

# TEXAS Elder Law

## NewsFlash



Paul Premack

### President's Report

By Paul Premack, CELA, San Antonio, Texas  
President of the Texas Chapter of NAELA

The Officers and Directors of your Chapter are working hard to make this a great year for all Texas NAELA members. We have several new initiatives being worked on in committees. Any members who would like to become involved are welcome to contact me (Paul@Premack.com) to contribute to the Publicity/Outreach committee, the Public Policy and Litigation committee, the Programming committee, the Membership committee, the Awards committee, and the Newsletter committee.

New this year is an effort to bring you two Webinars. These will be announced via the listserv and will use national NAELA's technology. We will again hold our fun and useful UnProgram in January, this year in Dallas, and the Summer program in coordination with UT CLE.

The Board desires to both have outreach and inreach this year. We want outreach to raise awareness of the existence of the Texas Chapter among possible referral sources. Earlier this year we

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### Book Review

#### Avocado Toast Is the New Bread & Butter: Millennials and "Sandwich Generation" Members as the Elder Law Client

Reviewed By Emily B. Taylor

For many elder law attorneys, presentations at senior centers or with preparing-to-retire business owners

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### Best of the List Serve or My Love Letter to Clyde

By Jennifer L. Coulter



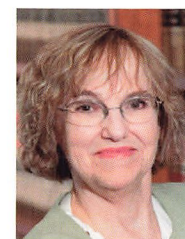
Jennifer L. Coulter

It's that time again, when we sort back through the list serve for the things that were the most helpful. This time, I decided that I simply had to dedicate the entire

column to the man I want to be

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### Illegal SNF Discharges: Appealing Medicare Notice of Nonpayment<sup>1</sup>



Terry L. Garrett

By Terry L. Garrett

In May 2019, *JAMA Internal Medicine* reported a study of nursing home discharges tied to Medicare

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### Member Profile: Lori A. Leu, CELA

By Stephanie Townsend Allala



Lori A. Leu, CELA

Walking into Lori Leu's office is akin to walking into your own home. Her staff conveys their greeting with a welcoming warmth, a cup of coffee, a chat about family and the weather, making you feel like you've known each other for a lifetime. It's what you might expect from a small-town

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# SAVE THE DATE

## 2020 UnProgram

Mark your calendars for the UnProgram on January 24-25, 2020, at the Embassy Suites by Dallas Love Field, 3880 West Northwest Highway, Dallas, Texas 75220. In prior years, the UnProgram has been held at the Embassy Suites near the Dallas/Fort Worth (DFW) Airport in Grapevine. This year, due to scheduling conflicts with the DFW location, we are trying the Embassy Suites near the Love Field Airport.

The UnProgram offers a unique opportunity to share tips and experiences, learn from each other, and connect with your fellow Texas NAELA members. This is always one of the most popular events of the year, so mark it on your calendar today! If you have ideas for topics to be included, or would like to volunteer to moderate a session, please contact Lori Leu at lleu@leulawfirm.com.

### ***President's Report, continued from page 1***

sponsored a table at the Aging in Texas Conference, and had a good response – which was too often along the lines of “I didn’t know there were lawyers who focus on these issues!” If administrators, social workers, and others think of NAELA when a legal issue arises, they can recommend a visit to our website to find an area Member attorney to provide those services.

We also want inreach to you, our members. The Board has created a budget for local gatherings of our members. If you want to hold a meet-and-greet, go out for drinks, or get together with other Texas NAELA members in your area, the Chapter can reimburse you up to \$250 for the costs. Let me or our Treasurer **Joy Eckelkamp** know about any member gathering you broker. Additionally, the Membership committee is looking into both reducing attrition and involving existing and new members in more Chapter activities.

As President, I want to thank **Stephanie Townsend Allala** for editing this newsletter, thank those who contributed articles, and thank the Board for their enthusiastic contributions at the planning retreat we held in San Antonio in early September. The 2019-2020 Chapter year looks like it will be excellent thanks to the efforts of our Directors, Committees, and because you as Members contribute your time, ideas, expertise, and caring at our gatherings and on our listserv! ■

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**Paul Premack, CELA, practices at The Premack Law Office in San Antonio, TX.**



**Book Review**  
**continued from page 1**



**Emily B. Taylor**

are primary referral sources and good clientele. However, a growing number of individuals aged approximately 23 to 38 (millennial generation according to Pew Research Center) may be worth

the elder law attorney's second look.

