

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

May 6, 2017

Location: State Bar of Michigan, 306 Townsend, Lansing, MI. Participants had the option to appear by telephone.

Attendance:

- **In Person:** Sara Schimke*, Christopher Smith*, Beth Swagman*, Michael Mestelle*, Christine Caswell*, Caroline Dellenbusch*, Raymond A. Harris*, Robert Mannor*, Brad Vauter, Susan Chalgian, Jill Goodell, Nicholas Ryan.

- **On Phone:** Michele Fuller-Urbatsch*, Theresa Orlaske-Rich*, Kelly Quardokus*, Howard Collens*, Erma Yarbrough-Thomas*, Angela Hentkowski*, Maria Messina Wiersma*, John Payne*, Paul Sturgul, Deb Clawson, Don Rosenberg, David Kerr, Megan Edmonds, Todd Tennis.

16 out of 20 members of Council were present.

* Indicates Council member.

I. Executive Reports.

1. **Minutes.** The minutes from the April meeting were submitted for Council's approval. **Beth Swagman** moved to approve the minutes. **Michael Mestelle** seconded the motion. The April minutes were approved unanimously.

2. **Treasurer's Report.** **Beth Swagman** indicated there were no significant changes to the Section's budget since the last meeting.

II. Committee Reports.

1. **Fall Conference.** **Angela Hentkowski** reported that an e-blast would go out in May promoting the conference to the Elder and Probate sections. Angela indicated that typically an e-blast is also sent to the Health section, but we have never had a Health section attendee. Thus, everyone concurred that the section could save the funds and not send an e-blast to the Health section.

2. **Legislation Committee.**

- a) *POST*. Committee chair, **Kelly Quardokus**, indicated that the Committee wished to update its public policy position for the Physician Order Scope of Treatment (POST) legislation (Michigan House Bills 4170-4174) to be more particular about the Council's concerns. The following motion was made:

Motion (Beth Swagman; second Michael Mestelle):

The Elder and Disability Rights Section of the State Bar of Michigan supports House Bills 4170-4174 provided that it is amended to coordinate the language in the current POST legislation with existing EPIC language concerning Patient Advocate Designation statutes and eliminates additional consent requirements regarding the removal of feeding tubes/hydration when the right to revoke is already included in the bill.

Additionally, the Elder and Disability Rights Section recommends that Section 5676(1)(A)(v) of HB 4170 be revised to coordinate with POST language already in use in other states as to when a POST form should be "reviewed" as opposed to when POST form is "VOID." The Section's recommendations include: "reviewing" forms when there are patient changes in residency, a physician, medical conditions, treatment preferences, or when annual signatures or dates are missing, before automatically voiding a POST form in order to allow for more continuity between states and to preserve possible national funding or training opportunities for Michigan.

Yeas: Sara Schimke, Christopher Smith, Beth Swagman, Michael Mestelle, Christine Caswell, Caroline Dellenbusch, Raymond Harris, Theresa Orlaske-Rich, Kelly Quardokus, Howard Collens, Angela Hentkowski, Erma Yarbrough-Thomas, John Payne.

Nays: None.

Abstain: Maria Messina Wiersma, Robert Mannor, Chair.

13 yeas, 0 nays, 3 abstentions. Motion passes.

- b) *Other Legislation.* **Todd Tennis** provided a legislative update, which is attached and incorporated into these minutes. Regarding Community Mental Health privatization, both the House and Senate budgets largely ignored the recommendations of the Section 298 Workgroup and have proposed some at least initial movement towards privatization.
- c) *Financial Endangered Adult Legislation.* The Committee is still reviewing and providing comment on the financially endangered adult legislation proposed by Representative Brinks. **Brad Vauter** noted that even if this legislation is not passed by Michigan, proposed SEC regulations will accomplish much of the same things and that the SEC regulations should be coordinated with the Michigan legislation. For speaking up, Brad was drafted to work with the legislative committee on this legislation.
- d) *Waiver.* It was noted in the meeting that Tri-County Area Agency on Aging put out a notice that it was no longer accepting individuals on its waiting list. Although nobody else has seen the issue, Council is asked to let the committee know if they see issues elsewhere.

3. **Education and Outreach.**

- a) *“Who Should You Trust” Presentations.* **Erma Yarbrough-Thomas** indicated that she attended a teleconference for the State Bar of Michigan’s “Who Should You Trust” outreach presentations. Erma stated that Section members should let her know if they are interested in doing a presentation.
- b) *Utica Baseball Outing.* The Committee is working on a social mixer for the Section (and possibly other Sections) at the baseball park in Utica, Michigan.
- c) **Free Membership for This Year to New Members.** **John Payne** suggested that the Section offer free membership to new members that sign up this year as an incentive for them to become paying members with Bar Dues are sent out.

