



## LATEST NEWS . . .

### We're pleased to introduce you to Carmine Perri

He will fight to protect your family's money.

In response to our many client families who are being torn apart over allegations in a will contest and other elder law matters that require legal representation, we have added a litigation attorney to our team. We're pleased to be able to represent you in court on any of these matters:

- Probate
- Nursing facility claims
- Will contests
- Conservatorships
- Financial exploitation & elder abuse
- Trusts
- Medicaid appeals
- Fiduciary representation

Of course it is our hope that you wouldn't need to go to trial and that we could help you reach a settlement first, but sometimes disputes elevate and leave you without a choice. If this happens, you can turn to us – our litigator, Carmine Perri, is ready to fight for you.

Remember that if you do find yourself facing a potential legal battle, it is crucial that you are represented by an attorney with specific expertise; now is not the time to use your general practice attorney! ✨

## Want to Bequeath Your Car to Someone?

*From the Law Offices of Sharon L. Pope, LLC*

The easiest way to transfer a vehicle upon death is to plan in advance. When registering a vehicle, you can designate a transfer on death beneficiary, not unlike what you can do with a bank account.

To make this designation, simply complete the area reserved for this purpose on the reverse side of your registration certificate. If you do not have a registration certificate, or if you are registering a new vehicle, complete the Official Registration, Form H-13, and designate the Owner in Box 1 as "John Doe, Transfer on Death to Jane Doe." Upon the owner's death, the transfer on death beneficiary need only bring a certified copy of the death certificate to the nearest DMV office to have the registration transferred.

If an individual has died, and these steps were not taken in advance, there is some extra legwork involved to transfer ownership of the vehicle. You will need to visit your nearest DMV office to register the vehicle.

*(Continued on page 3)*



## GOOD TO KNOW

The Social Security Administration has added 35 more medical conditions to its Compassionate Allowances program, which fast-tracks disability claims for applicants with severe medical conditions. Find the list of all 200 conditions at [www.socialsecurity.gov/compassionateallowances](http://www.socialsecurity.gov/compassionateallowances). These claims should be decided within days, the agency says.

## QUIZ TIME

**QUESTION:** You need a will, but should you also look into setting up a trust if you:

- a) Are filthy rich or even a little bit so?
- b) Want to keep your money out of the tax man's hands?
- c) Plan to remarry and want to make sure your new spouse doesn't shortchange your children?
- d) Have a spendthrift son who's in debt, and you don't want his creditors to get a bit of your assets?

**ANSWER:** ALL OF THE ABOVE. You don't need to be loaded to benefit from a trust. Irrevocable trusts, which may be changed only by the trustee and beneficiaries, can reduce estate taxes and help protect asset from creditors and lawsuits. They also allow you to specify how your assets will be distributed, should you, for example, prefer to dish out the kids' inheritance slowly rather than in a lump. Call us if you'd like to set up a trust.



CZEPIGADALY, LLC

ESTATE PLANNING, PROBATE & ELDER LAW

*It's Time. Plan Today for Your Tomorrow.*

## BOOMER BULLETIN . . .

# Reverse mortgages risky for boomers?

Reverse mortgages were once considered a last-resort option for cash-strapped seniors in their late seventies and eighties. Now many recession-battered baby boomers are looking to these loans to shore up savings and pay off credit cards and other debt. New products — in particular, fixed-rate lump-sum loans — are a big lure.

But while the shifting landscape offers opportunities for younger borrowers, it also poses risks. Over time, these large loans could devour home equity, leaving borrowers short on cash in their later years.

A reverse mortgage lets you tap your home equity in the form of a lump sum, line of credit or monthly draws. Applicants must be 62 or older, and there are no income or credit requirements. The loan does not have to be repaid until the homeowner dies, sells the house or moves out for at least 12 months.

