

Patricia E. Kefalas Dudek & Associates

Passionate Advice and Advocacy
for all Stages of Life

March 2020



National Elder Fraud Hotline

Now Available: National Elder Fraud Hotline

On Tuesday, March 3, 2020, Attorney General William P. Barr addressed attendees of the Keeping Seniors Safe summit and announced the launch of the [National Elder Fraud Hotline](#). This toll free call center helps combat fraud against older Americans and provides support for victims who have been robbed of their hard-earned savings.

The National Elder Fraud Hotline is staffed by caring professionals who can provide personalized support to callers. Use this call center to—

- report incidences of fraud;
- obtain a case manager who will help you through the reporting process at the federal, state, and local levels; and
- connect with other helpful resources on a case-by-case basis.

Call **833-FRAUD-11 (833-372-8311)** to receive help from a hotline case manager.

Visit the [National Elder Fraud Hotline](#) website.

AG Nessel Responds to Judge's Action in Healthy Michigan Plan Ruling

Federal Judge James Boasberg granted the State's motion today for partial summary judgment in *Young v. Azar* to vacate U.S. Health Secretary Azar's Dec. 21, 2018 approval of the work and community-engagement requirements in the Healthy Michigan Plan. In response, Michigan Attorney General Dana Nessel issued the following statement:

"We are grateful for Judge Boasberg's swift decision today, which will ensure that Michigan won't be throwing away taxpayer money to enforce unlawful requirements and cause confusion and concern for tens of thousands of Michigan beneficiaries whose health care coverage was in limbo."

Make Sure You Are Counted in the 2020 Census

The 2020 census is starting soon, and seniors need to be counted. This may be more of a challenge this year because for the first time, the census will be completed largely online.

While the census is being conducted largely online, you do not need to fill out the form online if you don't want to. Beginning in March 2020, the census will mail out postcards to each household, giving instructions on how to respond. You will have the option of responding online, by mail, or via the phone. If you don't respond, a census worker will visit your home to collect the data.

[Click Here to Read More](#)

Nursing Home Update: Latest Data Indicate Severe Nurse Understaffing

February 26, 2020 – Sufficient staffing is vital to a nursing home resident's quality of care and ability to live with dignity. Unfortunately, many nursing homes fail to comply with federal law requiring facilities to provide sufficient care staff and to have a registered nurse on duty eight hours a day, seven days a week. As demonstrated by the newest federal nursing home data (third quarter of 2019), too many facilities are failing to allocate funds to maintain sufficient staffing to meet every resident's needs.

Today, LTCCC announces the publication of the latest [user-friendly data on staffing for every U.S. nursing home](#) (in compliance with mandatory reporting requirements). This information can help the public, news media, and policymakers identify and assess the extent to which nursing homes in their communities are providing sufficient staffing to meet basic clinical and quality of life needs. The data are for the most recent period reported by the federal Centers for Medicare & Medicaid Services (CMS).

[Click Here to go to the Full Media Alert](#)

How Does Medicaid Treat Income?

The basic Medicaid rule for nursing home residents is that they must pay all of their income, minus certain deductions, to the nursing home. The deductions include a \$60-a-month personal needs allowance (this amount may be somewhat higher or lower in your state), a deduction for any uncovered medical costs (including medical insurance premiums), and, in the case of a married applicant, an allowance for the spouse who continues to live at home if he or she needs income support. A deduction may also be allowed for a dependent child living at home.

[Click Here to Continue Reading](#)

Ohio's Students with Disabilities to Benefit From Groundbreaking Settlement in Long Standing Class Action Lawsuit

The final agreement reached between the Ohio Department of Education and Disability Rights outlines a plan to improve the integration and academic achievement of Ohio students with disabilities

Columbus, Ohio, (March 2, 2020)-- The Honorable Judge Michael H. Watson of the United States District Court for the Southern District of Ohio has granted final approval to a comprehensive settlement agreement in the class action Doe v. State of Ohio, case number 2:91- cv-00464. Disability Rights Ohio (DRO), the Judge Bazelon Center for Mental Health Law, and the law firm of Steptoe & Johnson worked with the Ohio Department of Education to reach a settlement that will improve the State's support for special education throughout Ohio and support improvement in student outcomes. In addition, the settlement will provide intensive support to 11 of Ohio's school districts to secure measurable improvements in student performance and inclusion for children with disabilities. The settlement will be in effect for five years.

[Click Here for the Entire Press Release](#)

The Trump Administration Allows States to Choose Medicaid Block Grants

The Trump administration has unveiled a plan to allow states the option to cap Medicaid spending using block grants. While this change does not directly affect nursing home residents on Medicaid and is billed as a way to improve state flexibility in running Medicaid programs, it could result in significant service cuts.

Announced on January 30, 2020, the Centers for Medicare and Medicaid Services (CMS) plan, dubbed "Healthy Adult Opportunity," would allow states to apply for block grant funding instead of receiving unlimited matching funds. States that choose to enter such an arrangement would receive a pre-set amount of money in exchange for increased flexibility in how they administer their programs.

