

THE ALERT

THE ALERT IS LEGAL AID'S NEWSLETTER FOR SENIORS

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More Information about Medicare Drug Program: Delayed Drug Enrollment Will Cost \$2.24 Monthly Penalty

Unless Congress or the Administration make changes, seniors who delay enrolling in a Medicare Part D Prescription Drug Insurance Plan will have to pay a \$2.24 a month premium penalty to enroll after May 15.

If they don't sign up for a drug plan by May 15, they will not be able to enroll in a plan until November. **Even then the drug coverage won't start until January 2007 when the \$2.24 penalty begins.**

After that, the next enrollment time will be November 2007 when the

premium penalty will grow to \$6.08 per month.

Only seniors with very low incomes and assets will not be affected by the premium penalty calculated at 1% for each month of delay in enrolling.

Those low-income seniors were automatically enrolled in prescription drug plans by the government.

Now people on SSI and those who successfully applied for the limited income subsidy are being automatically enrolled if they did not enroll in a plan themselves.

Those Medicaid-Medicare

recipients who were automatically enrolled last year have not been without the many problems that have plagued the Part D program.

Some seniors were put into plans that did not cover the drugs they took.

Others changed to plans that covered their drugs, but the changes were not registered so they had difficulty getting the drugs they needed.

Other seniors reportedly have been charged more than the \$1, \$2, \$3 and \$5 co-pays they were supposed to pay. Others couldn't get drugs they needed.

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The Legal Aid Society
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Since 1905

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Advocacy groups have called for “urgent action” by the government to resolve problems already encountered by seniors who are on both Medicare and Medicaid.

They blame the large number of drug plans available for making it difficult for seniors to select appropriate prescription drug coverage.

They called for immediate solutions to problems such as “accessing vital

medications at the pharmacy, incorrect payment requirements, busy signals at call centers and inadequate notice to beneficiaries of enrollment, disenrollment, transition and appeal rights.”

You should be aware that if you receive both Medicare and Medicaid, are on Medicaid spend down or are enrolled in a Medicare Savings Program such as QMB or SLMB, you can

...some seniors...not approved for extra help may now qualify

change plans monthly if the plan you are in is not meeting your needs.

If you are having problems selecting a plan or having difficulties with the plan you have, you can get help by calling one of the organizations listed on this page.

If you have Medicare Part D prescription plan problems that cannot be resolved by any of the above agencies, call the Senior Intake Line of Legal Aid at 216-861-5479.

If you are a senior who applied to the government for special help and were denied because your income was a little over the limit, you should be aware that recently the amounts of income to qualify for extra Medicare Part D help were revised upward.

That means some seniors who initially were not approved for the extra help may qualify now. However,

they need to re-apply.

If you are a single person with monthly income under \$1,225 (\$1,650 for a couple) with assets below \$11,500 (\$23,000 for a couple), you may be able to get extra help.

Income limits are higher if you work or support family members in your home.

Dig Out Gift Cards

Now is the time to dig through the drawers and pull out the gift cards you got for Christmas and use them.

Consumers lose money by not taking advantage of gift cards. They lose money because some cards expire or their value gradually decreases.

Although the Ohio Legislature passed a law regulating how some gift cards work, the law does not apply to some of the largest gift card sellers.

Still Time to Get Heating Bill Help

If your income is low, you still have until May 31 to apply for help to pay your heating bills through the Home Energy Assistance Program (HEAP).

For information call the HEAP hotline at 1-800-282-0880 Monday through Friday from 8 a.m. to 7 p.m. and Saturday from 9 a.m. to 1 p.m.

If you were denied benefits or need help completing the application, call the Ohio Consumers' Counsel at 1-877-742-5622.

CALL FOR HELP

OSHIP (Ohio Senior Health Insurance Information Program) toll free at 1-800-686-1578.

Pro Seniors toll free at 1-800-488-6070.

Medicare toll free at 1-800-633-4227 or access at www.medicare.gov.

