

ELDERS 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, Managing Editor, at ccaswell461@gmail.com.

Litigation Committee Report

By Sanford J. Mall, Mall Malisow & Cooney, PC

By now, as most members of the Elder Law & Disability Rights Section know, the Section funded a federal class action lawsuit against the Michigan Department of Community Health and the Department of Human Services for violation of 42 USC § 1396a(r)(1) and 42 CFR § 435.725. The State's violation was its refusal to allow offset against the patient pay amount (PPA) for a Medicaid eligible, nursing home resident who had pre-eligibility medical expenses (PEME). The Section engaged national counsel, Rene Rexiach, as well as local counsel, William Goodman, to file suit in the Eastern District of Michigan. The suit was commenced on September 16, 2009, and Federal Judge Nancy Edmunds signed the Order Approving the Settlement Agreement on February 14, 2011.

During the process of litigation, the agency received approval of a State Plan amendment pertaining to PEME from the Centers for Medicare and Medicaid Services (CMS). The text of the State Plan amendment (effective March 9, 2010) reads:

Reasonable Limits on Amounts for Necessary Medical or Remedial Care not Covered under Medicaid

Reasonable and necessary medical expenses not covered by Medicaid incurred in the 3 month period prior to the month of application are allowable deductions. Expenses incurred prior to this three month period are not allowable deductions.

Medical and remedial expenses incurred as the result of imposition of a transfer of asset penalty period are limited to zero unless application of these limits would result in undue hardship.

An undue hardship exists when the beneficiary's physician (MD or DO) says necessary medical care is not being provided and the client needs treatment for an emergency condition.

The highlights of the lawsuit settlement include:

1) BEM 164 (see pages 2-3) and 546 (see pages 8-9) were amended consistent with the above State Plan amendment.

2) Patient pay offset is available for unreimbursed pre-eligibility medical expenses incurred up to three months prior to the month in which the Medicaid application is filed. (See Notes 1 – 3 below).

3) The agency has assigned a liaison as a contact person to process PEME PPA requests (see Note 4 below). The liaison is:

Ardene K. Martin, DCH/LTC Liaison
400 S Pine St., 5th Fl
Lansing, MI 48909
517-241-4302
517-241-8556 (Fax)

4) The State will pay the Plaintiffs' legal fees and expenses related to the litigation. This means that the Section is in the process of receiving reimbursement for the retainer fees advanced to counsel.

5) The State sent out notice to all Medicaid beneficiaries who filed an application on or after January 1, 2009, providing information about how to file a request for a patient pay offset. (See Note 5 below). A copy of this letter is available.

Important Notes

1) It is unanswered as to what happens when there is more than one application filed (e.g., initial application denied due to being over assets, then two months later a second application is filed and approved).

2) Adjustments to patient pay for PEME will not be made when the ineligibility for Medicaid was due, even in part, to divestment.

- 3) Patient pay amount will only be offset for expenses that remain unpaid.
- 4) When seeking assistance from Ms. Martin, she will need a signed release by your client (or the client's agent) before she will discuss any case specifics.
- 5) The opportunity to request PEME PPA for applications dating back to January 1, 2009 is strictly limited to requests received by the Agency no later than December 20, 2011. Otherwise, an applicant will be limited to requests submitted within 1 year of receiving approval for Medicaid.

What's Next

Now that the above PEME lawsuit has been resolved, the Litigation Committee is looking at other areas of litigation to pursue. The following issues have been discussed at recent ELDRS Council meetings:

- 1) Challenging the change to BEM 401 related to the use of pooled accounts trusts for persons over age 65.
- 2) Filing a class action suit addressing DHS' systemic standard of promptness violation in the processing of Medicaid applications and in providing full resolution of a matter after the filing of an appeal.
- 3) Challenging the department's treatment of community spouse IRA's/401K's.
- 4) Seeking enforcement of the Public Health Code requiring all Medicare certified beds to also be Medicaid certified.
- 5) Challenging the change to BEM 400 regarding treatment of jointly owned property.
- 6) Challenging BEM 405 regarding its treatment of personal care contracts as being violative of the spirit of Medicaid litigation, the SSI POMS, and Michigan case law.

Are there other such issues that you believe widely affecting our clients? If so, please e-mail me at sjmid@teclf.com.