The new funding option applies mainly to healthy adults under 65 who are covered under Medicaid expansion. People needing long-term care and individuals who are 65 and over would not be included in a potential state block-grant project along with children and individuals with disabilities. States also cannot block grant services that are required under the Medicaid statute, such as emergency and hospital services.

[Click Here to Read the Full Article](#)

The Top 10 Elder Law Decisions of 2019

ElderLawAnswers' annual roundup of the top 10 elder law decisions for the past year, as measured by the number of "unique page views" our summary of the decision received.

[Click Here to See the List](#)

Lawmakers Must be Cautious About Recommendations From a New Industry Report on Nursing Home Closures

Feb. 28, 2020 - LeadingAge, a trade association for non-profit nursing homes, has released a [report](#) on nursing home closures and trends between June 2015 and June 2019.

LeadingAge advises that these closures were the result of multiple issues, pointing to low occupancy and Medicaid reimbursement rates as factors. In light of the report's findings, LeadingAge makes several recommendations, including the following:

- States must reevaluate their Medicaid rate setting processes to ensure that providers are reimbursed for their actual cost of care.
- The National Academy of Sciences should launch a new study to evaluate the nursing home survey process, links to care outcomes, and alternative strategies for nursing home quality.

The Center for Medicare Advocacy and the Long Term Care Community Coalition urge state and federal policymakers to be cautious about these recommendations. **First, our organizations do not believe that nursing homes should receive additional public funds without audits to determine how facilities spend public reimbursement and the implementation of a [medical loss ratio](#) (MLR) designed to hold nursing home operators accountable for taxpayer dollars.** Without an MLR, there is no guarantee that increases in reimbursement rates will be used on direct resident care instead of administrative costs and profits. In fact, nursing home industry rate increases, even those targeted to direct care staff wages, often do not result in improvements in staffing or resident safety.

[Click Here to Access the Full Statement](#)

Authorized Representatives Cannot Sue State on Behalf of Medicaid Beneficiaries

The Seventh Circuit rules that Medicaid regulations do not permit authorized representatives to bring civil lawsuits on behalf of Medicaid beneficiaries. [Bria Health Services, LLC v. Eagleson](#) (U.S. Ct. App., 7th Cir., No. 18?3076, Feb. 11, 2020).

[Click Here to Read More](#)

Estate Planning Is Essential for Unmarried Couples

While estate planning is important for married couples, it is arguably even more necessary for couples that live together without getting married. Without an estate plan unmarried couples won't be able to make end-of-life decisions or inherit from each other.

Estate planning serves two main functions: determining who can make decisions for you if you become incapacitated and who gets your assets when you die. There are no laws in place to protect unmarried partners. Without a solid estate plan, your partner may be shut out of the decision making and the inheritance.

[Click Here for the Full Article & Essential Steps for Unmarried Couples](#)

Trump Administration Proposes Major Change to Medicaid's Funding Structure

The Department of Health and Human Services (HHS) will now give [states the option to obtain](#) a portion of their federal Medicaid funding via so-called "block grants." This potentially dramatic change is billed as a way to improve state flexibility in running Medicaid programs. Although beneficiaries with disabilities should not be directly affected, the change could result in significant service cuts for millions of adults who secured Medicaid coverage through the Affordable Care Act.

The question of what increased program flexibility would look like is central to all debates surrounding block grants. Advocates of block grants—from the Reagan administration to former House Speaker Paul Ryan—have argued that block-granting is necessary to ensure the program's long-term funding stability. Disability rights advocates, among other groups, fear it is just a back-door way to slash benefits.

[Click Here to Continue Reading](#)

State Can Recoup Medicaid Benefits From Estate Even If Recipient Wasn't Qualified to Receive Them

A Minnesota appeals court holds that the state can recoup Medicaid benefits from the estate of a Medicaid recipient who received benefits through a Medicaid waiver program even if he wasn't actually qualified for the waiver program. [In re the Estate of: Raymond Deforest Trahan](#) (Minn. Ct. App., No. A19-1020, Feb. 3, 2020).

[Click Here for More on This Decision](#)

How Secure Is Social Security?

For years people have been worried about Social Security's future, but what is the actual outlook? According to the federal government, unless Congress acts to intervene, Social Security shortfalls are expected beginning in 2035.

Social Security retirement benefits are financed primarily through dedicated payroll taxes paid by workers and their employers, with employees and employers splitting the tax equally. Employers pay 6.2 percent of an employee's income into the Social Security system, and the employee kicks in the same. Self-employed individuals pay the entire 12.4 percent Social Security payroll tax. This money is put into a trust fund that is used to pay retiree benefits.

The trustees of the Social Security trust fund have reported that if Congress doesn't take action, the fund's balance will reach zero in 2035. This is because more people are retiring than are working, so the program is paying out more in benefits than it is taking in. Additionally, seniors are living longer, so they receive benefits for a longer period of time.

