

F20X WHAT YOU DON'T KNOW ABOUT CURRENT LEGISLATION MAY IMPACT BOTH YOU AND YOUR HEIRS

- I. **Current legislation** – Bills passed by the General Assembly and signed by the Governor that may have an impact on seniors.

§18.2-178.1

Financial exploitation

Adds a new provision to the fraud section of the criminal code, making it unlawful for any person who knows or should know that another person suffers from mental incapacity to, through the use of that incapacity, take, obtain, or convert money or other thing of value belonging to that other person with the intent to permanently deprive him of it. This financial exploitation is defined as larceny, which carries a potential penalty of 1 – 20 years in prison.

§64.2-719; 64.2-2001 et seq.

Guardianship

Requires the hearing to be held within 120 days of filing a petition for guardianship, unless the court finds good cause to postpone it for a longer period of time; requires an explicit consideration by the court of whether the guardianship is in the best interests of the respondent; limits the award of fees to those which are “reasonable”; and permits the court to authorize a conservator to create and fund a trust for the benefit of the respondent. If the conservator is requesting the authority to do estate planning, including the authority to create and fund a trust, creates a new requirement that notice of the hearing on that request be given to family members, beneficiaries named in the respondent’s will, and “all other interested persons.”

§64.2-109, 110

Digital assets

Provides that the personal representative of a deceased minor has the power to assume the deceased minor’s terms of service agreement for digital accounts with internet service providers, or other online account service provided for purposes of consenting to and obtaining the disclosure of the minor’s communications and subscriber records. On written request, this information must be provided within 60 days.

§64.2-601

Small estates

Adds a provision explicitly authorizing the successor to endorse or negotiate any small asset that is a check or other negotiable instrument that is payable to the decedent. [Note that “small estate” is now defined as an entire personal probate estate as of the date of death that does not exceed \$50,000]

§64.2-621 et seq.

Transfer on death deed

Adopts the Uniform Real Property Transfer on Death Act, permitting the creation of transfer on death deeds of real property. An individual may execute and record a deed transferring property to one or more beneficiaries, with the deed to take effect at the time of the individual’s death. Such a deed is fully revocable by the individual, and gives no present rights to the beneficiary.

Full control remains with transferor; maintains real estate tax exemptions; not a completed gift for gift tax purposes; remains in transferor’s estate for estate tax purposes, therefore gets step up in basis; protects against creditors of the beneficiary; avoids probate

II. Latest changes in Medicare

Changes to Medicare contained in the Affordable Care Act that go into effect in 2013

- Establish a pilot program to develop and evaluation paying a bundled payment for inpatient/outpatient/physician/post-acute care for an episode of care.
- Begin phasing in subsidies for brand name drugs under Part D

Consent agreement between CMS and CMA on the improvement standard

Jimmo v. Sebelius (USDC, District of Vermont)(January 24, 2013)

Agreement is in effect now, and has retroactive status for claims denied on or after January 18, 2011. It affects care in any setting (SNF, home, ALF, rehab).

Litigation on observation status

Bagnall v. Sebelius (USDC, District of Connecticut) pending

Bills filed in last Congress to define “admission” by length of stay; no action.

III. Myths and realities of long term care coverage

ACA changes to Medicaid long term care coverage

The Affordable Care Act created or enhanced six key options for the delivery of Medicaid long term services and supports. Many people prefer to receive care at home or in community based settings, and home and community based services are often significantly less expensive than comparable services provided in institutions such as skilled nursing facilities. Over the past two decades, spending on Medicaid HCBS has been growing relative to institutional care spending as more states continue to reorient their long-term care programs by increasing access to HCBS. The national percentage of Medicaid spending on HCBS has more than doubled from 20 percent in 1995 to 45 percent in 2010.

The Affordable Care Act offers to the states a number of new and expanded opportunities, including enhanced federal financing, to improve access to and delivery of Medicaid long term services and supports.

1. Money follows the person demonstration (MFP)
2. Financial alignment demonstration for dual eligible beneficiaries
3. Health home state plan option
4. Balancing incentive program
5. Home and community based services state plan option (HCBS)
6. Community First Choice state plan option

The repeal of CLASS and the creation of the Commission on Long Term Care

The American Taxpayer Relief Act of 2012 (ATRA), passed on January 1, 2013, and signed into law the next day, repealed the Community Living Assistance Services and Supports (CLASS) Act, a provision of the Affordable Care Act that aimed to create a voluntary, federal long-term care insurance option. ATRA also established a Commission on Long-Term Care to perform a comprehensive evaluation of long term supports and services.

The Commission is to “develop a plan for the establishment, implementation, and financing of a comprehensive, coordinated, and high-quality system that ensures the availability of long-term services and supports...[for] elderly individuals, individuals with substantial cognitive or functional limitations, other individuals who require assistance...” A report is to be submitted within six months with recommendations for legislative and/or administrative action.

Commission is composed of 15 members, three appointed by the President; three appointed by the majority leader of the House; three appointed by the minority leader of the House; three appointed by the majority leader of the Senate; and three appointed by the minority leader of the Senate.

President Barack Obama:

Henry Claypool, Executive Vice President of the American Association of People with Disabilities

Dr. Julian Harris, Director of the Office of Medicaid in Massachusetts

Carol Raphael, Vice Chair of the American Association of Retired Persons Board of Directors

House Majority Leader, Speaker John Boehner (R-OH):

Judith Brachman, a former director of the Ohio Department of Aging

Stephen Guillard, President Belmont Nursing Corp.; Executive Vice President and COO of HCR ManorCare

Grace-Marie Turner, President and founder, Galen Institute

House Minority Leader Nancy Pelosi (D-CA):

Bruce Allen Chernof, MD, President and CEO, The SCAN Foundation

Judith Stein, JD, Executive Director of the Center for Medicare Advocacy

George Vrandenburg, Co-founder and chair of USAgainst Alzheimer's

Senate Majority Leader Harry Reid (D-NV):

Javaid Anwar, MD, internal medicine

Laphonza Butler, President of SEIU United Long-Term Care Workers Union

Judith Feder, Georgetown University, Professor of Public Policy

Senate Minority Leader Mitch McConnell (R-KY):

Bruce Greenstein, Louisiana Health Secretary

Neil Pruitt, Chairman and CEO of UHS-Pruitt Corp and Chairman of the American Health Care Association

Mark Warshawsky, Former Treasury Assistant Secretary for Economic Policy (President George W. Bush)