Michigan Legislative Update as of April 19, 2011

By Ellen Hoekstra and Todd Tennis, Capitol Services, Inc.

The Governor continues to announce that his budget deadline is May 31, and the legislature seems to be moving budget bills ahead quickly enough that the deadline now appears realistic. Somewhat more uncertain is when the legislature will complete its work on overhauling the state's tax laws, despite a recent leadership "deal" on that issue.

Taxation Issues Affecting Seniors

The most public differences between the Governor's original recommendations and legislators' perspectives had been on the taxation rather than the budget side. The Governor's tax proposal included a major reduction and simplification of business taxes, with consequent increases in taxes for individuals. The Senate was most outspokenly opposed to the taxation of pensions, with 11 of the 26-member Republican caucus telling the press they were "no" votes on the Governor's proposal. Senate Majority leader Randy Richardville (R-Monroe) had proposed an alternative plan under which only future retirees would see their pensions taxed.

An AARP rally on March 16 turned out 1,100 seniors at the Capitol under the banner "It's Not Fair." The pension exemption elimination was one element of HB 4361 (Rep. Jud Gilbert, R-Algonac) which had a number of hearings before the House Taxation Committee. The pension tax exemption elimination did not extend to Social Security nor to military pensions but would have removed the current exemptions to defined benefits plans, IRA's, annuities, and those 401 (k) distributions that are attributable either to employer contributions or to employee contributions matched by the employer. Currently federal, state, and local government pension/retirement income is fully exempt. Private pensions are exempt up to \$45,120 for a single filer and \$90,240 for joint filers, with these amounts indexed to inflation.

In mid-April, the Governor and top legislative leaders announced an agreement in principle that included a modified pension tax proposal but another \$150 million in budget reductions beyond those proposed by the executive budget proposal. The new pension tax proposal has three tiers: taxpayers born before 1946, those born between 1946-1952, and those born 1953 and later. The first group would see no changes from the status quo. The second would have retirement income up to \$20,000 single and \$40,000 joint exempt, with income beyond that level taxed at 4.35%. The third tier

would see its retirement income (except for military pensions and Social Security) taxed at 4.35% until turning 67, after which time retirees would qualify for a senior income exemption of \$20,000 for single filers and \$40,000 joint, regardless of income source. There was also agreement that the shortfall in revenue would be made up through further budget reductions.

Despite the fact that there is agreement at the leadership level, there is some question whether there are enough votes in the Senate to support the deal.

Further Cuts in DCH and DHS Budgets bills

Both the House and Senate subcommittees on the Department of Community Health and Department of Human Services have seen the impact of the agreement to increase budget cuts referenced above.

The Department of Community Health and Department of Human Services budget bills have been reported out of subcommittee in both chambers, and the Senate Appropriations Committee plans to meet the week of April 18 to report all of its budget bills to the Senate floor. Once each chamber has passed its budget bills, we expect the bills to go quickly into conference committee.

The House Department of Human Services (DHS) budget bill (HB 4276) was reduced by \$90.4 million from the current year and trims 315 workers from the budget. The bill also reduces state disability funding by \$12.4 million by changing the State Disability Assistance rates for disabled adults without children in independent living arrangements from \$269 to \$175 per month. The House panel also removed boilerplate language requiring Medicaid eligibility within 60 days when disability is an eligibility factor and within 45 days for other applicants, as well as deleting language requiring DHS to approve or deny Medicaid applications for nursing home patients within 45 days of receipt of necessary information. The Senate bill, SB 179, changed the eligibility for State Disability Assistance to match Federal disability standards, as well as eliminating the credit for caregivers. The Senate also rejected the Governor's proposal to increase staff for the SSI program by 7 FTE's. The Senate added a \$500 penalty for each instance that the Department does not process a Medicaid eligibility application within the given timeframes.

The House Department of Community Health (DCH) budget bill, HB 4269, concurs with the Governor's recommendations to reduce non-Medicaid CMH funding by \$8.5 million,

a 3% cut. However, the house increased reductions for senior programs by \$8 million, including a 15% cut to community services and an 18% cut for home-delivered and congregate meals, and eliminated funding for all three senior volunteer programs. The House bill also increased anticipated “savings” from estate recovery from the Governor’s estimate of \$10 million to \$15.4 million; the Senate mirrored this change in SB 172, the Senate DCH budget bill. SB 172 also has reductions to many programs for seniors and includes a 4.8% reduction in non-Medicaid CMH. Members with concerns regarding any of these issues will want to call or email their legislators quickly, given the projected deadline to complete the budget by the end of May.

