

ELDRS Update

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This is a publication of the Elder Law & Disability Rights Section of the State Bar of Michigan. All opinions are those of the respective authors and do not represent official positions of the Elder Law & Disability Rights Section or the State Bar of Michigan. Comments or submissions should be directed to Christine Caswell, Editor, at christine@caswellpllc.com.

Fall Conference Registration Open

[Online registration](#) is now open for ELDRS Fall Conference, October 2-4 at the Crystal Mountain Resort. [Mail-in](#) forms are also available. The registration deadline is September 25. Hotel reservations may be made by calling Crystal Mountain at 855.520.2974 or booking [online](#). The group code is 4656TS. Reservations must be made by September 1, 2019 to ensure booking at the discounted rate.

This year's keynote speaker is Eric Carlson, Directing Attorney for Justice in Aging. He led Justice in Aging's extensive research (funded through The Commonwealth Fund) on Medicaid-funded assisted living and is currently leading a project to assist Medicaid consumers receiving long-term care services in Florida and New Jersey. Carlson also serves as president of the national Assisted Living Consumer Alliance and is author of the legal treatise *Long-Term Care Advocacy* (Matthew Bender and Co.).

Legislative Update

By Todd Tennis, Capitol Services, Inc.

ELDRS Advocacy Day



Immediate Past Chair Sara Schimke discusses ELDRS issues with Majority Whip Sen. Peter J. Lucido at the ELDRS Advocacy Day.

On May 21, over 30 members of the Elder Law and Disability Rights Section traveled to Lansing for the first annual ELDRS Advocacy Day. Attendees were able to discuss key issues with the legislature, including vulnerable adult abuse, funding for in-home care, and protecting the rights of those with disabilities. Members who came met with their state representatives and senators or their staff throughout the day.

The group was also able to hear presentations on important ELDRS issues and discuss various statutory and regulatory solutions to numerous concerns. Rep. Jon Hoadley, Vice-Chair of the House Appropriations Committee, gave an overview of the budget process, and Assistant Attorney General Scott Teter spoke about the Elder Abuse Task Force.



ELDRS Legislative Consultant Todd Tennis prepares attendees for meetings with their legislators.



ELDRS members take a lunch break between meetings with their legislators.

Most attendees reported that they were able to have productive meetings with their lawmakers and staff. The goal was to introduce ELDRS members as a resource for legislators, not only when it comes to policy questions, but also as a contact for constituent issues. Some of the topics attendees discussed included access to home and community-based services, the prevention of financial abuse against vulnerable adults, and concerns about the universal caseload system used by DHHS.

2019-2020 Budget

For the last eight years, the legislature has been able to finish the upcoming fiscal year budget by June or July. However, we now have split partisan power between the legislature and the governor, so House and Senate leaders have decided to hold off before presenting a budget to Gov. Whitmer. The deadline for having a budget in place is October 1, 2019. Because it seems likely that a budgetary showdown will occur, legislative leaders may think that their hand is strengthened by delaying completion of the budget for as long as possible. The governor and legislators are currently in discussions about the proposed funds.

Decision to Privatize Lakeshore PIHP Comes as a Surprise

On June 28, DHHS announced its contract with the Lakeshore Regional Entity Pre-Paid Inpatient Health Plan would be terminated as of October 1, 2019. Instead, the agency that will be responsible for allocating Medicaid mental health dollars in that region will be Beacon Health Options, a privately-run for-profit company. The state cited the poor fiscal health of Lakeshore Regional Entity as the main reason for the move. Lakeshore Regional Entity covers Allegan, Kent, Lake, Mason, Muskegon, Oceana, and Ottawa counties.

There are 10 PIHPs in Michigan, and the remaining nine that are currently publicly-operated fear that this could be the first attempt to privatize the mental health system in Michigan. In a letter to Director Robert Gordon, signed by the heads of all 10 PIHPs in Michigan (including Lakeshore), the authors argue that it is unfair to punish a PIHP or Community Mental Health Agency for fiscal distress after the state reduced its support of these agencies by approximately \$500 million since 2012. Efforts continue to get the state to reverse the decision, but at this point, it seems that Beacon Health Options will take over the contract in October.

Back to Basics Webinar Series

By Maria R. Messina Wiersma, Chalgian & Tripp Law Offices, PLLC, Southfield

Our Back to Basics Webinar series continues as an exclusive benefit to ELDRS Section members. Adding even more to the value of your membership, this benefit extends to your assistants and paralegals as well. Tune in to the upcoming webinars listed below:

8-15-19 **Special Needs Toolbox**

Noon Christopher W. Smith, Chalgian & Tripp Law Offices, PLLC, Southfield

<https://attendee.gotowebinar.com/register/1912008236461036034>

9-09-19 **VA Aid & Attendance Basics**

Noon Robert D. Mannor, Mannor Law Group PLLC, Grand Blanc

<https://attendee.gotowebinar.com/register/2149153103363033346>

11-12-19 **Handling Fiduciary Real Estate Transactions**

Noon Christine Caswell, Caswell Law PLLC, Lansing

<https://attendee.gotowebinar.com/register/3540593867783883277>

1-9-20 **PACE Program**

Noon Erin Majka, Chalgian & Tripp Law Offices, PLLC, Kalamazoo

<https://attendee.gotowebinar.com/register/8768323057514517259>

Looking for more topics? Interested in presenting? Contact Maria R. Messina Wiersma at messina@mielderlaw.com with your request.

