

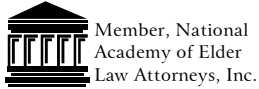
Texas Elder Law FaxLetter

From Michael B. Cohen & Associates

700 North Pearl Street, Suite 1650
Plaza of the Americas, LB 314
Dallas, Texas 75201

Telephone (214) 754-0025 • Direct Line (214) 720-0102

Facsimile (214) 754-0936 • E-Mail coelldlaw@flash.net • www.dallaselderlawyer.com



Member, National
Academy of Elder
Law Attorneys, Inc.

A FREE BUSINESS AND LEGAL UPDATE OF CURRENT EVENTS AFFECTING THE ELDERLY ♦ SEPTEMBER 2003 EDITION

MEDI- MINUTES

DHS Announces New Transfer Penalty Amount

The Texas Department of Human Services (DHS) has determined that the average private pay cost per month for a long-term skilled care facility in Texas has gone DOWN from \$2908 (the rate established in September 2001) to \$2858 (this is contrary to what is happening nationwide as indicated in the next story below). Therefore, to calculate the transfer penalty of the amount of months of ineligibility for long-term care due to uncompensated transfers (such as gifts) from the long-term care Medicaid applicant, you would divide the amount of the uncompensated transfer by 2858 for all Medicaid applications on or after September 1, 2003 – regardless of when the uncompensated transfer took place within the look-back period.

As many of you know, DHS has a right to know of all uncompensated transfers within the look-back period (which is 3 years on gifts and 5 years on most trusts) to determine if there is a penalty prior to Medicaid eligibility. Uncompensated transfers to spouses are not penalized (there are a few other exceptions to the general rule). If the client applies during an existing penalty period, the client must personally pay for skilled care and medications until the penalty period has expired. To calculate the penalty period:

1. Determine the difference between the value of the property or money transferred and the value paid (if any) to the client;
2. Divide that number by 2858;
3. Round down to a whole number (that is number of months of ineligibility);
4. Count the month in which the transfer is made as a penalty month (even if it was the last day of the month).

The first date on which eligibility can be established is the first day of the month after the penalty period. Thus, if a client



made a gift of \$11,000 on September 2003 (and there were no other gifts in the look-back period that created an existing transfer penalty) to someone other than the limited permitted exceptions (such as the client's spouse, etc.), then the client would not be eligible for the months of September, October and November 2003 (since $\$11,000 / 2858 = 3.8$, creating 3 months of ineligibility from the month of the uncompensated transfer). It should be noted that if the same transfer had taken place a year earlier, then the transfer penalty would have expired in 2002 and there would be no ineligibility for the transfer in 2003 even though the transfer took place within the look-back period. It should also be noted that clients often confuse the IRS gift tax rules (the annual exclusion which permits \$11,000 a year gifts to a donee without any gift tax) with the Medicaid rules, whereby the same gift could result in an existing transfer penalty.

This is the first time in this author's recollection that the penalty divisor has gone down. It supposed to represent the monthly average private pay cost of a nursing home in Texas, and it is this author's experience that nearly universally the private pay rates generally go up (see the article below) each year instead of down. Many people who have been aggressive in monthly gift giving to obtain Medicaid eligibility could be adversely affected by this determination – thus it is possible that DHS is leaving the agency open to suit due to potential due process claims in addition to other possible causes of action. Those who have made aggressive gifts will need to recalculate and possibly return some gifted funds to obtain eligibility as soon as possible.



3% higher than last year. Compare that to the consumer price index, which only rose by 2.1%.

Dr. Sandra Timmerman, Director of the MetLife Mature Market Institute, believes that rising liability and malpractice insurance and falling Medicaid payments might be partially to blame.

Source: *The Kaiser Family Foundation (8-5-03)*
<http://www.kaisernetwork.org>

HEALTH HAPPENINGS

Alzheimer's Cases Increasing Along with Life Span

Today there are about 4.5 million Americans suffering from Alzheimer's disease (AD). But scientists at Rush-Presbyterian- St. Luke's Medical Center in Chicago, IL project that around 13.2 million older Americans will have AD by 2050 unless scientists can find new methods of preventing or treating the disease.

The leader of the study, Dr. Denis A. Evans MD, explains, "Declines in death rates after the age of 65 mean that more people will survive to the oldest ages, where the risk of AD is greatest." As we live longer, our risk increases greatly for AD and so does its severity. In 2000, among AD sufferers between 65 and 74, 17% were classified as severe. Of those older than 85, 28% were severe.

National Institutes of Health (8-18-03)

OUT & ABOUT

Michael B. Cohen will be teaching a course entitled "Aging Successfully and with Dignity: A Symposium for Those Approaching Their 60s and Beyond" at Southern Methodist University-Legacy in Plano on October 18, 2003. For registration information, contact SMU Professional Courses for Adults at 214-768-8446.

Michael B. Cohen was quoted on September 1, 2003 in the Dallas Morning News in connection with an article regarding planning for your elderly parent.

NATIONAL NOTES

Cost of Nursing Home and In-Home Care on the Rise

In the last year, the cost of living in a nursing home rose at almost four-times the rate of inflation, according to a MetLife Mature Market Institute survey released August 5. The survey showed that the cost of living in a nursing home increased by 8%. While not quite as drastic, the hourly cost of in-home care is

Member of the Board of Directors of the Texas Chapter of the National Academy of Elder Law Attorneys, Inc.

This FaxLetter is free and complies with FCC regulations. You are receiving it because someone in your office has requested a subscription. If our records are incorrect, or if you would like to end your subscription, please contact us by phone, fax, e-mail, or postal mail.