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IN THIS ISSUE:

BANK OF AMERICA SAYS POWER OF ATTORNEY DOES NOT GRANT ACCESS TO ONLINE BANKING

MILLIONS OF SENIORS COULD LOSE MEDICAID LTC COVERAGE UNDER GOP PLAN, REPORTS WARN

FOLLOWUP STUDY FINDS FINANCIAL ABUSE OF ELDERLY IS ON RISE

WIFE RESPONSIBLE FOR HUSBAND’S UNPAID NURSING HOME BILL

Bank of America Says Power of Attorney Does Not Grant Access to Online Banking

When one spouse suffers from dementia, the other spouse often must take over managing the couple's finances, usually with the help of a power of attorney. But things don't always go smoothly with financial institutions. Just ask Chicago resident Eva Kripke, who has been handling money matters since her husband, Sidney, was diagnosed with Lewy body dementia four years ago.

Acting as agent for her husband under a power of attorney, for years Ms. Kripke had been going online to check her husband's Bank of America account and writing checks from it, until one day in April when the bank suddenly changed its security procedures and she was blocked from accessing his online account unless she supplied his Bank of America credit card number.

Because of her husband's dementia, Ms. Kripke had torn up the credit card several years previously, but she was able to obtain the card number from her local Bank of America branch. But that wasn't enough -- the bank also wanted the security code and the expiration date, neither of which she or the bank had. Without that, even though she had all the other information about her husband's account, not to mention his power of attorney, she could not access it online.

"[The bank employees] told me that power of attorney was not accepted for online banking," Kripke told the Chicago Tribune's "What's Your Problem?" columnist, to whom she turned for help. "It did not matter that I had been accessing my husband's account for several years. There was no way I could have access to my husband's online account any longer."

Bank of America suggested Mrs. Kripke open a joint account with her husband, something her lawyer advised her not to do, saying it was better for the couple to keep their accounts separate. The bank also said she could go to her branch and get a printout of her husband's account and even offered to have a bank employee drop one off at her house.

Paul's Note: This is just one of several examples where a third party refuses to honor a valid power of attorney form. Although Connecticut has a Statutory Short Form Power of Attorney, many financial institutions will not honor the POA if the date on the POA is more than a few years old, the exact transaction attempted is not mentioned, or the institution itself is not named. At CzepigaDalyDillman, we use the Connecticut form but have added additional pages of provisions and also give our clients self-executing update letters. We have now added on-line banking to our form as well. The Connecticut Bar Association is currently in the process of reviewing its POA law to update it to current times.

Millions of Seniors Could Lose Medicaid LTC Coverage Under GOP Plan, Reports Warn

After the fierce backlash against their plan to privatize Medicare, Republican strategists are focusing on their proposal to cut $750 billion from Medicaid. Ironically, policy experts say that scheme would have a much greater impact on today's elderly and near-elderly than the Medicare proposal ever would. A flurry of reports released by different groups paint an alarming picture of millions of nursing home residents and those who receive long-term care at home losing Medicaid coverage over the next decade if the Republican plan becomes law.

"This is a huge deal for the nation's seniors, and it's been largely unrecognized," Jocelyn Guyer, the co-executive director of the Center for Children and Families at the Georgetown University Health Policy Institute, told the New York Times.

The plans for Medicaid, part of the budget bill recently passed by the Republican-led House, would turn Medicaid funding to states into a "block grant," something proposed by George W. Bush in 2003 and by Newt Gingrich in 1995.

Under the current system, the federal government matches every dollar that states spend on Medicaid, no matter how high the total goes. Under the House Republican plan, starting in 2013 states would receive a fixed amount every year, which would only increase with population growth and the overall cost of living, not health care costs. If a state's Medicaid costs are higher than its block grant will cover, the state would have to make up the difference, either by spending more of its own money or by restricting eligibility for Medicaid (including nursing home coverage), reducing covered services, or cutting payment rates to health care providers. The Republican plan would make it easier for states to cut benefits and limit eligibility by giving them more flexibility in designing their Medicaid programs than it now permits.

According to the non-partisan Congressional Budget Office (CBO), the federal block grants would not come close to meeting states' needs. The Office predicts that by 2022 federal funding for Medicaid would fall 35 percent below what the federal government now is projected to provide states, and the shortfall would be 49 percent by 2030. Eight states -- including Florida, Colorado and Georgia -- would lose more than 40 percent of their federal funding for Medicaid over the next decade, according to a separate analysis by the Urban Institute released by the Kaiser Family Foundation.

Relaxing or eliminating federal requirements would mean more uninsured or underinsured citizens. The Urban Institute predicts that between 31 million and 44 million fewer people would be enrolled in Medicaid in the next decade, and most would be left without insurance coverage.

States desperate to cut Medicaid costs would likely turn first to services for the elderly and disabled because that's where the money is. Although only 23 percent of people enrolled in Medicaid in 2010 were elderly or disabled, they accounted for 64 percent of Medicaid spending, according to the CBO, and seven of 10 nursing home residents are on Medicaid.