### The Pitfalls for Younger Borrowers

But younger borrowers taking lump-sum loans could lead to big problems. In 10 or 20 years, with the compounding of interest, little or no home equity could remain. Many borrowers may not be able to raise enough funds from a home sale to move to a retirement community or an assisted-living facility. Or they could run into trouble if they're short on cash for health expenses, home repairs or property taxes in later years -- traditional uses of late-in-life reverse mortgages.

Besides wanting the payout, many younger borrowers are choosing a lump sum because it offers a fixed interest rate. The line of credit and monthly-draw options require an adjustable rate, which generally comes with a 10% cap.

But while a fixed-rate loan may be fine for a regular mortgage, the interest on a reverse mortgage eats into home equity. With a fixed-



rate reverse mortgage, the lump-sum loan starts accruing interest from the start.

Borrowers may be better off with the adjustable-rate loan and its flexible payout. With the line of credit, you only accrue interest on the amount you tap. Any unused amount grows at the loan's rate.

A borrower must pay off an existing mortgage when taking out a reverse mortgage and can use the proceeds to do so. Younger borrowers are more likely than older borrowers to have a traditional mortgage and many are considering a reverse mortgage to pay off an existing loan, according to a MetLife study. "But while you'll be released from monthly mortgage payments, you haven't reduced your debt, says Barbara Stucki, vice president of home equity initiatives for the National Council on Aging. "You're really just transferring the existing forward mortgage into the reverse mortgage," she says. "You are deferring the date it has to be paid until you move." ✨

*Excerpt from an article by Rachel L Sheedy, Kiplinger's Personal Finance.*

## Q & A

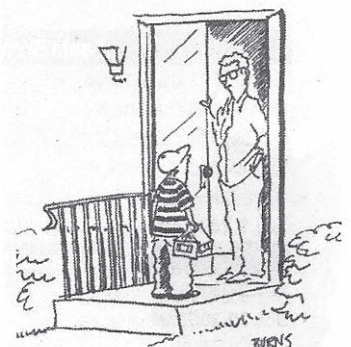
We invite you to submit your questions to us at [plantoday@ctseniorlaw.com](mailto:plantoday@ctseniorlaw.com).

### Q Do I need a lawyer to apply for Medicaid?

A Not always, but the general rule of thumb is that you should consult with a lawyer who has experience in this area so that you can at least get the lay of the land and not spend more money than you have to at the nursing home. Because of the many recent state and federal rule changes, consultation with an attorney experienced in elder law and public benefits is more advisable than ever before. In addition, seeing a lawyer ahead of time might reveal planning concerns and opportunities that you might not be aware of but that the lawyer could point out and advise you on. Here's the key: As soon as you suspect that your health is declining or that you might need to go to a nursing home, or if you are already in one, you should contact a lawyer to investigate whether it is possible to protect assets for your spouse, children or other beneficiaries, if that is your desire. The more assets you have, the more complicated the application will be, and the more likely it is that a lawyer can help you to protect some of your money, if you wish, for your beneficiaries. ✨

## Pepper ... And Salt

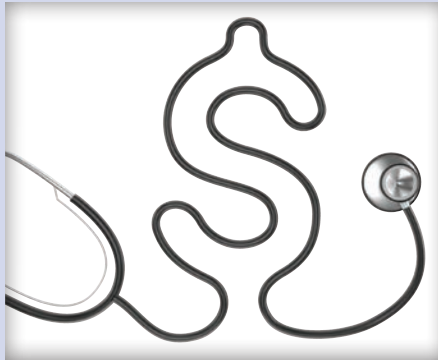
THE WALL STREET JOURNAL



"Would you like to buy a candy bar to help us raise money for our social security?"