We anticipate legislation to be introduced to create a more aggressive estate recovery program in Michigan, which does not have a federally approved statute at this time.

Durable Power of Attorney Legislation Moves in the Senate

Senate Bill 92, sponsored by Senator Steve Bieda (D-Warren), seeks to specify the authority, responsibilities, rights, and limitations of an attorney-in-fact designated and acting under a durable power of attorney and require an attorney-in-fact to execute an acceptance of obligations before exercising authority under a durable power of attorney.

A substitute version of the bill was reported from the Senate Judiciary Committee on March 16 that clarified that the requirements will not apply to a patient advocate designation; a power of attorney created by a parent or guardian regarding the care, custody, or property of a minor child; a durable power of attorney that is coupled with an interest in the subject matter of the power; nor to a durable power of attorney that is contained in a loan, escrow, security, joint venture, or other such agreement.

The next step on this bill would be for the full Senate to vote on passage of SB 92.

Recently Introduced Bills Followed:

- **HB 4345** Rep. Ananich (D-Flint) Prohibits magistrate from refusing to accept complaint because signed upon information and belief by individual other than the victim in cases alleging vulnerable adult abuse. Currently in House Judiciary.
- **HB 4486** Rep. Switalski (D-Warren) requires bond if liquid assets in estate exceed a certain limit and requires conservator to sign acknowledgment of duties. Currently in House Judiciary.

- **HB 4487** Rep. Nathan (D-Detroit) Prohibits residential mortgage fraud. Currently in House Judiciary.
- **SB 211** Sen. Young (D-Detroit) Requires insurers to develop antifraud plans. Currently in Senate Insurance.
- **SB 260** Sen. Whitmer (D- East Lansing) Provides for vulnerable adult program. Currently in Senate Judiciary.

Recent News for the Elder Practitioner

By Christopher Smith, Smith Elder Law

Topics

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Alzheimer's/Dementia

- Under new guidelines, the diagnosis of Alzheimer's has been divided into three different stages: a phase when dementia has developed; a middle phase in which mild problems emerge, but daily functions can still be performed; and the most recently discovered phase in which no symptoms are evident but changes are brewing in the brain. The goal is to encourage early detection in hopes of ultimately improving treatment options. [Pam Belluck, Guidelines Allow Earlier Definition Of Alzheimer's, The New York Times, April 19, 2011.](#)
- A new Chinese study released in the journal *Neurology* found that those with vascular problems (e.g., high blood pressure) were twice as likely to develop dementia. Those that treated the vascular condition were less likely to develop dementia/Alzheimer's than those that were not treated. [Roni Caryn Rabin,](#)

[Patterns: Treating Other Conditions May Stave Off Alzheimer's, N.Y. Times: Vital Signs Blog, April 15, 2011.](#)

- Adding to the growing research for finding early predictors of Alzheimer's, researchers at Harvard and Rush University found that individuals who had an MRI scan that showed a thinning cerebral cortex were three times more likely to develop Alzheimer's. [Richard Alleyne, Brain Scan Could Diagnosis Alzheimer's Disease In Advance, The Telegraph, April 13, 2011.](#)

By The Numbers

- U.S. life expectancy at birth increased slightly to 78.2 years in 2009 from 78 years in 2008. Life expectancy for males was 75.7 years and 80.6 years for females, both up slightly from 2008. Heart disease and cancer accounted for 48% of all deaths in 2009. [U.S. Mortality Rate Fall To All-Time Low, Lewis Krauskopf, Reuters, March 16, 2011.](#)
- The U.S. birth rate fell 4% from 2007 to 2009 – the biggest drop since the mid-1970's. [Shari Roan, Drop In U.S. Birth Rate Is The Biggest In 20 Years, L.A. Times, March 31, 2011.](#)

