

**ATTORNEYS  
HELPING THE  
ELDERLY AND  
PERSONS WITH  
DISABILITIES**



**MARTHA C. BROWN & ASSOCIATES, LLC**  
**ELDER LAW ATTORNEYS**  
 220 W. Lockwood, Suite 203  
 Webster Groves, MO 63119  
 Telephone (314)962-0186



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**When Is A Hospital Stay Not A Hospital Stay?**

**M. Brigid Fernandez**

In some situations, a person's hospital stay may not be considered by Medicare as an inpatient hospital stay, but rather as an outpatient observation. Most Medicare beneficiaries know that Medicare pays for their skilled nursing facility care, which is care provided in a nursing home, if they meet certain requirements. One of the requirements is that a beneficiary must be a hospital inpatient for at least three consecutive days before admission to the skilled nursing facility. You are an inpatient beginning the day that you are formally admitted to the hospital with a physician's order. The day before you are actually discharged is your last hospital inpatient day. Your status in the hospital affects how much you will pay for your hospital stay and whether or not Medicare will cover your care in a skilled nursing facility.

Across the country, increasing numbers of Medicare beneficiaries are being denied Medicare coverage for skilled nursing care following a hospitalization. Even though beneficiaries have been in a hospital bed, on a nursing division, receiving physician and nursing services, medications, tests and meals, they are in some cases identified as outpatients. Even long hospital stays, some as long as 14 days, have been classified by the hospital as an outpatient observation. The beneficiary in this situation would have no idea their stay was being considered as an outpatient observation. It appears like an inpatient admission in all respects.

When the hospital classifies a beneficiary as an outpatient, Medicare Part B covers these services instead of Medicare Part A, the hospital benefit. The Medicare beneficiaries are then responsible for their entire skilled nursing home stay because they never met their three-day consecutive inpatient hospital requirement. This lack of knowledge on the beneficiary's part can be quite costly. According to Genworth's publication on the Average Cost of Care in Missouri 2011, a private room in a skilled nursing facility in the St. Louis area is \$165 daily, or approximately \$60,000 per year.

**What are Observation Services?**

The Medicare manuals define Observation Services generally as a set of specific, clinically appropriate services which include short term treatment, assessment, and reassessment. These services are provided while a decision is being made about whether a person will require further treatment as a hospital inpatient, or if the person is able to be discharged. The Medicare manuals suggest that a patient may not remain in observation status for more than 24 or 48 hours.

**What can Medicare Beneficiaries do?**

Beneficiaries or their advocates should speak up and ask the hospital staff to clarify whether they are classified as an inpatient or on observation status. This is particularly important if skilled nursing care is anticipated after the hospitalization. If the beneficiary is placed on observation status, they should ask for clarification regarding that decision from their physician, and request a notice from the hospital utilization review team. The Center for Medicare Advocacy recommends that beneficiaries challenge this decision by filing an appeal after they receive this notice.

If the hospital does not provide notice, a beneficiary can appeal when they receive their Medicare Summary Notice. (The Medicare Summary Notice sets forth the services a beneficiary received in the prior quarter). As a part of the appeal, it would be necessary to request the complete medical record for the entire hospital stay. Call our office for a consultation to assist you in the Medicare appeal process.

The Medicare laws are complex and often difficult to understand. The Center for Medicare Advocacy has been working to raise awareness of this increasing problem that many Medicare beneficiaries may face. The next time you are in the hospital and you have Medicare — ask your physician if you are a Hospital Inpatient or Outpatient. If you have a Medicare Advantage plan, the costs and coverage may vary from the traditional Medicare plan.

Information included in this article was obtained from The Center for Medicare Advocacy publications. For more information you may visit <http://medicareadvocacy.org>.

**Mission Statement:**

We are a law firm that concentrates on the unique legal needs of people who are elderly, disabled and the families who care for them. We appreciate and understand that each client's legal needs are personal to them. We are prepared to counsel our clients about the many non-legal issues that may arise, including financial, health and long term care concerns. We dedicate ourselves to educating our clients, empowering them to make decisions that are right for them and giving them peace of mind.

