

## I Didn't Know That! – Part Two

This month, more “I didn’t know that” facts for our readers!

**I didn’t know that...If I receive Florida Medicaid for nursing home benefits, my home won’t necessarily be taken by Medicaid.** Having their homes recovered by Medicaid is among people’s greatest fears. Those fears are generally unfounded IF you can avoid legal blunders by getting good legal advice. Here are the essential facts: If your home is homestead property, if you intend to return to it (whether or not this is likely), if it has been left to your constitutional heirs at law, and if you still own it at the time of your passing, it will be exempt from Medicaid recovery.

**I didn’t know that...If I am someone’s agent under their power of attorney, I cannot make them do whatever I consider best for them.** In other words, you don’t get to be someone’s

boss if their Durable Power of Attorney or Health Care Surrogate grants you the power to handle his/her financial or health care decisions. The individual who has granted you that authority has given up none of their own. This is an issue that often comes up when adult children who are agents under a parent’s documents worry that a parent is making poor decisions. Perhaps the parent is spending money in a manner the child considers wasteful or foolish, or not taking care of his/her health in a way the child considers responsible. The truth is, unless



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a court deems your parent to be incompetent, your parent can do as your parent wishes. Competent adults have the legal right to make their own decisions—and that includes decisions that you consider to be bad ones.

**I didn’t know that ...If I am married, my spouse does not have an automatic right to get information about my health and access my medical records.** Under the federal law known as HIPAA (Health Insurance Portability and Accountability Act), your spouse has no special rights to access your information. You must autho-

rize them to do so with a HIPAA release, just as you would authorize anyone else. Without such a release, your spouse could find it rough going. We have had cases where husbands and wives, trying to assist their ill spouses and handle their medical bills, were stonewalled by insurance companies, hospitals and the like.

More “I didn’t know that” next month.

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Read The Florida Elder Law and Estate Planning Blog at [www.karplaw.blogspot.com](http://www.karplaw.blogspot.com).



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