Motion (Caroline Dellenbusch; second Sara Schimke). The Section will offer free membership to new members for the remainder of the 2017 Bar year, so long as the membership will show up when the 2017-2018 State Bar statements are sent out.

The motion passed unanimously.

The meeting was then adjourned at 11:03 a.m.

Next Meeting: June 3, 2017, State Bar of Michigan, 306 Townsend, Lansing, at 10 a.m.

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

May 2, 2017

By Todd Tennis and Jean Doss

General Update on the Budget Process

As we prepare this report, both the House and Senate are wrapping up floor debate on their budget bills for Fiscal Year (FY) 2017-18. The House has rolled all department budgets into two omnibus budget bills; one for all education funding and one for everything else. The Senate is maintaining – for now – separate budget bills for most state departments. We expect the conference committee process to start the second week in May.

At this point, rather than accepting the general funding level in the Executive Budget recommendation, both the House and Senate are making large reductions in overall funding. The initial appropriation bills passed out of the House and Senate Appropriations Committees showed cuts of over \$200 million from the Governor’s initial proposal. These cuts were across the board, and included programs affecting seniors, state prisons and food assistance. Most observers initially felt that this was an attempt to identify enough spending reductions to revitalize the income tax cut bill that had been defeated in the House earlier this year.

Recently, another reason for making these budget cuts came to light. In late April, Senate Majority Leader Arlan Meekhof (R-West Olive) and Speaker of the House Tom Leonard (R-DeWitt) both called upon their caucuses to support the closure of the Michigan Public School Employees Retirement System. Such a move would shift future public school employees from a hybrid pension plan into a strictly 401(k)-style defined contribution plan. There is a cost to closing the current pension plan; best practice accounting standards call for acceleration in the payment of unfunded liabilities, a move that would cost the state over \$500 million next year alone, and billions over the next decade. By cutting funds for services in next year’s budget and borrowing from the Budget Stabilization Fund, Senator Meekhof and Speaker Leonard would be able to realize a longtime goal of ending traditional pensions for future school employees.

Over the last several years, the Legislature has consistently completed the budget by June. But as debates over public school employee pensions and the integration of behavioral and physical health financing are added to the usual list of controversial issues (e.g., roads, education), the Legislature may be forced to push back that arbitrary deadline.

Section 298, So-Called “Integration” Update

As ELDRS members know, “Section 298” refers to boilerplate in last year’s original Executive budget recommendation that would have moved Michigan’s \$2.6 billion public behavioral health care system over to the 11 largely private for-profit Medicaid managed care organizations which oversee physical health programs. This proposed “integration” of the two systems was hugely unpopular among many behavioral health advocates, and eventually the issue was removed from the 2017 budget bill and replaced with language creating a work group to study the issue.

Fast forward to this spring: both the Interim and Final Section 298 workgroup reports, reflecting the input of over 1,700 stakeholders, overwhelmingly support retaining public management of the state’s behavioral health and intellectual/developmental disability supports and services. Despite this, both the House and Senate Appropriations Subcommittees budget bills for FY 17-18 *promote* privatization. The Senate DHHS budget bill calls for full privatization by September 2020, and the House DHHS budget bill has language calling for pilots that “integrate” behavioral and physical health systems under private health plans. All budget bills ultimately end up in conference committee. See below for more details. ELDRS members wishing to communicate their views on this budget issue to their state legislators should do so soon, as the Legislature is hoping to wrap up work on the FY 17-18 budget by late May/early June.

Specific Budget Items of Interest to ELDRS Members

PACE (Program of All-inclusive Care for the Elderly)

Executive recommendation (Exec. Rec.): adds \$20 million Gross (\$7 mill. GF/GP) to support enrollment increases within existing programs and for 2 new PACE sites in Newaygo County and central Michigan. The increase is offset with assumed long-term savings.

Current House version: The Exec. Recommendation included a 2.5% per member per month rate increase. House includes a 1.0% per member per month rate increase

Current Senate version: concurs with Exec. Recommendation.

Senior In-Home Services

Exec. Rec.: increases funding by \$2.1 mill GF/GP, which – together with increase in 16-17 FY budget, should meet demand and eliminate waiting lists for services as of 9/30/16.

Current House version: \$1.0 mill increase

Current Senate version: concurs with Exec. Recommendation.

Senior Meals and Nutrition Services

Exec. Rec.: includes \$1.5 mill increase. \$1.7 million in Federal grant increase also included. Should meet demand and eliminate waiting lists for services as of 9/30/16.