In its own report, titled "The High Cost of Capping Federal Medicaid Funding," the AARP says that the cumulative effect of giving states the option to change their Medicaid rules "could cause millions of poor -- as well as formerly middle-class people who have exhausted their life savings and rely on the Medicaid program -- to lose access to the long-term care services that Medicare does not provide."

Based on of its long experience ensuring that states do not limit eligibility and benefits, the National Senior Citizens Law Center says that the result of block granting Medicaid would mean taking health care coverage away from millions of low-income older adults and people with disabilities.

"In the name of 'flexibility' and state's rights, America's safety net could be ripped to shreds," the group warns in a new Policy Issue Brief, "Medicaid Block Grants: Attacking the Safety Net for Low-Income Older Adults." The Brief outlines eight ways that Medicaid block grants could hurt elderly Medicaid recipients or their families:

It could be harder to qualify for benefits

Coverage for long-term care services and supports could be threatened

Access to nursing home care could be lost

Availability of essential services could be eliminated

Those with both Medicare and Medicaid could be at risk

Spouses of Medicaid nursing home residents could be impoverished

Nursing home consumers would lose protection

Getting medical equipment and supplies could become difficult

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Follow-up Study Finds Financial Abuse of Elderly Is on Rise

Older Americans are losing $2.9 billion annually to elder financial abuse, a 12 percent increase from the $2.6 billion estimated in 2008, according to "The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders."

The study, based on a comprehensive review of news articles on elder financial abuse, found that crimes involving strangers as the perpetrators made up more than half (51 percent) of reported cases of elder financial abuse, followed by crimes involving family, friends and neighbors as perpetrators (34 percent). By contrast, MetLife's study two years ago found that family members and caregivers were the culprits in most cases (55 percent). Robberies and crimes classified as "scams perpetrated by strangers" increased from 9 percent to 28 percent from 2008 to 2010. Exploitation from the business sector accounted for 12 percent of reported cases. Medicare and Medicaid fraud made up 4 percent of cases.

According to the study, which is accompanied by a consumer guide and tip sheets on preventing elder abuse, the most common abuse scenarios involved strangers who targeted victims out shopping, driving or managing financial affairs, and often looked for particular flags of vulnerability like handicap tags on cars, walking canes or the display of confusion. Crimes included cons, purse snatchings and associated physical assaults. In cases involving a person known to the victim, trusted helpers like caretakers, handymen, friends, "sweethearts," children, lawyers and others seized upon opportunities to forge checks, steal credit cards, pilfer bank accounts, transfer assets and generally decimate elders' financial safety nets.

The typical victim of elder financial abuse was a woman between the age of 80 and 89, who lived alone and required some help with either health care or home maintenance. Nearly 60 percent of perpetrators were males, mostly between ages 30 and 59.

"In almost all instances, financial exploitation is achieved through deceit, threats and emotional manipulation of an elder. In addition to this psychological mistreatment, physical and sexual violence frequently accompany the greed and disregard of financial abuse. The vigilance of friends and family can help protect elders from those who are predatory, which may, unfortunately, include strangers or even other loved ones."

"The 2010 Passage of the Elder Justice Act may bring more attention and resources to this crime leading to prevention among the expanding older population," said Karen A. Roberto, Ph.D., director of the Center for Gerontology, at Virginia Polytechnic Institute, which assisted with the study. "In addition, a new Office of Financial Protection for Older Americans has been established as part of the new Financial Regulatory Reform Bill and Congress continues to focus on new legislation regarding this issue."

Wife Responsible for Husband's Unpaid Nursing Home Bill

A New York trial court orders the wife of a deceased nursing home resident who was denied Medicaid benefits to pay for his care. Wayne Health Care Demay Living Center v. Blair (N.Y. Sup. Ct., No. 68514/2009, April 20, 2011).

Sonja Blair admitted her husband, Robert, to a nursing home. She executed the admission agreement on behalf of her husband under a power of attorney but never signed a personal guaranty. Mr. Blair applied for Medicaid benefits, but the state denied benefits because he did not submit verification of his financial documents.

After Mr. Blair died, the nursing home sued Mrs. Blair for $90,679 as reimbursement for expenses relating to the food, shelter, and medical services provided by the nursing home. The nursing home argued Mrs. Blair was responsible under the doctrine of necessaries because it relied on her credit in extending services to Mr. Blair.

The New York Supreme Court, a trial court, orders Mrs. Blair to pay the nursing home. The court holds that under common law there is a presumption that a creditor has relied on the credit of the community spouse when providing services, and Mrs. Blair did not rebut that presumption. The court notes that had Mr. Blair been approved for Medicaid, the bill would have been much less and that "payment of this amount would have constituted the fair and reasonable conclusion to this sad story," but the court determines that it cannot make a decision on what "might have been."

Paul's Note: This case would have a different result in Connecticut. Although Connecticut has a statute setting forth the financial responsibility of one spouse for the debts of the other spouse, a recent Connecticut Supreme Court case concluded that the statute does not apply to debts one spouse incurs while in a nursing home.