According to a recent Genworth study, in less than a decade since 2010, the average age of caregivers has fallen to age 47. Further, the average age of the recipient of care has dropped to 66 in 2018 from age 75 in 2010. This trend manifests itself in a myriad of social media groups such as The Caregiver Space on Twitter and Caregivers' of Parkinson's Disease Support Group on Facebook. There are also countless blogs such as [lotsahelpinghands.com](http://lotsahelpinghands.com) and [themotivatedmillennial.com](http://themotivatedmillennial.com). Many of these resources were created by the generation who grew

up with the Internet and so, it is no surprise to see this as the avenue in which these individuals are sharing information in the face of what feels like insurmountable challenges.

I have seen a client whose ill mother moved in with her upon her return home from college graduation. And it does not stop with mom and dad. I have also had a client, just turned 40, who was left to care for a brother with traumatic brain injury while planning her own wedding. These individuals are trying to navigate a multitude of information and options, and find a balance in their lives. A quick scroll through these Internet sites and resources leads to questions posted by readers and members such as, "Anyone else caring for their brother with ALS?" or "Since my mother died, my 95-year-old grandmother has moved in. Where do I find a chair lift?" The collateral issues these individuals face are also those which elder law attorneys are equipped to assist with or offer up a helpful referral source in the alternative.

Besides advising your millennial how best to help mom and dad, they may also be a member of or preparing to be a member of the "sandwich

generation." According to the Pew Research Center, 71 percent of the "sandwich generation" are aged 41-59 and nearly 20 percent are younger than age 40 or the millennial generation (the remaining roughly 9 percent is over age 60). These individuals are caring for an aging loved one in addition to caring for their young children. This is a particular client who is looking to help themselves as well as those they are caring for. It takes a skilled elder law attorney to provide this multi-generational planning. Building a solid attorney-client relationship now often leads to the opportunity for the elder law attorney to plan for the caregiver's own family affairs as they transition to the next phase of life. For many millennials and "sandwich generation" members, that phase is looking more and more like a dual caregiver role.


With a generation accustomed to information at their fingertips and faced with caregiving challenges, a unique prospect exists for the elder law attorney. It would be prudent of the elder law attorney to reach these groups and ensure they are receiving accurate information and competent counsel. ■

**Emily B. Taylor is an attorney at Rapp & Krock, PC, in Houston.**


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# Summer Conference Recap

By Paul Premack, CELA

## The 21st Annual Estate Planning, Guardianship, and Elder Law Conference was again co-sponsored by the Texas NAELA Chapter and the University of Texas School of Law.



**Paul Premack**

The 21st Annual Estate Planning, Guardianship, and Elder Law Conference was again co-sponsored by the Texas NAELA Chapter and the University of Texas School of Law. Moody Gardens in Galveston was this year's setting on July 31 for the NAELA day, and August 1-2 for the UT portion of the program.

The day began at 11am with a Board of Directors meeting, followed by lunch for the members and new members to meet the board. All new members had the opportunity to introduce themselves and their practices, and to



learn a bit more about the workings of the Texas NAELA Chapter.

For the first time, the CLE program was split into two tracks. Under the leadership of **Cathy Fowlkes** and with the aid of **Kelley M. Bentley, CELA**; **Danielle Feick**; **Lori A. Leu, CELA**; and **Sally A. Mirabella**, a group of 24 members participated in the full-day Medicaid Planning track. Various case studies were presented, and the participants took a hands-on approach to learn how to gather data, apply the law and regula-

tions, and handle nuts-and-bolts issues like preparation of the Medicaid application. Thanks to Cathy and her

crew for the huge effort involved in planning and presenting this portion of the day's program.

The second track was the more traditional CLE lecture presentations. **Christina T. Leshner** presented a detailed overview of Medicaid for Kids, presenting on issues we may face with families and disabled minors instead of the elder community. **Lori L. Noack-May** shared her expertise on making distributions from special needs trusts (SNTs), and **Suzanne Mitchell** discussed how attorneys can work with and benefit from the Ombudsman's office in Austin and under the various Area Agencies on Aging.

