

# ELDRS Update

## Winter 2026, Volume XII, Issue 4

*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.*

### ***From the Chair***

*By Susan Lucile Chalgian, Chalgian & Tripp Law Offices, East Lansing*



#### **2026 Legislative Day**

Block your calendar!!! ELDRS's Legislative Day is Tuesday, February 24th (rescheduled to avoid the mid-winter break closures). We will meet at 10 am at the State Bar of Michigan before heading out to our legislators' offices.

A long-standing tradition, ELDRS members attend meetings with Michigan legislators to bring attention to issues that matter to our clients. You might think is it worth taking a day away from the office? Has anything changed from these meetings if we still face so many roadblocks? YES. Our Section now receives personal invitations to weigh in on legislative issues that may affect our clients. Our public policy positions are respected and thoughtfully considered. The bills we draft are moving in the right direction. And nothing impresses a client more than your big-time advocacy on their behalf. We look forward to eating lunch with you between meetings and snapping a great marketing photo of you on the Capitol lawn!

#### ***Save the Dates***

**2026 Legislative Day** - 10 am, February 24, State Bar of Michigan, Lansing (new date)

**2026 Spring Conference** - March 6, Kellogg Center, East Lansing (agenda below)

[\*\*Register Today\*\*](#)

**2026 Fall Conference**  
September 23-25  
Embassy Suites  
Grand Rapids

### ***ELDRS 2026 Spring Conference Agenda and Registration***

**Date:** Friday, March 6, 2026

**Time:** 9 am - 3:30 pm

**Location:** Kellogg Hotel and Conference Center, 219 South Harrison Rd, East Lansing, MI 48824

**Cost:** \$200 for Elder Law & Disability Rights Section, Probate & Estate Planning Section, and Young Lawyers Section members; \$250 for nonmembers

[\*\*Register Today\*\*](#)

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## Agenda

- 8:30-9 am - Registration
- 9-10 am - Attorney Ethics: Diminished Capacity and Confidentiality, Alecia Chandler
- 10-10:45 am - Long Term Care in Amsterdam, Robert Mannor & Kelli King-Penner
- 10:45-11 am - Break
- 11 am-Noon - How to Identify and Then Make an ADA Complaint, Michael Bartnik
- Noon-1 pm - Lunch with Michigan Rep. Sarah Lightner
- 1-2 pm - Involuntary Discharge Defense Nursing Homes, Mireille Phillips
- 2-2:15 - Break
- 2:15-3:30 pm - The Truth About MI Choice Waiver, Elizabeth Gallagher

If you require accommodations to participate in the conference, please reach out to Harley D. Manela at [hmanela@teclf.com](mailto:hmanela@teclf.com) or (248) 538-1800 as soon as possible. If you would like to be a sponsor, please reach out to Harley D. Manela at [hmanela@teclf.com](mailto:hmanela@teclf.com) or (248) 538-1800.

## ***Is Non-Homestead Real Property Owned as Joint Tenants with Rights of Survivorship a Countable Asset in the Medicaid Program?***

*By David L. Shultz, Of Counsel, Chalgian and Tripp Law Offices PLLC, East Lansing*

A new client meets with you to learn how the client might qualify for the Medicaid program to help pay for long-term care costs. Client owns a home in Southeast Michigan and also owns property in Northern Michigan. Client and brother inherited that property from their parents. They own it as joint tenants with rights of survivorship (JTWROS). The brother refuses to sell the property.

You consult the Michigan Department of Health and Human Services (MDHHS) Bridges Eligibility Manual (BEM), and you learn:

1. "Michigan Medicaid policy acknowledges that for property owned as JTWROS, no owner can sell unless all owners agree."<sup>1</sup>
2. "An asset is unavailable if all the following are true, and an owner **cannot** sell or spend their share of an asset:
  - Without another owner's consent.
  - The other owner is not in the asset group.
  - The other owner refuses consent."<sup>2</sup>

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<sup>1</sup> BEM 400, page 13. The BEM is available online at: [mdhhs-pres-prod.michigan.gov/olmweb/ex/html/](http://mdhhs-pres-prod.michigan.gov/olmweb/ex/html/).