Elder, Estate, and Probate Law

- The Voice of America reported on an increased demand for elder law attorneys to draw up intra-family caregiving contracts. [Getting Paid To Look After Elderly Relatives, Ashley Milne-Tyte, Voice of America, March 29, 2011.](#)
- The *William Mitchell Law Review* dedicated most of an entire issue (eight articles) on the theme "The Future of Elder Law Practice." All of the articles are available online at: http://www.wmitchell.edu/lawreview/Volume37/37_1.html. *Stetson University Law Review* also had a symposium issue on the teaching of elder law (not available online).
- In a survey of 457 high net worth and ultra high net worth individuals with \$3 million or more in investable assets, U.S. Trust found that 52% have not fully disclosed their wealth to their children and 15% have disclosed nothing about the family wealth. [Halah Touryalai, Boomers Leave Kids In The Dark About Their Wealth, Forbes Blog, April 21, 2011.](#)

Long-Term Care

- According to John Hancock Financial, the average cost for a private nursing home bed in 2011 rose 3.5% to \$85,775 annually. The average cost of a semi-private nursing home room grew 3.2% to \$75,555. Meanwhile, the average cost charged for an assisted living facility grew 3.4% per year to \$39,240, while the average cost of a home health aide has risen 1.3% per year to \$37,440. [Survey Reports Higher Long-Term Care Costs, McKnight's Long-Term Care New, April 22, 2011.](#)
- The National Consumer Voice for Quality Long-Term Care released a publication entitled "Piecing Together Quality Long-Term Care: A Consumer's Guide to Choices and Advocacy." Michigan's RoAnne Chaney and Alison Hirschel are acknowledged for their role on the project's advisory committee. The guide can be found at <http://www.theconsumervoice.org>.
- The independence of the long-term care ombudsmen in Florida and Iowa was recently questioned. In Florida, federal investigators are looking into the forced resignation of Florida's LTC ombudsman Brian Lee. The allegations suggest that Florida Gov. Rick Scott forced Lee's resignation under pressure from the nursing-home industry. [Feds To Probe Ouster Of Florida's Nursing-Home Watchdog, Kate Santich, Orlando Sentinel, March 10, 2011.](#) In Iowa, the long-term care ombudsman's choice for a personal attorney added to earlier concerns about her independence. [Seniors' Advocate Must Be Independent, Editorial, Des Moines Register, March 27, 2011.](#)
- Under new regulations, administrators of long-term care facilities must notify residents in writing at least 60 days prior to a skilled nursing facility's closure. This is a change to the current 30-day requirement. The notification must include a state-approved relocation plan. [Changes To Nursing Home Disclosure Rules, Angela Stringfellow, SeniorHomes.com, March 24, 2011.](#)

Medicaid

- States and the federal government could have saved as much as \$329 million in 2009 if they would have paid for more generic drugs for Medicaid beneficiaries, according to the conservative American Enterprise Institute. [Report: Medicaid Wasting Money On Non-Generics, Julian Pecquet, The Hill, March 28, 2011.](#)

- The Kaiser Foundation released a four-page summary comparing the Medicaid provisions in the various deficit reduction proposals. [Comparison of Medicaid Provisions in Deficit-Reduction Proposals, The Kaiser Foundation, April 14, 2011.](#)
- Arizona's Medicaid program is proposing a \$50 fee to smokers and diabetics that do not follow a doctor's order to lose weight. [Marc Lacey, Arizona Asks To Set Fines For Health Risks, The New York Times, April 1, 2011.](#)

Medicare

- While there will probably be a cost-of-living adjustment to Social Security next year, that increase will likely be wiped out by increased Medicare Part B premiums. [Medicare Rise Could Mean No Social Security COLA, Stephen Ohlemacher, Associated Press, March 27, 2011.](#)
- Under a new rule, Medicare beneficiaries will have to see a doctor in-person 90 days before or 30 days after starting home health services in order for the home health agency to get reimbursed. [Want Medicare To Pay For Home Care? See Your Doctor, Phil Galewitz, NPR, March 24, 2011.](#)
- A study by the Kaiser Foundation showed that raising the Medicare eligibility age from 65 to 67 would save the federal government a lot (\$7.6 billion in 2014), but would ultimately cost billions more for individuals, employers, and states. If the eligibility age was raised, it would cost 65 and 66 year olds an average of \$2,400 a year more for health care. [Study Finds Raising Medicare Age Would Shift Costs, Kaiser Health Network, March 29, 2011.](#)
- Senators John Kerry and Olympia Snow introduced a new bill entitled Improving Access to Medicare Coverage Act of 2011 that would make days spent at a hospital "under observation status" count towards the three-day hospital stay required to qualify for skilled nursing benefits. [Bill Would Correct Post-Hospitalization Medicare Loophole, McKnight's Long-Term Care News, April 15, 2011.](#)
- While many new preventive screenings are covered by Medicare under the Affordable Care Act, any variation from the test may result in additional costs. Take colonoscopies as an example. The actual colonoscopy is free, but if the doctor removes a polyp (occurring in 25% of men and 15% of women), the test is "morphed" into a treatment procedure resulting in additional costs. [Harris](#)