Health Care Policy issues were ably presented by **Kathy Elder**, stepping in at the last minute to cover for **Andrea Gray, MPH**, whose family has relocated out of state. **Randy Drewett, CELA**, covered the practical scenarios sometimes presented when physically



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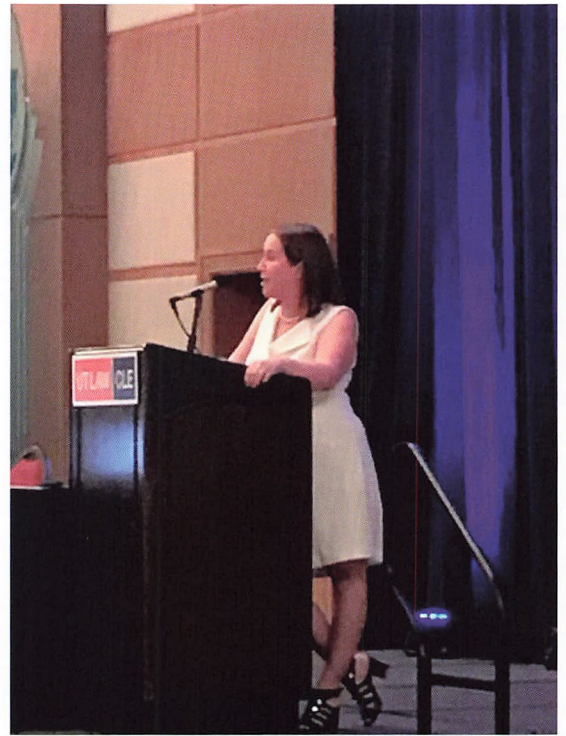
disabled but mentally capable clients need to sign documents in your office.

**Chris Ritter** from TLAP presented his perspectives on attorneys who may become impaired or unable to practice due to illness or dependencies. He made positive suggestions on how to handle very difficult issues that can arise in our practices. Conversely, **John McNair, CELA**, discussed issues we all face when engaging a new or existing client who may have limited capacity.

After dinner, the general membership meeting, and chapter elections, **Lori Leu and Erin Peirce** tag-team pre-

sented the new VA Pension Rules in a most informative and entertaining fashion. The evening ended with **Jennifer Coulter's** detailed (and always directly from memory) presentation on Medicaid Planning for Couples.

Next year's program is being coordinated by **Lori Leu and John McNair**. It should again include the Medicaid nuts-and-bolts track, and should not be missed by any member! ■





## Best of the List Serve, continued from page 1

when I grow up: **Clyde Farrell**. It's not uncommon for his posts to take up a substantial portion of this column, but this time around almost every answer I bookmarked was from Clyde. It's got to be the footnotes. If you're thinking, "But I'm a super excellent poster!", you're probably right, and I'll be coming back around to you again. This time, though, it's all about Clyde. With that preface, let's dive into his excellent advice.

As is often the case, Clyde let us know about several programs many of us (well, at least me and the original poster) only vaguely knew existed. This includes CHIP having no resource limits or transfer penalties (May 24, 2019 post - CHIP), Gap Medicaid to provide coverage for those kicked off Supplemental Security Income (SSI) due to a bump in benefits from the death or retirement of a parent until the disabled child can apply for DAC benefits (May 21, 2019 post - Disabled Adult Child), and the Breast and Cervical Cancer program, that has no resource limit (Sept. 24, 2019 post - Breast and Cervical Cancer Program). These helpful posts remind us that there's more to Medicaid than nursing homes, Star ++, and CAS. Plus, they come footnoted and with attached in-depth briefings.

We also had the usual series of questions about individual retirement account (IRA) treatments, but with a twist: 401Ks where the plan participant is still working. Clyde

addressed this issue a couple of times for us recently (Apr. 24, 2019 post - 401K and new rules) (Aug. 26, 2019 post - 401K and Medicaid). The much shorter version is that most 401Ks will be exempt if the community spouse (CS) owning it is still working. Cautionary note: that may change if the CS is over a certain age, and you should read the plan to ensure it will be exempted.