## What We've Been Up To

### What We've Been Up To

Get additional information at our website by visiting:

[http://  
www.elderlawstlouis.com/  
speak.shtml](http://www.elderlawstlouis.com/speak.shtml)

#### Special Needs Trusts are Discussed during Legal Webinar

Martha C. Brown participated in a joint panel discussion titled "Leveraging Special Needs Trusts to Obtain Public Benefits" during a legal webinar for Strafford Publications. The teleconference was June 15th.

#### Brigid Fernandez Discusses Medicare with Social Workers

Brigid Fernandez presented the "Medicare Skilled Nursing Home Benefit" with Social Workers in Home Care at their monthly meeting held at the Brentmoor Retirement Community. Medicare beneficiaries are routinely being denied their skilled nursing home benefit based on the "improvement standards." She discussed the rules and regulations governing Medicare and the fact that many Medicare beneficiaries are denied this benefit.

#### Firm Attends Prime Times Senior Expo

Martha C. Brown & Associates was an exhibitor at the Prime Times Senior Expo on July 21st. This resource fair for older adults was sponsored by the Webster-Kirkwood Times and South County Times and was held at Orlando Gardens in Webster Groves, Missouri.

#### Martha Brown Speaks to SLU Students

Martha C. Brown talked with St. Louis University students during their Law Practice Management class. She discussed "Office Systems."

#### Brigid Fernandez Meets with NASW Members

Brigid Fernandez presented "It's all about MO HealthNet-Planning and Paying for Long-Term Care" to members of the National Association of Social Workers, Missouri Chapter. This seminar was offered two days, one held at Mother of Good Counsel Home in St. Louis and the other at the Holiday Inn East in Columbia, Missouri.

#### Elder Law Update Given by Martha Brown

Martha C. Brown gave an elder law update during a "15 Hour Review of the Law." The two day event was sponsored by The University of Missouri Kansas City Law School and was held at Crowne Plaza in Clayton, Missouri.

#### Firm Attends National Senior Health & Fitness Jam

Martha C. Brown & Associates participated in the National Senior Health & Fitness Jam. The event was held at the Monsanto YMCA on May 25th.

#### Brigid Fernandez Discusses Legal Documents

Brigid Fernandez presented "Important Estate Planning Documents" to participants and families at the Living Better Adult Day Center in Maryland Heights, Missouri.

#### Martha Brown Talks to Nursing Home Administrators

Martha C. Brown presented "When the Attorney Calls" to The Coalition of Nursing Home Administrators. She discussed subpoenas, the release of information and what to do when the attorney calls. The event was held at Jefferson Memorial Hospital in Festus, Missouri.

#### The Firm attends Health Fair at Covenant House

Martha C. Brown & Associates attended the Covenant House and CHAI Apartments Senior Health Fair on June 28th. The fair brought together a variety of vendors and provided the latest resources and literature to residents and local seniors.

#### Martha Brown Talks about SSI and POMS

Martha C. Brown discussed The Program Operations Manual System (POMS) and how it's information is used by Social Security employees to process claims for Social Security benefits. This event was held at the DD Resources office in St. Louis, Missouri.

#### Brigid Fernandez Speaks with Parish Nurses

Brigid Fernandez discussed "Planning and Paying for Long Term Care" with the Parish Nurses of Greater St. Louis. This event was held at the Society for the Visually Impaired on July 14th.

#### The Firm Attends Senior Fair in Festus

Martha C. Brown & Associates participated in the Festus Senior Expo on June 22nd. The event was held at the Best Western in Festus and was sponsored by The Reader.