## When Medicare Won't Pay

Seniors who have their Medicare claims denied have “surprisingly good” odds on appeal, said Mark Miller in Reuters.com. In 2010, 40% of Part A hospitalization appeals and 53% of Part B outpatient appeals were granted, according to the Centers for Medicare & Medicaid Services. Consumer advocates say the process is straightforward. Simply indicate on your summary notice of coverage what you think has been erroneously denied, make a copy, and mail it back. It pays to be persistent. “If your appeal is denied at the first level, keep going. You have the right to 3 additional levels of appeal, and the odds get better as your move along.”



## SENIOR NUTRITION: Tips for staying on track



Eating healthily is an ongoing commitment, but it's easier than you think. Here are some tips for staying on course:

- **Ask for help.** Admit when you need a hand to shop, cook, and plan meals and find someone to help. It's important for your health not to revert to frozen dinners or fast food.
- **Variety, variety, variety!** Try eating and cooking something new as soon as boredom strikes.
- **Make every meal “do-able.”** Healthy eating needn't be a big production. Keep it simple and you'll stick with it. Stocking the pantry and fridge with wholesome choices will make it easier to prepare quick, tasty meals.
- **Set the mealtime mood.** Set the table, light candles, play music, or eat outside or by a window when possible. Tidying yourself and your space will help you enjoy the moment.
- **Break habits.** If you eat watching TV, try eating while reading or use the time to catch up with your spouse or a friend. If you eat at the counter, sit at the table instead. Make your meal an enjoyable part of the day.

## Bequeath your car *(Continued from page 1)*

### Bring all of the following with you:

- The Certificate of Title, assigned to the new owner by the Executor or Administrator of the estate
- A certified copy of the Probate Court document authorizing the transfer of the vehicle (a list of acceptable probate documents can be found on the DMV's website at [www.ct.gov/dmv](http://www.ct.gov/dmv))
- A completed Application Registration and Certificate of Title, Form H-13
- A current insurance card in your name for the vehicle
- Valid identification (a list of acceptable forms of identification is available on the DMV's website at [www.ct.gov/dmv](http://www.ct.gov/dmv))

There may be special circumstances requiring extra documentation, such as if the vehicle was previously registered out of state or if is not in compliance with state emissions requirements. ☀

*We will be merging with Sharon Pope at the end of the year and are grateful for her contribution to our newsletter.*

## What's Up With Us

**Linda Worden**, our geriatric care manager, was just elected to the New England Chapter of the National Association of Professional Geriatric Care Managers. She also just became a Certified Dementia Specialist. Linda spends her time helping our clients to care for their older relatives. Her tremendous knowledge about dealing with dementia and her access to resources has lowered the stress level for many of our clients.



**It's Time. Plan Today  
for Your Tomorrow.**

**Call us at (860) 594-7995**



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15 Massirio Drive, Berlin  
281 Hartford Turnpike, Vernon

... by attending one of our Adult Ed classes.  
**SIGN UP TODAY!**

	<b>My Neighbor has a Living Trust, Should I?</b>	<b>Strategies to Prevent You from Going Broke in a Nursing Home</b>
Rockville High School	March 20 & April 8	March 27 & April 22
Berlin High School	March 13	March 6
Conard High School	March 20	March 27
Wethersfield High School	March 4	March 11
Platt High School, Meriden	April 4	April 10
Newington High School	April 11	April 25
Southington High School	April 24	May 1
Manchester Community	April 30	May 7
Simsbury High School	May 13	May 20

**CzepigaDaly** is a law firm dedicated to preserving your well-being as well as your assets. In addition to offering estate and tax planning, elder law, estate administration, probate and special needs trusts services, we also help you with healthcare-related decisions, advocacy services, housing matters, insurance and elder law litigation.

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Information contained in this newsletter should not be construed as legal advice, and readers should not act upon any legal information contained in this publication without professional counsel.