The subject of long-term care insurance (LTCI) payments arose several times as well. Fortunately, Clyde put all of us right by explaining in his Apr. 17, 2019 post that LTCI payments are third-party resources and payments paid to the Medicaid recipient should be paid to the nursing facility, not the Texas Health and Human Services Commission (HHSC) - whatever either of those is telling your client.

In a most unusual turn of events, Clyde addressed an issue I've been

having trouble with and gave an answer I did not like. Hint, though, it's not Clyde with the problem here. Many of us have had problems with HHSC on business property being exempted. As Clyde explains, HHSC has taken the position that limited liability companies (LLCs) should not be exempt business property (June 12, 2019 post - Business property F-4330). For a good explanation of why, read the full post.

I'd also be remiss if I didn't relay Clyde's timely update of the transfer penalty's daily divisor. Beginning September 1, 2019, the new daily divisor is \$213.71 (Aug. 30, 2019 post - New daily rate for calculating the Medicaid transfer penalty).

While there were many more of Clyde's posts I will be coming back to, I'm out of time to profess my love. Keep an eye out for the next BOTLS when I'll probably pop the question to **Patty Sitchler**. ■

Home Groups Texas Chapter Listserve Email Archive

My time: 10:32am (US/Eastern) [edit]

### Listserve Email Archive: Texas Chapter

Reply to Community Reply to Sender Delete (Admin/Moderator) #previous Next Back To All

**Sender:** Stephanie Townsend Allala  
**Date:** Apr 5th, 2018 12:42pm  
**To:** "txnaela@mycommunities.naela.org" <txnaela@mycommunities.naela.org>  
**Subject:** How do we get companies to follow Jimmo standard?  
**0** 1 Attachment(s)  
**Statistics:** 181 sent

**Send Email:**  
Email from Web  
From Mail Program  
Email Moderator

Dear colleagues,

My firm is encouraging nursing facilities to follow the *Jimmo* Corrective Action Order. Most seem to not have heard of it, and are worried about whether Medicare advantage plans will honor it. It seems one HMO is claiming it doesn't apply to them. Does anyone have any experience with this? How to you rebut, other than providing documentation of the CAO? Thank you for any guidance you can provide.

Stephanie Townsend Allala

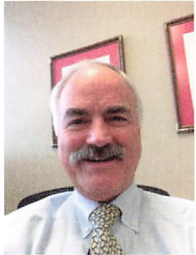
**Jennifer L. Coulter** is an associate attorney at the elder law firm of **Townsend Allala, Coulter and Kludt**, with offices in El Paso, TX and Truth or Consequences, NM.



# Clinton Nix Brings a Texas Twang to National NAELA

By Lisa Shoalmire

## Learn more about Texas Chapter and NAELA Board member Clinton Nix.



**S. Clinton Nix**

Clinton Nix of Bradbury & Nix law firm began a two-year term of service on the National Academy of Elder Law Attorneys (NAELA) Board of Directors on June 1, 2019. Clinton has been a member of NAELA since 2000 and has served in numerous capacities as a member of the Texas NAELA Chapter, including president from 2016-2017. The last Texas member to serve on the national NAELA Board of Directors prior to Clinton was **KT Whitehead** who served on the board from 2007-2011. When asked why he wanted to serve on the NAELA Board, Clinton stated that he believed that Texas needed representation on the board since Texas is one of the largest NAELA state chapters and there had been no Texas voice on the board since Ms. Whitehead. The NAELA Board boasts members from 13 other states. While admitting that there is a learning curve in serving on the board of a national organization with professional staff and a budget in excess of \$2 million, Clinton believes that, with the help of the more experienced board members, he will get up to speed and be able to represent Texas well.

Clinton says that his goal is to educate Texas NAELA members

on what is going on in the national organization and to provide a line of communication about trends in other states that may impact Texas elder law practitioners in the future. Clinton stated that he has already observed how fortunate Texas is when comparing the practices and relationships of other states' Medicaid agencies with their respective elder law practitioners. Being aware of the more adversarial practices and aggressive agency tactics in other states will help Texas attorneys understand the importance of participation in the legislative and rule-making processes to head off similar practices in Texas, Clinton expressed.

