



## A Good Reason NOT to Sign a Nursing Home Agreement for a Loved One While You're at the Nursing Home



The day your loved one enters a nursing facility is not a great day. Aside from your own emotional strain, you will try valiantly to let your loved one know that you will stay close and advocate for his or her needs.

And then there's the paperwork. Lots of it.

Should you sign the nursing home's Admission Agreement right then? Do you understand what it all means and that if you're not careful, you could end up in nursing home litigation?

Robert, a family man in his fifties, agreed to bring his wife's Uncle Jack to the nursing facility and to get him settled in.

When they arrived, Uncle Jack was brought to his room and Robert was shepherded to the admissions office where he sat down in front of the admissions coordinator. Sitting in front of Robert, stacked a couple of inches thick, were admissions documents that the coordinator was about to review. Robert, shifting nervously on his chair, was caught by surprise because he had not expected to be involved in any paperwork; he thought his role was to provide moral support to Jack.

One of the documents Robert was asked to sign was a nursing home Admission Agreement. He was told that he was signing as Responsible Party only because he was Jack's contact for emergency purposes. He was also advised that he would not be held personally responsible for Jack's debt, assuming a debt would ever be owed to the facility.

Fast forward nine months, Uncle Jack dies. Three months after Jack's death, a state marshal came to Robert's house and served him with a lawsuit stating that the nursing facility filed suit against Robert claiming he, as Responsible Party, owed it over \$70,000.

If only Robert had known the implications of signing those documents, the next two years of his life would have been much less stressful.

Although this story has been slightly altered from cases we have encountered in the

*(Continued on page 3)*

### Can they do that?

According to the American Association for Long-Term Care Insurance, insurers are rolling out new policies that charge single women 40-60% more than single men. **And yes, they can.**

### SATURDAY HOURS!

You asked, we listened...

You told us how difficult it is to find time to meet with us during the week. We completely understand...that's why we've added weekend hours for initial consultations. Here's the schedule:

#### Hartford office:

1st Saturday of the month  
151 New Park Avenue

#### Simsbury office:

2nd Saturday of the month  
237 Hopmeadow Street

#### Berlin office:

3rd Saturday of the month  
15 Massirio Drive



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# Respite Care = Relief

## 3 Programs to Help You Take a Break



If you're a caregiver, you need some time for yourself. Away from juggling your family's needs, medical appointments, and responsibilities of work. You need respite care.

Respite care is substitute care given to your loved one so you can take a break and get some relief from the burden of caregiving. It can be for an hour, a day, a weekend, on a regular basis or just one time.

Studies have shown that caregivers are at increased risk of depression and other health problems. By taking care of yourself, with adequate sleep, nutritious meals and exercise, you will increase your energy, your well-being, your morale, and your

ability to provide that care. Reaching out for help from a respite program can be just what you need.

To help you pay for taking a break, there are 3 respite care programs available in Connecticut (see box below). They each cover services such as adult day care, home health aide, homemaker/companion, skilled nursing care or short-term nursing home care. As long as your loved one is not receiving benefits from any Medicaid programs, and you get a doctor's statement declaring your loved one has Alzheimer's disease or a related disorder, you can apply for one or more of these programs.

So make a plan – for a day at the spa, a lunch out with a friend, even a vacation. **You know you deserve it!**

### Q&A

We invite you to submit your questions to us at [plantoday@ctseniorlaw.com](mailto:plantoday@ctseniorlaw.com).

#### Q Can my heirs benefit from my Roth IRA?

A Yes, and it's a great financial gift that will endure. If you leave the Roth to a child or grandchild, all the money in the Roth goes to the heir free of income taxes and the account can be stretched over the heir's own life expectancy. When your grandchildren inherit a Roth IRA, they will have a tax-free growth for the rest of their lives.

