

ELDER LAW NEWS

Legal power for seniors.

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THE LAW OF LATER-LIFE HEALTH CARE AND DECISION MAKING

BY
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After a year of studying for the Certified Financial Planner™ Exam, I have returned to other professional studies. Recently, I have read Eric Carlson's *Baby Boomers Guide to Nursing Homes* and Natalie Choate's *Life and Death Planning for Retirement Benefits*, and I have reported on both books in prior editions of the *Elder Law News*.

I recently learned that my friend, Lawrence Frolik, Professor of Law at the University of Pittsburgh School of Law, has written *The Law of Later Life Health Care and Decision Making*. I decided to add his book to my reading list. In the preface of his book, Professor Frolik states that his goal is to provide a "comprehensive description of manner in which the law regulates and reacts to health care and personal decision making for the elderly." He accomplishes this goal.

The Law of Later Life Health Care and Decision Making is divided into the following chapters:

- Chapter 1, Paying for Health Care, discusses Medicare, Medigap insurance policies, PACE, employer health insurance for employees age 65 years and older, retiree health care benefits, and health insurance for pre-age 65 retirees.
- Chapter 2, Long-Term Care Housing Options, discusses aging in place at home, age restricted housing, supportive housing (including assisted living facilities and continuing care retirement communities), nursing homes and hospice.
- Chapter 3, Paying for Long-Term Care, discusses private payment (private savings, annuities, reverse mortgages, and sale of home with lease back), long-term care insurance, Medicare, Medicaid, and life insurance (accelerated death benefits, life settlements, and viatical settlements).

- Chapter 4, Legal Implications of Mental Incapacity, discusses guardianships, conservatorships, and powers of attorney.
- Chapter 5, End-of-Life Decision Making, discusses health care decision making for incapacitated patients, living wills, health care powers of attorney, Do Not Resuscitate (DNR) Orders, palliative care, hospice care, and disposition of physical remains.

As many of you know, I have been a member of the National Academy of Elder Law Attorneys since 1990 and a Certified Elder Law Attorney since 1995; however, despite this background, I learned a great deal from Professor Frolik's book. For example:

- As the Social Security normal retirement age increases to 67 years, individuals will be entitled to Medicare at age 65 if they are "eligible" for Social Security retirement benefits even though not receiving such benefits. Most people will be eligible for these benefits since the early retirement age remains age 62.
- If an individual loses coverage formerly provided by an employer sponsored Medicare supplement, then the insured can not be denied coverage for any pre-existing condition for Medigap policies A, B, C, or F, provided the insured applies within 63 days of the termination of the employer sponsored policy.
- Before a nursing home discharges a resident, even for nonpayment, the nursing home must create an appropriate post-discharge plan of care.

In addition, Professor Frolik's book demonstrates that planning for the payment of long-term care is one of the most critical aspects of later-life planning. *The Law of Later Life Health Care and Decision Making* provides an explanation of the principal sources of payment, including use of savings, long-term care insurance, and Medicaid. I am testing the book with a real life fact pattern in a case where I am currently assisting a community spouse obtain a court order of support that exceeds the income that Medicaid normally permits a community spouse to keep. Professor Frolik's book correctly cites the authority that requires the state to accept the higher court ordered amount.

Published by the American Bar Association in 2006, *The Law of Later Life Health Care and Decision Making* may be purchased from Amazon.com for \$67.97. Oast & Hook is encouraging its staff to read this fine book.

Andrew H. Hook is a principal at Oast & Hook. He is a Certified Elder Law Attorney and a Certified Financial Planner®.

Oast & Hook

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