New Florida Electronic Documents Act

By Raymond A. Harris, Buhl, Little, Lynwood & Harris, PLC, East Lansing

Editor's Note: Mr. Harris is licensed to practice law in both Michigan and Florida.

With the signing of the Electronic Documents Act ("EDA") by Governor Ron DeSantis on June 7, 2019, Florida joined Nevada, Indiana, and Arizona in allowing electronic wills.

Background

In early 2017, various groups in Florida brought forth House Bill 277, commonly known as the Florida Electronic Wills Act ("FEWA") over the objections of the Florida Real Property, Probate and Trust Law Section of the Florida Bar. After quickly passing through both the House and Senate (passing the Senate by a 34-0 vote), Gov. Rick Scott vetoed FEWA on June 29, 2017. Gov. Scott issued a letter¹ which accompanied his veto in which he expressed concerns that remote notarization would not adequately ensure authentication of the parties to the document, as well as the potential burden on the Florida probate court system.

The EDA was introduced in early 2019 and was supported by lobbyists representing realtors, credit unions, AARP, title companies, and the Florida Bankers Association, among others. Unlike the FEWA, it faced little opposition and was signed into law on June 7, 2019. It will go into effect on January 1, 2020.

The EDA allows:

- Electronic signing, witnessing, and notarization of wills and other estate planning documents.
- Remote signing by the testator, witnesses, and notary.
- Digital storage of the document and the video of the signing process by a qualified custodian without the need to retain a physical copy of the document. The electronic will may then be admitted to Florida probate through the e-filing portal and is deemed to be an original document for probate purposes.

The EDA's Procedure for Electronic Wills

In Florida, a traditional will must be signed by the testator in the presence of two witnesses and a notary who all sign the document at the same time and place. The EDA changes this to allow all parties to sign digitally and further allows for remote execution when none of the parties are in the same location.

The EDA implements strict procedures to properly execute an electronic will, including the requirement that remote parties must all be able to see and hear each other through a secure videoconference link such as Skype. Additionally, the signatures of vulnerable adults are automatically voidable under the new law unless the witnesses are physically present with the individual² and financial powers of attorney containing "superpowers"³ may similarly only be signed in person.

Electronic Will Concerns

Because electronic wills represent the cutting edge of the merging of modern technology and ancient legal doctrines, many questions still remain.

- Currently, only four states recognize electronic wills. If the testator passes away in a state that does not recognize electronic wills, is the testator now intestate?
- As every estate planning attorney knows, the execution of a will with proper formalities helps reduce fraud or undue influence on the testator. However, the remote witnessing of an electronic

document may not allow the attorney to ensure that no one is sitting outside the view of the camera and threatening or otherwise influencing the testator.

- To become an online notary, a notary public must take additional training courses and be bonded for a minimum of \$25,000. In the short term, how many notaries will actually do this?
- What happens if the online custodian of the will goes out of business or is hacked? For example, assume a digital custodian suffers a ransomware attack wherein the criminals demand an exorbitant fee to unlock the documents. What if the vendor then turns to individuals for whom it is storing documents to contribute to the ransom or simply folds its business?

Conclusion

Although relatively new, electronic wills and other estate planning documents will most likely become the norm in the coming decades, the various issues will need to be conclusively answered before attorneys recommend this procedure to clients. Instead, in the immediate future, the new law will likely be utilized by individuals seeking to prepare their own documents without the assistance of an attorney.

¹The letter may be found at <https://floridaprobate.lexblogplatform.com/wp-content/uploads/sites/206/2017/06/HB-277-Veto-Letter.pdf>.

²Florida defines “vulnerable adult” as a person age 18 or older “whose ability to perform the normal activities of daily living or to provide for his or own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.” FS 415.102(28).

³Florida “superpowers” within financial durable powers of attorney include the power to create or revoke inter vivos trusts, make gifts of the principal’s assets, change beneficiary designations, disclaim property, and change the rights of survivorship. FS 709.2202.

Calendar of Events

By Erma S. Thomas, Neighborhood Legal Services Michigan Elder Law & Advocacy Center, Redford

ELDRS – www.michbar.org/elderlaw

Sept. 7 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.

Oct. 2-4 - ELDRS Fall Conference and Annual Meeting, Crystal Mountain Resort

Nov. 2 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend Street, Lansing at 10 a.m.

NAELA – www.naela.org

Aug. 15-17 - 14th Annual Council of Advanced Practitioners Conference, Grand Bohemian Hotel in Asheville, North Carolina

Nov. 14-16 - 2019 NAELA Summit, Washington DC

ICLE/SBM – www.icle.org

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| Sept. 12-13 | Elder Law Institute, 5 th Annual, Plymouth (Live) |
| Sept. 13 | Medicaid Workshop: Navigating MI Choice Waiver & Beyond, Plymouth (Live) |
| Sept. 19 | Drafting an Estate Plan for an Estate Under 5 Million, Plymouth (Live) |
| Sept 26-28 &
Oct 18-19 | 40-Hour General Civil Mediation Training, Plymouth (Live) |
| Nov. 7 | Veterans Benefits & Claims: A Practical Approach, Plymouth (Live) |
| Nov. 21 | Ultimate Evidence Workshop: Admitting, Impeaching, and Objecting, Plymouth |