

ElderLaw Advisor

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NEW LAWS YOU SHOULD KNOW ABOUT

The 127th legislature enacted 16 laws to help Maine elders age in place and access services that help achieve that goal. Specifically, the legislature authorized funding for Alzheimer's respite, financial management services, home delivered meals, senior housing and home repair and increased funding for direct care workers, assisted living and nursing homes.

The legislature enacted LD 1049, **An Act to Further Define Duties for Persons Who Hold Powers of Attorney or Act as Agents for Residents of Long-term Care Facilities.** This law allows the facility to sue an agent who fails to pay the facility or fails to timely apply for the MaineCare long term care benefit. Failure to pay or act promptly on an elder's behalf makes the agent personally liable to the facility for unpaid costs and attorney's fees.

The newly enacted **CARE Act** allows a patient to designate a "lay-caregiver" in the patient's medical record and requires the facility on discharge to instruct the lay-caregiver on the patient's care needs and how to provide the care as needed.

The Department of Health and Human Services issued new rules for the **Low Cost Drugs for the Elderly and Disabled.** The new

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AARPs AGE-FRIENDLY COMMUNITIES NETWORK

The AARP Network of Age-Friendly Communities is an affiliate of the World Health Organization's Global Network of Age-Friendly Cities and Communities, an international effort launched in 2006 to help cities prepare for the world's growing population of older adults and the growing trend of urbanization. Participation in the Network advances AARP's mission to help people live safely and comfortably in their homes and in their communities.

Communities that promote and support healthy aging can join the Network. An age-friendly community will assess and make improvements in eight domains that influence the health and quality of life for older adults. The livability domains and what they represent are as follows:

1. **Outdoor Spaces and Buildings:** Availability of safe and accessible recreational facilities.

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"Live everyday as if it were your last because someday you're going to be right."

~ Muhammad Ali, 1942-2016



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Elder Law – Understanding the Needs of Our Elders
Long-Term Care and Estate Planning

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MARK NALE



HOME CARE SERVICES AND YOUR RIGHTS

As Elder Law attorneys we know that our clients all wish to remain in their homes for as long as possible and sometimes they need help in order to do so. If we have family and friends nearby who can help – great. Family and friends may provide care at no charge, or you may hire and pay them. You may, as is often the case, hire individuals employed by agencies to provide the home care. Home care workers have a variety of educational backgrounds and training.

Most typical services needed are provided by Personal Support Specialists, Personal Care Attendants, Home Health Aids and Homemakers. These services include meal preparation, house-keeping, personal hygiene and bathing, companionship and sometimes oversight for safety purposes. Some home care agencies offer some services, some offer all. Home care agencies are regulated and licensed by DHHS, Division of Licensing and Regulatory Services.

You have the right to have home care workers who are trained professionals, honest and trustworthy. Home care agencies must interview and carefully screen workers before hiring. Agencies must conduct a criminal background check,

ensure all required licenses are in place and up-to-date, and provide training for the specific service to be provided.

If you hire an individual worker directly you should put the arrangement in writing in order to avoid a period of ineligibility if or when you need to apply for the MaineCare long-term care benefit. You can do a background check on the individual by calling the CNA Registry at (207) 287-9310.

When hiring an agency they will conduct an interview and develop a care plan for the person. The plan should set forth the person's care needs, housekeeping chores, whether medications will be administered and hours and times that a caregiver will be in the home. You should also have a clear understanding of who provides "backup" if the regular caregiver can't make it. You or the agency?

If you have a complaint or concern you can voice your complaint to the agency without fear of retaliation. You can also call the Maine Long-Term Care Ombudsman Program at 1-800-499-0229 or DHHS at 1-800-383-2441.

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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 us at 207-660-9191 or sign-up at our website at www.nalelaw.com.

New Laws You Should Know About, *continued from p1*

rule adds a liquid asset limit of not more than \$50,000 per person or \$75,000 per couple. The proposed rule requires an annual review and certification.

The Department of Labor (DOL) released the final **Fiduciary Rule** regarding financial advisors and retirement assets. The new rule makes advisors of retirement assets subject to fiduciary requirements. Essentially, the rule requires the advisor to **always act in the client's best interest and to charge on a fee-based and best interest relationship** as opposed to a commissionable basis. The DOL's definition of "Best Interest" means acting in a prudent manner. Prudent advice is "advice that is based on the investment objectives, risk tolerance, financial circumstances and needs of the retirement investor, without regard to the financial or other interests of the Advisor, Financial Institution, or their Affiliates, Related Entities, or other parties".