[Meyer, Under Health Law, Colonoscopies Are Free—But It Doesn't Always Work That Way, Kaiser Health News, April 25, 2011.](#)

Medicine and Health Insurance

- Of the one-million Medicare patients hospitalized annually, 13.5% experience an adverse event due to hospital errors, costing \$4.4 billion a year. (Source: U.S. Department of Health and Human Services.) [Judith Graham, New List Offers Hospital-Specific Data On Patient Safety, Chicago Tribune, April 11, 2011.](#) Another study estimated that one in three people in the United States will encounter some kind of mistake during a hospital stay. [Julie Steenhysen, Errors Still Common In U.S. Hospitals, Reuters, April 7, 2011.](#)
- Palliative care and hospice care are often mistakenly used interchangeably. Pain relief provided by palliative care does not have to be limited to terminal conditions, and recent studies show that palliative treatment is cost-effective and increases the quality of life. Still, many insurance companies do not reimburse hospitals for palliative treatment. [Demand Grows For Palliative Care, Michelle Andrews, Kaiser Health Network, March 29, 2011.](#)
- Three out of four prescribed drugs are now generics. All of the top 10 most prescribed drugs are generics. [Scott Hensley, 3 In 4 U.S. Prescriptions Are Now For Generic Drugs, NPR's Health Blog, April 20, 2011.](#)
- The Government Accountability Office analyzed data from four states and found that 39 to 59 percent of consumers succeeded in reversing a coverage denial when they appealed to their insurance company. [Private Health Insurance: Data on Application and Coverage Denials, U.S. Government Accountability Office, March 2011.](#)
- Two pricy cancer drugs have again raised the question as to how much is a couple of more months of life worth? Provenge, which treats prostate cancer, costs \$93,000 and gives men an average of an extra four months to live. [Medicare in Spotlight on Cancer Drug, David Nather, Politico, March 29, 2011.](#) Similarly, Yervoy, a new melanoma drug which costs \$120,000 for a course of treatment, has only shown to extend life expectancy by less than four months. [Approval For Drug That Treats Melanoma, Andrew Pollack, N.Y. Times, March 25, 2011.](#)

- The Obama administration delayed implementing rules that would provide greater protections to patients appealing insurer's decisions denying or reducing health care benefits until January. The proposed rule changes include: (1) reducing the amount of time an insurance company is allowed to review a denial of coverage in urgent cases, from no more than 72 hours to 24 hours; (2) requiring insurers to provide information about the denial and how to appeal in appropriate language for non-English speaking beneficiaries; and (3) requiring insurers to provide consumers with specific details about what treatment isn't covered and why. [Administration Delaying Some Rules For Appealing Health Insurance Denials, Susan Jaffe, Kaiser Health Network, March 25, 2011.](#)

Michigan

- The Robert Wood Johnson Foundation released its county health rankings. For Michigan, Ottawa (#1), Leelanau (#2), Livingston (#3), Washtenaw (#4), and Alger (#5) were at the top for health outcomes. Alcona (#78), Ontonagon (#79), Lake (#80) Wayne (#81), and Clare (#82) brought up the bottom. (Keweenaw County was not ranked.) The survey also has a different ranking of Michigan counties based on health factors such as the social, economic, and physical environments. A full-listing can be found at <http://www.countyhealthrankings.com>.
- Budget cuts to the Genesee County Health Plan, which helps people who make too much to qualify for Medicaid, but not enough to buy private insurance, were featured in an article in the *Washington Post*. [Municipalities Trim Health Services Amid Housing Bust, Phil Galewitz, The Washington Post, March 27, 2011.](#)
- The *New York Times* featured emergency rooms that are built for elder patients at St. Joseph Mercy-Ann Arbor. (Most, if not all, hospitals in the St. Joseph Mercy system have or will have them.) Henry Ford also plans to have rooms dedicated to seniors.) [Alyson Martin, Emergency Rooms Built With The Elderly In Mind, The New York Times: The New Old Age Blog, March 14, 2011.](#) These emergency rooms were also featured in *Hour Magazine*. [Mark Kurlyandchik, Michigan's First Emergency Rooms For Seniors Only, April 2011.](#)