## What's Up With Us

- ◆ Trial attorney Carmine Perri welcomed a new son into the world last month. Raine Payton weighed in at 9 lbs., 12 ozs.
- ◆ In our continuing advocacy for the special needs community, we have been a long-time supporter of the **Brain Injury Alliance of Connecticut**. As a result, we've recently been awarded the 2014 Partnership Award.

PROGRAM	REQUIREMENTS	BENEFIT
CT Alzheimer's Association Chapter Respite Fund	Any age/no income or asset limits	Up to \$500/family per year (Reimbursement will be made to the service provider)
<b>AREA AGENCIES ON AGING*</b>		
The CT Statewide Respite Care Program	Any age/income less than \$43,198 assets \$114,844 or less	Up to \$7,500/family per year (20% co-payment of the cost of the service required, but may be waived based on financial hardship)
The National Family Caregiver Support Programs	Age 60+, no income or asset limits	Up to \$7,500 annually (but more likely a grant of \$2,500–\$3,500) — donations expected

\*2 programs, one application

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# Do You Pay Capital Gains Taxes on Property You Inherit?

When you inherit property, such as a house or stocks, the property is usually worth more than it was when the original owner purchased it. If you were to sell the property, there could be huge capital gains taxes. Fortunately, when you inherit property, the property's tax basis is "stepped up," which means the basis would be the value of the property at the time you inherited it.



For example, suppose you inherit a house that was purchased years ago for \$150,000 and it is now worth \$350,000. You will receive a step up from the original cost basis from \$150,000 to \$350,000. If you sell the property right away, you will not owe any capital gains taxes. If you hold on to the property and sell it for \$400,000 in a few years, you will owe capital gains on \$50,000 (the difference between the sale value and the stepped-up basis).

On the other hand, if you were given the same property, as opposed to receiving it upon the owner's death, the tax basis would be \$150,000. If you sold the house, you would have to pay capital gains taxes on the difference between \$150,000 and the selling price. The only way to avoid the taxes is for you to live in the house for at least two years before selling it. In that case, you can exclude up to \$250,000 (\$500,000 for a couple) of your capital gains from taxes.

(Elderlawanswers.com)

## We're Hiring!

Know of anyone looking to join the great team of a growing firm? Send them to the Careers section of our web site [www.ctseniorlaw.com/careers](http://www.ctseniorlaw.com/careers). We're currently seeking an **Assistant Trust Administrator**, a **Medicaid Paralegal** and an **Office Clerk**.

## A Good Reason NOT

(Continued from page 1)

past, and although a majority of Connecticut nursing facilities would never conduct their admissions process in this way, the sad truth is that Robert's experience is not uncommon.

Before you or your loved one is admitted into a nursing facility, take the time to review the admissions packet carefully. Don't feel compelled to sign it on the spot, and don't feel you need to sign them the day they're given to you. Tell the nursing home you want to take the Admission Agreement with you to have one of our elder law attorneys review it. The two hours you spend in advance may save you, or a loved one, from potentially two years in court.

## 8 Ways to Avoid Awkward Phone Calls with Your Grown Kids . . .



Do you sometimes feel tongue-tied talking to your adult children or grandchildren? Wishing the phone calls were longer and more natural? Here are some ideas for you:

- 1 **Don't interrogate.** If your kids feel you're probing, they'll be less interested in conversing with you.
- 2 **Adjust to their schedule.** Find out when your children will be free to talk. The more control your young adults feel they have over when you talk, the likelier they'll be relaxed when the phone rings.
- 3 **Become a tech wizard.** Young people often prefer texting, chat apps and email. Get up to speed and stay in touch more often... you'll gain fodder for a longer conversation.
- 4 **Cut the criticism.** Enough said.
- 5 **Show genuine interest.** Listen well, don't change the subject or delve into what you think.
- 6 **Avoid hot-button issues.** Do what needs to be done to avoid topics that lead to arguments.
- 7 **Have a life.** Our favorite one! Share your stories and what you've been up to... interesting people inspire interesting dialogue.
- 8 **Be upfront about expectations.** Upset that your kids don't call you enough? A quick chat about your hopes, and a readiness to scale back your desires, can alleviate tensions.





