

THE SHORE LAW FIRM

TO: OUR HEALTH CARE COLLEAGUES

FROM: DEBORAH K. BLUM-SHORE

INTERVENTION OPPORTUNITIES:

**WAYS YOU CAN HELP YOUR PATIENTS AND THEIR FAMILIES
GET THE BEST CARE AND SAVE MONEY BESIDES!**

Planning for disability/Avoiding Guardianship: Every patient intake interview is an opportunity to inquire whether or not the patient has done any estate planning documents (DPOA, HCP, etc.). If someone says “yes,” they should be congratulated, but they should still be encouraged to have the documents reviewed by an attorney who specializes in elder law. So many of my clients come to me with documents prepared by general practitioners whose DPOAs do not cover all of the bases needed for an agent to plan for the patient’s long term care needs. I have seen DPOAs without named alternates, DPOAs with no or very limited gifting or self-dealing powers, and DPOAs which do not give the power to sell real estate. In many cases, the client thinks s/he is all set, when in reality, there is still work to be done in order to avoid court involvement down the line. I have also seen HCPs where the documents have been witnessed by the named proxies, which voids the document and leaves the patient without a valid document.

Massachusetts Guardianship practice radically changed as of 7/1/09 when the Massachusetts Uniform Probate Code took effect, and it continues to evolve. Guardianships are now more complicated, time consuming, and expensive than ever before. With good documents in place, guardianship can be avoided in most cases.

Community care opportunities: With changes in long term MassHealth rules rendering some patients ineligible for a period of time, community care is more important than ever before. More people than ever are eligible for financial assistance with community care, including Veterans’ benefits for vets and their surviving spouses. Patients may need help getting eligible for community assistance, and may need counseling about the many opportunities for care available in our local area. We can help educate about hiring caregivers, home care, adult day programs, assisted living, and hospice.

Long term MassHealth planning, applications, and appeals: This is one area where being “penny wise” by allowing someone other than an elder law attorney file an application can end up being “pound foolish” for the patient and his/her spouse. Even though well-intentioned, the financial interests of a nursing home or its designee are inherently in conflict with the financial interests of the patients. Facilities are licensed to provide health care, not legal services. Based on our knowledge of the breadth of Medicaid law, we can help a patient become eligible at the soonest possible date thereby ensuring the facility will be timely paid, can help to preserve assets and ensure that funds will be available for a community spouse, can prepare and facilitate the approval of a MassHealth application, and can handle any appeal necessary to obtain benefits.

Post-long term MassHealth eligibility planning: Once a married patient is on MassHealth, the community spouse has the opportunity to do additional planning for his/her own future care needs. And, in order to protect against the possibility of estate recovery when the patient dies, there should be a complete review of the manner in which all assets are owned. Finally, we typically want to re-do the documents of the community spouse to protect against the possibility that s/he might predecease the nursing home spouse. Thus, even if a patient is already on MassHealth, there is often legal work still to be done to be sure that both members of a couple are fully protected.

Sale and transfers of real estate: At times, a patient's health may be so bad that he/she is unable to remain at home. If the patient owns property, it has to be kept secure, perhaps rented, or perhaps sold. We can help the patient and/or family sell the house, and advise on how to use and manage the sale proceeds, always with an eye towards the eligibility requirements of government assistance programs.

End of life planning: We know that the reality is that many (if not most) long term patients die in a hospital or in a nursing facility. Some of them are still private pay patients. Others are taking advantage of hospice services in their homes. When someone's health status is changing, it is an excellent time to review the status of one's assets to see if there is any work that can be done quickly to avoid probate when the person dies. There are also steps that might be taken for single Medicaid patients whose estates might be subject to estate recovery claims by the Commonwealth. A few hours of legal work in advance can save a family more than a year of probate and potentially thousands of dollars in costs and fees. (The flip side of this is if you learn that the spouse of one of your patients is dying. Again, there are steps that can be taken quickly to ensure that the patient's eligibility for MassHealth is preserved.)

Estate Administration: Ideally, if we have done everything right in advance, there will likely be no estate to administer when one of your patients dies. However, it is always prudent to take an hour or so after someone dies to review the status of any assets, retitle assets as needed, change beneficiaries, and perhaps change the estate plans of the surviving family members. That little investment of time can result in years of peace of mind as the family adjusts to the loss of a loved one.