Greater Cleveland Access to Benefits Coalition: 216-373-1650 or 216-421-1350 or toll free 866-885-1650 in Cuyahoga, Geauga, Lake and Lorain counties.

Ashtabula County Community Action Agency at 440-997-5957 or **ACQUIRE** at 211 in Ashtabula County.

Ohio Medicaid, toll free at 1-800-324-8680 or access at www.jfs.ohio.gov/ohp or go to an Employment (or Job) and Family Services office in your county for information about financial assistance in paying basic Medicare Part B premiums. (Financial guidelines are different from Part D.)

Law Protects Patients in Most Nursing Homes

What do you do when the nursing home tells you your spouse has to leave within 48 hours because the spouse is a “difficult resident?”

Or if the nursing home says, “Medicaid does not pay for the service that you want?”

In either situation you have a right to protest, says a new booklet published by the National Senior Citizens Law Center (NSCLC). The booklet, “20 Common Nursing Home Problems—and How to Resolve Them,” is available by mail for \$9.95 plus \$3 shipping at NSCLC, 1101 14th St. NW Suite 400 Washington DC 20005. For information, call 202-289-6976.

It also is available as a download on the internet for \$7.95 at <http://www.nsclc.org>.

“Too frequently, nursing homes follow standard operating procedures that violate the Nursing Home Reform Law and are harmful to residents,” says the center.

This law applies to all nursing homes certified to accept payment from the Medicare and/or Medicaid programs whether or not the resident is eligible for those programs.

That includes more than 95% of nursing homes.

While the center cautions

that the guide is not a substitute for the independent judgment and skills of any attorney or other professionals, family and friends are encouraged to speak up on behalf of nursing home residents.

The center says, “If a resident and family are too

Eviction is allowed for only six limited reasons...

afraid or shy to ask for anything, the resident almost assuredly will get relatively little attention.”

When outside assistance is needed, the center recommends consulting with the state Department of Health which licenses nursing homes and the Long Term Care Ombudsman in your area.

In Cuyahoga, Geauga, Lake and Lorain counties the Ombudsman can be reached at 216-696-2719 or toll free at 1-800-365-3112. In Ashtabula County the Ombudsman is at 330-746-2938 or toll free 1-800-589-5826.

Here’s what the center has to say about the two questions posed at the beginning of the article.

As for the eviction, the center says being “difficult” never is enough to justify eviction from a nursing home and evictions from nursing homes generally require 30-days advance notice.

Eviction is allowed for only

six limited reasons:

- 1) The resident hasn’t paid.
- 2) The resident no longer needs nursing home care.
- 3) The resident’s needs cannot be met there.
- 4) The resident’s presence in the nursing home endangers others’ safety.
- 5) The resident’s presence in the nursing home endangers others’ health.
- 6) The nursing home is going out of business.

What if you are told Medicaid does not pay for the service you want?

“A Medicaid-eligible resident is entitled to the same level of service provided to any other nursing home patient,” says the center.

Here are some other common nursing home problems discussed in the center’s booklet and what the center says about them:

WHAT YOU HEAR: We don’t have enough staff to accommodate individual schedules. You must wake up every morning at six a.m. or because of our scheduling, your bath always will be at two p.m. or if you don’t like the meal entrée, your only option is a peanut butter sandwich.

FACT: A nursing home must make reasonable adjustments to honor resident needs and preferences.

WHAT YOU HEAR: We don’t have enough staff. You

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should hire your own private-duty aide.

FACT: A nursing home must provide all necessary care.

WHAT YOU HEAR: If we don't tie your father into his chair he may fall or wander away from the nursing home. There's just no way we can always be watching him.

FACT: Physical restraints cannot be used for the nursing home's convenience or as a form of discipline.

WHAT YOU HEAR: Your mother needs medication in order to make her more manageable.

FACT: Medication can be used to modify behavior only when the behavior is caused by a diagnosed illness, such as depression, for which a specific medication is needed for the resident's treatment.

WHAT YOU HEAR: We can't give you therapy services because your Medicare payment has expired and Medicaid doesn't pay for therapy.

