



LOCATIONS

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856.616.2923

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215 Fries Mill Road
Turnersville, NJ 08012
856.616.2923

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Hamilton, NJ 08619
609.807.3300

PENNSYLVANIA

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1515 John F. Kennedy Blvd.
Suite 1200
Philadelphia, PA 19103
215.546.5800

Lower Bucks County

Seven Neshaminy Interplex
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Trevose, PA 19053
215.546.5800

Main Line

150 N. Radnor Chester Road
Suite F-200
Radnor, PA 19087
610.710.4220

www.rothkofflaw.com
info@rothkofflaw.com

FAX

856.616.2991

TOLL FREE

877.475.1101

The Struggle for a National Agenda on Alzheimer's Disease and Related Dementia

By **Jerold E. Rothkoff, Esquire**

I am into my third decade of being an elder care law attorney. Early on in my career, I realized the shortcomings of a traditional elder law practice focused exclusively on financial issues. Our clients and families needed a multi-disciplinary approach to aging and chronic care issues, which focused on helping families navigate the health care system. This is the reason we now have five geriatric social workers in our elder care law firm.

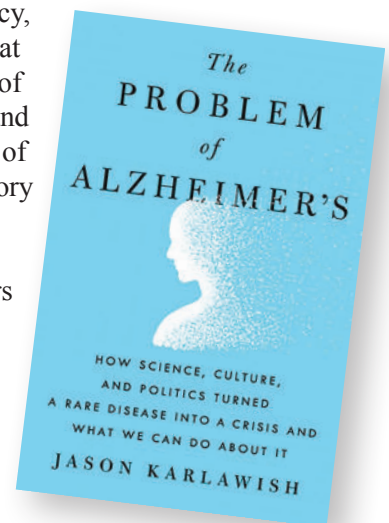
In 1989, Dr. Margaret Noel, a geriatrician, founded the Center for Older Adults at Thoms Rehabilitation Hospital in Asheville, North Carolina. Her center saw older adults whose multiple illnesses were a complex web of social, medical and financial problems, and involved significant communication with both the patient and family members. Most of the patients came to the center with dementia-related issues. The problem with this type of medical practice was the business model. Rather than have funding come from research and philanthropy, the funding came through patient care billing. According to the hospital, this business model was not financially sustainable. As a result, the center was forced to close in 1999.

However, Dr. Noel did not give up. She was committed to continuing the model of comprehensive interviews with patients and family members, time spent with a social worker to create a comprehensive care plan, and follow-up to help implement the plan. As a result, she founded MemoryCare. Over twenty years later, MemoryCare has six

physicians, three social workers and a nurse, working in teams, including conducting home visits.

The story of Dr. Noel is retold in a fascinating new book, *The Problem of Alzheimer's – How Science, Culture, And Politics Turned a Rare Disease Into A Crisis And What We Can Do About It*, by Dr. Jason Karlawish. Dr. Karlawish is a professor of medicine, medical ethics and health policy, and neurology at the University of Pennsylvania and the co-director of the Penn Memory Center. He has spent much of the last 20 years working with persons with Alzheimer's, including being a part of cutting-edge clinical trials on diagnosis and treatment of Alzheimer's.

Dr. Noel's success in transforming her center to a multidisciplinary operation is the exception rather than the rule. According to Dr. Karlawish, "we are bound up in a health care system that cannot (or will not) care for persons with Alzheimer's Disease." Unlike other developed nations, the United States is the only country which



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Rothkoff Law 2021 Virtual Elder Care Symposium On October 21, 2021

We are excited to announce our virtual Symposium for 2021, to be held on October 21, 2021. Our keynote speaker will be Dr. Jason Karlawish, author of the new book, *The Problem of Alzheimer's – How Science, Culture, And Politics Turned a Rare Disease Into A Crisis And What We Can Do About It*. Due to the uncertainty of large in-person gatherings this fall, we have decided to have the Symposium

remain in a virtual setting this year. However, we have a very exciting new virtual platform we will be utilizing which we believe will delight all attendees and sponsors.

We want to thank the following sponsors for their participation, patience and support of our fourth annual Elder Care Symposium. More information will be forthcoming over the next several months.

