Ask the Lawyer

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Ask the Lawyer is a new regular feature for Quality Lifestyle magazine. Each issue will address your questions in areas relating to estate, probate, elder law, Medicaid, Medicare, and eldercare legal advocacy and counseling. If you wish to have your questions answered, please send them to Sanford J. Mall, 31000 Northwestern Highway, Suite 220, Farmington Hills, MI 48334. The questions below came from recent meetings at the law offices of Mall, Hamilton & Associates, P.C.

When families come to see us for their initial consultation, one of their biggest concerns is how they can help assure quality of life and quality of care for themselves or a loved one. As ElderCare Attorneys, we are often told that the best service we offer – initially and throughout the legal and care planning process – is the peace-of-mind that there is help available. There is help confronting the frustration, confusion and anxiety that so frequently accompanies care planning and care giving. With proper planning and the use of a holistic professional team you and your loved one can have powerful advocacy, save time and money. Such support can also help provide you and your loved ones the time and emotional strength to express and demonstrate your love and caring concerns for each other. The aging process can be difficult on the elder as well as the family. Bringing together a holistic care planning team will pay priceless dividends.

In this issue of Ask the Lawyer I respond to questions that have been asked by families when they run into what we call "provider roadblocks." Some of these "roadblocks" appear as families work to navigate through the health care, home care, legal and/or financial systems. If you are presently experiencing any of these difficulties for yourself or others – seek professional counsel and advocacy. If you have not yet confronted these issues, take the time to learn, prepare and plan. Good planning for you and your family is the best prevention. Remember that learning and properly preparing is less costly and less emotionally taxing than waiting to react during crisis.

My 87 year old mother is in the hospital recovering from a kidney operation. The continuing care social worker informed me that Mom is to be discharged as soon as a nursing home bed is available. I didn't want Mom to go to a nursing home and I am worried that she is too frail and confused to leave the hospital. Is there anything I can do?

Yes, you can intervene and advocate on your mother's behalf. However, if you are not already your mother's Patient Advocate (Health Care Agent), you may run into resistance. Without having legal authority to speak on your mother's behalf the hospital might first require you to obtain Guardianship in Probate Court before they will acknowledge and act upon your concerns. Assuming you have the necessary authority (either as Patient Advocate or Guardian) you can request that the hospital schedule a discharge planning meeting to discuss all the discharge / continuing care issues and concerns. As part of discharge planning, you will have the right to select among the various available nursing homes or other post-discharge care planning options.

You should approach the care planning meeting as your mother's care advocate asking questions about her prognosis and the type of therapy or skilled care she should be receiving. Additionally, when nursing home options are provided, you should tour the recommended facility(s), arrange a meeting with the Director of Nursing and discuss your specific concerns. Often family members are unfamiliar with this process and need professional assistance to provide such advocacy. If this is the case consider contacting an independent Geriatric Care Manager and / or and ElderCare Attorney.

Dad was in a very nice nursing home recommended by the hospital. He was recently transferred back to the hospital due to an infection from a severe bed sore. He is now stable but the wound is still severe. The hospital is planning to transfer him back to the same nursing home. Do I have to accept the hospital's discharge plan?

No. The answer here is much like the one to the

continued on page 45

Ask the lawyer...continued

question above. In this case – especially with an active bed sore – the hospital and receiving nursing home should assure you that there is an effective care plan in place. Bed sores can be deadly and your father is at risk. The Director of Nursing at the receiving nursing home should be able to assure you of the home's preparedness to provide the extra level of care your father needs. Under any circumstances, your concerns about the particular home he came from are more than understandable. You and your father do not have to accept what the hospital is telling you. You don't have to face this alone. Due to the critical nature of the medical care issues here, you may wish to seek professional intervention for counseling and advocacy support.

My wife has been in a nursing home for 8 days. They told me she is going to lose her Medicare coverage because she is not progressing and won't participate in treatment. I thought Medicare pays for 100 days. What's going on here? What do I do now?