- **Applying for Medicaid?** Find out if you need a lawyer
- **Want to bequeath your car?** Here's how to do it
- **Are reverse mortgages risky for boomers?** Check out the pitfalls

## IN THIS ISSUE

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*It's Time. Plan Today for Your Tomorrow.*

**ESTATE PLANNING, PROBATE & ELDER LAW**

**CZEPIGADALYLLC**





# SMART PLANNER

For Legal, Financial and Healthcare Professionals

February 2013

## Medicaid Estate Recovery Still Applies Only in Narrow Circumstances

**Medicaid estate recovery causes “paralysis” in many attorneys, but there is no cause for panic.**

Federal law requires that states have a recovery plan in place. Everything in estate recovery comes down to the state’s definition of ‘estate.’

How does estate recovery work? The general rule is that no lien may be imposed during the Medicaid recipient’s lifetime. There is an exception if the Medicaid payment was incorrectly made and there is a judgment from the court or if there is real property and no intent to return home. In *Arkansas Dept. of Health & Human Services v. Ahlborn* (547 U.S. 268 (2008)), an individual

received a settlement in a personal injury case, and Medicaid asserted a lien against the settlement. The Supreme Court held that federal law prohibits recovery during the recipient’s life, so the state cannot touch the settlement unless the award is for reimbursement for medical costs associated with the injury.

What can and can’t be recovered depends on what your state permits. Federal law allows states to expand the definition of estate beyond the probate estate to real or personal property or other assets the recipient had title to or an interest in at the time of death. Fewer than half the states, Connecticut among them, have adopted the expanded definition of estate.

But even if your state has expanded the definition of estate, there are still only a limited number of assets that it can recover from. If the community spouse dies first, Medicaid can recover only what the institutionalized spouse is entitled to under state law. If the community spouse survives the Medicaid spouse, then the state can generally only recover from assets in the spouse’s estate that can be traced back to the Medicaid recipient’s ownership at death. For example, say a husband and wife own a house jointly. The wife does not take the husband’s name off the deed when he enters a nursing home. He dies in the nursing home and the wife dies several years later. Medicaid can recover against the house because it can trace the ownership to the husband at the time of his death. If the wife had removed his name when he entered the nursing home, then the state would not have been able to recover the house.

States can recover assets from third parties only to the extent of the Medicaid recipient’s interest in the assets. It is important to know how your state treats jointly held property. In Connecticut, a joint tenant owns an undivided 50% interest in the whole. This means if the recipient jointly owned a \$100,000 house with someone else, Medicaid could recover only \$50,000, because that was the amount the recipient was entitled to. Similarly any life estate interest owned by the Medicaid recipient at death is recoverable after death.

### What About Trusts and IRAs?

In general, the state can’t recover against an irrevocable trust, but there have been exceptions. In one case, a discretionary trust was invaded because it did not contain a spendthrift provision, so it was available to all general creditors. As long as you follow state law regarding asset protection, you shouldn’t have any problems. Although the state can’t recover from gifts to an

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### More about our litigation services

On the 1<sup>st</sup> page of this newsletter we introduced you to our new attorney, Carmine Perri, and announced the addition of litigation services to our firm. We want to encourage you to **integrate us into your team when your clients need help in court** for matters relating to probate, nursing home claims, will contests, financial exploitation and Medicaid appeals.

Not only will your clients benefit from Carmine Perri’s court room success, they will benefit from his true understanding of estate, trust and probate litigation laws that are fraught with hidden pitfalls.

For the second year in a row, Carmine was selected as the only New England elder law “Rising Star” by New England Super Lawyers magazine, a designation recognizing the top up-and-coming attorneys in New England who are 40 years old or younger. He is a member of the Connecticut Bar Association, a recipient of the Fairfield County “40 under 40” competition, and a board member of Connecticut National Academy of Elder Law Attorneys (NAELA).

