

# THE RISLEY NEWSLETTER

## PATIENT BILL OF RIGHTS/VIATICAL AGREEMENTS/HURRICANE 2000

### PATIENT BILL OF RIGHTS

Last year, the Governor signed a "Patient Bill of Rights" for Californians. This year, the President announced the "Health Care Consumer Bill of Rights" developed by a 34-member advisory commission, Consumer Protection and Health Care Quality. The Commission included representatives of consumers, the insurance industry and business. The purpose of both of these measures is to insure that "patient care" rather than "profits" are given first consideration by the Managed Care Organizations.

The Federal measure covers care furnished to Medicare beneficiaries, and applies to the Veteran's Administration, Department of Defense, and to 75,000,000 Americans treated under the Medicare and Medicaid Programs.

In substance, the Plan provides as follows:

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*"You have the right to be informed about your health plan in plain English. You have the right to choose the right doctor for the right type of care; the right to medical services in an emergency, wherever and whenever the emergency arises; the right to know all your medical options, no matter how much they cost; the right to respectful care and equal treatment at every health care facility by every health care provider; the right to know your medical records are confidential and only used for legitimate purposes; the right to express your concerns about the quality of care you receive and to take action when that care is inadequate."*

The Bill of Rights was developed, largely as a response to perceived patterns of denial of care by Managed Care Organizations. These organizations often require patients to see "gateway physicians" to receive a referral to a medical specialist. Consumer Groups contend that the complex physician payment arrangement discourages participants from obtaining specialty care, and that Managed Care Organizations (MCO) place profits before patients.

But the Board of Directors of the American Association of Health Plans, the trade organization for MCO's, voted to incorporate several elements of the Patient's Bill of Rights. These efforts should improve

access to needed medical care by most people.

## **INSURANCE, BENEFITS FOR THE LIVING: VIATICAL AGREEMENTS**

Insurance policies may benefit the living insured during a final illness. Recently, Life Insurance Companies began writing some policies which provide for accelerated payments where evidence is given to demonstrate the insured is terminal. These provisions are known as "living pay-out options," "acceleration of life insurance benefits," "accelerated death benefits," and finally "living needs benefits." Policies should be examined carefully to see if any of these provisions are contained in them. If a terminal condition develops, a request for implementation should be made.

The second method of receiving life insurance payments before death involves "Viatical Settlement." In a Viatical Settlement, a third party purchases the life insurance policy of an insured, (the viator) who has a life-threatening disease or illness. The insured receives a one-time payment from the third party. The payments range from 50% to 80% of the policy's face value. In the alternative, the insured can elect to receive periodic payments. The purchaser then becomes the owner of the policy and typically names itself as the beneficiary. The third party purchaser continues to pay the premiums, and receives the policy's face value when the insured dies. Most purchasers require the insured to have two years, or less, to live. The shorter the insured's life expectancy, the greater the purchase price.

During 1994, Viatical Settlement Companies paid an average of \$76,000.00 for a \$100,000.00 policy. Life insurance continues

to be a central source of financial security for most families in this country. Since so many people place their trust and financial future in the hands of insurance companies, it is important to determine the financial stability of them. Information about insurance companies can be obtained from the American Council on Life Insurance, the National Council on Aging, and individual State Insurance Boards.

Obviously, it is important to deal with a company with an established track record, so that the chances are good the company will still be in existence to pay accelerated benefits when the time comes.

There are several sources available to ascertain insurer solvency. The first is the National Association of Insurance Commissioners (NAIC). Another is A. M. Best Company, Standard & Poor's Corporation, Moody's, and Duff and Phelps. These companies base their ratings on information obtained from NAIC database and special requests for information from specific insurance companies. The National Viatical Association which can be reached at (800) 741-9465, has prepared a booklet about viatical settlements, along with a list of companies that purchase life insurance policies.

### Tax Consequences

What are the tax consequences of receiving accelerated payments or arranging a viatical settlement?

As a general rule, proceeds of a life insurance policy are excluded from the recipient's gross income under IRC Code 101(a)(1). However, to obtain this exclusion, the proceeds must be payable "by reason of the death of the insured."

Viatical Settlements, or accelerated benefits are not payable by reason of the insured's death, as the insured is still alive. Accordingly, the proceeds should be subject to income tax. However, in August of 1996, President Clinton signed the Health Insurance Portability and Accountability Act of 1996, which included an express provision excluding most accelerated payments and viatical settlements from gross income. The statute deemed them to be paid by reason of death of the insured. The payments must meet certain fixed requirements not discussed in this newsletter.