Retirement

- Student loan debt surpassed credit card debt for the first time last year, topping \$1 trillion dollars. [Tamar Lewin, Burden Of College Loans On Graduates Grows,](#)

[The New York Times, April 11, 2011.](#)

- Fidelity Investments estimates that the out-of-pocket health care costs for a 65-year-old retired couple to be \$230,000, an 8% decline from last year due to the Protection and Affordable Care Act. [Fidelity Investments Estimates Health Care Costs For Couples Retiring In 2011 Will Drop To \\$230k In One-Time Reduction, March 31, 2011.](#)
- The Employee Benefit Research Institute released its annual Retirement Confidence Survey. Among the findings, 29% of respondents said they had less than \$1,000 in savings, and 56% reported that they had less than \$25,000 in savings, excluding their primary home and defined benefit plans. Only 42% reported that they have tried to calculate how much they need to save to live comfortably in retirement. [The 2011 Retirement Confidence Survey, Employee Benefit Research Institute, March 2011.](#)

Social Security

- The *New York Times* featured an article about the disincentives to return to work built into the Social Security Disability program. According to the article, about one in 21 Americans between 25 and 64 now receive Social Security Disability. [Motoko Rich, Disabled, But Looking For Work, The New York Times, April 6, 2011.](#)
- A class-action lawsuit was filed in Queens against administrative law judges for Social Security Disability cases because, among other things, they allegedly made repeated legal errors and generally conducted combative hearings. Queens had the third highest Social Security Disability rejection rate in the country. [Sam Dolnick, Suit Alleges Bias In Disability Denials By Queens Judges, The N.Y. Times, April 12, 2011.](#)

Useful Resources

- The Department of Veterans Affairs has a website that enables you to compare the quality of various VA hospitals. The website can be found at <http://www.hospitalcompare.va.gov>.

- Medicare.gov revamped its “Ask Medicare” section which is dedicated to helping caregivers (and the rest of us) with questions about Medicare. It can be found at <http://www.medicare.gov>.
- SeniorHomes.com published a list of their best resources for seniors on the web. It can be found at <http://www.seniorhomes.com/p/2011-best-of-the-web/>.

Just For Fun

- Don’t want people to have to get out of their car for a funeral visitation? Then maybe a drive-through funeral home is for you. [Ann M. Simmons, Paying Their Respects Outside Funeral Home, L.A. Times, April 17, 2011.](#)
- The Center for Economic and Policy Research has an interesting calculator and graph projecting the federal deficit as a percent of GDP if the United States reduced its per capita health care costs to that of other developed countries. It can be found at <http://www.cepr.net/calculators/hc/hc-calculator.html>.

ELDRS Updates at Spring Conference

By Christine Caswell, Caswell Law PLLC

Six topics central to elder law and disability rights were presented at the ELDRS 9th Annual Spring Conference on March 4 at the Inn of St. John’s in Plymouth. The topics included the following:

- **What is New in Tax Law – Robert Labe**

Labe gave an overview of the Tax Relief, Unemployment Insurance, Reauthorization and Job Creation Act of 2010. Under the Act, personal representatives for decedents who died in 2010 can elect to be subject to the modified carryover basis rule of Section 1022 of the Tax Code, as opposed to being subject to the federal estate tax. For anyone not electing out of the estate tax, the exclusion is \$5 million with a tax rate of 35 percent and a stepped-up basis to determine the tax basis of assets. The \$5 million exclusion is also applicable for 2011 and 2012 with inflation indexes in \$10,000 increments. Labe also reviewed the Economic Growth and Tax Relief Reconciliation Act of 2001.

In an “era of uncertainty,” Labe discussed estate planning strategies, including using disclaimers in trusts and Clayton QTIP trusts. He suggested attorneys may want to modify marital deductions and credit shelter formulas to “reflect a possibility of total repeal of the federal estate tax.”

