *Mr. Krooks* has also appeared in a recent PBS Special (TV Show) "When Disability Strikes." In addition, *Mr. Krooks* has been quoted in a number of publications, including the *Wall Street Journal*, *Westchester Magazine* and *Newsday* on a variety of Elder Law Topics.

Congratulations to *Howard S. Krooks, Esq.*, Partner in the Elder Law Department for passing the Florida Bar.

Congratulations and job well done to all of our employees who took part in the Alzheimer's Memory Walk on October 26, 2003. The Firm helped raise money to battle this dreadful disease.

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NEW PRIVACY RULES RESTRICT *Family* *Access* TO HEALTH INFORMATION

By Bernard A. Krooks, Esq.

After a man rushes his wife to the emergency room and helps her get situated in her room, he goes home to shower, change clothes, and eat. Upon returning, he can't remember the room number. The "Information Desk" refuses to provide any information about his wife, not even the room number.

A 20-year old lady is stung by bees, suffers a life-threatening allergic reaction and is rushed to a hospital. No family lives nearby; her mother lives in another state. The hospital never attempts to contact her mother claiming HIPAA prevents them.

An elderly man is hospitalized with pneumonia in serious condition and he is not expected to return home. The doctor and hospital refuse to provide any information about his condition to his only child who lives with him and cares for him. They say she does not have proper authorization and her father cannot sign one now.

After the unexpected death of a widow in a nursing home on Medicaid, her only surviving descendant wants to find out what caused her death. Her grandmother had no property, no estate and no personal representative. The nursing home refuses to provide any information to the grieving granddaughter. What does she do?

These disturbing experiences are a result of the newly enacted Health Insurance Portability and Accountability Act, or HIPAA.

Under HIPAA, doctors, hospitals and other healthcare providers are prohibited from discussing a patient's status with other family members unless proper written consent forms are signed. As an estate planning and elder law attorney, I believe HIPAA threatens independence and liberty for many Americans.

HIPAA will have a negative effect on the medical community, emergency service personnel, and other healthcare providers. Patients, families and loved ones are also being seriously affected by HIPAA. In the name of privacy, family members are severely restricted from information essential to provide loving care during a medical crisis.

Some healthcare providers apply HIPAA stringently, concerned about fines for violations. They would rather be safe than sorry. Who can blame them? But for family members just trying to help, the results are often frustration, a sense of powerlessness and anger. The federal government has set up a hot line (866-627-7748) to assist families who are dealing with the effects of HIPAA.

WHAT CAN YOU DO

The key to protection from HIPAA is to be designated in writing by the patient as a "Personal Representative" (PR). This can be accomplished through a properly drafted health care proxy. A PR is treated as if he/she is the patient so healthcare providers must disclose medical information. But when in doubt about a PR's authority, some health-care providers may provide some information to some



people in some situations. But they are not required to do so without the proper documentation.

For a minor child, the parent is generally the PR. However, she may have to prove she really is a parent of the child. For an adult, no one, not even a parent, spouse or child, has any right to medical information unless the patient designates the person as the PR.

Elderly patients and their families suffer most from HIPAA. Often isolated with children living far away, health-care crises may require emergency intervention. HIPAA can restrict necessary communications with family members who want to help. Adult children should help their parents plan ahead for HIPAA with proper documentation. Consulting a qualified attorney is appropriate and recommended.

Act now to preserve your liberty and independence. Make sure your loved ones have access to your health care information and you have access to theirs in the event of a health care crisis.

to receive services provided by the Medicaid Home Care Program. Based on Mom's medical condition and financial situation, and her desire to remain at home, we arranged for Nancy's Mom to participate in the Home Attendant program of the Medicaid Home Care Program.

A Happy Ending:

Today, Nancy and her Mom are both happy! Nancy enjoys peace of mind knowing that her Mom is receiving the care and attention she needs and Mom is enjoying enhanced quality of life with the care she needs being provided in her own home.