<sup>2</sup> *Id.*, at page 12.

3. “An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset.”

Assume an asset is available unless evidence shows it is **not** available.”<sup>3</sup>

BEM policy indicates the client’s interest in the property client holds as JTWROS with brother should not be counted in determining client’s eligibility for Medicaid if it can be proven that brother refuses to sell.

However, there is a potential problem. It is not unusual now for MDHHS to treat non-homestead property owned as JTWROS with one owner refusing to sell as a countable asset **unless** a joint owner lives in the property and the following requirements are met:

- “Jointly owned real property is only excludable if it creates a hardship for the other owners.”<sup>4</sup>
- “For jointly owned real property count the individual’s share unless sale of the property would cause undue hardship. Undue hardship for this item is defined as a co-owner who uses the property as his or her principal place of residence **and** they would have to move if the property were sold **and** there is no readily available housing.”<sup>5</sup>

MDHHS’s reliance on this “undue hardship” policy is wrong. It is a resource exclusion applicable to property that is otherwise countable. Medicaid law and policy never treat assets that are unavailable as countable resources. In the client’s situation, the only circumstances under which this resource exclusion would come into play are (1) if the client’s brother consented to sale of the property or (2) if the client owned the property with brother as tenants in common, thereby making the client’s interest a countable resource.

“Federal Medicaid law requires a state plan for medical assistance to include a description of the criteria for determining the eligibility of an individual and the methodology to be employed in determining such eligibility.” It shall be no more restrictive than the methodology which would be employed under the supplemental security income program in the case of groups consisting of aged, blind, or disabled individuals in a State in which such program is in effect.<sup>6</sup>

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<sup>3</sup> *Id.*, at page 10.

<sup>4</sup> *Id.*, at page 12.

<sup>5</sup> *Id.*, at page 13.

<sup>6</sup> 42 USC 1396a(a)(10)(C)(i). Note: Under 42 CFR 435.121, States may opt to apply stricter standards for determining Medicaid eligibility. Michigan has not made that election. Connecticut, Hawaii, Illinois, Minnesota, New Hampshire, North Dakota, and Virginia have chosen in their State Medicaid Plans to use their own stricter criteria to determine Medicaid eligibility. This option comes from Section 209(b) of the Social Security Amendments of 1972. States electing this option are called 209(b) States. See also POMS SI 01715.010.

7. See 42 CFR 435.401(c)(2) and 42 CFR 435.601(b) and (d).

The federal regulations governing the Medicaid program echo this requirement.<sup>7</sup> In its Medicaid State Plan, the State of Michigan has confirmed it uses the methods of the SSI program to determine countable resources of aged, blind, and disabled individuals, including ones more liberal than those used in the SSI program.<sup>8</sup>

*What are the pertinent criteria and methodology for determining eligibility in the SSI program?* The Social Security Administration issues policy governing the Supplemental Security Income (SSI) program in its Program Operations Manual System (POMS). The POMS acknowledge that in Michigan, a deed stating there is a “A right of survivorship” means consent of the other owners is necessary for transfer of the individual’s ownership interest.<sup>9</sup> The POMS states an individual who has an ownership interest in property but is not legally able to transfer that interest to anyone else does not have a resource.<sup>10</sup> The client’s interest in the Northern Michigan property is not a resource because his brother refuses to sell. For that reason, the value of his interest does not count against the resource limit for the SSI program.<sup>11</sup> Nor does it count against Michigan’s Medicaid asset limit.

