



THE POLNER ABRAHAMS REPORT

INSIGHTS FOR INTELLIGENT ELDER LAW, ESTATE AND SPECIAL NEEDS LAW PLANNING

COURTESY OF

POLNER ABRAHAMS
LAW FIRM

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What you need to know...

Managed Long Term Care Alert

New York State administers a comprehensive home care program called Managed Long Term Care (MLTC). After the local Medicaid department in your county determines financial eligibility for services, a state-contract agency – Maximus – must first certify that the senior or person with disabilities actually needs the care and services. Then, and finally, the Medicaid recipient can be evaluated by and enroll in a managed care plan.

A serious new issue has been discovered and reported by advocates, including myself, and in the NY Times.

Some managed care providers (MLTCs) are arbitrarily and without notice or legally required notice, reducing the hours of aides to the Medicaid recipient. A client recently told me that his wife – competent but legally blind and with a debilitating and paralyzing disease – received a call informing her that 84 hours per week of care by aides would be reduced to 39 hours of care. A nonprofit filed a federal class action lawsuit against the NY State Department of Health and a particular MLTC on behalf of disabled and aged persons unlawfully threatened with cuts in home care services.

You need to be on the alert for:

- It is unlawful to be told by telephone or verbally that any services will be reduced or cut; the law requires that the Medicaid recipient (or their representative, such as a family member) receive a written notice.
- Written notice must be delivered and include the date service will be reduced, the specific facts and reasons justifying proposed reductions in hours for an aide, the telephone number to request a reconsideration by the MLTC company, and the telephone number to request an administrative Fair Hearing from the NYS Department of Social Services (held in your own county) to challenge the reduction in hours.

- Written notice of reduction or change of services must be mailed at least 10 days before the effective date of reduction. If a Fair Hearing is requested from the NYS Department of Social Services before the effective date (the 10 days), request 'Aid to Continue' so services remain until a written decision from NYS.
- Contact my office to seek representation for the fair hearing and for information about a no-charge legal advocacy group near you (funding is called ICAN).

This report evaluates and challenges this serious issue:

"Mis-Managed Care: Fair Hearing Decisions on Medicaid Home Care Reductions by Managed Long Term Care Plans June – Dec. 2015" by Medicaid Matters New York. Visit **New York Times** article "Lives Upended by Disputed Cuts in Home-Health Care for Disabled Patients," by Nina Bernstein, July 20, 2016, and for a link (online) to the published report.

Mediation: Solving More Problems than Litigation

Family disputes involving elder care, health decisions and financial management and special needs continue to plague the court system when guardianship legal proceedings (NY Article 81 or Article 17a guardianship cases in NYS) are brought and a judge imposes a decision.

Most families don't realize that their 'day in court' does not give them their 'say in court' when the judicial system is involved.

The goal of mediation is for all 'sides' in the dispute or disagreement to reach a mutually satisfactory resolution or settlement with a neutral Mediator. Mediation can be used before you file a legal proceeding and can include your lawyers; or after you filed your legal proceeding.

My work as a mediator is not to be an advocate or a judge. My role is to facilitate the options for resolving your disagreement or dispute by skillfully but impartially guiding you through discussion, conflict resolution, and negotiation.

More about my services at www.BPAbrahamLaw.com

Let's go green! To receive e-mail alerts when my newsletters are available online, email Info@BPAbrahamLaw.com with the Subject line: **"Yes: e-Newsletter"**. If you do not sign-up, you will continue to receive the paper version.

ABLE Act Now Law in NY State, SSI Is Ready with Regulations

The Achieving a Better Life Experience Act of 2014 – “**ABLE Act**” – became a federal law In December 2014, modeled on the 529 program for college savings accounts. **On July 22, 2016, NYS enacted the ABLE Act.** We are waiting for the name of the entities authorized to open and manage the ABLE accounts.

Here's a summary of this wonderful new law:

- ABLE Act amends the Internal Revenue Code to allow a qualified state ABLE program, similar to the 529 program, to be exempt from income taxation. The extent of income tax savings on account earnings will vary by state.
- Accounts can be established for disabled persons whose onset of disability was before age 26. The account can be established after age 26 but before age 65 as long as the determination of disability established the condition onset before age 26.
- Accounts can be established by a parent, legal guardian or agent acting under a power of attorney. The beneficiary is considered the owner by SSI, regardless of who opens the account.
- The disabled person must either be receiving SSI or Social Security Disability (or the derivative benefit from a parent of a disabled person called CDB – child disability benefit – formerly DAC).
- There can be only one ABLE Act account for a disabled beneficiary.
- The ABLE Act will allow anyone to contribute a gift to the established qualified account up to the tax-free maximum of \$14,000 per year in 2016.
- The account can accumulate up to \$100,000 (includes interest and dividends) even if the beneficiary is receiving SSI and Medicaid. Note: SSI generally limits resources to \$2,000. If account exceeds the cap, the beneficiary does not receive the SSI cash benefit because eligibility is ‘suspended,’ but NY Medicaid benefits continue.
- The account can be used for education, housing, transportation, employment training and support, assistive technology, health prevention and wellness, legal fees, financial management services, funeral and burial, and basic living expenses. This is completely new and different from traditional SSI and Medicaid rules and law governing supplemental needs trust where trust funds cannot be used for food or housing expenses or items paid for by Medicaid.
- On the beneficiary’s death, Medicaid may recoup what was paid during lifetime from the qualified account, similar to a pay back supplemental needs trust.
- Social Security has already created SSI policy (called POMS) for ABLE accounts. More info: SSA-POMS SI 031130.740. My **Legal Update Blog** will provide more detail about ABLE accounts: <https://bpalegalupdateblog.wordpress.com>

POLNER ABRAHAMS LAW FIRM

350 Old Country Road – Suite 101
Garden City NY 11530

Telephone: (516) 741-9175

Fax: (516) 741-9444

Web: www.bpaElderLaw.com and
www.bpaSNTLaw.com

Blog: www.bpaLegalUpdateBlog.wordpress.com

Email: Info@BPAbrahamsLaw.com

*Your Personal Approach to Elder Law, Estate
Planning and Special Needs Law*

We publish this newsletter and our blog updates on estate and tax law changes, special needs law developments, and Medicaid and other elder law planning to benefit you and your family. *We look forward to serving you.*