Clients often come to us with a familiar scenario: A fiercely independent, elderly parent who is increasingly frail and/or forgetful, yet is still living alone or with an equally elderly spouse. The adult son or daughter may take on some of the day-to-day chores of running a house, but it becomes increasingly evident, that mom or dad requires more care. The parent needs help performing daily personal hygiene activities and forgets to take medication. The son's or daughter's common question is, "What to do"? For New York State's elderly who meet the financial and medical eligibility requirements, the Medicaid Home Care Program can provide valuable services.

What Are These Services?

Briefly, there are four basic types of Medicaid home care:

- Home attendant or personal care, which is the largest program;
- Certified Home Health "CHHA" Services, commonly known as "visiting nurse services" for people with unstable or acute medical conditions;
- Private Duty Nursing for clients who need continuous skilled nursing needs; and
- The Lombardi Program, the

"Nursing Home Without Walls," for clients who may benefit from a mix of home care and adult day care programs.

Each program has specific medical and financial eligibility requirements. Obtaining benefits can be challenging, but working with an experienced Elder Law Attorney maximizes a client's chance of getting all the benefits that he or she is entitled to receive.

My Parent Saved Money Over The Years. Will This Impact Eligibility?

Although it is a program based on financial need, there are several liberal rules that enable middle-class seniors to qualify.

The most important rule states that a senior can transfer any amount of assets today to a trusted family member and qualify for Medicaid home care and community-based medical care on the first day of the following month (except for the "nursing home without walls" program). There is no penalty period for the transfer of assets, unlike the nursing home Medicaid program.

In addition, applicants in New York City and suburbs such as Westchester or Nassau County can request a "Simplified Asset Review" in which only three months of bank and other asset records must be submitted to Medicaid.

Further, even if a "sick spouse" is living with a well spouse who has assets, the sick spouse can be eligible solely on the basis of her own assets and resources if the well spouse signs a form that states he refuses to make his assets and income available for the care. This option can lead to a recovery action by the Human Resources Administration ("HRA") or the local department of social services. However,

an experienced Elder Law attorney will be able to guide the family through this process and help them engage in post-eligibility planning.

But What if My Parent's Income is More than the \$662 Medicaid Limit for 2003?

Seniors with incomes above \$662 monthly can "spend-down" their excess income to qualify for Medicaid. For example, the senior keeps the first \$662 of his income and receives a bill for the surplus from the home attendant program. If a senior has extra medical bills (i.e., has paid for a hearing aid), these bills can be used to offset the spend-down. Prescription drug costs are covered, so, for many seniors, this benefit more than offsets the financial obligations of the spend-down requirements. The Elder Law attorney may also discuss the possibility that the parent's surplus monthly income can be placed in a "pooled trust."

Is the Medical Form, the M11q, an Important Factor in Determining Eligibility Benefits?

The senior who is determined to be financially eligible for the Medicaid home care program must also be medically eligible. That is why the medical form, the M11q (it often has a different name outside of New York City), is such an important document.

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We will work with your physician to ensure that your needs are comprehensively expressed in the M11q.

The physician who signs the form must clearly state how much assistance the senior needs with respect to activities of daily living such as bathing, grooming, feeding, transferring in and out of bed and walking. The M11q is used to determine how many hours per day of care and what type of home health care a senior is entitled to receive. Unfortunately, physicians are usually very busy and may not have the time to fully describe in writing all of the patient's home care needs.

The knowledgeable elder law attorney or advocate can work with

the physician to make sure that all of the required language necessary to best explain the senior's needs is adequately expressed in the M11q.

How Can I Determine if My Parent Qualifies for Home Care Services?

The Elder Law attorneys at Littman Krooks LLP are always available to discuss these complicated and important issues with you. We can help you navigate through the maze of rules and regulations to reach a satisfactory solution. We will meet with you to review your situation and your options. Working together we can hopefully keep mom or dad where he or she wants to be – at home.

If you are interested in having an Elder Law Attorney from Littman Krooks LLP speak to your group, please contact Nicole Garcia at 914-684-2100.

If you have moved or have address corrections, please contact Nicole Garcia at 914-684-2100. Please also call Nicole if there is someone else you know who would enjoy receiving our complimentary newsletter and we will add them to our mailing list.

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