



The Anchor

ELDER LAW PRACTICE OF TIMOTHY L. TAKACS

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Spring 2008

Issue 28

Hospice Underutilized for Alzheimer's Patients

Coming Events

April 7 and June 2, Tim Takacs guest on Morning-Line, NewsChannel 5+
(Comcast Cable Channel 50) 8am

May 15, Tim Takacs guest on OpenLine, NewsChannel 5+
(Comcast Cable Channel 50) 7pm

May 29, Caregiving Refresher Course by Carol Moseley, RN at Elder Law Practice for clients/ families, 6pm
RSVP (615) 824-2571

June 25, Alzheimer's Basics by Debra King, CMSW, at Elder Law Practice for clients/families, 6pm
RSVP (615) 824-2571

Mental Health Association Education & Events, call 269-5355 for dates, times and locations

Alzheimer's Family Care Network, call (615) 292-4938, ext. 15 for dates, times and locations closest to you

When Hospice began in the early 1970s, it was widely used by cancer patients. Its goal is to keep the terminally ill person as comfortable as possible in the final stages of disease and enable the person to spend special time with family and friends.

Reports by the National Hospice and Palliative Care Organization (NHPCO) show that not only is the use of Hospice care rising significantly in the U.S., but the percentage of Hospice patients with non-cancer diagnoses is also steadily increasing.

According to Bruce Jennings, Senior Research Scholar at The Hastings Center, only about 7 percent of the nation's Hospice patients are individuals with Alzheimer's Disease (AD). Hasty states "The sad fact is that otherwise medically

robust and 'healthy' AD patients fall between the cracks of our health care system near the end of their lives."

In his 2003 study, Hasty attributes barriers such as Medicare's Hospice benefit and its six-

"...but often it's simply not clear-cut when it is appropriate."

month life expectancy along with inadequate physician awareness and referral of AD patients to Hospice in the community. In addition, families are often faced with ethical and emotional barriers. "Because Hospice has been understood as a 'last resort,' and as a place where people go to die, enrolling a loved one in hospice - particularly if it is someone whom you have cared for with great difficulty, anguish, and self-sacrifice for a very long time - may feel like a betrayal, both of the loved one and of yourself."

Jean Marks, former associate executive director of the Alzheimer's Association also agreed that doctors and families are still shy about

considering Hospice for AD patients. "Hospice offers a very

peaceful way to go after this long protracted illness, but often it's simply not clear-cut when it is appropriate," she said. As a result, Hospice care and resources for individuals with late stage dementia of the Alzheimer's type and their caregivers have been underutilized.

The NHPCO has published guidelines to help doctors determine when hospice is appropriate for people with Alzheimer's Disease. The organization also offers a resourceful Web site to consumers: www.caringinfo.org~



Questions and Answers

Q *What happens if my loved one who is in Hospice lives beyond the 6-month life expectancy?*

A If the patient survives beyond 6 months, the Medicare benefit may continue indefinitely, as long as there continues to be reasoned clinical judgment sustaining a prognosis of 6 months or less.

Q *May I deduct gifts on my income tax return?*

Q Making a gift or leaving your estate to your heirs does not ordinarily affect your federal income tax. You cannot deduct the value of gifts you make (other than gifts that are deductible charitable contributions).

Q *When my father, who is on Medicare, becomes eligible for Medicaid nursing home benefits, does he need to drop his Medicare supplemental insurance?*

A It's true that without his Medicare Supplement, Medicaid would cover Medicare's deductibles and cost-shares for your father. However, any health insurance premiums would have been used to offset counted income during Medicaid application. This means that it could potentially affect the amount of the patient liability due the nursing home each month. It's best to seek individual counsel before dropping the Medicare supplement.~



“He who would pass his declining years with honor and comfort, should, when young, consider that he may one day become old,...

Medicare's Coverage of Diabetes Tests and Supplies

The Medicare Modernization Act of 2003 expanded the number of preventive services covered by Medicare to include diabetes screening tests. Effective January 1, 2005, Medicare provides coverage of diabetes screening tests for beneficiaries at risk for diabetes or those diagnosed with pre-diabetes.

Medicare provides coverage for diabetes screening tests, at certain frequencies, for 1) beneficiaries diagnosed with pre-diabetes and 2) beneficiaries previously tested but not diagnosed as pre-

diabetic or who have never been tested.

Coverage for the diabetes screening tests are provided, in full, as a Medicare Part B benefit. A referral must be received from a physician or qualified non-physician practitioner for the screening.

