

## LONG TERM CARE

# update

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## New "Office Of Long Term Living" Created

The Office of Long Term Living (OLTL) was created by the Department of Public Welfare (DPW) and the Pennsylvania Department of Aging (PDA). The new OLTL will be a combination of the DPW's Office Social Programs Bureau of Home and Community Based Services, the DPW's office of Medical Assistance Programs, Bureau of Long Term Care Programs, the staff and initiatives of the Governor's Office of Health Care Reform and many functions of the PDA such as administration of the Aging Waiver. The purpose of the OLTL is to help rebalance Pennsylvania's long-term living programs and to provide elders and those with disabilities assistance in living independently.

## Social Security Debit Card

On January 3, 2008, the United States Treasury Department announced through its Financial Management Services Program the launch of a new initiative- a Direct Express Card. Starting in the Spring of 2008, the Financial Management Services will offer these new cards, and they will operate as debit cards for Social Security recipients.

The Direct Express Card will eliminate the need for check cashing, and can be used at ATMs. The cards will work anywhere MasterCard debit cards are accepted. Although the cards will be initially introduced in only a handful of states this Spring, the cards will be accessible nationwide by the end of the summer. It is expected that the card will provide significant savings for both its recipients and the federal government.

## Legal Liability And Risk Management In Long Term Care Facilities

In the last ten years, there has been an explosion of lawsuits filed against long term care facilities based on alleged deficiencies in care. Most actions against long term care facilities are based on quality-of-care issues premised on ordinary negligence. To bring a negligence action against a long term care facility, the plaintiff must show that the home owed the resident a duty of care, the home breached its duty, the breach caused the resident injury, and the resident suffered harm or damages as a result. There are different levels of care that are required for different types of facilities. Certainly, a nursing home facility will be required to provide a higher level of care to its residents than a long term care facility. Therefore, it is important to ensure that the residents in a long term care facility are not in need of nursing home care or a higher level of care than the home can provide.

Plaintiff lawyers often use resident records and fact witnesses to establish a negligence claim. Careful record keeping is important. Plaintiff lawyers can use the resident's records as a way to show that the resident did not receive proper care.

The long term care facility is also responsible for the acts of its employees and agents. This legal principle is known as vicarious liability. Most homes play a significant role in the resident's choice of an attending physician. To protect the home from being sued based on a physician's malpractice, the home should provide the resident with a list of physicians who are willing to see the residents in the facility. Allowing the resident to select his or her own physician will lessen the likelihood that the home will be found vicariously liable for the physician's negligence.

There are regulations that define certain requirements that nursing homes are required to meet in order to qualify for Medicare and Medicaid programs. Federal and state statutes are occasionally used to secure damages from long term care facilities for quality-of-care breaches. Actions based on the violation of a federal or state statute can be brought by the government. The theory of liability is that the long term care facility agreed to meet a minimum threshold of care to legitimately seek reimbursement under Medicare or Medicaid, but the care furnished by the home fell beneath the minimum threshold of care. Consequently, the government initiates suit against the home for seeking Medicare and Medicaid reimbursement when it falsely represented that it was meeting the minimum threshold of care.

It is important to ensure that a long term care facility is in compliance with all state and federal regulations. Compliance with state and federal regulations is a defense that the home can raise to defend claims made against it based on inadequate care. Further, compliance with state and federal regulations is necessary to ensure uninterrupted Medicare or Medicaid reimbursements.

## Attorney General's Elder Abuse Unit Resolves Restitution Claim With Hearing Aid Company

Attorney General Tom Corbett initiated an action against a hearing aid company in central Pennsylvania because elderly consumers complained that they were ignored or otherwise unfairly treated when they tried to return hearing aids to the company.

Consumers alleged that the company used stall tactics to prevent consumers from returning their hearing aids. One consumer complained that she tried to have her old hearing aid repaired, but was told that she had to purchase a new aid because the old one was unable to be fixed. As a result, the consumer was charged \$600.00 in non-refundable fees for a new aid, and afterward learned that her used aid was able to be fixed.

Pursuant to the agreement, the company will pay \$100,000 in restitution to consumers, extend the 30 day return period to 60 days, and will pay \$25,000 in civil penalties.

## Baby Boomers Start Claiming Social Security Benefits

The first baby boomers will turn 62 years of age in 2008, and will therefore be eligible to claim Social Security retirement benefits. The Social Security Administration was concerned about the impact on benefits by the nearly 80 million baby boomers. The baby boomer generation consists of those born between 1946 and 1964. Approximately one million baby boomers will retire early, even though their benefits will be reduced by 25% because they retired prior to age 66.

The Administration on Aging projects that the population 65 and over will increase from 35 million in 2000 to 40 million in 2010, and then to 55 million in 2020. By 2030, there will be about 71.5 million older persons, almost twice their number in 2005. The 85+ population is projected to increase from 4.2 million in 2000 to 6.1 million in 2010 and then to 7.3 million in 2020.

This demographic shift has ignited national efforts to address the growing elder population as well as a transformation of the services provided to the elderly. Efforts are underway to improve long term care and emphasize that the transformation of long term care is no longer a concern for the future, but is now at our heels and requires immediate attention.



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THE PERRY LAW FIRM LLC  
update

The Perry Law Firm, L.L.C., was established in 1998 by Mark T. Perry, Esquire. The firm has offices in Scranton, Wilkes-Barre and Bethlehem. Our attorneys have diverse extensive experience and expertise in handling legal matters involving the healthcare industry, medical malpractice defense, risk management, and long term care facilities.

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