“An asset an individual owns, has the right, authority, or power to convert to cash (if not already cash) and which the individual is not legally restricted from using for their support and maintenance is a resource.”<sup>12</sup> The value of a resource counts against the resource limits for the SSI and Medicaid programs, unless it qualifies for a resource exclusion. The POMS include the same resource exclusion in BEM policy for jointly owned real property which cannot be sold without undue hardship (due to loss of housing) to the other owner(s).<sup>13</sup> However, that exclusion only applies to jointly owned real property that is a resource, the value of which would otherwise be countable without the exclusion. It is wrong for MDHHS to require an individual to satisfy the requirements for this exclusion when a person’s interest in jointly owned real property is not a resource.

Medicaid policy is complicated and it is often poorly written. MDHHS staff sometimes confuse and misapply it. This writer hopes the information in this article will help if you need to

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<sup>7</sup> See 42 CFR 435.401(c)(2) and 42 CFR 435.601(b) and (d).

<sup>8</sup> Michigan Medicaid State Plan, Attachment 2.6-A, Pages 12g, 16a, 17, and 18.

The Medicaid State Plan is available online at: [mdch.state.mi.us/dch-medicaid/manuals/MichiganStatePlan/MichiganStatePlan.pdf](http://mdch.state.mi.us/dch-medicaid/manuals/MichiganStatePlan/MichiganStatePlan.pdf).

<sup>9</sup> POMS SI CHI01110.510.B. See also, *Albro v Allen*, 437 Mich 271, 454 NW2d 85 (1990). The POMS for the SSI program is available online at: [secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&restricttocategory=05](http://secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&restricttocategory=05).

<sup>10</sup> 20 CFR 416.1201(a)(1), POMS SI 01110.100.B.3 and POMS SI 01110.115.A.

<sup>11</sup> POMS SI 0110.100.A.

<sup>12</sup> 20 CFR 416.1201(a) and (a)(1) and POMS SI 01110.100.B.1.

<sup>13</sup> POMS SI 01130.130. This exclusion does not appear in the federal regulations for the SSI program.

advocate for a Medicaid applicant who owns real property as JTWROS and the other owner(s) refuses to sell.<sup>14</sup>

## ***Legislative Update***

*By Todd Tennis, Capitol Services, Inc.*

### **2026 Has Potential to be Big Year for ELDRS**

In my last column, I wrote that 2026 will be hard to predict in terms of legislative activity. That it is an election year is a double-edged sword. On the one hand, lawmakers who are in tough re-election races will be very eager to move legislation to show what benefits they are bringing to their districts. On the other hand, lawmakers will be much more skittish about voting for legislation that could be seen as controversial. Moreover, 2025 was the least active year in Michigan history in terms of legislative production, and it is hard to forecast if House and Senate leaders will kick it up a notch in 2026. If they do, ELDRS is at least poised to move legislation that we have championed for the last few years. These legislative goals include amendments to Medicaid eligibility pertaining to personal assistance contracts; a permanent statute regarding remote witnessing and notarization of legal documents; and improvements to state pension systems to ensure that adult children with disabilities will not be negatively impacted when they receive survivorship benefits.

Senate Bill 266, introduced by Sen. Kevin Hertel (D-St. Clair Shores), seeks to prohibit the Michigan Department of Health and Human Services from requiring notarized care contracts when assessing Medicaid long-term care eligibility. ELDRS has lobbied for over a decade for the discontinuation of this practice, which treats applicants as if they were somehow hiding income just for hiring personal care services. Most Michigan residents are unaware that a failure to maintain notarized contracts with care providers could negatively impact their application for Medicaid long-term care services. Senate Bill 266 passed the Senate with a 35-2 vote. Rep. Doug Wozniak (R-Shelby Twp.) has recently introduced the House version of the bill, House Bill 5405. Both bills are awaiting action in the House Health Policy Committee.

A package of bills has been introduced in the House aiming to protect public school and state employees with adult children with disabilities from unintended consequences related to inherited pension benefits. House Bills 4657-4660 were introduced by Rep. Tyrone Carter (D-Detroit), Rep. Stephanie Young (D-Detroit), Rep. Kara Hope (D-Delhi Twp.) and Rep. Doug

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<sup>14</sup>Adding a joint owner to an asset who can block its sale so the value of the asset is not counted does not work as a Medicaid planning technique unless that happens beyond the sixty-month look-back period described in BEM 405, page 5. Any action by the client that reduces or eliminates his ownership or control of an asset is considered a transfer subject to a Medicaid divestment determination. See the example at the bottom of BEM 405, page 3.

