



THE POLNER ABRAHAMS REPORT

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

COURTESY OF

POLNER ABRAHAMS
LAW FIRM

VOLUME 14 ISSUE 1

What you need to know...

Updates on Elder Law, Medicaid and More

Health Care Legislation Update ...

The current federal legislative proposals to repeal the Affordable Care Act (“Obamacare”) could have wide-reaching consequences for disabled persons under age 65, seniors, and persons in nursing homes if your care is or will be paid for by Medicaid. The proposed repeal would also affect Medicare by increasing premium costs and decreasing the availability of services.

☞ If you are under age 70 and can afford long term care insurance, consider purchasing a 5-year policy to cover the costs of home care, assisted living and nursing home care. A qualified long term care insurance specialist can evaluate if this is a good option for you.

☞ We must continue to oppose the repeal of the Affordable Care Act to protect Medicare and Medicaid for persons with disabilities and seniors. Contact your elected officials to make sure your voice is heard.

Medicaid Update ... Protect Your Rights!

You need to protect your rights in order to remain out of a nursing home, to keep assets if one spouse is in a nursing home, and to use Medicaid home care services. How? Get qualified legal counsel. Contact my office for a consultation.

- Spousal refusal is still legal in New York State.
- What does this mean for you? For nursing home care and for home care, the non-Medicaid spouse may refuse to contribute excess resources and income toward their spouse’s cost of care and services.
- The consequence? What Medicaid can demand as repayment depends upon the non-Medicaid spouse’s income and countable resources.
- NY State’s Home Care/Community Medicaid Program is

Special Offer for Past Clients & New Referrals

*Celebrating my 15 years as an independent law firm
Offer is good through September 30, 2017*

Over my 35 years of legal practice and 15 years in my own firm, I’ve been committed to staying up to date on changes in the fields of elder law, estate and tax planning, special needs law, Medicaid, legal guardianship and elder law mediation. Yes, they all have become increasingly complex.

But one thing is unchanged and not complex: my promise to provide each client with a personal approach to their legal needs, never cookie-cutter “looseleaf” services.

If you are a past client, I invite you to call (516) 741-9175 to schedule your 45-minute legal status check-up *at no charge*. And if you are a current client and refer someone new to my practice, they will get a 45-minute no-charge introductory consultation.

still a viable option for keeping seniors and persons with disabilities living at home.

- Managed Long Term Care (MLTC) delivers the Medicaid services – home aides, transport to doctors, adult day care.
- The number of hours per day, and days per week, are determined by the MLTC. If you are dissatisfied with those hours, after you start MLTC services, you can exercise your appeal rights. Or, you may privately pay to supplement your care, including using a reverse mortgage to fund it.

Elder Law Advance Planning ... Legal Options

Advocates report that in addition to repeal of the Affordable Care Act, there is the potential reduction of exempt status for the family home under the proposed federal Medicaid Home Improvement Act.

- Currently, the federal Medicaid program protects up to \$560,000 of equity in the family home. In 2017, NY State exercises its option to increase that equity limit to \$840,000.

Let’s go green! To receive e-mail alerts when my newsletters are posted online, email Info@BPAbrahamsLaw.com with the Subject line: “**Yes: e-Newsletter**”. If you do not opt for the e-newsletter, we will continue to send you the paper version.

Updates ... Continued

- The proposed federal Act would eliminate the state's option.
- Option: Consider creating an irrevocable trust or a life estate deed to protect your home.
- Remember you should only consider these options after you have had a legal consultation.

Special Needs Update ... Advance Planning

- Advance planning is more critical than ever for families with a disabled family member including an adult-onset condition (e.g. Parkinson's disease, Multiple Sclerosis) or a birth-related impairment including intellectual disability or developmental disability. Contact my office for a legal consultation to review planning options.
- Repeal of the Affordable Care Act would be detrimental to persons with disabilities by reducing services through a 'cap' called a beneficiary allotment. Go to <http://www.nyselfd.org/> to learn more and what you can do to oppose the changes which could affect persons with disabilities.
- Drastic changes in NYS have been proposed for the 17A Guardianship law in response to judicial cases critical of the law as overly broad and unconstitutional because the authority of 17A guardians is not tailored to the individual, and because the rights of persons who are intellectually or developmentally disabled are reduced. A federal class action is pending to halt the use of 17A to appoint guardians statewide.
- The proposed laws (S5842 (Hannon) and A5840 (Levine)) could make it more difficult for parents (or other family members) to be appointed guardians, would require court investigations and hearings to prove that the individual cannot make their own health and personal decisions, and might increase court and legal costs.

- Advocates opposed to the law yet concerned about the federal class action to stay all 17A guardianships believe the proposed legislation is the 'best worst' solution and hope future amendments can be made after its passage. Make your voice heard now. Contact your NYS Assembly and Senate representative through their website.

The Last Word ... Positive Changes to NY State Law

On a positive note, the NY State legislature passed two laws to implement federal laws enacted during President Obama's term.

- The Special Needs Fairness Act permits competent but disabled persons to create their own pay back supplemental needs trusts to legally shelter resources or income. Previously, only a parent or grandparent could create the trust and if both were deceased or incapacitated, a court proceeding – with its costs and legal fees – was necessary for a court to establish the trust.
- ABLE Act accounts (called 529A accounts) are a welcome addition to the more limited uses permitted with SNTs. Although NYS passed the implementing legislation, it still does not yet offer the state ABLE Act account. The federal law allows you to select another state to open the account.

For more information, visit my website, www.bpasntlaw.com and read the 1/22/2017 blog. The ABLE Act account can be an important part of your special needs estate planning.

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*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.*