### Contact Us

**Martha C. Brown &  
Associates, LLC**  
220 W. Lockwood, Suite 203  
Webster Groves, MO 63119

**Office Hours**  
8:30 a.m.—5:00 p.m.

**Phone**  
314-962-0186

**Fax**  
314-962-1298

**Website**  
[www.elderlawstlouis.com](http://www.elderlawstlouis.com)

**Email**  
[info@elderlawstlouis.com](mailto:info@elderlawstlouis.com)

**Blog**  
[www.elderlawstlouis.com/blog](http://www.elderlawstlouis.com/blog)

*Use of e-mail does not protect the confidentiality that is a basic element of the attorney-client relationship. We regret that we cannot respond to e-mails from non-clients seeking legal advice because of the possibility of conflict of interest. Because of this, we will not read the substance of your message. Please contact us by telephone at (314) 962-0186 between the hours of 8:30 a.m. to 5:00 p.m. if you wish to discuss your situation with us.*

## Calendar of Events

**WEDNESDAY, AUGUST 3—11:00 a.m.**

ALZHEIMER'S FAMILY EDUCATION CLASS  
ALZHEIMER'S ASSOCIATION ST. LOUIS CHAPTER OFFICE  
9370 OLIVE BLVD.  
ST. LOUIS, MO

Martha C. Brown will be meeting with patients and family members affected by Alzheimer's Disease during an Alzheimer's Association education class. Martha will be discussing "Legal and Financial Issues." For more information call the Association's office at 314-432-3422.

**MONDAY, SEPTEMBER 12—WEDNESDAY, SEPTEMBER 14**

MISSOURI COUNCIL FOR IN-HOME SERVICES ANNUAL CONFERENCE  
TAN-TAR-A RESORT  
494 TANTARA DRIVE  
OSAGE BEACH, MO

This annual conference is designed to benefit several different groups associated with the in-home industry including administrators, private pay providers, front line supervisors, Medicaid and Medicare providers, nursing supervisors, state and local contract providers and agency aides. Martha C. Brown will be attending this event. For more information visit: <http://www.mohomecare.org/displaycommon.cfm?an=1&subarticlenbr=7> or contact the council at 573-634-5272.

**WEDNESDAY, SEPTEMBER 14—10:00 a.m.-12:00 p.m.**

ARE YOU READY FOR 2012 CHANGES SENIOR HEALTH FAIR JAM SERIES  
WEST COUNTY FAMILY YMCA (WEST COUNTY)  
16464 BURKHARDT PLACE  
CHESTERFIELD, MO

BPG Entertainment in association with Silver Sneakers and Prime Life Media present The 2 Hour Senior Health Fair Jam Series called "Are You Ready for 2012 Changes?" This event is being held at various locations across Missouri in September through November. Each event will have bingo, a cooking demonstration and health screenings. For additional information please contact Greg "Big Papa G" Horta with BPG Entertainment at [bigpapag@rocketmail.com](mailto:bigpapag@rocketmail.com) or by phone at 618-334-5233.

**SATURDAY, SEPTEMBER 17— 9:30 a.m.**

ST. LOUIS MEMORY WALK  
BUSCH STADIUM  
ST. LOUIS, MO

Join us at the Alzheimer's Association 2011 Memory Walk®. This is the firm's third year participating. It is the nation's largest event to raise awareness and funds for Alzheimer care, support and research. This inspiring event calls on volunteers of all ages to be champions in the fight against Alzheimer's. For more information, visit: [www.alzstl.org](http://www.alzstl.org).

**MONDAY, SEPTEMBER 26—WEDNESDAY, SEPTEMBER 28**

2011 MISSOURI SHOW ME SUMMIT ON AGING AND HEALTH  
SHERATON WESTPORT CHALET HOTEL  
191 WESTPORT PLAZA  
ST. LOUIS, MO

This annual conference is the largest senior forum in the state, attracting more than 450 participants, sponsors and exhibitors. It is an important opportunity for civic leaders, nonprofit providers, members of the business community, caregivers and citizens to meet and discuss the challenges facing Missouri's aging population. Join us Wednesday morning for Brigid Fernandez's presentation called "Missouri HealthNet: Planning and Paying for Long Term Care. For additional information visit: <http://www.ma4web.org/>