Accelerated death insurance benefits and Viatical Settlements may provide much needed assistance for terminally ill persons during the last years of life and for chronically ill individuals. These payments will usually be excluded from the insured's income. In addition, assuming the payments are spent or given away using tax free transfers, the insured's estate and gift tax burden can be reduced.

## **HURRICANE 2000**

Storm clouds are approaching in the form of the "Year 2000 Problem." Shorthand for the problem is "Y2K." It will impact all of us, not just computer users, because everyone is affected by computers. But those of us using personal computers should take a few precautionary steps. Print hard copies of financial records and important documents in case your computer, or a service provider's computer, is impacted by the problem.

What is THE PROBLEM? As reported in the June 10, 1997, issue of The Risley Newsletter, "Most proprietary computer systems allow for only two digits for the year.

The year 1997 is expressed as "97," and the "19" is assumed and omitted." Your computer may not know the difference between your records for the year 2001 and 1901. Numerous calculations are based on this date.

Legal claims can and will be made against affected companies' Boards of Directors, alleging breach of fiduciary duty and failure to disclose the Y2K problem fully in the annual and quarterly reports filed with the U.S. Securities and Exchange Commission. The affected companies may then sue the computer consultants that had advised them in the design of their computer systems, and also sue the vendors that sold, licensed, or maintained the hardware and software in the non-compliant system.

As we reported in the October 10, 1997 issue of the Risley Newsletter, "It has been predicted that five to ten percent of businesses in the United States will fail as a result of the 'Year 2000 Problem' which will, in turn, create a chain of bankruptcies nationwide."

### Federal Inaction

If you have not prepared for the Y2K Problem, you are not alone. The Los Angeles Times reported that a congressional panel said Wednesday, March 4, 1998, that 37% of the most critical computers used by Federal Agencies will not be updated in time to handle dates in the year 2000 and will be subject to widespread failure. California Representative, Steve Horn (R-Long Beach), the sub-committee chairman issued a "report card" that gave the Federal Government a D-minus in its efforts to avoid a crisis. We should not use the Federal Government as a model for our inaction.

Impact on the US Economy

The March 2, 1998, issue of Business Week Magazine reports that the growth rate in 1999 will be .3 percentage points lower as companies divert resources to fix the problem. Then the Y2K Problem could cut half a percentage point off growth in 2000 and early 2001. All told, the Year 2000 bug could cost the US about \$119 Billion in lost economic output between now and 2001. "The Year 2000 but will certainly hurt the economy," says DRI Chief Economist, David A. Wyss, "and it could be a real killer if more of the problems are not fixed." A December, 1997, survey by Howard Rubin, indicated that two out of three large companies did not yet have detailed plans in place to address Y2K. Judith List, who runs the Year 2000 effort for Bellcore, which develops communications software says, "There is no question that things will fail," . . . "What Bellcore recommends is that you focus on the mission-critical systems first."

The Fix

The Y2K Problem may not be as severe for PC's as for the more sophisticated mainframes. The March, 1998, issue of Computer currents reported:

If your PC is like millions of others out there, it is a small black cube plugged into the motherboard with the name BenchMarq, Odin, Twinhead, or Dallas Time printed on it. This is the CMOS module that provides the real-time clock and calendar.

In many cases, the module on older motherboards can be replaced with a 2000 compliant

model, such as the Dallas Semiconductor DS12C887 chip, available from Resource 800 at [www.resource800.com/ho01006.html](http://www.resource800.com/ho01006.html) for \$24.95. (Resource 800's Web page also has some relevant details about clock chips and how to replace them.) If the clock module is mounted in a socket, you can swap it out yourself. If it's soldered in, find a skilled technician who can carefully remove the old module and put the new one in.

If You Experience a Y2K Problem

Undoubtedly, the Y2K Problem will impact people and businesses regardless of their precautions. In that case, you may wish to seek legal advice to help you determine whether you have a cause of action against a service provider, computer manufacturer, software manufacturer, or anyone else.

**CHANGES TO E-MAIL ADDRESS AND AREA CODES**

The telephone company recently changed the area code for Pasadena and the San Gabriel Valley from "818" to "626." Accordingly, our telephone and fax numbers are as follows:  
**(626) 397-2745** and **(626) 397-2746.**

Our E-Mail address has been changed from Compuserve to PacBell. The new E-Mail address is: **[rrisley@pacbell.net](mailto:rrisley@pacbell.net)**.

Our Web Page will be updated soon. The Web Page is located at: **[www.icanect.net/califlaw](http://www.icanect.net/califlaw)**.

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