- **Understanding Mental Health Law – Hon. Milton Mack, Michelle Fuller, and Laurie Murphy**

With 25 percent of the prison population diagnosed with a mental illness (15 percent in Wayne County), Judge Mack, Fuller, and Murphy reviewed the process for Involuntary Treatment under the Mental Health Code and noted that the Code is the exclusive means for involuntary commitment. A diagnosis of mental illness is not sufficient alone, and a guardian or patient advocate may not sign a person into a psychiatric hospital without his or her consent. If the person does not agree to a pre-screening process, then there must be a police officer’s petition based on personal observation of conduct which reasonably leads to a belief that the individual is a person requiring treatment. Note that Medicaid will not cover this petition, so the person requesting the determination may have to pay. Also, a petition may be filed with the probate court for Hospitalization and Order for Examination.

This section also covered “Kevin’s Law,” which expands the definition of a “person requiring treatment,” noting that it is hard to meet the statutory requirements of this law and that no enforcement mechanism was included, even if treatment is ordered.

Also, a specific patient advocate for mental health treatment decisions may now be named under Michigan law and may be incorporated into a Medical Power of Attorney. However, this is only effective after a physician and a mental health treatment provider determine that the individual is not able to make his or her own mental health treatment decisions. Under this law, people with chronic mental illness can develop their own plan while competent and can communicate their wishes to their families and providers. However, once again, there is no enforcement mechanism under this law.

- **Health Care Reform Law – Patricia E. Kefalas Dudek**

According to Kefalas Dudek, changes in the Affordable Health Care Act affect Special Needs Trusts and older Americans. Citing an article she wrote for NAELA,

the coordination of health care benefits for SNT's is important under the new law because children can now stay on their parents' group health insurance plans until they are 26, which may affect those on Medicare for special services. She also mentioned state coverage plans which may help while waiting for Medicare/Medicaid coverage. As for seniors, extended care options have been expanded. Unfortunately, Kefalas Dudek noted that a definition of "essential benefits" was not included in the law.

- **Everything You Wanted to Know about the MI Choice Waiver Program – Sanford J. Mall**

Under federal Medicaid law, states wishing to provide nursing home care outside of a nursing home "must apply for and be granted a 'waiver' by the Centers for Medicare and Medicaid Services." Michigan's program is commonly known as MI Choice. However, there is a long waiting list for this waiver.

Mall explained the four categories of priority to determine when an initial assessment should be done and how long an individual has to wait for the waiver. People in imminent risk of being admitted to a nursing home, unless they are granted a waiver, receive priority. Mall said the application should be filed prior to the requisite in-person assessment and the individual must be qualified for Medicaid to get MI Choice benefits.

Mall cited insufficient staffing, funding, and patient slots available as problems with the program, as well as a lack of uniformity. He also noted problems with getting the needed in-person assessment, which sets the whole process in motion.

- **Recent Medicare Updates – Norman Harrison**

Harrison focused on Medicare Advantage Plans and how to opt out of them, providing sample documents for guardians, Medical Power of Attorney patient advocates, and attorneys. Under the new health care act, the cost of Medicare Advantage Plans will increase, so seniors may want to look at going back into the traditional Medicare A and B plans. Harrison specifically provided sample documents for Michigan Office of Retirement Services and the UAW Retiree Medical Benefit Trust.

- **What is on the Horizon for DHS & Medicaid – Don Rosenberg, Rosemary Buhl, and Paul Sturzel**

Proposed Michigan legislation and other issues affecting DHS and Medicaid were discussed by Rosenberg, Buhl, and Sturzel, as well as other attorneys, including Sanford Mall. No reductions in Medicaid services or provider reimbursement are currently planned for the 2011 budget (but see 2012 proposals above in the Michigan Legislative Update article). Also noted were concerns under the Michigan Administrative Hearings System transferring certain functions to SOAHR. The panel also held an interactive discussion with attendees regarding common issues (latest trends) with applications and processing through DHS, and tips were shared by the panel and attendees in resolving difficult issues.