The best thing you can do is learn how and when to advocate for your wife's care. Your wife may or may not be eligible for more Medicare coverage days. Unfortunately, what you describe is a very common experience for families and not knowing the complex, but protective, rules can be quite frightening.

Medicare payment for the first 100 days in a nursing home does NOT occur in all cases. Full payment by Medicare for nursing home care is UP TO 20 days followed by partial payment (with resident co-payment required) for UP TO an additional 80 days. To qualify for such payment the nursing home resident must be medically certified as needing skilled care. So, you are being told that your wife will no longer be medically certified as requiring skilled care. In turn, if she does not require such care, her nursing home stay will no linger be covered by Medicare.

Note however that what you were told does not necessarily comply with Medicare regulations. A person does not need to "make progress" or "participate" in treatment to continue to be certified for skilled nursing care. The minimum standard for certifying for skilled nursing care is to help prevent decline – a standard that is generally not hard to reach, especially after only 8 days in the nursing home! If you believe your wife should continue to receive skilled and/or rehabilitative care then I suggest the following 4 stage course of action:

1) Request a care plan meeting with your wife's doctor, the Director of Nursing and any additional therapists involved in her case; and
2) Request a written care plan for your review and if the nursing home still stands by its decision; then
3) Request the nursing home put its decision (to terminate your wife's Medicare coverage) in writing;
4) Exercise your appeal rights. Your wife will remain on Medicare during the time it takes todetermine if such decision is correct.

As with the other answers printed in this month's column, professional counsel and advocacy can be very effective unless you have experience in these matters. Because your wife is in a nursing home you may also consider contacting the State Long-Term Care Ombudsman's office in Lansing at 1-866-485-9393. In my experience, virtually all of our clients have received additional Medicare coverage by going through the first 2 stages (and sometimes just by requesting such a meeting and written plan).

No, you should not have to pay the nursing home bill out of your money assuming that (1) the facility has an available Medicaid certified bed and (2) you did not sign the Admission Contract as the "Guarantor." If either is not the case, I strongly recommend seeking the advice of competent Elder Law counsel to assist you. Otherwise, the nursing home is only entitled to your father's "resident pay amount." This resident payment amount is equal to his monthly income minus $60.00 for his personal needs allowance.

You must inform the nursing home that you filed the Medicaid Application and that your father should be eligible effective as of February. The overpayment you made for February's bill should then be applied for February and future months until the balance is used up. From that point on the nursing home is obligated to accept only the resident pay amount until the Medicaid application is approved (if denied, the resident pay amount still applies during the appeal process). Your father is protected from involuntary discharge. Both state and federal law prohibit such discharge from a Medicaid certified facility merely because of the resident's inability to pay or

continued on page 46

Ask the Lawyer

continued from 45

because of his seeking Medicaid coverage.

(Editor's Note – In this specific case, after my client notified the nursing home of the pending Medicaid application, it still insisted on being paid the private pay rate until the application was approved. The family was quite nervous about only paying the lower monthly (resident pay amount) rate. With added professional care advocacy the nursing home resident maintained his placement and Medicaid eligibility was granted 2 months later.)

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I'm not ready to hire any professional advisors yet let alone a team. How can I learn more about the issues and be better prepared?

Fortunately, there are lots of great resources for more information. The following websites provide valuable information regarding Eldercare issues:

Elderlaw Answers – www.elderlawanswers.com

Geriatric Care Managers – www.caremanager.org

National Academy of Elder Law Attorneys – www.naela.org

Citizens for Better Care – www.cbcmi.org

Also, these books are excellent resources:

Eldercare 911, by Susan Beeman and Judith Rappaport-Musson

Nursing Homes - Getting Good Care There, by Sarah Green Burger, Virginai Fraser, Sara Hunt and Barbara Frank

In addition, we offer many useful materials that we will make available upon request.