Wozniak (R-Shelby Twp.). The bills seek to address when a member of a state-operated pension system opts to include survivorship benefits for these adult children. Once the adult child becomes the beneficiary, in most cases, their new income would disqualify them from other benefits related to housing, mobility, and health care. To address this, the bills would allow the pension benefits to be placed in a trust on behalf of the child, thereby granting them the additional income their parent desired without threatening other necessary supportive benefits. These bills are awaiting action in the House Judiciary Committee.

The section has also been working with Rep. Sarah Lightner (R-Springport) on the reintroduction of remote witnessing and notarization bills. Last session, identical bills passed the House overwhelmingly but failed to get through the Senate calendar before time ran out at the end of session. The goal is to provide a method for attorneys and their staff to remotely witness and notarize documents to provide better security and convenience for clients, particularly those who are elderly or disabled. Once the bills are introduced, we expect them to be referred to the House Judiciary Committee chaired by Rep. Lightner.

Although it is still unclear how much volume the House and Senate will move in 2026 regarding individual pieces of legislation, our hope is that these and other ELDRS priorities will be well-positioned to make the cut. All of these bills have passed at least one chamber in the past two years with overwhelming support. We just need to bring it all together this year to get them across the finish line. With that in mind, we encourage our members to contact their state representatives and senators about supporting these bills.

### ***Mental Health Update from MHAM***

*The following is published with permission from the Mental Health Association in Michigan (MHAM) from its January 19, 2026 State Mental Health Public Policy Update. Some parts have been edited.*

#### **Region 10 PIHP, et al., v the Mich Dept of Health and Human Services (MDHHS)**

On August 29, 2025, a group of community mental health services providers (CMHSPS) and Prepaid Inpatient Health Plans (PIHPS) filed a lawsuit against the Michigan Department of Health and Human Services (MDHHS) in response to MDHHS' Request for Proposals (RFP), issued on August 4, 2025, to replace the current PIHPS through a competitive procurement process.

The lawsuit alleged MDHHS did not have the authority to competitively bid out the PIHPS. According to the complaint, "This case challenges the State of Michigan's unlawful attempt to eliminate the statutory authority of community mental health services programs (CMHSPs) to choose whether to form regional entities with their selected partners and the State's attempt to eliminate the statutory authority of those regional entities to serve as

specialty prepaid health plans (PIHPs) for their respective regions. The State is doing so through a procurement process that bars the regional entities from bidding."

On January 8, 2026, the Hon. Christopher Yates issued an opinion:

"The court hereby issues a declaratory pronouncement that the RFP, as drafted, impermissibly conflicts with Michigan law in numerous respects, especially insofar as the RFP restricts CMHSPs from entering into financial contracts for the purpose of funding CMHSPs' managed-care functions.

"However, the court will not yet issue injunctive relief that directs defendants to amend or pull back the RFP. Defendants must decide, in the first instance, how to address the conflicts between Michigan law and the RFP that the court has identified."

Judge Yates further indicated that the RFP violates several sections of Michigan law and stated, "Whether compliance with Michigan law should be achieved through a notice of deficiency, an amended RFP or a pull-back of the RFP is a matter that the Court must leave to the defendants." In other words, the judge did not tell MDHHS what it must do if it wishes to proceed with the procurement, but it is clear that the RFP is in violation of several sections of the Michigan Mental Health Code. It is now up to MDHHS to consider three options that were provided in the January 8, 2026 opinion. MDHHS has not issued a formal response to the court's decision.

