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Seniors and Special Needs News - March 17, 2017

1 message

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With help, seniors and people with special needs can keep some of their assets in the family rather than lose their entire life savings to the costs of long term care. They can use these protected assets to enhance their quality of life beyond what long term care alone will provide.

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The Koewler Law Firm
 JAMES L. KOEWLER, JR.



Seniors and Special Needs News

Medicare, Rehab, and "Failure to Improve"

After a hospital stay, Medicare-covered people may need rehab to continue improving from the treatment that the hospital provided. (As discussed in the [March 10, 2017](#) installment, the hospital stay must be at least three days and a full "admission" to the hospital.) In the past, as a way to save money, Medicare would cut off rehab for someone who wasn't getting better (or wasn't getting better fast enough.)

BUT, Medicare's rules don't allow for a cut-off of rehab for a failure to improve. Medicare got sued to stop using the "improvement" standard. A class action lawsuit was filed in 2011 in Vermont, Jimmo v. Sebelius (Kathleen Sebelius was the United States Secretary for Health and Human Services between 2009-2014.) Jimmo and the other claimants pointed out that the Medicare rules do not set restoration of the patient's condition as the only goal of rehab. Instead, the rules specifically list the preservation of current capabilities and the prevention of further deterioration as alternate goals if restoration isn't possible.

Now, restoration is listed in the rules as the goal of rehab when the patient is trying to recover from a malformed body part. Unfortunately, that restoration goal came to be applied to most or all rehab programs, not just to malformed limbs. Using a "failure to restore" the patient's function test allows payment to be cut off earlier in the rehab process than would using a "preservation of current function/prevention of deterioration" test. Cutting off rehab earlier

saves Medicare and its insurance affiliates save a great deal of money when rehab gets shut down early. As a result, bit by bit, most or all rehab patients came to be measured by their progress toward restoration of function, and when the patient failed to improve toward that goal, payment for rehab get cut off.

The Jimmo lawsuit forced Medicare to face its failure to follow its own rules. The Jimmo lawsuit didn't go to trial but, instead, led to a settlement agreement that Medicare would stop improper use of the "restoration" standard and its "failure to improve" test for ending rehab payments. (The restoration goal still applies to malformed body parts.) The judge approved the settlement as a court order.

Unfortunately, years later, rehab providers and Medicare's insurers are still applying the failure to improve standard. The Jimmo case went back to court to demand that Medicare follow the settlement agreement. (Based on the resulting court order, it appears that the judge is not happy with Medicare.)

Under the new court order that adds to the original settlement agreement, Medicare must undertake an effort to educate the public that the failure to improve test does not apply.

To patients undergoing rehab, the Jimmo case is the basis to argue that rehab should not be ended. The proposed ending of rehab must come in writing with an explanation of the right to appeal. The Jimmo settlement is an argument to present in the appeal.

Unfortunately, many hearing officers are more familiar with the incorrect approach that "failure to improve" is a reason to end rehab than they are familiar with the Jimmo agreement. Appeals about the continuation of rehab may require the help of an attorney who works in Medicare or Medicaid.

Also, the Jimmo settlement does not get rid of the 100-day limit on Medicare payments for rehab. The 100 days of available rehab does not reset unless the patient can go 60 days without needing Medicare's support for the health issue that led to rehab. If the family is concerned about the patient going 60 days without needing more medical help, the family may not wish to push the Jimmo issue too far. The family may wish to "save" some of the 100 days.

In summary, if a patient seems to be getting pushed out of rehab early and the patient or family wishes rehab to continue, argue that Medicare can't cut off rehab for a failure to improve. Use the name "Jimmo," so the care provider, insurer, or hearing officer can look for the agreement.

Suggest a Newsletter Topic

I try to write something new (and useful) in my newsletter every week. So, I know that I will sometimes have writer's block. I'd like your help, please.

If you have a topic for my newsletter that you'd kindly suggest, I promise to consider it. (I don't promise to pursue it. I just promise to consider it.) I try to write about issues concerning seniors, health care, long term care, special needs, Veterans Pension (aka Aid and Attendance) benefits, and Veterans Compensation benefits. Please keep your suggestions within or near to those topics.

