



ElderLaw Advisor



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LEGISLATIVE UPDATE

There are a number of bills before the Maine Legislature that are “elder-related”. However, there are two important bills that warrant our attention and support. These bills deal with keeping and caring for elders in their homes. The first bill proposes payment to family members, friends, or neighbors who provide at-home care to a Medicaid/MaineCare recipient, all in an effort to keep the elder at home and out of an institutional setting.

The second bill seeks to establish a Blue Ribbon Commission to study the future of home-based and community-based care. The Commission would study the unmet needs and financing options of long-term home-based and community-based care because the State has an increasingly elderly population and there is a shortage of long-term home-based and community-based care workers.

As Elder Law attorneys, we support these two bills because we know how important it is for elders to remain at home. We encourage you to contact your local State Representative and Senator voicing your support of these two bills as well.

KNOW YOUR HEALTHCARE DECISION RIGHTS

April 16, 2008 will be the inaugural National Healthcare Decision Day. On that day at 1:00 p.m. at the Muskie Center in Waterville and 4:00 p.m. at the Hospice Volunteers-Waterville, we will be participating in a forum highlighting the importance of advance healthcare decision making. We will discuss a patient’s right to request and/or refuse care and a healthcare provider’s right to comply with or refuse a patient’s request for healthcare. We will also provide healthcare directive forms and help you execute a healthcare directive. **This article will address patient and caregiver healthcare decision making rights under Maine law.**

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Humor is the great thing, the saving thing. The minute it crops up, all our irritations and resentments slip away and a sunny spirit takes their place.

Mark Twain



JOHN NALE

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MARK NALE



Know Your Healthcare, *continued from p1.*

In Maine, the patient's and doctor's rights are established under the Maine Probate Code, Title 18-A, Part 8, Section 5-803 et seq. Under Maine law, a person can appoint another person as their agent to make healthcare decisions for them. The appointment of an agent should be in writing but does not have to be. The agent can make your healthcare decisions only when you are unable to do so because of mental or physical incompetence. You may limit your agent's authority, but if you do not, your agent may (just as you may), request or refuse any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition. And your agent may (just as you may), select or discharge healthcare providers and institutions; approve or disapprove diagnostic tests, surgical procedures, medications and order "do not resuscitate". And, most importantly your agent may, direct the physician to withhold or withdraw artificial nutrition and hydration and all other forms of care, including life-sustaining treatment, and therefore **may hasten your death (just as you may).**

And just as the patient can request or refuse certain medical services, so too may the doctor request or refuse to provide certain medical services. The law states that the doctor or

hospital "shall comply" with the patient's or agent's healthcare decision. However, a doctor can refuse to comply with a healthcare decision made by a patient or their agent if the doctor believes the decision is **against the law; against his "conscience"; against good healthcare; or against generally accepted healthcare standards.** The hospital may also refuse to request or provide certain medical services for the same reasons.

Also, under Maine law, a doctor or hospital acting in good faith and in accordance with generally accepted healthcare standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for refusing to comply with a patient's healthcare decision. However, a doctor or hospital that intentionally violates the law is subject to actual damages plus attorney's fees.

OUR ADVICE?

FIRST When appointing an agent, **make sure your agent knows how you feel about end-of-life healthcare decisions** and will follow your instructions. If your wishes go against your agent's religious or conscious beliefs, he/she may not be able to act for you.

SECOND When selecting a doctor, **make sure your doctor knows how you feel about end-of-life healthcare decisions** and will follow your instructions. If your wishes go against your doctor's religious or conscious beliefs, he/she may not be able to comply with your healthcare decisions.

WHAT IS ELDER LAW?

Nale Law Office is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid/MaineCare, Medicare, Social Security, SSI, disability planning, care management, and fiduciary services.

ElderLaw Advisor is written by John E. Nale, Esq. & Mark J. Nale, Esq. This newsletter is published as a service of Nale Law Offices, 44 Main Street, Waterville, ME 04901. This information is for general informational purposes only and does not constitute legal advice. For more information please consult Nale Law Offices at 873-4304 or visit our website at www.nalelaw.com.



