

SMART PLANNER

Useful Tips for a Better Tomorrow

Summer 2016



WE'RE EXPANDING! More attorneys, staff and a New Milford office

We are happy to announce that on July 1st, we merged with the Law Offices of Barbara W. Reynolds and Lynda Lee Arnold of New Milford.

This merger adds two seasoned attorneys and additional staff members to further assist you with planning for and protecting your future and your family's future. It also extends our presence and our ability to serve Connecticut residents in the western part of the state.

Barbara W. Reynolds, just like Paul and Brendan, is a *Certified Elder Law Attorney*. There are only 11 CELAs in Connecticut and we have 3 of them. For 15 years, she has had her own practice in the beautiful community of New Milford. Barbara has been recognized for 10 consecutive years as a Connecticut Super Lawyer. Prior to practicing law, she taught high school English in New Milford. She has 2 grown children and a grandchild and she lives in Danbury.



Lynda Lee Arnold has practiced law for 16 years. She is almost finished working on an advanced legal degree in elder law and estate planning at Western New England School of Law. Lynda has 2 grown children and a grandchild and she lives in Sherman.

Merging with Barbara and Lynda is a natural next step for our firm. We feel that expanding our firm will help to address the growing demand in Connecticut for estate planning and long-term care planning services. With skyrocketing long-term care costs, a surge in the elderly population and confusion about public benefits, more and more people will benefit from our expanded services and additional office locations.

We look forward to introducing you to our expanded team!

TAKING IT TO THE TOP

We have cases not only pending in Probate and Superior court, we now have matters pending in the Appellate and Supreme Courts. This means we are now litigating at every level in Connecticut State Court.



GOOD TO KNOW

Free Access to Parks!

If you're 65 or over, you can **access all Connecticut state parks and forests for FREE!** You just need to obtain a Charter Oak pass by mail or in person. To find out how to get your pass, visit the Department of Energy & Environmental web site www.ctgov/deep and click on Parks & Forests, then State Parks Passes.

Pepper ... And Salt

THE WALL STREET JOURNAL



"It used to be filled with our grandchildren's pictures. Now it's appointments and prescriptions."



CZEPIGA DALY POPE

Estate Planning | Elder Law | Special Needs | Probate

It's Time. Plan Today for Your Tomorrow.

Should You Have a Long-Term Care Insurance Policy? Connecticut Has a Plan!

By Lara Schneider-Bomzer

If you're like so many Connecticut residents, you wonder whether or not you should purchase a long-term care insurance policy.

And whether, or how, it fits into your estate plan.

It's uncanny that we may own a life insurance policy that will provide for our loved ones after we're gone – but we don't have a policy to protect US...while we're still here...when we need to pay for long-term care. And Connecticut is the most expensive state in the country (\$160,000/year) for long term care.

This article will explain how [long term care insurance policies](#) work.

Who pays for care?

While Medicare will pay for your medical bills and short term rehabilitation stays, Medicare does not pay for your care at an assisted living facility or skilled nursing facility after 100 days.

As the cost of long term care in Connecticut is so expensive and continues to increase, a long term care insurance policy could help to pay for these costs.

But which plan do you choose and how do you know what plan is best for your needs? There are many factors to consider when choosing a long term care insurance plan such as:

- How much should the daily benefit be?
- Can I afford the premiums?
- Should I have an inflation rider on my plan?
- How much do I need in lifetime benefits?
- Should it cover assisted living and home care?

Connecticut has a plan

One benefit to consider is the Connecticut Partnership for Long Term Care or the "Connecticut Partnership Plan." This is a long term care insurance program that is set up by the state in conjunction with certain private insurers who are eligible to provide this benefit.

Most significantly, it is a **long term care insurance policy that offers the added benefit of asset protection.**

The Connecticut Partnership Plan offers a comprehensive plan that ensures that:

- There is a minimum daily benefit that will automatically increase each year to account for inflation;
- Covers a wide variety of community based and home based services; and



- Most importantly, offers the insured an asset protection component that cannot be found in any other long term care insurance policy.

An Example . . .

The asset protection component can best be understood by the following example:

Let's say you are insured under the Connecticut Partnership Plan and your lifetime benefit is \$250,000.

1. You enter a skilled nursing home and over a two year span you exhaust your entire lifetime benefit.
2. You now apply for Medicaid nursing home benefits. Beyond the protected amount you and your spouse are entitled to keep under the Medicaid program, you and your spouse will get to keep an additional \$250,000 in assets because you exhausted your lifetime benefit under the Connecticut Partnership Plan.

Essentially, it is a "thank you" from the state for purchasing the long term care insurance and using up all your benefits under your plan before [applying for Medicaid benefits](#) and state aid. This is a highly important and valuable benefit!