Upcoming Events Section of the ELDRS Newsletter (Rev. 05/10/11, John L. Arenz,)

DATE	ORGANIZATION	TITLE	LOCATION	WEBSITE
May 18–21, 2011	NAELA	2011 NAELA Elder & Special Needs Law Annual Meeting	Las Vegas, NV	www.NAELA.org
May 19–21, 2011	SBM Probate Section / ICLE	51st Annual Probate & Estate Planning Institute (Conference)	Acme, MI	www.icle.org
May 25, 2011	NAELA–Tax Section	Meeting–Attorney is Quarterback of the Estate	Webinar	www.NAELA.org
June 4, 2011	SBM ELDRS Section	Section Meeting	Troy, MI	http://michbar.org/elderlaw/calendar.cfm
June 20, 2011	NAELA–Young/New Attorneys Section	Meeting–Growing Your Solo Elder Law Practice	Webinar	www.NAELA.org
June 14–17, 2011	National Association of Professional Geriatric Care Managers	CMSA 21st Annual Conference and Expo	San Antonio, TX	http://www.caremanager.org/calendar.cfm
June 17–18, 2011	SBM Probate Section / ICLE	51st Annual Probate & Estate Planning Institute (Conference)	Plymouth, MI	www.icle.org
June 18, 2011	SBM Probate Section	Section Meeting	East Lansing, MI	http://michbar.org/probate/meetingschedule.cfm
June 21, 2011	SBM ELDRS Section / ICLE	Basics of Advising Elderly Clients & Those With Disabilities	Plymouth, MI	www.icle.org
June 29, 2011	SBM Probate Section / ICLE	Drafting an Estate Plan for an Estate Under \$5 Million (Seminar)	Plymouth, MI	www.icle.org
July 12, 2011	NAELA–Benefits & Financing Section	Meeting–VA Processing Delays	Webinar	www.NAELA.org
July 12, 2011	SBM Probate Section / ICLE	Drafting the Last-Minute Estate Plan for a Sick or Dying Client	Webcast Only	www.icle.org
July 19, 2011	NAELA–Health Care Section	Meeting–Expedited Appeals	Webinar	www.NAELA.org
August 6, 2011	SBM ELDRS Section	Section Meeting	Marquette, MI	http://michbar.org/elderlaw/calendar.cfm
August 19–20, 2011	NAELA	2011 NAELA CAP-Only Conference	Chicago, Ill	www.NAELA.org

Upcoming Events Section of the ELDRS Newsletter (Rev. 05/10/11, John L. Arenz,)

August 31, 2011	SBM Probate Section / ICLE	Handling Guardian ad Litem Appointments	Webcast Only	www.icle.org
September 13, 2011	NAELA–Benefits & Financing Section	Meeting–Residence Value: Exempt or Not for VA Pension?	Webinar	www.NAELA.org
September 15–18, 2011	National Association of Professional Geriatric Care Managers	2011 NAPGCM Advanced Practice Retreat	San Diego, CA	http://www.caremanager.org/calendar.cfm
September 19, 2011	NAELA–Young/New Attorneys Section	Meeting–Long Term Care Insurance Annual Review	Webinar	www.NAELA.org
October 4, 2011	SBM Probate Section / ICLE	Drafting an Estate Plan for an Estate Under \$5 Million (Seminar)	Plymouth, MI	www.icle.org
October 13–16, 2011	National Association of Professional Geriatric Care Managers	2011 National Gerontological Nursing Association Annual Convention	Louisville, KY	http://www.caremanager.org/calendar.cfm
October 21–23, 2011	Midwest Geriatric Care Managers Association	NAPGCM Midwest Chapter Annual Conference	Branson, MO	http://www.midwestgcm.org/
November 3, 2011	Michigan Society of Gerontology	2011 Michigan Society of Gerontology (MSG) Fall Forum	East Lansing, MI	http://www.msginfo.org/
November 3–5, 2011	National Association of Professional Geriatric Care Managers	2011 Western Region Chapter Conference	Las Vegas, NV	http://www.caremanager.org/calendar.cfm
November 6–8, 2011	National Association of Professional Geriatric Care Managers	2011 Mid-Atlantic Chapter Conference	Philadelphia, PA	http://www.caremanager.org/calendar.cfm
November 8–12, 2011	NAELA	2011 NAELA Advanced Elder Law Review/CELA Prep Course	Boston, MA	www.NAELA.org
November 10–12, 2011	NAELA	2011 NAELA Advanced Fall Institute	Boston, MA	www.NAELA.org