Please submit your suggestion [here](#). If I use your topic suggestion, I'll put the content in both my blog and newsletter.

Thank you for your help.

Social Media Posts since the last newsletter

02-09-2017 Helping #SpecialNeeds students transition from #Graduation to #Employment <http://ow.ly/9wgq308KvrW>

02-08-2017 How to prevent an #AgingParent from being a #Fraud victim <http://ow.ly/uYqs308sxmQ>

02-07-2017 The #Cost of #HealthCare after #Retirement <http://ow.ly/fBxQ308Ksyj>

02-06-2017 Create a plan for #HomeCare for #AgingParent <http://ow.ly/aAXH308swRd>

02-05-2016 Poorly written #PowerOfAttorney can get in the way when someone needs #LongTermCare <http://ow.ly/wUVK308sDP9>

02-04-2016 #AffordableCareAct (#ObamaCare) prompted people to pursue #PreventiveCare <http://ow.ly/kwzM308sCCN>

02-03-2017 #Ohio #Medicaid financial standards for #LongTermCare for 2017 - an update <http://wp.me/p47F09-pl>

Older social media posts can be found in the [social media post archive](#) on the firm's website, ProtectingSeniors.com.

The Koewler Law Firm News

3-21-2017 Jim Koewler will present a Continuing Education Program at the annual Social Worker Luncheon hosted by the Summit Senior Sales, Administration and Marketing Association Social Worker Luncheon. The luncheon will take place at the Natatorium in Cuyahoga Falls, Ohio, 11:30 a.m. Continuing Education credit will be available for social workers, counselors, and nurses. The topic has not yet been finalized.

3-21-2017 Jim Koewler will discuss how families can get help from Medicaid and/or the Veterans Administration to help pay for long term care as part of a series of seminars on long term care issues by Visiting Angels of Canton, Senior Mortgage Advisors, and The Koewler Law Firm at the offices of Visiting Angels in Canton, Ohio.

5-2-2017 Jim Koewler will discuss legal representation that can help people who need long term care and people who have special needs at a meeting of the Aging Services Network East at Euclid Hospital in Euclid, Ohio.

5-16-2017 Jim Koewler will discuss Ohio's rules on Qualified Income Trusts (aka Miller Trusts) for people who need Medicaid to pay for long term care at a meeting of the University Hospitals Bedford Medical Center Senior Network at Light of Hearts Villa in Bedford, Ohio.

5-26-2017 Jim Koewler will discuss Ohio's 2016 changes to its Medicaid eligibility rules at a meeting of Eldercare Professionals of Ohio at Chippewa Place in Brecksville, Ohio.

6-19-2017 Jim Koewler will speak at a two-day Continuing Legal Education seminar in Akron, Ohio sponsored by the National Business Institute entitled "Elder Law and Medicaid Planning: Everything you Need to Know." Jim will make three presentations on the first day of the seminar covering Medicaid Benefits and Eligibility Rules, Preserving Family Assets when Qualifying for Medicaid, and Medicaid Application Procedure and Tactics.

6-21-2017 Jim Koewler will speak at a two-day Continuing Legal Education seminar in Cleveland, Ohio sponsored by the National Business Institute entitled "Elder Law and Medicaid Planning: Everything you Need to Know" (repeating the program from Akron.) Jim will make three presentations on the first day of the seminar covering Medicaid Benefits and Eligibility Rules, Preserving Family Assets when Qualifying for Medicaid, and Medicaid Application Procedure and Tactics.

11-21-2017 Jim Koewler will discuss changes in federal and state laws and rules affecting people who need long term care at a meeting of the University Hospitals Bedford Medical Center Senior Network at the Solon Senior

Center in Solon, Ohio as part of the Network's Legislative Affairs Committee.

Older items of firm news can be found in the [news archive](#) on the firm's website, ProtectingSeniors.com.