Medicare also provides limited coverage of the following supplies for beneficiaries with diabetes:

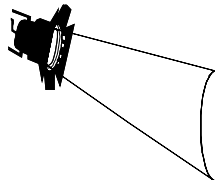
- ♥ blood glucose self-testing equipment
- ♥ one pair of therapeutic shoes (and 3 inserts)

- ♥ insulin pumps and the insulin used in the pumps

For those with diabetes, Medicare coverage also includes:

- Foot care
- Hemoglobin A1c tests
- Glaucoma screening
- Influenza and pneumococcal immunizations
- Diabetes self-management training.

Note: insulin not used with an external insulin pump and certain medical supplies used to inject insulin are covered under Medicare Part D.~



GUEST COLUMN

Special Needs Trusts Can Help Quality of Life

Special Needs Trusts safeguard a loved one's personal assets and provide for the comforts of life that public benefits do not cover—all without jeopardizing eligibility for government assistance.

Public benefits such as, Social Security Supplemental Income (SSI) and/or Medicaid (TennCare) require income limits. What often results in trying to manage those limits is that the recipient of public benefits (SSI and TennCare) will become disqualified if he or she should receive an inheritance or settlement. In the case of someone who is applying for public benefits, the application will be denied if income and asset limits are exceeded.

Under current federal law, assets held in most trusts will also be counted against recipients of public benefits. However, a provision in the law creates a specific exception for the recipient or applicant who places assets in a

non-profit pooled trust. In such cases, one may continue receiving public benefits for meeting essential needs and still have resources available for their special or supplemental needs. The following list provides some examples of potential trust beneficiaries who can benefit from joining a pooled trust:

- Applicants or recipients (child or adult) of government assistance programs that are based on asset and income limitations, such as Medicaid or SSI
- Recipients of personal property injury settlements who need to apply for or protect government assistance benefits
- Nursing home residents or soon-to-be nursing home residents

The benefits of having a properly designed pooled trust are immeasurable.

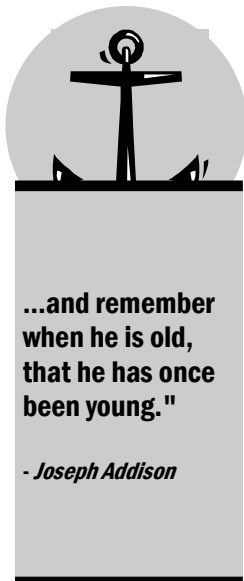
- ◆ Government benefits continue

- ◆ Allows parents and grandparents to set aside funds for the benefit of their disabled child or grandchild
- ◆ The beneficiary's lifestyle is maintained
- ◆ Reduces the burden and risks from family members
- ◆ Protects inheritances and personal injury settlements
- ◆ Upon death, in some cases, assets may be left to other family members



The pooled trust is structured so that the client's interests come first. This means that professional relationships such as attorneys, social workers and geriatric care managers are not disrupted. In fact, trust funds can potentially be used toward their needed services. Other uses for which supplemental payments may be made include:

- ♥ Supplemental nursing care
- ♥ Guardian fees
- ♥ Geriatric care services
- ♥ Medical procedures or



...and remember when he is old, that he has once been young."

- Joseph Addison

Special Needs Trusts Can Help Quality of Life *(continued)*

therapies not reimbursed through other sources

- ♥ Travel or entertainment expenses
- ♥ Customized durable medical equipment, entrance ramps and prosthetics (artificial limbs)
- ♥ Camps, respite care, personal care items and services
- ♥ Differentials in housing costs between shared and private rooms in institutional settings

Perhaps the most striking benefit, however is that a pooled trust provides beneficiaries who have small to

moderate amounts of money with professional trustee and money management services. The funds are only "pooled" for investment and management services. A separate account is established for each beneficiary. A one-time setup fee is charged at the time the pooled trust is established. An annual fee, which represents a modest percentage of the fund, will also be applied. Funds may be added to the beneficiary's accounts and interest can accrue.

This information was provided by VistaPoints, Inc. Established in 2000 as a non-profit 501(c)(3), VistaPoints is Tennessee's only Special Needs Trust

Resource Center. The organization is focused on helping the disabled, their parents, caregivers, and professionals learn more about the unique protections offered by Special Needs Trusts.

Darlene Kemp is the Executive Director of Vista Points, Inc. Ms. Kemp's education background includes a Masters of Public Health and Gerontology and a Masters in Business and Health Care Administration. If you would like to have Ms. Kemp speak at your facility, at a meeting, in a group setting, or to you individually, please contact her at dkemp@vistapoints.org or call 615-824-7230.~



"By the time a man realizes that maybe his father was right, he usually has a son who thinks he's wrong."

