

ELDRS Update

Fall Edition 2016, Volume VI, Issue 3

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, Managing Editor, at christine@caswellpllc.com.

From the ELDRS Chair

By Michele P. Fuller-Urbatsch

Per tradition, I accepted the nomination to Chair of this wonderfully active section at our annual fall conference. Angela Hentkowski and the conference committee did another amazing job organizing the event and creating a well-rounded series of speakers who not only helped us hone our legal technical knowledge but also created opportunities for growth in managing our practices. I would also like to welcome Beth Swagman to the executive committee as our new Treasurer, as well as Caroline Dellenbusch, Ray Harris and Theresa Rich to the Council.

On behalf of the section, I would like to thank and acknowledge David Kerr and Jill Goodell for their service on the Council. Their terms have officially expired, but I hope that their active presence on behalf of the section will continue for their advocacy, skills, and wisdom are valued by all of us.

In preparation for assuming leadership of the ELDR section, I attended a full day training session at the State Bar. By far, the best experience was meeting and interacting with the other chairs of the different sections. The unique characteristic of our chosen area of practice is that it affects persons of all socio-economic levels. I was fortunate to make connections with chairs from Social Security, Family Law, Real Property, and other sections and discuss how our areas of practice are complimentary. There are new sections of the Bar that are looking for support, such as the LGBTA. I learned how particularly large sections, like Family Law, which has twice the number of members that we do, run its meetings to maximize effectiveness. One of the things I would like to do over the next year is co-host some networking events and educational events to create referral opportunities for our members, in addition to increasing our membership in numbers and diversity.

I have been thinking a great deal about how to maximize our effectiveness during meetings. I have a request for all attendees that may take some getting used to, which is being prepared in advance for meetings. Also, committee reports should be submitted in advance so that we can

be prepared and get to the heart of matters. Any council member who is not on a committee will be asked to choose at least one. In addition, and most importantly, I have asked that each committee come up with three goals to accomplish in the next year. Then, as a council, we can outline what our overall goals are for the Section.

This year, all meetings will be held at the State Bar of Michigan at 306 Townsend, Lansing, Michigan 48933. This was decided for several reasons. One, it was personal. I needed to have one less thing to figure out. Two, and most importantly, it has become very clear that the most effective meetings are those that are well attended in person. The location with the best attendance is universally in Lansing, which is equally inconvenient to most, including me. Three, the survey which Chris Smith conducted indicated that attendance was important and Lansing was a key location. However, the August meeting will generously continue to be hosted by Jim Steward and Angela Hentkowski in Ishpeming so that we can all have an excuse to take advantage of our beautiful northern Michigan summers, forever memorialized by Kid Rock.

Last year we had some great wins, such as getting FADA legislation passed and supporting important litigation efforts. I hope to add to the list in the coming year and open up opportunities for our members, while effectively dealing with challenges that may arise, together with all of you.

Sincerely,

Michele

Michigan-Specific Litigation Fund Donations

By Robert Mannor, Mannor Law Group, PLLC, Grand Blanc

The community of elder law and disability attorneys in Michigan is unique in its collegiality and cooperation. We all advocate to find, get, and pay for better care for our clients. Often this requires expensive litigation, which our clients cannot always afford, to address what we determine to be unlawful practices by government agencies. Nor can ELDRS afford to address all of the multiple issues from its annual budget.

To address this, the ELDRS' Council and the Michigan Chapter of the National Academy of Elder Law Attorneys (NAELA) have worked together to set up a Michigan-only 501(c)3 litigation fund through the NAELA Foundation. Consult your tax professional about the tax deductibility of your donation. Our ambitious goal is to have 100 firms or lawyers contribute \$1,000 to the fund. If you cannot contribute that much, every donation helps. This fund will help all of us to aggressively represent our clients.

To donate to the fund, checks should be written to the NAELA Foundation and sent to Katie Parker, Mannor Law Group, at 8226 S. Saginaw, Grand Blanc, MI 48439 with a notation that they are for the litigation fund.