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Expanded Skilled Nursing Facility Medicare Coverage During the COVID-19 Pandemic

by *Jerold E. Rothkoff*

The COVID-19 pandemic has been particularly devastating for nursing homes and their residents. Aside from the tragically disproportionate loss of life, care for surviving residents has been delayed or interrupted due to infection, facility lockdowns or other health system disruptions. As a result, the Centers for Medicare & Medicaid Services (CMS) has waived two limitations on Medicare Part A skilled nursing facility (SNF) coverage during the coronavirus pandemic:

1. The 3-day qualifying hospital stay requirement; and
2. The 100-day benefit period.

However, CMS treats the two SNF coverage expansions differently from each other with regard to its connection to COVID-19.

Three Day Prior Inpatient Hospital Stay

The qualifying hospital stay waiver applies to all SNF-level beneficiaries under Medicare Part A, regardless of whether the care the beneficiary requires has a direct relationship to COVID-19. This means a beneficiary can get Part A coverage in an SNF whether or not the individual was a hospital inpatient for three consecutive days, or any days at all. This is true so long as the beneficiary meets all other requirements for Part A coverage (e.g., needs skilled nursing care seven days per week or skilled rehabilitation

services five days per week, or a combination of the two).

100-Day SNF Coverage Limit

For expansion of the 100-day limit on SNF coverage, however, the beneficiary's COVID-19 status is relevant. According to CMS, "If the patient has a continued skilled care need (such as a feeding tube) that is unrelated to the COVID-19 emergency, then the beneficiary cannot renew his or her SNF benefits under the waiver as it is this continued skilled care in the SNF rather than the emergency that is preventing the beneficiary from beginning the 60-day 'wellness period'." Thus, SNF residents can receive an additional 100 days of Part A coverage only when their continued need for care is related to the COVID pandemic.

Nursing home residents who qualify for the additional 100 days of coverage can continue to use them, even after the waiver of the benefit period ends. According to CMS, "If a beneficiary has qualified for the special one-time renewal of SNF benefits under the benefit period aspect of the waiver while the waiver is in effect, that reserve of 100 additional SNF benefit days would remain available for the beneficiary to draw upon even after the waiver itself has expired."

Please feel free to contact our Rothkoff Law Group should you have any questions regarding skilled nursing care coverage.

The Struggle for a National Agenda on Alzheimer's (Continued from front page)

does not guarantee universal long-term care coverage for its citizens.

Dr. Karlawish believes if we are to encourage more clinicians to structure their medical practice like Dr. Noel, greater reimbursement will be needed, such as those created under the 2010 Affordable Care Act. However, more money alone is not enough for this transformation. Our health care system must provide compassionate diagnosis

and care options for the person living with dementia and their family members. While research continues, we must foster quality of care and quality of life for persons with dementia and their caregivers.

Like medicine, the law has its shortcomings when attempting to provide holistic options for persons with dementia and their caregivers. The law alone will not, in isolation, be successful

in solving the problems of dealing with Alzheimer's and related dementia and meeting an individual's needs. A comprehensive approach to elder care law is needed to help families navigate the long-term care system they have been thrust into. According to Dr. Karlawish, "our duty – caregivers, the health care system, government, society – is to be present from diagnosis to death." I could not agree more.

THE ROTHKOFF QUARTERLY – Published for clients and friends of ROTHKOFF LAW GROUP

The success of our firm is a direct reflection of our clients and the referral sources who have supported us. Therefore, we actively welcome your referrals as well as your input regarding the contents of this newsletter. We also welcome comments on the quality of legal services our offices provide.



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Update on Rothkoff Law Status

As we move into the second year of dealing with the effects of COVID-19, at the present time, most of our office team continues to be hard at work with the assistance of technology. We continue to be very productive working remotely, and are at the office when needed to meet with clients or perform tasks they cannot accomplish remotely. However, as more of our clients and staff are fully vaccinated over the coming weeks, we expect to start engaging in more in-person client appointments and have more staff return to the office. However, we will continue to give our team members

the flexibility to continue to work remotely as long as the needs of our clients can continue to be met.

We have updated our professional and consumer seminars and webinars for 2021. All of our firm's vast educational and networking opportunities for professionals and the public will continue to be offered exclusively in a virtual setting until further notice. You may review all our updated 2021 professional and consumer events at <https://rothkofflaw.com/events/>.

Wishes for continued good health to all of you.

All information presented is general and does not constitute legal advice. Please do not act upon this information without consulting an attorney. Anyone facing a legal issue discussed in this publication is advised to seek legal advice from a competent professional.