Clinton also praised the depth of knowledge on the NAELA Board to address areas of concern for elder law attorneys. One such area included the recently proposed rule changes in the POMS regarding compensation of the attorneys who draft special needs trusts (SNTs). The NAELA organization mobilized into action to address flaws in the POMS proposal which would possibly impact the availability of professionals to assist families with SNT creation and to address the SSA's underlying concerns which led to the initial POMS proposal. Further, Clinton said that NAELA is highly concerned with non-attorney Medicaid planning services, and, given the experience with this issue in states like Florida, NAELA is continuing to focus on addressing this area.

Clinton noted that, of the state chapters represented within NAELA, nearly half of these other states have

non-mandatory bar associations. In those non-mandatory bar states, the NAELA state chapters are more proactive in recruiting and keeping members. While Texas still has a mandatory bar, if changes to this model come about, Clinton said that, seeing what other NAELA state chapters have done to support their membership is helpful.

If there is a desire to serve in any capacity with NAELA, Clinton said that there is a place for you in the national organization. Also, if there are areas of concern for Texas members who wish to bring those to the national organization, Nix is your conduit to the NAELA Board. Clinton will be attending the NAELA Summit in Washington D.C. on November 14-16, 2019. You can reach Clinton Nix at [nix@bradburylawfirm.com](mailto:nix@bradburylawfirm.com). ■

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**Lisa Shoalmire is an attorney and senior partner at Ross & Shoalmire in Texarkana.**



**Member Profile,  
continued from page 1**

lawyer who made it big in one of the largest metroplexes in the nation.

Lori is familiar to TXNAELA members for her work in the areas of Medicaid, VA benefits, and contested guardianships and probates. “I feel like what I do matters. Clients give me hugs, they confide in me. I think I have found what I was always meant to do.”

The road here was long and winding, and if she seems to take a pastoral approach, it’s not by accident – Lori once studied for the ministry. Lori was born in Winchester, Kansas, a small town of 500 people. Many years before, the same doctor who delivered her drove a horse and buggy through snow to a farm outside of town to deliver Lori’s father. After graduating from high school in a class of 48 people, Lori attended Kansas State University, living in a dorm her first year that had more residents than her home town. From K-State, Lori headed straight to Harvard Law School. The small-town girl suddenly found herself alone in a challenging, diverse environment, and she thrived.

The Kansas girl missed home though, so she started her legal career back at a Kansas City law firm. Two years later, she was approached by a headhunter to work at a large Dallas firm. She had no contacts in Dallas, but the confidence she

gained at Harvard assured her she could begin again in a new, strange place. Her family and her faith helped guide her.

“Dallas was where I really started to grow. I was working for a large firm in commercial litigation where the billable hour was king. Luckily, my focus changed when I met and married my husband in 1993, and our daughter was born one year later.” While on maternity leave with her daughter, Lori’s law firm dissolved, and while pregnant with her son, her subsequent firm also broke up. “In retrospect, the closing of those firms helped me stay on the right path. Working round the clock would not have allowed me to raise my children in the way that made sense for me. And, pulling back from the pressure of billing hours gave me time to realize that I wanted to reach people in a different, more personal way than that allowed.”

As Lori went through this evolution, she questioned whether she should continue to practice law. In 2002, Lori began attending seminary at Southern Methodist University’s Perkins School of Theology, while still working full-time and raising her family. She was 30 hours into her divinity degree when her husband’s job transferred the family to France in 2006. In yet another step away from the small town, Lori spent a year in France focused on her children, learning to speak French, and traveling.

After returning to Texas, Lori continued to struggle with what she was meant to do. “I was anxious to return to work, so I went back to a big firm, but felt like a square peg in a round hole. The work just didn’t matter to me, so I quit.” After the many different experiences, Lori yearned for something more. “One day, I was looking through a Super Lawyers magazine and saw an ad for someone who practiced elder law, and that sounded interesting. I asked an attorney friend to introduce me to **Dianne Reis**, CELA, an attorney in Plano, Texas, so I could learn more about it. We met, I joined NAELA, and the rest is history.”