To date, the following attorneys or firms have already contributed to the fund:

- Chalgian & Tripp Law Offices, PLLC
- Biddinger & Bitzer PLLC
- Laurie Murphy
- Law Office of Carol Thomas
- Christopher and Caroline Smith
- Patricia E. Kefalas Dudek
- Probate Support Specialists, LLC (Charlene Tope)
- James B. Steward
- Buhl, Little, Lynwood & Harris, PLC
- Terri Winegarden
- J. David Kerr
- Paul A. Sturgul
- Mannor Law Group, PLLC
- James R. Modrall III
- C. Jill Goodell
- Sharon A. Burgess & Elion E.H. Fichtner
- David Dobreff Law PLC
- John B. Payne
- Wallace Law Firm, PC
- William Lamb - Elder Law of Chelsea
- Bassett & Associates PLLC
- Chris Berry
- Caswell Law PLLC
- Kerry Rastigue
- Charlotte F. Shoup
- Q Elderlaw PLC (Kelly Quardokus)

Medicare Update: Medigap Subsidies and Last Chance for Blue Cross Legacy Plans

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

Blue Cross Legacy enrollment ends November 14

Well, the end of a legacy is here. Blue Cross Blue Shield of Michigan has announced that the last day to enroll in a Medigap Legacy Plan C is November 14, 2016 (with an effective date no later than December 15, 2016). While those enrolling will now pay much higher monthly premiums (see below) for those with serious medical conditions or those under age 65, it might be the last chance to get a Medigap (aka Medicare Supplemental) plan without that underlying health condition increasing his or her premiums. Do not let this date pass without seriously considering if you have any clients in need of Medigap coverage.

Why is December 15th the last effective date? Practically it means that individuals with Medicare Advantage plans will not have the opportunity to disenroll from a Medicare Advantage Plan and enroll in a Legacy plan. Coincidence? I reserve comment.

Blue Cross states that it will guarantee issue of a MyBlue Medigap Plan F (along with a couple of other plans) with effective dates beginning January 1, 2017, but these new plans will be subject to rate adjustments based on various health factors outside of the guaranteed issue period. And with rates *starting* at \$394.54/month for those under 65, it will hardly be a solution for most individuals with disabilities.

Medigap subsidy applications are available through December 15, 2016

Individuals with a Medigap plan who have annual *incomes* less than \$17,820/year (\$1,485/month) for individuals or \$24,030/year (\$2,002/month) as a couple should head to <http://michiganmedicaresubsidy.com> and apply for subsidies that are being administered by the Michigan Health Endowment Fund. For 2017, those subsidies will be:

- \$40 for those ages 65 to 75
- \$65 for those over age 75
- \$125 for those under 65 with a disability.

Again, this is an income test. Assets do not matter. Blue Cross estimates that approximately 32% of Legacy Medigap plan members could benefit from the subsidy.

Subsidy enrollment for 2017 will end December 15, 2016. Individuals can apply for a subsidy by calling (866) 824-9772 or by going to <http://michiganmedicaresubsidy.com>. The website claims that it is experiencing a high call volume and encourages individuals to apply online or by mail.

Individuals can use these subsidies with four Medigap insurers: Blue Cross Blue Shield of Michigan, Blue Care Network, UnitedHealthcare AARP® Medicare Supplement, and Priority Health. The subsidy does not just apply to beneficiaries on Blue Cross Legacy plans.

The enrollment process is relatively simple. You will need a client's Social Security number, Medicare number (if different), and the Medigap policy. For income verification, if an individual

is in a Medicare Savings Program, has a valid Bridge Card, or receives heat assistance, income verification is as simple as providing proof of the benefit.

At best, this is a temporary fix. The legislature only allocated funds for the subsidy for up to five years. In talking to the Michigan Health Endowment Fund, these subsidies will likely be decreased each year and could be exhausted in just four years. But for now, eligible clients might as well take advantage of it.

How much will Blue Cross Legacy Plan C cost for those staying on the plan?

For 2017, what currently costs \$122.86 for Legacy Medigap Plan C will now cost the following starting January 2017:

Age	Southeast MI		Rest of MI	
	Male	Female	Male	Female
<65	\$314.87	\$314.87	\$314.87	\$314.87
65	\$178.85	\$170.33	\$166.37	\$158.45
66	\$189.50	\$179.64	\$176.28	\$167.09
67	\$200.25	\$188.92	\$186.28	\$175.74
68	\$209.44	\$196.66	\$194.83	\$182.94
69	\$218.71	\$204.40	\$203.45	\$190.14
70	\$227.44	\$210.59	\$211.57	\$195.90
71	\$236.30	\$216.79	\$219.81	\$201.66
72	\$245.28	\$222.98	\$228.17	\$207.43
73	\$254.39	\$229.18	\$236.64	\$213.19
74	\$263.61	\$235.37	\$245.22	\$218.95
75	\$269.47	\$238.47	\$250.67	\$250.67
76	\$275.38	\$241.56	\$256.17	\$224.71
77	\$281.36	\$244.66	\$261.73	\$227.59
78	\$287.40	\$247.76	\$267.35	\$230.47
79	\$293.50	\$250.85	\$273.02	\$233.35
80+	\$299.66	\$253.95	\$278.76	\$236.23

Legislative Update

By Todd Tennis, Capitol Services, Inc.