The other benefit of the Connecticut Partnership Plan is that **if you move out of Connecticut, the benefits will pay out in your new state.** Should you then need to apply for Medicaid benefits, you would be able to receive the asset protection benefit so long as:

- (1) you meet the Medicaid eligibility requirements in the new state; and
- (2) Connecticut has a reciprocal agreement with that state at the time that you are applying for Medicaid benefits.

Is a long-term care insurance policy right for you? Will you be able to pay for costs down the road if you become ill? Give us a call if you are evaluating the Connecticut Partnership Plan or another long term care insurance policy.

It's Time. Plan Today for Your Tomorrow. Call us at (860) 236-7673.

GOOD NEWS! Prepaid Funeral Contracts and Medicaid

You have probably heard the phrase “[spend down](#)” – something you could do to reduce your assets which would help to qualify you for Medicaid.

A prepaid funeral contract is one of those items that are considered exempt. In other words, its value won't be counted when the Department of Social Services is reviewing your total assets.

And that value has just gone up.

Effective July 1st, the standard amount allowed by the state of Connecticut for a prepaid irrevocable funeral service contract has **increased from \$5,400 to \$8,000.**

This is good news if you are trying to **qualify for Medicaid.**

You now have more to spend down on a funeral contract. But the **contract must be irrevocable** — meaning that there is no option available to cancel the contract for its cash value...you cannot get your money back.

What is a prepaid funeral contract?

A prepaid funeral contract is a legal agreement which says you will pay now for funeral services that will be needed sometime in the future. Most people who pre-pay their funerals do so to make it easier for their families when they die. Others do it to save money: they buy at today's prices to avoid tomorrow's increased costs.

But purchasing these irrevocable contracts is extremely useful as you begin planning for Medicaid.

A good thing about these contracts is that they enable families to pre-pay for the costs of a funeral without having to commit to any particular funeral home.

What these contracts can cover

- ◆ Caskets
- ◆ Funeral home services
- ◆ Hearse transportation
- ◆ Flowers
- ◆ Headstone
- ◆ Car and limousine services
- ◆ Embalming
- ◆ Death certificates
- ◆ Burial plot dressing and cosmetology
- ◆ Transportation for family members
- ◆ Cemetery services and fees
- ◆ Memorial following the burial



The increase in the amount allowed for these irrevocable contracts is good news for Connecticut residents.

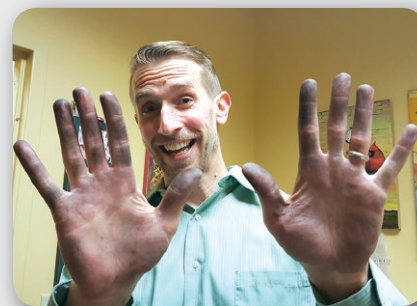
WHAT'S UP WITH US



Attorney [Kathleen Tetrault](#) recently participated in “her favorite weekend of the year,” the Special Olympics CT Summer Games. She's been volunteering for them for 3 years. Kathleen and her father are tennis players and started a Special Olympics tennis program in Middletown where they both serve as coaches for the team.



Attorney [Brendan Daly](#), one of our principals, is a media star! Last month he was featured on WFSB Better CT where he talked about caregivers getting paid, *and* WTIC News Talk radio where he answered questions about estate planning and Medicaid.



Community Relations Manager [Kevin Riedel](#) brought our customer service to a new height – flat tire repair! One of our clients discovered her flat tire after leaving our office. Kevin rolled up his sleeves and quickly fixed her tire so she could get to a senior center event on time.



Need a Speaker for Your Group?

If you belong to a club or group that would benefit from learning more about the topics in our newsletter, give us a call. We can customize a presentation to suit your group's needs. To schedule a speaker, email kevin@ctseniorlaw.com or call (860) 956-3589.



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Tax Free Savings: First ABLÉ Accounts Go Live

By Kathleen Tetreault

On June 1, 2016, Ohio became the first state in the nation to open its ABLÉ account program. This news is making national headlines because individuals from any state—including Connecticut—can go on-line and create an Ohio ABLÉ account that will be valid in the individual's home state.

For those who are new to the game, **ABLÉ accounts are tax-free savings accounts for individuals with qualifying disabilities that began before age 26.** Congress passed the ABLÉ Act in December 2014, which authorizes states to create ABLÉ programs for their residents with disabilities. One of the hallmarks of ABLÉ accounts is that the funds will be exempt from the low income and asset limits for public benefits programs—like Supplemental Security Income and Medicaid—that many individuals with disabilities rely on for supports and services.

The difference between ABLÉ accounts and SNTs

While ABLÉ accounts and [special needs trusts](#) exempt funds so an individual with a disability financially qualifies for public benefits—they also bear a lot of differences. Here are four key considerations between ABLÉ accounts and special needs trusts.