Join us in welcoming Carmine and know that we have expanded our practice to provide you and your clients solely with litigation assistance. We will respect your ongoing relationship with your clients and will not offer them any legal services that you provide, even though we may offer those same services. ✨

# Second Circuit Upholds Medicaid Applicants' Right to Timely Fair Hearing and Decision

A federal appeals court affirms a district court's holding that Medicaid applicants in New York have a private right of action against the state for its routine failure to resolve appeals within 90 days, although the district court's ruling was found to be overbroad in one respect. (*Shakhnes v. Berlin*)

Medicaid applicants in New York sued the state agency over its systemic failure to resolve appeals from adverse agency decisions in a timely manner. Pursuant to a federal regulation, the agency is required to provide final administrative action within 90 days of a request for a fair hearing. Evidence revealed that the agency took longer than 90 days to resolve appeals in at least 36 percent of cases and that the entire process took an average of 326 days. The appeal of one denial of nursing home benefits was not resolved for more than 500 days!

The agency filed a motion for summary judgment seeking to dismiss all of the plaintiffs' claims, asserting that there is no private right of action to compel the state to resolve appeals faster. The plaintiffs argued that 42 U.S.C. § 1983 provides a private right of action where, as here, regulations place a time limit on government action. The district court held that a private right of action existed to compel the agency's compliance with Medicaid regulations and granted the plaintiff's declaratory and injunctive relief.

The state appealed, asserting that the plaintiffs lacked a private right of action because the regulation's 90-day time limit was an additional obligation not contained or implicit in the Medicaid Act and that the district court's order was overbroad in construing "final administrative action" to include the actual provision of services.

The Second Circuit Court of Appeals affirms the district court's holding that 42 U.S.C. § 1983 provides the plaintiffs with a private right of action against the state for its failure to resolve appeals in 90 days, as required by the federal regulation. The court concludes that the 90-day time limit for the agency to resolve appeals "merely further defines or fleshes out the content" of the statutory right to a fair hearing and decision (quoting *Harris v. James*, 127 F.3d 993, 1009 (11th Cir. 1007)). The matter is

remanded to the district court, however, as its order was overbroad in defining final administrative action to include the actual provision of services.

**Editor's Note:** *The failure of the State of Connecticut Department of Social Services to comply with federal guidelines concerning the timely processing of Medicaid applications has been a problem for many years. Lawsuits over this failure have been brought in the past and the state has been found wanting, but this is the first time a federal court of appeals whose jurisdiction includes Connecticut has ruled favorably for Medicaid applicants on this issue. Maybe now the state will take notice and adhere to federal law, but practicalities (many applications and not enough staff) lead me to believe otherwise. ☀*

## UPCOMING EVENT

### Join us at the 29th Annual FPA CT Planner's Conference – April 24th, Aquaturf, Plantsville

CzepigaDaly is a Gold Sponsor at the largest financial planning conference in Connecticut. If you're planning to attend, come visit us at our booth and find out more about using annuities in Medicaid planning by signing up for Brendan's presentation:

#### ***Annuities as Asset Protection Tools: A New Medicaid Planning Strategy for Your Senior Clients***

As a result of Brendan's victory in a landmark Medicaid case regarding asset protection for married couples, your senior clients may now keep far more assets than what the state had previously allowed. Now, the healthy spouse can purchase a single premium immediate annuity (SPIA) and not have the annuity, or the money used to purchase it, counted as assets for Medicaid eligibility. In this session you will learn how this new change expands the asset protection options you can provide your clients, the specific regulations and annuity rules you must know before recommending it, and how to determine which of your clients would benefit from this new strategy in Medicaid planning.

## Medicaid Estate Recovery

(continued from front)

irrevocable income-only trust, it can recover income from an income-only trust, including undistributed income.

Whether the state can recover from an individual retirement account (IRA) is an open question, but there is a strong argument that recovery from an IRA would conflict with federal tax law.

**Editor's Note:** *Recovery thus far in Connecticut has been somewhat lax, but as the state faces increasing budget shortfalls, it is likely that the state's recovery efforts, a sleeping tiger thus far, will wake up and be on the prowl. ☀*



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