ARE YOU MANAGING SOMEONE ELSE'S MONEY OR PROPERTY?

When you have been named or accept the role of managing someone else's money or property, you are a fiduciary. **As a fiduciary you are by law required to manage the money or property for their benefit, not yours.**

You may become a fiduciary in a number of different ways. You may be named or selected, but no matter how you get there, once there, the rules and the law are the same.

You may be named by the Social Security Administration as a representative payee or by the Department of Veterans Affairs as a VA fiduciary. You may be named by the court as someone's guardian or conservator; or you could be selected by the person to serve as their agent under a power of attorney or trustee of their trust. In all instances you are managing someone else's money or property. By law you must act only in their best interests, being careful and prudent, keeping their money and property separate from yours and keeping good records. You must abide by all four.

Things you must do and things you must not do. You must make sure the person's day-to-day needs, such as food, clothing and shelter are met. You must pay the person's bills, taxes and other obligations on time. You must deposit their money in a savings account and protect their money from false creditor claims and scams.

You must not mix your money with their money. You must not borrow from their money or make gifts to yourself or others. You should not pay yourself for services unless specifically allowed to as approved in writing.

When keeping money separate, separate means separate. Never deposit the other person's money in your account, or your money into their account. You should not be a joint owner of their account. You should pay your expenses with your money and their expenses with their money. Never mix the two.

Finally, keep good records and report as required. Keep a list of the money and property you begin with and what you receive throughout. Keep a list of what you do with the money. Keep

receipts of all expenses with NO exceptions. From your list, which can and should be the check-book register, file reports to the appropriate agency or court as required.

If you have any questions regarding your duties and obligations, you should consult with an experienced Elder Law attorney.

AARPs Age-Friendly Communities Network,
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2. **Transportation:** Safe and affordable modes of private and public transportation.
3. **Housing:** Availability of home modification programs for aging in place as well as a range of age-friendly housing options.
4. **Social Participation:** Access to leisure and cultural activities, including opportunities for older residents to socialize and engage with their peers as well as with younger people.
5. **Respect and Social Inclusion:** Programs that promote ethnic and cultural diversity, as well as multigenerational interaction and dialogue.
6. **Civic Participation and Employment:** Paid work and volunteer activities for older residents and opportunities to engage in the formulation of policies relevant to their lives.
7. **Communication and Information:** Access to communications technology and other resources so older residents can connect with their community, friends and family.
8. **Community Support and Health Services:** Access to home-based care services, health clinics and programs that promote wellness and active aging.

An age-friendly community will provide walkable and safe streets, suitable housing and transportation options, access to key services and opportunities for residents to participate in community activities. Myself and others are in the early stage of assessing the City of Waterville's current age-friendly domains and will be approaching the City asking that we join the AARP Network of Age-Friendly Communities.

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ELDERLAW ADVISOR

- New Laws You Should Know About
- AARPs Age-Friendly Communities Network
- Home Care Services and Your Rights
- Are You Managing Someone Else's Money or Property?



THE ADVANCE HEALTH CARE DIRECTIVE

Because the law is very strict about who is able to participate in health care related conversations and decisions, we should all have an Advance Health Care Directive in place.

However, many people do not plan for a time when we may need someone else to help us with healthcare and end-of-life decisions. Not planning in advance means you may not be able to gain access to the information needed to act on your loved one's behalf. In a worst case scenario, you might be forced to petition the probate court for guardianship, a time consuming and costly process.

The Health Information Portability and Accountability Act (HIPAA) keeps a person's health information and records private. A properly drafted Advance Health Care Directive authorizes you to receive that information. The HIPAA authorization authorizes the doctor to share that necessary information with you.

The Advance Health Care Directive also authorizes you to make healthcare decisions for another person in the event they are unable to make those decisions themselves. It is crucial that the person named as agent know what the elder's wishes are in the event they need life support, a feeding tube or intravenous fluids to survive.

The Advance Health Care Directive should also include "living will" language. The living will language gives the caregiver or other loved one the authority to carry out end-of-life decisions. You can decide in advance that you do or do not want to be resuscitated if you stop breathing; whether artificial life support should be used or whether a feeding tube should be inserted.

Making these decisions in advance and giving your agent the authority to carry out your wishes means your caregiver and other loved ones do not have to agonize over difficult medical and end-of-life decisions.