**WEDNESDAY, SEPTEMBER 28— 9:00 a.m.-1:30 p.m.**

ST. LOUIS TIMES FUNFEST  
MARYLAND HEIGHTS CENTRE  
2344 MCKELVEY ROAD  
MARYLAND HEIGHTS, MO

Join us at the 80th St. Louis Times Funfest. Over 75 Funfest events have been hosted since their start in 2000, with an average attendance of almost 700 attendees per event. There will be bingo, prizes and live entertainment from The Anita Marie Show. For more information contact 314-434-1919 or visit: [http://www.stlouistimes.com/funfest\\_schedule\\_2011.asp](http://www.stlouistimes.com/funfest_schedule_2011.asp)



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***If you are  
interested in having  
an elder law  
attorney from  
Martha C. Brown &  
Associates speak at  
your event, please  
contact Peggy at  
314-962-0186***



## Calendar of Events (Continued)

**WEDNESDAY, SEPTEMBER 28—10:00 a.m.-12:00 p.m.**

ARE YOU READY FOR 2012 CHANGES SENIOR HEALTH FAIR JAM SERIES  
EMERSON FAMILY YMCA (NORTH COUNTY)  
3390 PERSHALL ROAD  
FERGUSON, MO

BPG Entertainment in association with Silver Sneakers and Prime Life Media present The 2 Hour Senior Health Fair Jam Series called "Are You Ready for 2012 Changes?" This event is being held at various locations across Missouri in September through November. Each event will have bingo, a cooking demonstration and health screenings. For additional information please contact Greg "Big Papa G" Horta with BPG Entertainment at [bigpapag@rocketmail.com](mailto:bigpapag@rocketmail.com) or by phone at 618-334-5233.

**WEDNESDAY, OCTOBER 5—10:00 a.m.-12:00 p.m.**

ARE YOU READY FOR 2012 CHANGES SENIOR HEALTH FAIR JAM SERIES  
ST. CHARLES COUNTY FAMILY YMCA (ST. CHARLES COUNTY)  
3900 SHADY SPRINGS LANE  
ST. PETERS, MO

BPG Entertainment in association with Silver Sneakers and Prime Life Media present The 2 Hour Senior Health Fair Jam Series called "Are You Ready for 2012 Changes?" This event is being held at various locations across Missouri in September through November. Each event will have bingo, a cooking demonstration and health screenings. For additional information please contact Greg "Big Papa G" Horta with BPG Entertainment at [bigpapag@rocketmail.com](mailto:bigpapag@rocketmail.com) or by phone at 618-334-5233.

**WEDNESDAY, OCTOBER 12—10:00 a.m.-12:00 p.m.**

ARE YOU READY FOR 2012 CHANGES SENIOR HEALTH FAIR JAM SERIES  
FIVE STAR SENIOR CENTER (ST. LOUIS CITY)  
2832 ARSENAL STREET  
ST. LOUIS, MO

BPG Entertainment in association with Silver Sneakers and Prime Life Media present The 2 Hour Senior Health Fair Jam Series called "Are You Ready for 2012 Changes?" This event is being held at various locations across Missouri in September through November. Each event will have bingo, a cooking demonstration and health screenings. For additional information please contact Greg "Big Papa G" Horta with BPG Entertainment at [bigpapag@rocketmail.com](mailto:bigpapag@rocketmail.com) or by phone at 618-334-5233.

**WEDNESDAY, OCTOBER 19—10:00 a.m.-12:00 p.m.**

ARE YOU READY FOR 2012 CHANGES SENIOR HEALTH FAIR JAM SERIES  
BRUNSWICK ZONE XL (ST. CHARLES COUNTY)  
8070 VETERAN'S MEMORIAL PARKWAY  
ST. PETERS, MO

BPG Entertainment in association with Silver Sneakers and Prime Life Media present The 2 Hour Senior Health Fair Jam Series called "Are You Ready for 2012 Changes?" This event is being held at various locations across Missouri in September through November. Each event will have bingo, a cooking demonstration and health screenings. For additional information please contact Greg "Big Papa G" Horta with BPG Entertainment at [bigpapag@rocketmail.com](mailto:bigpapag@rocketmail.com) or by phone at 618-334-5233.

