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A CHANGE FOR THE BETTER IN ASSISTED LIVING

By Dana E. Bookbinder, Esquire

This week the New Jersey State Bar Association's Elder and Disability Law Section held its annual retreat, providing elder law attorneys the opportunity to attend seminars on a variety of topics affecting our clients and discuss legal and practice issues with peers. This year's conference heavily focused on trends in both federal and state law and anticipated resolutions to current problems which our clients face every day. Among the topics discussed were inconsistencies in the operation of assisted living facilities. Current law pertaining to these facilities is sketchy, and much depends upon the assisted living contract itself. Fortunately, as was discussed among the attorneys in attendance, momentum is stirring toward greater uniformity and rights for residents.

Inconsistencies in assisted living policies, including the treatment of Medicaid applicants, have been so prevalent that last August, the state Division of Aging and Community Services issued a policy memorandum, which was distributed to assisted living facilities throughout the state. The memo reads, "Consumers have expressed confusion and frustration with their lack of understanding of the different responses they have received from various Assisted Living providers." The policy requires each assisted living facility to create a disclosure handout regarding the facility's Medicaid policies and procedures. All prospective residents are to receive the handout when visiting the facility. The handout also must be distributed to all current residents of the facility beginning on the effective date of the State's memo, October 1, 2004.

The topics required to be addressed in each facility's memo are as follows: responsibilities of the resident and facility with regard to Medicaid applications; whether the facility requires a period of private pay before accepting Medicaid benefits on behalf of a resident; whether the facility accepts Medicaid patients directly from the community; whether the facility has a waiting list for accepting Medicaid benefits on behalf of residents; the facility's expectations if a resident financially qualifies for Medicaid but the facility will not accommodate an additional Medicaid patient at that time; the physical accommodations given to Medicaid recipients; whether the facility will accept private payments made in addition to Medicaid benefits to upgrade a Medicaid

resident to a private room; how long a room can be held during a resident's medical leave; policies regarding residents' absences or termination of residency from the facility; and consequences of nonpayment.

While the State's memo falls far short of requiring consistency among facilities in their operations concerning patient rights, it is a significant step towards enabling prospective assisted living residents to make educated decisions. It also diminishes opportunity for consumer fraud in assisted living situations. As the law regarding assisted living residences continues to evolve as it has with regard to nursing homes, perhaps assisted living residents one day will be guarded by a uniform set of protective rights.

As I stated in my recent *Begley and Bookbinder Alert* article "Catch Me If You Can: Chasing Changes in Elder Law," elder law changes so quickly and radically, it is incumbent upon all practitioners to remain current. With the attention of the State agency and lawmakers and the help of proactive elder law attorneys, we hope to see more positive changes to protect those seeking long term care in facilities.



Begley & Bookbinder, P.C. is a law firm that specializes in Elder & Disabilities Law. We are based in Moorestown, NJ, with offices in Stone Harbor & Lawrenceville.

If you have any comments, e-mail us at ccaruso@begleylawyer.com

Our web site contains a library of firm newsletters, articles, on-line forms for Medicaid, Estate Planning and Guardianship, as well as our upcoming speaking engagements, our products, and other relevant information.

If you are interested in having an Elder & Disabilities Law Attorney from Begley & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

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