Lori jumped into elder law with both feet. She passed the CELA exam in 2014, attends national NAELA events, and serves on the Texas NAELA Board. She also actively supports the Alzheimer’s Association, chaired the Walk in Collin County in 2018, and now leads the Care & Support Advisory Committee for the Dallas area. Lori also chairs the board for the Wellness Center for Older Adults in Collin County.

What would Lori’s advice to a new attorney be? “Hold on to your values, no matter where life takes you, and insist on finding work that matters to you, even if the steps along the way don’t make sense to others. Work within your passion and there you will find success.” ■

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**Stephanie Townsend Allala is an elder law attorney in El Paso. She has been a NAELA member since 2016.**



## Renee Lovelace Earns Recognition for Excellence

Renee Lovelace, CELA, received the Lifetime Achievement Award at the 2019 Texas NAELA Summer Conference in Galveston. This award was in thanks and recognition for her enormous contribution of time, talent, and heart to Texas NAELA. She has been a passionate leader, trailblazer, guide, mentor, friend, and sounding board for so many attor-

neys, clients, and organizations. Her contributions are too numerous to list here, but they have helped build and shape Texas NAELA as well as our practice areas. Her thoughtful, conscientious, and compassionate approaches to disability planning, special needs trusts, estate planning, and elder law are an example for all us. Thank you Renee for all you have done and for many more years of service and leadership! We are very lucky to have you among us and are

thankful for your dedication to Texas NAELA! ■



## Legislative Update

By Monica A. Benson, CELA

At the 2019 UTCLE Estate Planning, Guardianship and Elder Law Conference held in Galveston, Craig Hopper and William Pargaman presented a Legislative Update, bringing attendees up to date on major legislative changes from the 2019 session. Among the highlights:

- A testator may provide for a named individual to designate an administrator, similar to how a trustee may designate a successor.
- The community property intestacy provisions were clarified, but did not change.
- Muniments of title may be later converted to an administration if the need arises. A case out of Houston, *In re: Jacky*,

506 S.W.3d 550 (Tex. App. – Houston [1st Dist.] 2016, no pet.) raised doubts about whether such a conversion was possible. The statute clarifies it is possible.

- One of the biggest disappointments of the session was Gov. Greg Abbott's veto of the real estate, probate and trust law (REPTL) Guardianship Bill. The bill contained miscellaneous REPTL provisions, such as clarification on Section 1021.001, matters relating to a guardianship proceeding; an amendment to the ward's bill of rights to conform to statutory procedure; and clarification on management trusts. Several non-REPTL provisions were tacked onto the bill, one of which allowed each county to establish an "office of public guardian." Gov. Abbott based his veto on this provision.
- REPTL Trust Bill passed and was signed into law. It contained

multiple provisions, among which included a clarification that trust reformations (as opposed to modification) are effective as of the creation of the trust; clarifies that assets can be decanted into a trust under the same instrument; and copied the Estates Code rules regarding effect of divorce on spousal provisions in revocable trusts to the Trust Code.

- There were bills affecting the financial power of attorney this session.
- With respect to medical powers of attorney, REPTL introduced a bill that would repeal the need to use the statutory form. However, this bill was met with strong opposition from several medical groups, and did not pass.
- The statutory Transfer on Death Deed (TODD) forms were repealed, and the Supreme Court directed to promulgate forms for TODDs and revocations. ■



**Monica Benson**

Monica A. Benson, CELA, is a partner at Katten & Benson in Fort Worth.



## Illegal SNF Discharges, continued from page 1

### Illegal SNF Discharges<sup>1</sup>

payment.<sup>2</sup> It found that illegal discharges peak on days 19, 20, and 21, just when a Medicare co-pay is to kick in, and are particularly high for patients who require more care or who are perceived as being unlikely to meet that co-pay. Relying on the ignorance of the general public and its own supposed ignorance, a skilled nursing facility (SNF) can avoid the financial risk of not collecting the Medicare copay.

### Circumventing the Rules

A SNF may manufacture a voluntary transfer. It may claim that a patient has “plateaued.” It may call a family member, claiming that the Medicare period has expired, that there is only one other place which will take the patient, and that the family member must come to sign the discharge papers that day. This eliminates the need to produce a 30-day transfer/discharge notice and to prepare and orient the resident for the move. It also affects the transfer before an appeal can be taken, depriving consumers of their rights.

