

**JUNE 2017 MINUTES OF THE
ELDER LAW & DISABILITY RIGHTS SECTION
STATE BAR OF MICHIGAN**

June 3, 2017

Location: Telephonic meeting.

Attendance:

- **On Phone:** Sara Schimke*, Christopher Smith*, Beth A. Swagman*, Kelly Quardokus*, David Sprague*, Jane Bassett*, Christine Caswell*, Howard Collens*, Jacquelyn Rygiel-Sprague*, Erma Yarbrough-Thomas*, Raymond Harris*, Angela Hentkowski*, Robert Mannor*, Maria Messina*, John Payne*, Don Rosenberg, Elizabeth Vincent, Brandon Thompson, Scott Robbins, Cheryl Hermann, David Kerr, Susan Chalgian, Jean Doss, and Todd Tennis.

15 out of 20 members of Council were present.

* Indicates Council member.

I. Executive Reports.

1. **Minutes.** The minutes from the May meeting were submitted for Council's approval. **Kelly Quardokus** moved to approve the minutes. **Beth Swagman** seconded the motion. The May minutes were unanimously approved.
2. **Treasurer's Report.** **Beth Swagman** reported that the Spring Conference had revenues of \$16k and expenses of \$10k, leaving a net profit of approximately \$6k. Beth also indicated some concern that membership is trending about 100 members down.

II. Committee Reports.

1. **Legislation Committee.**
 - a) *POST.* The Committee continues to work on implementing the Council's position on House Bills 4170-4174 as passed by Council in May. **Jim Steward**, **Robert Anderson**, and **Caroline Dellenbusch** are working on advocating for the final tweaks to the POST legislation, which still looks on track to pass the Michigan legislature.

- b) *Financial Endangered Adult Legislation.* The Committee expressed skepticism in the May meeting regarding the scope of this legislation and its potential unintended consequences. **Beth Swagman** met with Representative Brinks to express our concerns regarding the bill. The Committee remains hopeful that the bill is still in an early stage and that the legislature will remain open to comment.
 - c) *Other Legislation.* Capitol Services indicated that the legislature is consumed with a chaotic budget process. The Section 298 work group recommendations and the Community Mental Health privatization is part of the confusion and it is still unclear what the outcome will be. Capitol Services's full report is incorporated into these Minutes by reference.
 - d) *Administrative Committee?* **Kelly Quardokus** suggested that it might make sense for Council to have a separate committee to deal with issues at the various state agencies. Further consideration was tabled for now.
2. **Litigation.** **David Kerr** reported on behalf of the Committee. In the previous week, the Court of Appeals issued three decisions relevant to Medicaid attorneys (*Hegadorn, Bacon, and Cary*), which were mostly against the Section's positions. The Committee expects that Council may have a role to play with any further appeals. The Committee will follow its regular policies, but because there is not a July meeting, there may need to be a special meeting of the Council to vote on possible legislative responses.

The meeting was then adjourned at 10:59 a.m. (John Payne moved; Jane Bassett seconded.)

Next Meeting: August 5, 2017, Steward and Sheridan, 205 S Main St, Ishpeming, MI 49849.

Legislative Update to the Elder Law and Disability Rights Section (ELDRS) Council

June 3, 2017

From Todd Tennis and Jean Doss

Legislative Environment

It has been a rather slow month for elder law and disability issues in Lansing, as most lawmakers are focused on other issues, such as concealed carry rights and establishing state sanctions for female genital mutilation. The real whirlwind taking place, however, centers around the budget and public school pensions. Complicating what has for the last several years been a relatively boring annual appropriations process has been the agreement between Speaker of the House Tom Leonard and Senate Majority Leader Arlen Meekhof to close the Michigan Public School Employees Retirement System (MPSERS) to new hires.

Although Governor Snyder has been consistently opposed to closing MPSERS based on the massive price tag associated with such a move, House and Senate leadership have shown a willingness to move forward with a budget that includes over \$400 million next year alone to pay for the MPSERS closure. This would block out spending on a number of Governor Snyder's priorities, including increases for public education, senior food programs and public hospital and corrections staffing.

Meanwhile, the spring Consensus Revenue Estimating Conference (CREC) revealed that the state will have \$292.2 million less in General Fund money to spend this year and the coming Fiscal Year (FY) 2018 budget year that starts Oct. 1, but they'll have \$340.3 million more in the School Aid Fund (SAF) than expected. That equals out to a relatively tiny \$47.4 million increase in expected state revenue for the current year and next.