- Charles Wadsworth

What is a POLST Form?

The POLST form (Physician Orders for Life-Sustaining Treatment) is designed for individuals with serious or life-threatening illness. Its purpose is to ensure that a patient's wishes for care are honored by all medical personnel in the event that the patient is unable to speak for him/herself. It can guide daily care decisions such as the use of CPR or tube feeding. It also states that

measures to ease pain are always provided, regardless of any other care decisions.

The POLST form originated from the work of a multidisciplinary task force in Oregon in the early 1990s. It has continued to evolve on the basis of research studies and feedback from healthcare providers. An Advance Directive is different from the POLST form in that it



states the patient's wishes and appoints a healthcare representative to make decisions if the patient is unable to do so.

The POLST is an actual order from a physician. It gives specific directions to medical personnel and is strictly followed. It can be filled out by a nurse or social worker, but it must be signed by a physician or nurse practitioner in order to be activated.~

Takacs Tidbits

Tim writes frequently for legal audiences. His first book, *Elder Law Practice in Tennessee*, was published by Lexis-Nexis in 1998 and is used by attorneys throughout the state.

His latest book, *A Guide to Elder Law Practice*, was also published by LexisNexis and was

released September 2007.

It offers guidance on the legal, ethical and client communication issues that elder law attorneys are likely to face.

Tim wrote *A Guide to Elder Law Practice* to meet a growing demand for operational advice among attorneys who want to

better serve elderly clients.

His goal for the book was to provide those attorneys with a better idea of the situations they will encounter, the venues in which they will operate, and the sources of the law and regulations that will be pertinent to their practices. ~

Anchor Line



Our Elder Care Coordinators offer monthly training modules to help our Life Care Plan families better understand their strengths and stressors in caring for an elderly relative. Following are some highlights from *Assisted Living Basics*.

Definition

An Assisted Care Living Facility (ACLF) is a building, establishment, or complex that accepts primarily aged persons for domiciliary care. ACLFs provide the following on-site to residents: room, board, non-medical living assistance services appropriate to the residents' respective needs, and medical services as prescribed by each resident's treating physician, limited to the extent not covered by a physician's order to a

home care organization and not actually provided by a home care organization.

Disclosure

The residence must have an accurate written statement regarding fees and services that will be provided to the resident upon admission.

Facility Scope of Care

The facility may provide protective care and supervision to residents, assistance with medications, and assistance with all activities of daily living.

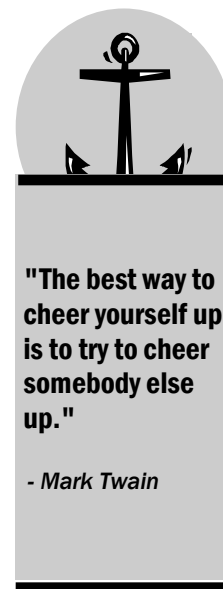
Resident Assessment

Facilities are required to assess prospective residents before they move in to make sure they meet the definition of an ACLF resident. Periodic assessments must be done to be sure residents do not need to be moved to a higher level of care.

Before residents with Alzheimer's disease or dementia can be admitted, an interdisciplinary team must determine that their care can be appropriately and safely provided in the facility. The team must consist of, at a minimum, a physician experienced in the treatment of Alzheimer's disease and related disorders, a social worker, an RN, and a family member (or patient care advocate). The team must review such persons at least quarterly as to the appropriateness of placement in the facility.

Medications

Medications must be self-administered or administered by a licensed professional. The facility may assist residents with medication. ~



"The best way to cheer yourself up is to try to cheer somebody else up."

- Mark Twain

The Anchor is a quarterly newsletter designed to enhance the service we provide to our clients. We hope you enjoy the publication and welcome your feedback.

Elder Law is a unique specialty of law intended to serve the needs of the elderly, disabled, and their families. The costs of utilizing such services are usually offset by the financial benefits gained as well as peace of mind.

Some clients who seek our services might feel like they are being tossed in a storm. Forces beyond one's control can catch a family off guard and easily drift them into a crisis situation. With professional assistance, including careful analysis and strategic planning, costly mistakes can be avoided while enhancing the quality of life for those involved.

While the Elder Law Practice of Timothy L. Takacs cannot stop the storm, we can provide the necessary anchor to help steady families during their season of turmoil.~

Information contained herein may contain general explanations of laws. It should not be considered as legal advice. Please seek counsel from an attorney regarding legal planning.
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