*Editor's update:* Bridge Michigan reported on January 30, 2026 that MDHHS has withdrawn its RFP for "administration of \$4.9 billion in Medicaid funds for mental health care." See <https://bridgemi.com/michigan-health-watch/michigan-quietly-kills-effort-to-restructure-mental-health-care-system/>.

### Mental Health Framework

MDHHS announced the [Mental Health Framework](#) to provide a "person-centered approach" to meet the mental health needs of Michigan citizens. The Framework will change the way Michigan mental health services are provided to citizens with Medicaid. The MDHHS is requiring mental health providers, who serve those with Medicaid, to be trained in standardized assessment measures to ensure individuals' mental health needs are addressed appropriately. In this case, those who have low to moderate mental health needs are served by the Medicaid Health Plans. Those who have more significant behavioral health conditions are served by the community mental health system.

According to the [MDHHS website](#): The Michigan Department of Health and Human Services (MDHHS) is shifting to a **more person-centered approach to serving Michiganders with mental health needs**. As part of [MIHealthyLife](#), an initiative that began in 2022 to strengthen the Comprehensive Health Care Program (CHCP), MDHHS is partnering with Medicaid Health Plans

(MHPs), Prepaid Inpatient Health Plans (PIHPs), and providers to improve accountability for and coordination of mental health care across the Medicaid program.

Under the Mental Health Framework (MHF), an enrollee's level of mental health needs, as determined through a State-identified standardized assessment tool, will more clearly determine which plan—the enrollee's MHP or PIHP—is responsible for their mental health coverage and care. MHPs will also begin covering some additional mental health services for enrollees with lower levels of mental health need, so MHPs are accountable for more of these enrollees' continuum of care. Beginning in October 2026:

- MHPs will cover most mental health services for CHCP enrollees with lower levels of mental health needs, and
- PIHPs will cover all mental health services for CHCP enrollees with higher levels of mental health needs.

Although this has been practiced for years, the use of standardized assessment, such as LOCUS and the MichiCANS, by Medicaid providers who are not in the community mental health system is a new requirement. Providers who must be trained in MichiCANS and LOCUS have expressed concerns to MDHHS about the lack of available training which may negatively affect the delivery of services to individuals. As of now, providers have been told there is time for them to be trained in the assessments, and they can continue to meet with their clients.

## ***Calendar of Events***

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

**ELDRS – [www.michbar.org/elderlaw](http://www.michbar.org/elderlaw)**

### **Council Meetings**

- April 3 - 12 pm, zoom
- May 1 - 12 pm, zoom
- June 5 - 12 pm, zoom
- August 7 - 12 pm, zoom

## ELDRS Events

- February 24, Legislative Day, 10 am – 3 pm, State Bar of Michigan, Lansing
- March 6 - ELDRS Spring Conference, Kellogg Center, East Lansing, 8:30 am - 3:30 pm

## **NAELA – [www.naela.org](http://www.naela.org)**

- February 10 - Wealth Transfer Planning for Large IRAs; Presenter, Robert Keebler, Keebler & Associates, LLP, Webinar, 1-2 pm, EST
- March 12 - AI in Plain English for the Estate Planning & Elder Law Attorney; Presenters, Audrey Gay Ehrhardt, Julieanne Steinbacher, & Linda M. Strohschein, Webinar, 1-2pm, EST

## **ICLE/SBM – [www.icle.org](http://www.icle.org)**

- February 19 - Drafting Estate Planning Documents, 35th Annual, Livestream 9 am-12:35 pm, On Demand Seminar Available 3/12/2026
- February 26 - Ultimate Evidence Workshop: Admitting, Impeaching, and Objecting, Ann Arbor, 8:30 am-4:20 pm
- March 3 - Estate Planning for Retirement Assets, Livestream 9 am-1:30 pm, On Demand Seminar Available 3/24/2026
- March 19 - Drafting an Estate Plan for an Estate Under \$5 Million, Livestream 9 am-3:30 pm, On Demand Seminar Available 3/3/2026
- April 16 - Completing the Medicaid Application: A Hands-On Workshop, Livestream 1-4:45 pm