



2018 Associates Campaign

Protecting Colorado's Most Vulnerable

BY GINA L. TINCHER

The Legal Aid Foundation of Colorado (LAF) kicks off its 14th Annual Associates Campaign on March 1, 2018. During this month-long campaign, young lawyers will lead efforts in a friendly competition to raise funds for Colorado Legal Services (CLS), the only agency in the state that offers free civil legal services to indigent and underserved populations in every single county. If your firm did not participate last year, there is still time to sign up for the 2018 Associates Campaign by contacting Kelly Bossley, associate director of LAF, at (303) 863-9544 or kelly@legalaidfoundation.org. Donations can also be made to LAF by visiting legalaidfoundation.org and selecting "Donate Now." The funds raised through the Associates Campaign and by LAF

throughout the year are critical to helping CLS continue its work of providing free legal services to thousands of Coloradans who would otherwise be unable to afford legal representation. The case study below highlights this important work.

Protecting the Elderly: A Case Study

"One of the best measures of a country is how it treats its older citizens."

—President Barack Obama¹

Peter Komlos-Hrobsky, supervising attorney of CLS's Health and Elder Law Unit, has seen firsthand how the Associates Campaign helps protect Colorado's elderly. Now in his 27th year at CLS, Komlos-Hrobsky has spent a significant part of his career helping senior citizens navigate

the often-complex world of public benefits like Medicare. His work, and that of the other CLS attorneys, ensures that citizens like Gloria Lang, a 79-year-old Denver resident, have a knowledgeable advocate in their corner and aren't forced to navigate our complex legal system alone.

In June 2013, Lang found herself in the hospital after passing out and falling in her home. After being treated in the emergency room, she was admitted to the hospital. She was discharged two days later and spent the next 39 days in a rehabilitation facility. After returning home, Lang received a \$23,000 bill for her post-hospitalization rehabilitation services. Lang then discovered that her medical treatment in the hospital had been coded as outpatient "observation services," which meant she would be responsible for paying for her rehabilitation services. Lang proceeded through the Medicare appeals process. An administrative law judge (ALJ) determined that her hospital stay constituted inpatient treatment, but the U.S. Department of Health and Human Services (HHS) reversed the ALJ's decision. With the help of CLS, Lang is challenging the reversal in federal district court.²

This case illustrates how CLS is an advocate for the elderly to obtain effective and affordable healthcare services. Elderly patients frequently rely on Medicare benefits to pay for their medical services. The Medicare program establishes a system of health insurance for those over 65 years of age, as well as the disabled and those with end-stage renal disease.³ The Centers for Medicare & Medicaid Services (CMS), part of HHS, administers the Medicare program and establishes guidelines for how providers code and submit requests for reimbursements. The coding of a beneficiary's services determines which part of the Medicare program will fund the provider's reimbursement.

Inpatient care is covered under Part A of the Medicare program, while most outpatient services, including "observation services" and care in skilled nursing facilities, are covered under Part B of Medicare. Observation services are implicated when "patients are not well enough to go home but not sick enough to be admitted."⁴ Medicare makes important

distinctions between observation services and inpatient care that can have dramatic impacts on both providers and patients.

Providers earn higher reimbursement amounts for services billed under Part A, rather than Part B. However, inpatient admissions are more heavily audited by CMS, whose external audit contractors can recover amounts paid to providers for services deemed unreasonable or medically unnecessary. For example, in 2013 Medicare contractors recovered more than \$1.6 billion in payments made for allegedly inappropriate inpatient services. Concerned about the risk associated from having Part A reimbursements recouped, providers decreased the number of inpatient admissions, opting instead to provide observation-only services to patients.

Another factor providers have to consider is that under Part A they are at risk of getting paid less by CMS if a patient returns to the hospital for the same condition within a certain period. This has led to numerous instances of medically fragile patients being discharged to another hospital or rehabilitation facility after observation rather than receiving treatment as an inpatient in the original hospital facility. According to Komlos-Hrobsky, the hospital would rather treat the frail individual as an observation patient instead of as an inpatient with the risk of the readmission penalty, even if it imposes financial burdens on the patient if rehabilitation services and care are required after the patient's hospitalization.

Komlos-Hrobsky argues that hospital billing decisions based on financial risk assessment should not affect a patient's eligibility for services and that patients have a right to reimbursement under Medicare depending on the actual services provided. "We're not challenging CMS's policy that gives hospitals latitude in billing services, but eligibility for post hospital services should depend on the actual nature of the services received," he said. "As a medical matter, services received by Lang were inpatient and Medicare laws entitle her to post-hospital rehab and nursing services, regardless of how the hospital chose to bill CMS."

While Lang's lawsuit challenges procedural irregularities that occurred during her appeal,

it also highlights the difficulties—for patients and providers alike—that arise from billing practices based on a hospital's risk assessment. For providers, the decision to admit versus provide observation-only services can impact patient outcomes and Medicare reimbursements. For patients, it can also impact important post-hospitalization care decisions and, like Gloria Lang discovered, can result in expensive and unexpected medical bills.

Regardless of the ultimate outcome of the appeal, Lang's situation clearly demonstrates the complexity of Medicare and the critical need for legal assistance. In the often confusing and very complex world of medical insurance, one thing is certain—the funds raised by the Associates Campaign are making a difference for the most vulnerable citizens in our state, like Gloria Lang. **CL**



Gina Tincher serves on the Legal Aid Foundation's Associates Advisory Board. A former 14-year law enforcement officer, she now represents a diverse portfolio of clients as a commercial litigator at Brownstein Hyatt Farber Schreck—(303) 223-1255, gtincher@bhfs.com.

NOTES

1. Obama, Remarks at White House Conference on Aging (Feb. 13, 2015).
2. *Lang v. Price*, No. 16-CV-02658-AP (D.Colo. filed Oct. 26, 2016). In this case, Lang claims HHS's reversal of the ALJ's findings was untimely.
3. 42 USC §§ 1395 et seq.
4. Jaffe, "Congress Approves Bill Bolstering Medicare Patents' Hospital Rights," Kaiser Health News (July 30, 2015), <http://blog.aarp.org/2015/07/30/congress-overwhelmingly-approves-bill-bolstering-medicare-patients-hospital-rights>.



Our Courts is a joint activity of the Colorado Judicial Institute and the Colorado Bar Association that provides nonpartisan information programs to adult audiences around the state to further public knowledge and understanding of the state and federal courts in Colorado.

For more information or to schedule a presentation, visit
ourcourtscolorado.org