Typically, the figures approved at the CREC give legislative leaders and the Governor the information they need to hammer out final "targets" for the coming FY '18 budget. But target negotiations broke down early in the process over the Governor's opposition to closing MPSRS. So, House and Senate Leaders came up with their own targets over the weekend, without the Governor. Conference committee members are being announced this week, discussions are underway amongst chairs, and conference committees will start meeting soon.

Even without the uncertainty related to potentially closing MPSERS, there are several areas of major disagreement between the House and Senate on budget priorities. It looks increasingly likely that, for the first time in 6 years, the appropriations process may not be finished by June and could even extend into September.

POST Bills Scheduled for Hearing on June 7

House Bills 4170-4174, aimed at creating a Physician Order for Suitable Treatment form, will be up for a public hearing in the House Health Policy Committee on June 7. ELDRS has asked for and received approval for a number of amendments to the bills since they were introduced. We are currently waiting for another substitute bill to be prepared that will incorporate the changes, and hopefully will have it by the time the Section meets on June 3.

While the bills will receive a hearing, there is no assurance at this time that they will receive a vote on June 7. However, we are hopeful that, barring any serious opposition, the bills will move out of committee and through the full House before the summer recess.

Integration Debate Continues with Differing House and Senate Versions of Section 298

Second only to the controversial closing of school employee pensions is the controversial 'integration' debate, and battle over "Section 298" boilerplate advancing that debate. The underlying question is whether to ensure that the state's mental health system remains a public system, or whether to convert the system to one controlled by for-profit managed care organizations, the same businesses that oversee Medicaid-funded physical health care now. The current year budget required an inclusive, state-wide work group process, which resulted in a final report recommending pilots to advance care coordination while retaining the public management system of behavioral health services via the Community Mental Health system. The House- and Senate-passed versions of the DHHS Budget include different versions of Section 298, neither of which reflect the recommendation of the public workgroup process. Copied below is a summary of the Senate and House versions. Revised language is being promoted by advocates. This may be the final, hardest issue for lawmakers to resolve in the FY 2018-19 budget.

Senate Section 298:

The department shall continue working with stakeholders to improve the coordination of publicly funded physical health and behavioral health services in this state. All efforts made towards improving the coordination of supports and services for persons having or at risk of having intellectual disabilities, developmental disabilities, substance use disorders, or mental health, and physical health needs shall be built upon the published core values agreed upon by the workgroup established in section 298 of article X of 2016 PA 268. These values include, but are not limited to; person-centered planning with the expectation of high quality and consistent care provided statewide. It is the intent of the legislature that the department shall consider the outcomes of pilots implemented under this section and the integration pilots recommended under section 234 when assessing and making recommendations regarding the most effective financing and service delivery models for the provision of Medicaid behavioral health services. Requires that all pilots be evaluated by a neutral, independent, third party.

House Section 298:

Sec. 298. Language rewritten: (1) Requires the Department to demonstrate both the successes and weaknesses of altering the behavioral health services delivery system in the ways described in subsections (2), (3), and (4). Includes what factors the Department must consider in their evaluation. Requires that any and all benefits and cost savings be reinvested in services and supports. Directs that the evaluation described in this subsection must be performed by one of the state's research universities. (2) Requires the Department to work with a willing CMHSP in Kent County and all Medicaid health plans in the county to pilot an integrated service model. (3) Requires the Department to implement one statewide behavioral health managed care organization that shall operate in conjunction with an appointed state commission to provide services to the state, other than Kent County. (4) Requires the Department to implement up to 3 pilots in addition to the pilot described in (2) to integrate Medicaid behavioral and physical health. These pilots must: (a) allow the CMHSP in the geographic area of the pilot to be a provider of behavioral health services, (b) only implement any changes to a Medicaid waiver or state plan to advance a pilot, during the duration of that pilot, (c) be consistent with the core values of the Sec. 298 Workgroup, and (d) provide updates to the Medical Care Advisory Council, the Behavioral Health Advisory Council, and the Developmental Disabilities Council. (5) Requires a report by March 15 on progress, a timeframe for implementation, and any barriers to implementation of the pilots described in subsections (2), (3), and (4). The report must also include information on policy changes and any other efforts made to improve the coordination of physical and behavioral health.