1. Control — ABLÉ accounts belong to the individual with a disability. Individuals with disabilities (or their parent, guardian, or agent) can open their own ABLÉ accounts and control how the funds are spent. This is a great benefit to many individuals with disabilities who are cognitively capable of making their own financial decisions. However, it does raise some concerns for individuals who may be coerced into giving their money away to predatory third parties.

On the other hand, individuals with disabilities *cannot* control the funds in a special needs trust. Instead, a trustee decides how the funds should be used. The idea of who is controlling the funds is therefore a key consideration!

2. Amount of funding — ABLÉ accounts have rules limiting the amount of funds in the account. Anyone can contribute to the account, but the total yearly contributions are limited to \$14,000. For example, if an individual has \$28,000, only \$14,000 can be deposited in the ABLÉ account each year. This is an issue if the individual needs to financially qualify for public benefits. This problem would be solved through the use of a special needs trust, because there are no rules limiting yearly contributions to special needs trusts.

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NJ High Court Rules that Medicaid Planning by Non-Lawyers is the Unauthorized Practice of Law

Joining the states of Florida, Ohio, and Tennessee, the Supreme Court of New Jersey has found that non-lawyers who apply the law to a Medicaid applicant's specific circumstances are engaging in the unauthorized practice of law.

The state Supreme Court had received complaints that non-lawyers retained by families or nursing homes to assist with the Medicaid application process were providing erroneous or incomplete law-related advice, and a state attorney ethics hotline had received reports that non-lawyers have charged "clients" large sums of money for faulty

Medicaid-planning legal assistance, causing the elderly victims significant financial loss.

Asked by the state Supreme Court for an opinion specifying what activities non-lawyers may engage in and what activities are the unauthorized practice of law, the Committee on the Unauthorized Practice of Law has concluded that while non-lawyer Medicaid advisors may provide limited services:

"[a]pplying the law to an individual's specific circumstances generally is the 'practice of law.' A Medicaid advisor or Application Assessor may provide information on insurance programs and coverage options; help indi-

viduals complete the application or renewal; help them with gathering and providing required documentation; assist in counting income and assets; submit the application to the agency; and assist with communication between the agency and the individual. **But the advisor may not provide legal advice on strategies to become eligible for Medicaid benefits, including advice on spending down resources, tax implications, guardianships, sale or transfer of assets, creation of trusts or service contracts, and the like."**

(elderlawanswers.com)

First ABLÉ Accounts Go Live

(continued from front)

Similarly, special needs trusts can hold an unlimited amount of funds. ABLÉ accounts have an account maximum, which is \$300,000 in Connecticut. Also, anything over \$100,000 in an ABLÉ account will impact the individual's eligibility for [Supplemental Security Income](#). However, special needs trusts can hold an unlimited amount of funds without affecting eligibility for public benefits. Given these distinctions, the selection of the best planning tools depends on the individual's unique needs and financial circumstances.

3. How the funds are used — The funds in an ABLÉ account must be used on "qualified disability expenses." These expenses may include "education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses" and other expenses the government might later identify. Unlike an ABLÉ account, the funds in a special needs trust do not need to be spent on disability-related expenses. Typically, funds in a special needs trust must be used for the benefit of the individual with a disability. This may be a more flexible distribution standard, depending on the individual's needs. Therefore, it is important to consider how the funds will be spent in considering the use of ABLÉ accounts and special needs trusts.

4. Payback to state — When an ABLÉ account and certain types of special needs trusts terminate, whatever funds are remaining in the account must first be paid back to the State for medical costs that it paid on behalf of the individual with a disability. However, for ABLÉ accounts, the payback is more *limited* than for special needs trusts. With ABLÉ accounts, the State is only paid back for the monies spent from the date the account was opened. On the other hand, for special needs trusts, the State is paid back for all monies spent on the individual. The difference in the payback to the State may make play an important role in selecting the best planning tools.

LITIGATION NEWS

> [Carmine Perri](#) is now lead counsel in the matter of *Paul Valliere et al. v. Commissioner of Social Services, SC 19701* (2016), which is currently pending in the Connecticut Supreme Court. This case is principally about whether the Department of Social Services must follow a Probate Court order regarding the calculation of a community spouse's allowance, pursuant to federal and state law. This case has wide-ranging implications regarding Medicaid eligibility and the practice of law within our State's probate courts.



> Carmine recently worked with State Senator Kevin Kelly in drafting new legislation to protect seniors and their families who sign nursing home agreements.

Dirty Dozen

Along with identity theft, phone and email scams, and phishing, other problems identified by the IRS are return preparer fraud, offshore tax avoidance, inflated refund claims, bogus charities, inflated deductions and credits, excessive claims for business deductions, falsifying income to claim credits, abusive tax shelters and frivolous tax arguments.



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