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Metro Bis Restaurant

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- **Estate Planning: Don't Make These Mistakes!** — April 23
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Learn ways to reduce or eliminate them — April 30
- **Long-Term Care: Ways to keep from going broke** — May 7

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## At a Senior Center near you...

- **Is Your House in Order? Estate Planning Docs You Should Have**  
April 24 — Southington Calendar House
- **What You Should Know About Medicaid Programs**  
May 6 — Wethersfield Senior Center
- **Why You Need a Will and What Happens if You Don't Have One**  
May 7 — New Hartford Senior Center

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## Medicare's Observation Status Under Attack

**Much has been written recently about the practice of hospitals to hold a patient in "observation status" rather than to formally admit them as a patient. Because the patient is not formally admitted, their hospital stay, even if it is for three nights, does not meet the first prong of Medicare's test for subsequent Medicare coverage of up to 100 days in a nursing home.**

I am pleased to report, however, that support is building for legislation to correct a technicality in Medicare law that is preventing thousands of hospital patients from being covered for a subsequent nursing home stay.

Medicare pays all or part of the costs for up to 100 days of a nursing home stay, but only if the patient was first admitted to a hospital as an inpatient for at least three days. To avoid financial penalties from Medicare if they readmit patients too quickly, hospitals are increasingly not admitting patients at all but rather placing them "under observation" to determine whether they should be admitted.

Although Medicare's guidelines say it should take no more than 24 to 48 hours to make this determination, in reality hospitals sometimes keep patients under observation for up to a week. If the patient moves to a nursing home after the hospital stay without having been admitted or admitted for fewer than three days, the patient must pick up the tab for the nursing home — Medicare will pay none of it (unless the patient is lucky enough to be in a Medicare Advantage plan that chooses to cover the costs).

In a 2013 report, the Inspector General for the U.S. Department of Health and Human Services identified more than 600,000 hospital stays that lasted for three or more nights but did not qualify the patient for coverage of nursing home care. In a recent report, AARP's Public Policy Institute found that between 2001 and 2009, Medicare claims for observation status grew by more than 100 percent.

But as hospitals' use of observation status expands and more beneficiaries are being denied nursing home coverage, the issue is attracting increased attention. In January, the observation status loophole made the NBC Nightly News in a three-minute segment titled "The Two Words That Cost Medicare Patients Thousands."

Rep. Joe Courtney (D-CT) has introduced bills since 2010 to allow the time patients spend in the hospital "under observation" to count toward the requisite three-day hospital stay for Medicare coverage of skilled nursing care. The legislation has gone nowhere, but Courtney is now optimistic that Congress will finally take action. His latest bill, H.R. 1179, was introduced with

Iowa Republican Rep. Tom Latham and has 137 co-sponsors. A companion bill in the Senate introduced by Sen. Sherrod Brown (D-OH), S. 569, has 25 co-sponsors.

And last week, the American Bar Association passed a resolution urging Congress to enact the bills or similar legislation. In announcing news of the ABA's resolution, the Center for Medicare Advocacy, which has sued to force the government to change its rules governing how hospitals admit patients, said that it "and other advocacy groups are hopeful that increased awareness of the Observation status problem will lead to a solution."

Stay tuned to see how this saga unfolds.

### Number of Estate Tax Returns has Plummeted Since 2003

The IRS has just released an analysis of estate tax returns filed by wealthy decedents in recent years. The analysis spans the years 2003 to 2012, during which time the estate tax filing threshold gradually rose from \$1 million to \$5.12 million.

Not surprisingly, the number of estate tax returns declined 87 percent, from about 73,100 in 2003 to about 9,400 in 2012, primarily due to the incremental increase in the filing threshold. The total net estate tax receipts fell from \$20.8 billion in 2003 to \$8.5 billion in 2012. The total for 2011 was only \$3 billion; the estates of those dying in 2010 had a choice of paying the estate tax or accepting a limited step-up in the cost basis of inherited assets.