Quick Note on Financial Exploitation Bills

The bipartisan, bicameral set of bills addressing financial exploitation of elders has not yet seen any action. We are assuming that after the budget is finished and/or during summer recess, the sponsors will re-focus on these bills and the comments submitted by ELDRS. The bills are: House Bills 4588-4589, sponsored by Rep. Winnie Brinks (D-Grand Rapids) and Rep. Joseph Graves (R-Linden) referred to the House Committee on Financial Services; and Senate Bills 345-346, sponsored by Sen. Jim Ananich (D-Flint) and Sen. Rick Jones (R-Grand Ledge) referred to the Senate Committee on Banking and Financial Institutions.

List of Monitored Legislation

HB 4021 PROBATE ([Kosowski](#))

Allows probate judges to schedule certain hearings before minor turns 18 years of age.

[Text/Analysis](#)

Introduced (1/12/2017; To [Judiciary](#))

HB 4043 VULNERABLE ADULTS ([Kosowski](#))

Establishes missing senior and vulnerable adult plan.

[Text/Analysis](#)

Introduced (1/18/2017; To [Law and Justice](#))

HB 4104 PROPERTY TAX (Wentworth)

Provides for requirement to issue a receipt to disabled veteran filling an affidavit for exemption of property taxes.

[Text/Analysis](#)

Introduced (1/26/2017; To [Tax Policy](#))

HB 4111 VETERAN PROPERTY TAX (Yanez)

Increases property tax credit for certain qualified veterans.

[Text/Analysis](#)

Introduced (1/26/2017; To [Tax Policy](#))

HB 4170 HEALTH (Tedder)

Allows physician orders for scope of treatment forms.

[Text/Analysis](#)

Introduced (2/7/2017; To [Health Policy](#))

HB 4171 PROBATE (Cox)

Authorizes a guardian to sign physician orders for scope of treatment form.

[Text/Analysis](#)

Introduced (2/7/2017; To [Health Policy](#))

HB 4173 HUMAN SERVICES (Vaupel)

Establishes procedure if adult foster care facility is unwilling to comply with physician orders for scope of treatment form.

[Text/Analysis](#)

Introduced (2/7/2017)

HB 4174 SCOPE OF TREATMENT (Love)

Revises procedure for complying with a do-not-resuscitate order to reflect physician orders for scope of treatment forms.

[Text/Analysis](#)

Introduced (2/8/2017; To [Health Policy](#))

HB 4209 COURTS (Lucido)

Increases juror compensation.

[Text/Analysis](#)

Passed in Senate (5/30/2017; 38-0, Immediate Effect)

HB 4210 JURIES (Lucido)

Provides for increase in juror compensation.

[Text/Analysis](#)

Passed in Senate (5/30/2017; 38-0, Immediate Effect)

HB 4410 WILLS AND ESTATES (Lucido)

Allows decedent to exclude adult child by written instrument.

[Text/Analysis](#)

Introduced (3/23/2017; To [Judiciary](#))

[HB 4532](#) MARITAL STATUS ([Whiteford](#))

Modifies marital status in instruments conveying or mortgaging real estate.

[Text/Analysis](#)

Advanced to Third Reading in House (5/30/2017; With substitute H-1)

[SB 39](#) (PA 20) SURVIVING SPOUSE ([Jones](#))

Revises exceptions to definition of surviving spouse in relation to funeral representative.

[Text/Analysis](#)

Signed by the Governor (3/31/2017; Signed: March 30, 2017; Effective: March 31, 2017)

[SB 49](#) PROFESSIONAL GUARDIAN ([Booher](#))

Modifies provision related to compensation for professional guardian or professional conservator.

[Text/Analysis](#)

Reported in House (3/28/2017; Amendment adopted; By [Judiciary](#))

[SB 78](#) HOMESTEAD EXEMPTIONS ([Nofs](#))

Continues homestead exemption upon death of homeowner under certain conditions.

[Text/Analysis](#)

Received in House (4/20/2017; To [Tax Policy](#))

Passed in Senate (4/20/2017; 37-0)

[SB 378](#) HOMES FOR AGED ([Knollenberg](#))

Exempts homes for the aged from licensing.

[Text/Analysis](#)

Introduced (5/16/2017; To [Regulatory Reform](#))