There are only a handful of days remaining in the 2015-16 legislative session. By the time this newsletter goes to print, only the “Lame Duck” portion of the session will remain, that dreaded period after the election but before the end of the year when legislators who have either retired or been defeated can still vote on bills. It is a time when legislators are frantically trying to complete legislation before the year-end deadline, and when many more controversial topics

that elected officials were reluctant to bring up before the election pop up like dandelions in May.

Several items that the Elder Law and Disability Rights Section have worked on this session have already made it across the finish line and been signed into law. This includes the Fiduciary Access to Digital Assets (FADA) bill sponsored by Rep. Anthony Forlini (R-Harrison Twp.) that created a process by which families of decedents could receive access to certain digital or online files of their loved one while still protecting the privacy rights of the individual. FADA was signed into law as PA 59 of 2016.

Rep. Forlini also worked with the ELDRS council on a bill to bring Michigan into compliance with the Stephen J. Beck, Jr. Achieving a Better Life Experience (ABLE) Act. This federal law allows for persons with mental or physical disabilities to establish tax-exempt savings accounts for disability-related expenses. Such an account would increase quality of life without risking loss of benefits due to asset limitations. The ABLE Act became PA 160 of 2015.

Unfortunately, there are still some ELDRS priorities that have not yet made it to the governor's desk. One of these is HB 4034 sponsored by Rep. Kurt Heise (R-Plymouth) that seeks to clarify rules pertaining to special needs or pooled trusts. Specifically, the bill would state that pooled trusts could be utilized by persons age 65 or older, something that the Michigan Department of Health and Human Services opposes. That opposition has made passage of the bill very difficult this session, and it is sadly unlikely that it will move in the little time remaining.

A package of bills that has a better chance of getting across the finish line deals with seclusion and restraint of public school students. The House Education Committee recently reported House Bills 5409-5418 that seek to provide restrictions on the use of seclusion and restraint in public schools. They stem from efforts of the disability community and Lt. Governor Calley's office to curb potential abuses of special needs children in classrooms. The bills as initially introduced gave very little latitude to educators, but after hearing concerns of school administrators, they were amended to prohibit seclusion and restraint in all but emergency situations. This recognizes that, while seclusion and restraint are to be avoided as much as possible, there may be times where use of such practices are necessary to protect students and faculty. ELDRS supports the amended package of bills, and it is expected that they will be part of the agenda in the Lamé Duck session.

We also want to make special note of the tragic passing of Rep. Peter Pettalia. Rep. Pettalia was killed in a motorcycle accident in September, and his loss is terribly sad to the Legislature and the entire Capitol community. Pete was a tremendous advocate for his constituents, and a pragmatic leader who worked hard to find solutions to complex problems that transcended partisanship. He rarely could be seen without his trademark warm smile, and he made everyone he met the better for meeting him. Rest in Peace, Representative.

Editor's Note: As of this newsletter, according to Capitol Services, Inc., Gov. Snyder vetoed the proposed legislation to end the Health Insurance Claims Assessment and proposed changes to Michigan's Medicaid funding.

Strength in Numbers: Growing ELDRS

By Maria Messina, Chalgian & Tripp Law Offices, PLLC, Southfield

The Elder Law and Disability Rights Section (ELDRS) of the State Bar of Michigan (SBM) has been busy. Between legislative advocacy and litigation efforts, the Section has expended much time and effort fighting for the good of our clients. But these efforts come at a cost. That cost has thus far been supported by our membership dues and the generous volunteerism of several members. While the Section is now exploring other avenues to fund litigation efforts, we continue to rely heavily on our membership dues to support the Section's good works.

Fiscal Year 2013-2014 saw a dramatic decline in membership for the ELDRS Section, from which we have not fully recovered. It seems the drop was due to SBM changing the automatic enrollment of newly minted lawyers into certain sections without fees for the first year or two. Instead, the Bar went to a system wherein new lawyers had to "opt in" to sections to take advantage of the free membership benefits, and there was no guarantee that they would opt back in by paying the section dues when the free membership period expired.

To reinvigorate our numbers, ELDRS is taking steps to not only increase membership but to also retain members who may have joined the section while taking advantage of free memberships. The newly created Membership Development Committee will focus on outreach to Michigan law schools to introduce students to the benefits of joining the Section at student rates.

One of ELDRS' greatest features is its collegial nature with many seasoned attorneys willing to share their time and knowledge. The Membership Committee seeks to highlight that benefit with a mentoring program that would pair new attorneys and law students with experienced ELDRS' attorneys. Participating members can choose how much time they contribute, ranging from meeting for a cup of coffee to developing a full mentorship relationship.