#### Here are some other highlights from the report:

- California had the highest number of estate tax returns filed in 2012, followed by Florida, New York, Texas, and Illinois.
- Looking at the number of estate tax returns filed as a percentage of the adult population (ages 18 and over), the top five states were the District of Columbia, Connecticut, Florida, California, and New York.
- Stock and real estate made up about half of all estate tax decedents' asset holdings in 2012.
- Estate tax decedents with total assets of \$20 million or more held a greater share of their portfolio in stocks (about 40 percent) and lesser shares in real estate and retirement assets than decedents in other total asset categories.

(Elderlawanswers.com)

## Hospital Allowed to Enforce Lien Against Tort Settlement After Expiration of Time Hospital Could Have Billed Medicare (Wis. App)

Conrad Laska was eligible for health care coverage through the Medicare program when he received treatment at a hospital for injuries that he suffered in a motor vehicle accident. The hospital, instead of billing Medicare for the treatment, as it indisputably could have done, filed a statutory lien under the hospital lien statute, WIS. STAT. § 779.80, against any tort claims Laska might have had and against any settlement or judgment resulting from those claims. The period during which the Hospital could have billed Medicare for Laska's treatment expired without the Hospital having submitted a bill to Medicare. Thereafter, Laska settled his claims in this action with all parties except the Hospital. Laska moved for summary judgment against the Hospital on the lien issue. He argued that the court had to follow the interpretation of federal Medicare law contained in a 2000 U.S. Department of Health and Human Services (Department) Memorandum.

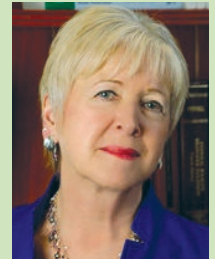
The circuit court entered judgment for the Hospital. The decision was affirmed on appeal. The appellate court rejected Laska's reliance on the 2000 Memorandum. The case involved two federal Medicare statutes, the Provider Agreement Statute and the Secondary Payer Statute. The Provider Agreement Statute ensured that neither a Medicare beneficiary nor any other person was charged for services if the beneficiary was "entitled" to have Medicare pay for those services. Enacted subsequently, the Secondary Payer Statute made Medicare a secondary payer, instead of a primary payer, for medical services provided to a

Medicare-eligible patient when payment was made or could reasonably be expected to be made under a primary plan. There was a disconnect between the language of the Provider Agreement statute and the 2000 Memorandum's interpretation of that statute. The 2000 Memorandum undermined the cost-shifting purpose of the Secondary Payer Statute by imposing a cut-off date for provider liens that appeared to lack any connection to whether a source other than Medicare could be reasonably expected to pay. The Hospital was allowed to enforce its lien.

*Laska v. General Casualty Co. of Wisconsin*, 2013 WL 978145 (March 14, 2013)

### WHAT'S NEW?

**Attorney Sharon L. Pope** was selected to chair and present to a national audience at this year's Academy of Special Needs Planners (ASNP) Annual Meeting in Denver. She shared her in-depth experience and knowledge on disability laws, nuances of public benefit eligibility and the unique planning strategies used to safeguard the assets of the special needs community. She also instructed professionals how to build a special needs practice and what attorneys need to know about serving as a special needs trustee.



### UPCOMING EVENTS

#### **April 23 — Annual CT Financial Planner's Conference, Aquaturf in Plantsville**

Once again this year we will be an event sponsor, so be sure to stop by our booth with your questions about estate, tax, or Medicaid planning, trusts, special needs planning or probate matters. Attend Attorney Paul Czepiga's session, "Don't Trust a Trust You Don't Know." You'll learn the nuances of many different types of trusts, and the language they must include.

#### **June 16 — Connecticut Bar Association 2014 Annual Meeting, Hilton Hartford**

To the Estates and Probate Section, Attorneys Sharon Pope and Claudia Englisby will be presenting "The Anatomy of a Special Needs Trust."



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