Jim's available presentations

- Changes in Ohio Medicaid Eligibility Rules for 2016 (Continuing Education credit available for social workers, counselors, nurses, and Certified Case Managers)
- ABLE accounts for people with Special Needs: Their Use and Misuse
- Ethical Issues in Case Management and Discharge Planning (Continuing Education credit and Ethics credit available for social workers, counselors, and nurses)
- Veterans Benefits that Help with Long Term Care (Continuing Education credit available for social workers, counselors, nurses, and Certified Case Managers)
- Overcoming Seniors' Resistance to Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Preventing Senior Fraud (Continuing Education credit available for social workers, counselors, and nurses)
- My Care Ohio and Medicare/Medicaid "Dual Eligibles" (Continuing Education credit available for social workers, counselors, and nurses)
- Navigating Medicaid, Medicare, and the Affordable Care Act (Continuing Education credit available for social workers, counselors, and nurses)
- What people "Know" about Long Term Care that is Wrong (Continuing Education credit available for social workers, counselors, and nurses)
- Government Benefits that can help Pay for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Legal Issues for People with Dementia (Continuing Education credit available for social workers, counselors, and nurses)
- Advance Directives – Powers of Attorney, Living Wills, etc. (Continuing Education credit available for social workers, counselors, and nurses)
- Buying Long Term Care Insurance Wisely (Continuing Education credit available for social workers, counselors, and nurses)
- Planning Ahead to Protect against Long Term Care Costs (Continuing Education credit available for social workers, counselors, and nurses)
- Organizing for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Pre-planning your Final Arrangements (Continuing Education credit available for social workers, counselors, and nurses)
- Elder Law: A Primer (Continuing Legal Education credit available)
- Protecting your Money when you need Long Term Care and Essential Estate Planning Considerations (with free living wills for up to 20 audience members)
- Health Insurance for Families: The Affordable Care Act ("ObamaCare,") Medicaid, and Medicare
- Myths about Long Term Care Costs
- How to help your Parents Manage their Affairs
- Legal Lessons for Life

Upcoming Meetings

03-20-2017 Medina County Senior Services Network's Education Committee, Yours Truly, Medina, Ohio, 11:30 a.m.

03-21-2017 University Hospitals Bedford Medical Center Senior Network, Northfield Village, Northfield, Ohio, 8:30 a.m.

03-21-2017 Summit Senior Sales, Administration and Marketing Association Social Worker Luncheon, Natatorium, Cuyahoga Falls, Ohio, 11:30 a.m.

03-23-2017 Portage Senior Services Network, Family and Community Services Building, Ravenna, Ohio, 8:30 a.m.

03-24-2017 Eldercare Professionals of Ohio, Hamlet Village, Chagrin Falls, Ohio, 9:00 a.m.

03-28-2017 Summit County Senior Services Network, Anthony Kucko Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.

03-28-2017 Professional Networking Group, The Weils, Chagrin Falls, Ohio, 9:00 a.m.

03-28-2017 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

03-30-2017 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio 8:30 a.m.

04-04-2017 Aging Services Network East, Euclid Hospital's Waltz Auditorium, Euclid, Ohio, 8:30 a.m.

04-04-2017 Montrose SeniorCare Networking Group, Brookdale Montrose, Akron, Ohio 8:30 a.m.

04-04-2017 Stow ElderCare Networking Group, Corner Cup Coffee House, Stow, Ohio, 9:00 a.m.

04-05-2017 Stark Senior Services Network, Meyer's Lake Ballroom, Canton, Ohio, 9:00 a.m.

04-05-2017 Richfield Chamber of Commerce luncheon, Richfield Days Inn and Suites, 11:45 a.m.

04-05-2017 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.

04-12-2017 Medina County Senior Services Network, Elmcroft of Medina, Medina, Ohio, 8:00 a.m.

04-12-2017 Summit Senior Sales, Administration and Marketing Association, Renaissance, Richfield, Ohio 2:30 p.m.

04-13-2017 Lorain County Senior Services Network, Lorain County Office on Aging, Elyria, Ohio, 8:30 a.m.

04-14-2017 Eldercare Professionals of Ohio, O'Neill Healthcare, Lakewood, Ohio, 9:00 a.m.

04-17-2017 Medina County Senior Services Network's Education Committee, Yours Truly, Medina, Ohio, 11:30 a.m.

Newsletter Archive

Past issues of this newsletter can be found in the [newsletter archive](#) on the firm's website, ProtectingSeniors.com.

Contact Jim Koewler

If you'd like to contact Jim, this newsletter has a dedicated [contact page](#) on the firm's blog site, ProtectingSeniorsNews.com.

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