FACT: Therapy should be provided whenever medically appropriate, regardless of the resident's source of payment.

WHAT YOU HEAR: Because you are no longer eligible for Medicare payment, you must leave

this Medicare-certified bed.

FACT: A Medicare-certified bed can be occupied by a resident whose care is not being reimbursed through the Medicare program.

WHAT YOU HEAR: Even though you are now financially eligible for Medicaid payment, we don't have an available Medicaid bed for you.

FACT: A nursing home can certify additional beds for Medicaid payment.

A nursing home must provide all necessary care.

WHAT YOU HEAR:

We must insert a feeding tube into your spouse because she is taking too long to eat.

FACT: The use of a feeding tube should be a last resort.

WHAT YOU HEAR: Your children can visit you only during visiting hours.

FACT: A resident's family member can visit at any time of the day or night.

WHAT YOU HEAR: We can't admit your mother unless you sign the admission agreement as a "responsible party."

FACT: A nursing home cannot require anyone but the resident to be financially responsible for nursing home expenses.

WHAT YOU HEAR: We have determined that you are not entitled to Medicare payment for your nursing home care, because of your limited health care needs.

FACT: A resident can insist that the nursing home send a bill to

Medicare. The nursing home does not have the last word on whether the resident's condition qualifies for Medicare payment.

WHAT YOU HEAR: We must discontinue therapy services because you are not making progress.

FACT: Therapy may be appropriate even if the resident is not making measurable progress. Accordingly, the Medicare program can pay for therapy services even if progress for the time being is not being made.

WHAT YOU HEAR: The nursing staff will determine the care that you will receive.

FACT: The resident and resident's family have the right to participate in developing the resident's care plan.

WHAT YOU HEAR: We don't have to readmit you from the hospital because your bed-hold period has expired.

FACT: A Medicaid-eligible resident has the right to be readmitted to the next available Medicaid-certified bed, regardless of the length of the hospital stay.

These are some of the topics covered by the center's booklet.

The information provided by the center about patient's rights and how to exercise them is, of course, much more detailed than we can provide here.

The Legal Aid Society of Cleveland offers free legal services to low-income seniors in Cuyahoga County.

INTAKE

Seniors may complete an application for assistance by calling the special Senior Intake Line at 216-861-5479.

If you qualify for our services, we will either give you advice or educational materials to help you, schedule an appointment or refer you to a volunteer attorney.

If necessary, you may need to meet with an attorney. **If you are unable to come to our downtown office at 1223 West Sixth Street, an attorney can arrange to meet you at a senior citizen center or some other office near your home.**

VOLUNTEER ATTORNEY CLINICS

In collaboration with the Cleveland Bar Association, Legal Aid sponsors clinics where volunteer private attorneys provide brief advice and referral only on civil matters. Clinic attorneys do not represent you. However, you may be referred to Legal Aid or another service provider for help. Bring with you all of your papers that concern your problem. The following clinics will be held:

SATURDAY, MAY 13 in connection with the Cleveland Bar Association's Volunteers Day at El Barrio, 2001 West 65th Street, and at Saigon Plaza at 5400 Detroit Ave. **Please call for time.**

SATURDAY, JUNE 10 at West Side Catholic Center, 3135 Lorain Avenue from 10 a.m. to 12 p.m.

SATURDAY, JUNE 24 at a site on the East Side. **Please call for location and time.**

Please call Legal Aid at 216-687-1900 for information about clinics.

For information or to make appointments outside Cuyahoga County, phone the offices listed below.

ASHTABULA COUNTY

Ashtabula County Legal Aid, 121 East Walnut, Jefferson, OH 44047
440-576-8120 or TOLL-FREE 1-866-873-9665

LAKE COUNTY

Lake-Geauga Legal Aid, 8 North State Street, Painesville, OH 44077
440-352-6200 or TOLL-FREE 1-888-808-2800

LORAIN COUNTY

The Legal Aid Society of Lorain County, 538 West Broad Street, Elyria, OH 44035
440-323-8240 or TOLL-FREE 1-800-444-7348

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