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1 The reality of appealing a hospital Medicare discharge was ably discussed by Mary Berthelot in “Medicare, Medicaid and Health Care Selection: Winning Against a Stacked Deck,” NAELA News Oct/Nov/Dec 2018 Vol. 30, Issue 4.

2 The study of 4.5 million discharges of people without a Medicare Supplement or primary insurance from January 2012 to November 2016 appears at <http://bit.ly/MedicaidSolTX>.

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**Terry L. Garrett is an attorney at The Garrett Law Firm, PLLC, in Austin.**

The SNF should be reminded of the transfer/discharge rules. Both the SNF and the Medicare Quality Improvement Organization (QIO) contractor should be reminded of *Jimmo v. Sebelius* and directed to the applicable CMS webpage.<sup>3</sup>

An SNF is likely to send an incomplete Notice of Medicare Non-Coverage (NOMNC) requiring signed acceptance by close of business the same day. The NOMNC must state that the resident has a right to send a written statement but may provide no address to which it may be sent. The NOMNC must state that there may be other appeal rights if the resident misses the immediate appeal deadline but may not state what that appeal deadline is. The NOMNC may claim that a decision to appeal will result in “a copy of the detailed explanation about why your coverage for services should not continue” but no such explanation may be forthcoming.

### Consumer Education

Information is available on Medicare.gov, but few SNF residents have access to the Internet and many lack the energy or ability to obtain and apply the information. A lawyer may appeal and may get more attention. 42 USC 406(a)(2)(A) restricts the lawyer’s fee for a successful Medicare appeal to the lesser of 25 percent of the amount received or \$4,000.<sup>4</sup> All too few people are able to take advantage of either resource.

### Appeal

The appeal must be taken by noon of the day following notice.<sup>5</sup>

Each response is made to a time-stamped voicemail. Kepro, the Central Texas contractor, tends to call back after business hours, on Saturdays and Sundays, times when a lawyer might

not be in the office. A call center-type clerk, following a script, takes notes of the interview and says that a response will be communicated within 72 hours. It will – but to the SNF, not to the resident, family member, or lawyer who filed the appeal. The SNF may not share the result with them.

Meanwhile, the SNF may manufacture other excuses, ranging from a lack of Medicaid beds to an inability to provide care. If the nursing home claims that it does not have beds, Texas NAELA member Patty Stichler, CELA, wisely suggests offering to have the state do a daily bed count and noting that the number of Medicaid beds can be increased. If the nursing home claims that it is unable to provide care, determine whether there has truly been a change in physical as well as financial status and, if so, whether it can be addressed by the current or the proposed facility.

Note that the local QIO’s response should not merely read “denied,” but explain why Medicare will no longer cover services.

Note also that the patient can be billed for services after the challenged termination date, possibly leading to a discharge for nonpayment following a 30-day eviction notice.

### Timing: Interface With Medicaid and Guardianship

Timely filing of a Medicaid application can at least delay discharge. If the resident has applied for Medicaid or is appealing an erroneous Medicaid denial, the facility cannot discharge him while that is pending. Many people who have funds for part or all of the co-pay arrive without having appointed an agent under a Durable Power of Attorney and without the legal capacity to appoint one. Accessing funds for the co-pay or transferring funds to a Qualified Income Trust (QIT) can pose a problem. Before a guardianship hearing can be held, the person may well have exhausted his/her remaining Medicare days. If he/she

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3 <https://www.cms.gov/center/special-topic/jimmo-center.html>

4 42 USC 406(a)(2)(A)

5 42 CFR 483.15



meets or could meet the asset limits but needs a QIT, the Medicaid application will likely have been rejected

before the guardianship becomes effective. ■

**“If the nursing home claims that it is unable to provide care, determine whether there has truly been a change in physical as well as financial status.”**



## Texas NAELA Board of Directors

### Officers

Paul Premack, CELA

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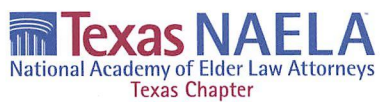
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