Once the fund runs out of money, it does not mean that benefits stop altogether. Instead, retirees' benefits would be cut. According to the trustees' projections, the fund's income would be sufficient to pay retirees 77 percent of their total benefit.

[Click Here to Continue Reading](#)

Resolving Conflicts Between Co-Agents on a Power of Attorney

Having power of attorney over a family member is a big responsibility and sometimes it makes sense to share that responsibility with someone else. But when two people are named co-agents under a power of attorney, conflicts can arise. Unfortunately, if the conflict can't be resolved, it may be necessary to get a court involved.

A power of attorney allows a person to appoint someone called an "agent" or "attorney-in-fact" to act in his or her place for financial purposes when and if the person ever becomes incapacitated. A power of attorney can name one agent or it can require two or more agents to act together.

If you are acting as a co-agent under a power of attorney, but you and your fellow agent disagree on a course of action or one party has stopped participating in decision making, what can you do? The first thing is to check the wording of the power of attorney document to see if it sets up a procedure for resolving disputes. If the power of attorney itself doesn't help, you should contact an attorney. The attorney can tell you if your state's power of attorney laws offer any guidance. There may be a state statute that deals with disputes.

[Click Here to Read the Full Article](#)

Make Sure Your Life Insurance Is Not Taxed at Your Death

Although your life insurance policy may pass to your heirs income tax-free, it can affect your estate tax. If you are the owner of the insurance policy, it will become a part of your taxable estate when you die. You should make sure your life insurance policy won't have an impact on your estate's tax liability.

If your spouse is the beneficiary of your policy, then there is nothing to worry about. Spouses can transfer assets to each other tax-free. But if the beneficiary is anyone else (including your children), the policy will be a part of your estate for tax purposes.

[Click Here to Continue Reading](#)

Rejecting State's Claim That SNT Terminated When Medicaid Benefits Ended, Federal Court Rules That Payback Dispute May Not Be Ripe

A Colorado district court determines that because a special needs trust (SNT) is not forced by state law to terminate once the beneficiary withdraws from the Medicaid program, the court may lack subject matter jurisdiction over a challenge to the state's attempt to recover Medicaid funds from the trust during the beneficiary's lifetime. *Brockman v Bimestefer* (D. Colo., No. 19-cv-1153-WJM-KMT, Feb. 13, 2020).

In a case we wrote about last fall, the settlement proceeds that Mendy Brockman received for injuries from a car crash were placed in an SNT established by the court and approved by the Colorado Department of Health Care Policy & Financing (HCPF) in 2014. Ms. Brockman received Medicaid benefits until she removed herself from the Medicaid program on January 1, 2019. In March 2019, HCPF directed Ms. Brockman to terminate her SNT and reimburse the state \$422,486 for the medical benefits she had received. HCPF based its demand on a state statute and regulation, 10 C.C.R. 2505-10, § 8.100.7.E.6.b.i.e, and C.R.S. § 15-14-412.8, that it contended compel an SNT to terminate when the trust is no longer required for Medicaid eligibility.

Jason Brockman, trustee of Ms. Brockman's SNT, along with Ms. Brockman, filed suit challenging HCPF's direction, claiming that the two state laws conflict with federal Medicaid law. They sought declaratory and injunctive relief only. HCPF responded with a motion to stay and motion to dismiss. The court granted the motion to stay pending its ruling on the motion to dismiss.

[Click Here to For More Information About This Decision](#)

How to Include Cryptocurrency in an Estate Plan

The growing popularity of cryptocurrency means it is increasingly something that must be considered when planning an estate. If you own cryptocurrency, providing instructions in your will is a must.

Unlike a bank account, there is no physical record of the currency, so if you own cryptocurrency it is essential that you declare it in your will and also let the person who will be handling your estate (your fiduciary) know about it. Also, unlike with a bank account, the fiduciary does not have to provide a death certificate or power of attorney in order to access the currency. As long as the fiduciary has your passcode, he or she can take control of the currency. This means you need to be sure that your fiduciary is someone you can trust with this information.

[Click Here to Continue Reading](#)



For more news and information about Patricia and Patricia E. Kefalas Dudek & Associates please visit us online.

www.pekdadvocacy.com

www.pattidudek.typepad.com/



Patricia E. Kefalas Dudek & Associates

30445 Northwestern Highway, Suite 310 Farmington Hills, MI 48334

Tel: [248-254-3462](tel:248-254-3462) Fax: [248-928-9233](tel:248-928-9233)

pdudek@pekdadvocacy.com

If you would like to add anyone to or be removed from the e-mail list please notify the editor. dwelsh@pekdadvocacy.com

This e-newsletter is a publication of Patricia E. Dudek & Associates. The legal information presented in this e-newsletter is intended for information purposes only and is not a substitute for consultation with a legal professional.