Current House version: provides \$750,000 increase.

Current Senate version: concurs with Exec. Recommendation.

New Nursing Facility Quality Pool

Exec. Rec.: Creates a new QAAP-funded nursing facility quality pool of \$73 mill (reduces \$8.2 mill in state retainer savings).

Current House version: concurs with Exec. Recommendation.

Current Senate version: Senate creates a \$100 point of difference for this initiative.

Wage Increase for PHIP Direct Care Workers

Exec. Rec.: includes funding to increase direct care worker wages by \$0.50/hr. by increasing the payment rate for specific direct care activities.

Current House version: House provided a \$0.25/hr. wage increase over the entire year.

Current Senate version: Senate delayed this increase to April 1, 2018 (instead of Oct. 1, 2017, which is the beginning of the fiscal year).

Revised Section 298 boilerplate (sometimes referred to as “integration boilerplate”)

Exec. Rec.: (similar to current year boilerplate) “The department shall continue working with stakeholders to improve the coordination of publicly funded physical health and behavioral health services in Michigan. 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, mental health and physical health needs shall be built upon the published core values agreed upon by the Section 298 Stakeholder Workgroup. These values include, but are not limited to, person centered planning with the expectation of high quality and consistent care provided statewide.”

Current House version: 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. (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) be consistent with the core values of the Sec. 298 Workgroup, and (c) 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.

Current Senate version: Language rewritten to read: “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.”

Also, the Senate budget contains Section 234: Requires the Department to advance pilots that integrate Medicaid behavioral and physical health, and periodically consult with stakeholder groups, the medical care advisory committee, and the legislature. Requires all savings resulting from the pilot be reinvested for services for the pilot behavioral health population and requires a report on savings by April 1. States that the goal of the demonstration models is to achieve integration by September 30, 2020.

POST Bill Gets New Draft

House Bill 4071, the main bill in the package of legislation that would create a Physician Order for Scope of Treatment form in Michigan, has a new draft form. Representative Tedder (R-Waterford), the bill sponsor, responded to concerns from ELDRS by making several changes to his original bill. The most significant change surrounds the treatment of medically assisted nutrition. The original bill would have required the patient or a patient advocate to have a secondary consent at the time medically assisted nutrition would be removed or refused, over and above the decisions in the POST form. At our request, that requirement was removed from the new draft of the bill.

Several other changes were also made to address inconsistencies in definitions and technical issues in order to ensure that the new law will not conflict with other existing laws relating to end of life decisions, guardianships and patient advocates. The ELDRS Legislative Committee is conducting a review of the new draft, and already several new changes have been identified. It will be important to make sure that all of ELDRS’ concerns are addressed when we next communicate with Representative Tedder, since we do not want to have a third round of amendments.

The bill is currently scheduled for a hearing in the House Health Policy Committee on May 24.

First Bills in Bipartisan, Bicameral Effort to Address Financial Exploitation of Elders Introduced

Sen. Jim Ananich (R-Flint) and Rep. Winnie Brinks (D-Grand Rapids) became interested in sponsoring legislation addressing financial exploitation of vulnerable adults after seeing similar bills pass with strong bipartisan support in other states. The two lawmakers shared initial drafts with ELDRS Legislative Committee members last month. Committee members, while supporting the general intent of the bills, had serious concerns with the drafts, and shared those concerns and alternative language with the legislators and their staff. Meanwhile, to ensure the package was both bicameral and bipartisan, the two Democrats recruited Sen. Rick Jones (R-Grand Ledge) and Rep. Joe Graves (R-Linden) as co-sponsors.

This week, the two bills were introduced in the Senate as SB 345 and SB 346, and referred to the Senate Committee on Banking and Financial Institutions. We expect the House bills to be introduced shortly. Requesting revised drafts from the Legislative Service Bureau can take additional time – sometimes weeks – so the sponsors chose to introduce the bills without ELDRS suggested changes. However, in a conference call with staff from all four offices, ELDRS Legislative Committee Chair and the Council’s lobbyists were assured that it is the intent of the sponsors to revise the bills to address ELDRS concerns. The Council’s lobbyists will be meeting with staff in the coming weeks to work on revised substitutes of the bills reflecting ELDRS suggested changes.

Legislation Tracking Report:

[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](#)

Reported in House (4/25/2017; By [Law and Justice](#))

[HB 4210](#) JURIES ([Lucido](#))

Provides for increase in juror compensation.

[Text/Analysis](#)

Reported in House (4/25/2017; By [Law and Justice](#))

[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](#)

Introduced (4/26/2017; To [Financial Liability Reform](#))

[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)