ELDRS is also welcoming experienced attorneys who are interested in adding elder law to their existing practice. The Section recently participated in the State Bar Annual Meeting to bring awareness of the Section and its benefits to other members of the Bar. ELDRS also staffed a table at the ICLE Elder Law Institute which was attended by many new lawyers and non-Section members interested in getting a taste of elder law.

We recognize that aging and disability issues are not limited to a certain national origin, color, religion, socioeconomic stratum, or sexual orientation. Just as our clients represent a wide range of backgrounds, we are striving to have our membership reflect that diversity. The membership committee is coordinating with several specialized Bar associations to invite participation in the Section from attorneys that bring varying experiences and insight into issues affecting our clients.

The efforts to increase membership are not merely to bring in more revenue; ELDRS has long had a strong and passionate membership base. But ELDRS wishes to continue that tradition by drawing on the time, talent, and insight of all its members by encouraging participation in monthly meetings, committee service, and attendance at our conferences by all section members. Nowhere else will you have to opportunity to engage and network with experienced practitioners and pioneers of elder law.

For members looking to get more involved, committee membership is open to all ELDRS' members. Committee chairs and contact information, as well as monthly meeting times, can be found [here](#). For those interested in serving on the Membership Committee or participating in the mentor program, contact me at messina@mielderlaw.com.

Finally, we want to make sure that we are providing sufficient value to all our existing members. The Council welcomes comments about your current membership or ideas about how the Section can provide more value. We appreciate you, our members, and look forward to another impactful year.

Growing ELDRS: Council Members Present at Solo/Small Firm Conference

By Beth A. Swagman, Beth A. Swagman PLLC, Grand Rapids



Howard Collens, Beth Swagman, and Caroline Dellenbusch at the SBM Conference in Sept. 2016.

The Elder Law and Disability Rights Section presented at the SBM's annual Solo/Small Firm Conference held Sept. 21-23 in Grand Rapids. ELDRS was given a two-hour segment on Thursday afternoon which could be described as a sweet spot in the schedule. The segment introduced conference attendees to the work of the section. Although the time conflicted with other programs, more than a dozen attendees chose ELDRS' seminar.

Attorney Caroline Dellenbusch gave an overview of court cases that are working their way through the legal system, including ELDRS' involvement in these cases. ELDRS is either providing an amicus brief to raise the awareness of critical issues in cases of first impression or litigating

or co-litigating these cases in pursuit of clients' rights. Often ELDRS is engaged in litigation against the office of the Attorney General who represents the Michigan Department of Health and Human Services (MDHHS). These cases revolve around MDHHS interpreting federal law or applying its own rules to residents receiving long-term care in a nursing home.

Todd Tennis, ELDRS' lobbyist from Capitol Services, Inc., discussed legislation enacted this year that impacts our clients. He also highlighted pending legislation and how it affects persons with disabilities. The audience learned ELDRS' client base is broad and diverse.

Attorney Howard Collens concluded the time slot with a thorough presentation on the Michigan Fiduciary Access to Digital Assets Act (MFADAA). The Act sets forth how fiduciary agents can access and manage the digital assets of an incapacitated or deceased person. Collens played a very active role working with legislators to shepherd this Act from introduction to passage, and he credited Todd Tennis for his work and guidance. Attendees were provided a handout which detailed aspects of the law and guidelines for implementing the Act in estate planning documents.

The questions from the audience indicated that both court cases and legislative issues are of considerable interest to attorneys who practice in the areas of estate planning, probate, and family law.

Calendar of Events

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

ELDRS – www.michbar.org/elderlaw

- Dec. 3 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend, Lansing, 10 a.m.
- Feb. 4, 2017 - ELDRS Council Meeting, State Bar of Michigan, 306 Townsend, Lansing, 10 a.m.
- March 10, 2017 - ELDRS' Spring Conference, Inn at St. John's, Plymouth, 9 a.m.

NAELA – www.naela.org

- Jan. 18, 2017 - Case Note: "Granny Goes to Jail" Redux, Webinar, 12:00 p.m. - 1:00 p.m.
- April 25-29 - 2017 Annual Conference, Boston Marriott Copley Place, 110 Huntington Avenue, Boston, MA 02116

ICLE/SBM – www.icle.org

- Nov. 17 - Anatomy of a Workplace Investigation, Plymouth, MI (Live)
- Nov. 17 - Experts in Estate Planning: Divorce, Blended Families, and Nuptial Agreements, Plymouth (Live)
- Dec. 1 - Planning Techniques for the Taxable Estate, Plymouth (Live)

Academy of Special Needs Planners - <https://attorney.elderlawanswers.com/national-meeting/register>

- March 22-24, 2017 - Annual Conference, New Orleans, Louisiana