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Martha C. Brown & Associates appreciates and encourages you to share this newsletter with anyone that is interested in issues regarding the elderly, the disabled, or someone needing information on veterans benefits. If you know someone who would like to receive this or future newsletters please have them contact us at 314-962-0186 or email us at: [marketing@elderlawstlouis.com](mailto:marketing@elderlawstlouis.com).

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Please send your name, email address and the name of your company to:  
[marketing@elderlawstlouis.com](mailto:marketing@elderlawstlouis.com).  
Thank you.

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*The choice of a lawyer is an important decision and should not be based solely upon advertisements.*

## **New Alzheimer's Definition Moves Researchers Closer to Early Detection and Intervention**

The following articles – collectively, the National Institute on Aging/Alzheimer's Association Diagnostic Guidelines for Alzheimer's Disease – expand the definition of Alzheimer's to include two new phases of the disease: (1) presymptomatic and (2) mildly symptomatic but pre-dementia, along with (3) dementia caused by Alzheimer's. This reflects current thinking that Alzheimer's begins creating distinct and measurable changes in the brains of affected people years, perhaps decades, before memory and thinking symptoms are noticeable.

"It is our hope that incorporating scientific knowledge gained and technological advances made over the past quarter century will improve current diagnosis, bring the field closer to earlier detection and treatment and ultimately lead to effective disease-modifying therapies," said William Thies, Ph.D., Chief Medical and Scientific Officer at the Alzheimer's Association. "Development and publication of these articles is a major landmark in the field. That said, publication of these articles is not yet the end of the process of developing new diagnostic criteria for Alzheimer's, but is another major step in the process."

### **Three Stages of Alzheimer's Disease**

The current diagnostic criteria for Alzheimer's, for the most part, focus on reliable diagnosis when signs of problems in thinking, learning and memory are noticeable to an individual, family and friends. But research tells us that Alzheimer's likely begins years, maybe even decades, prior to symptoms appearing. The new articles refer to three phases of Alzheimer's disease progression over time:

Preclinical Alzheimer's Disease – Measurable changes in biomarkers (such as brain imaging and spinal fluid chemistry) that indicate the very earliest signs of disease, before outward symptoms are visible. Currently, there are no clinical diagnostic criteria for this phase, but the group provides a scientific framework to help researchers better define this stage of Alzheimer's.

Mild Cognitive Impairment (MCI) due to Alzheimer's Disease – Mild changes in memory and thinking abilities, enough to be noticed and measured, but not impairment that compromises everyday activities and functioning.

Dementia due to Alzheimer's Disease – Memory, thinking and behavioral symptoms that impair a person's ability to function in daily life.

According to the authors, in order to facilitate the possibility of future pre-symptomatic treatment of Alzheimer's, it was important to define the disease from the earliest changes in the brain, not only the observable, symptomatic stages of the disease. The authors propose that Alzheimer's begins with a long asymptomatic period during which detrimental changes are progressing in the brain, and individuals with biomarker evidence of these changes are at increased risk for developing cognitive and behavioral impairment and progression to Alzheimer's dementia.

A biomarker is a naturally occurring, measurable substance or condition in the body that reliably indicates the presence or absence of disease or the risk of later developing a disease; for example, blood glucose levels are a biomarker of diabetes, and cholesterol levels are a biomarker of cardiovascular disease risk. Both fluid and imaging measures are being tested as possible biomarkers for Alzheimer's.

There was a broad consensus within the workgroups that much additional research needs to be done to validate the application of biomarkers as they are proposed in the newly-published articles. According to the authors, "The definitive studies ... are likely to take more than a decade to fully accomplish. Thus, we must move quickly ... and adjust our models and study designs as new data become available."

The challenge for Alzheimer's now is that there is currently no single, generally accepted way to identify the disease in the earliest stage – before symptoms are evident. It is hoped that the research agenda outlined in the new preclinical Alzheimer's article will correct this deficit.

The proposed new Alzheimer's disease diagnostic guidelines were published online by Alzheimer's & Dementia: The Journal of the Alzheimer's Association. Hard copy publication is in the May 2011 issue of the journal.