MEDICARE ISN'T JUST FOR WHEN YOU ARE SICK

The following preventative services are covered by Medicare to help you maintain your good health.

What's Covered?	How Often?	Cost to Beneficiary?
Flu Shot	Once Per Flu Season	Medicare Pays 100%
Pneumonia Shot	Usually needed once	Medicare Pays 100%
Cardiovascular Screening	Once every 5 years	Medicare Pays 100%
Diabetes Screening	Based on Risk Factors – Ask Your Doctor	Medicare Pays 100%
Pap Test and Pelvic Exam	Once ever 24 months	20% of Medicare approved amount (no deductible)
Mammogram Screening	Once every 12 months for women 40+	20% of Medicare approved amount (no deductible)
Colorectal Cancer Screening	Ask Your Doctor	20% of Medicare approved amount (no deductible)
One-time “Welcome to Medicare” Physical Exam	Once during first 6 months on Medicare	20% of Medicare approved amount (subject to deductible)
Bone Mass Measurement	Once every 24 months for those with certain medical conditions	20% of Medicare approved amount (subject to deductible)
Glaucoma Test	Once every 12 months for those at risk	20% of Medicare approved amount (subject to deductible)
Hepatitis B Shot	Ask Your Doctor	20% of Medicare approved amount (subject to deductible)
Prostate Cancer Screening	Once every 12 months for men 50+	20% of Medicare approved amount (subject to deductible)
Medical Nutrition Therapy	Nutritional Counseling to help manage Diabetes or Renal Disease	20% of Medicare approved amount (subject to deductible)
Diabetes Self-Management Training	Education for those with Diabetes	20% of Medicare approved amount (subject to deductible)
Smoking and Tobacco Use Cessation Programs	Up to two attempts per year	20% of Medicare approved amount (subject to deductible)

LEARN - TEACH - SERVE

Mark J. Nale, Esq. was recently elected to the Waterville Hospice's Board of Directors. He is also a member of the National Academy of Elder Law Attorneys and the MSBA Elder Law Section.

John E. Nale, Esq. was recently selected as Chair of the Legislative Affairs Committee of the Elder Law Section and serves as a Board Member of the Advisory Committee to the State of Maine Office of Elder Services and Board Member of the Maine Association of Area Agencies on Aging.

BABY BOOMER NEWS

The majority of baby boomers to turn 62 in 2008 report that they are retired or will be fully retired by age 65, when they'll also collect Social Security, according to a new MetLife Mature Market Institute study. The study also noted that most boomers turning 62 in 2008 have been married only once and that they have 2.4 children on average. Of those who have children, 78% have grandchildren (66% of total). Also of note, conservatives outnumbered liberals 2-1. "Contrary to what most of us have believed about the baby boomers who came of age in the turbulent 1960s, the group is very much like the 'Silent Generation' that preceded them," Sandra Timmermann, director of the MetLife Study, said in a statement. The survey reports that the majority (77%) of boomers born in 1946 say they are in good to excellent health; their net worth (excluding home value) is an average of \$257,800 and their average annual income is approximately \$71,400. Thirty-eight

percent are expecting an inheritance of an average of \$210,000. Eighty-seven percent say neither they nor their spouse are caregivers to elderly parents or relatives right now. When asked to use one word to describe the best aspect of turning 62, respondents answered: retirement or being close to it, being alive, freedom, health, Social Security, wisdom and independence. As one person put it, "I'm glad to be on the planet, rather than in it."

What Can We Do For You!

We frequently provide lectures for various groups in central and mid-coast Maine. A few suggested topics include estate planning, long-term care planning, MaineCare benefits, long-term care insurance and reverse mortgages. If your group is interested in any of these topics, please contact Deb Letourneau at 207-873-4304 or sign-up at our website at www.nalelaw.com.

- Legislative Update
- Know Your Healthcare Decision Rights
- Medicare Isn't Just for When You're Sick
- Learn - Teach - Serve
- Baby Boomer News

SPRING ISSUE ARTICLES:

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