

ELDRS Update

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Fall Conference Coming Up Oct. 1-3

Early Registration and Hotel Registration End Sept. 1

Early registration ends Sept. 1, and all registration closes on Sept. 19, for the 2014 ELDRS' Fall Conference. Early registration prices are \$200 for ELDRS' section members, \$230 for nonsection members, and \$125 for nonlawyers and students.

This year's program is October 1-3 at [Mission Point](#) on Mackinac Island. Room reservations need to be made by Sept. 1 at (800) 833-7711 with discounts for ELDRS' Conference attendees. Star Line Ferry discounts are also available at <http://www.mackinacferry.com> with the promo code "sbm." To register on-line for the conference or to download the conference registration form, go to <http://www.michbar.org/elderlaw>.

The Fall ELDRS' Conference is unique because it brings together practitioners from many disciplines, as well as nonattorneys, such as social workers, health care workers, and ombudsmen, with ample opportunity for networking. This year's keynote speaker will be Lawrence Frolik, professor of law at the University of Pittsburgh Law School. Frolik is regarded as a national expert on elder law issues and wrote *Advising the Elderly or Disabled Client*, *The Law of Later-Life Health Care*, and *Decision Making and Residence Options for Older and Disabled Clients*. There will also be a probate register panel, a panel discussing elder abuse, a discussion on the new PACE program, as well as ELDRS' own experts discussing Medicaid issues, Medicaid waivers, DOMA, care determination, guardianship, digital assets, and special needs planning and the ACA. Click [here](#) for the full schedule.

For questions about the conference, contact Beth Swagman at beth.swagman@comcast.net or (616) 323-3443.

Summer Doldrums

By Todd Tennis, Capitol Services, Inc.

The Legislature completed the budget process and promptly went into its summer recess in mid-June. Many had hoped it would wrap up the spring session with a plan to increase funding for Michigan's roads and public transit systems. However, despite calls from Gov. Snyder, the House and Senate failed to win agreement on any significant new funding.

Although the House and Senate are tentatively scheduled to return to session for a few days over the summer, the conventional wisdom in Lansing is that little, if anything, will be accomplished before fall. Even after they return in September, the looming election and fractious political climate makes it unlikely any substantive progress on any contentious issue will be accomplished before the *Lame Duck* session.

2015 Budget Completed

As for the budget process, there is some good news for senior advocates. Earlier this year, Gov. Snyder proposed to increase funds for several programs that help the elderly. The final budget incorporated nearly all of those recommendations. The Home and Community Based Waiver program was increased by \$26 million with the hope of eliminating the existing waiting list. Similarly, the budget adds \$6 million to expand other senior in-home services, home-delivered meals, and respite care. Part of that \$6 million will also be used to implement elder abuse prevention legislation that was enacted in 2012. In addition, the Program for All-Inclusive Care for the Elderly (PACE) received a funding increase that will allow expansion of the program into Genesee, Ingham, and Saginaw counties.

In addition, a pilot program was created within the Department of Community Health to study services to Alzheimer's patients and their families. The Alzheimer's Association of Michigan will receive \$150,000 to conduct a study on whether—and to what extent—in-home services for Alzheimer's patients reduce costs to the state over facility placement.

Auditor General Finds Major Problems in Adult Protective Services

On a less pleasant note, the Michigan Auditor General released a report showing the Department of Human Services (DHS) in a poor light. The audit specifically reviewed the Adult Protective Services (APS) division and uncovered several problems regarding investigations into allegations of neglect or abuse. Among other things, the report specifically found that "APS supervisors did not consistently review closed APS investigation cases, as required. Also, DHS did not ensure that APS supervisors conducted reviews of closed APS investigation cases that effectively detected unaddressed allegations, incomplete APS client service plans, and missed monthly face-to-face contacts with APS clients."

Of the approximately 200 closed cases reviewed by the Auditor General, it found that 20 percent had been closed without addressing all the allegations in the case. Several cases had been closed even though documentation showed that a vulnerable adult had been harmed or was at risk of harm. There were even four cases wherein APS had failed to notify law enforcement of criminal activity, as required by law.

DHS Director Maura Corrigan stated that the department was taking the Auditor General findings seriously and was working to correct the issues the report had raised.

Campaign 2014 Notes

All attention in Lansing is focused on the upcoming primary election battles, which feature some intense campaigns. A surprisingly high number of incumbents are facing serious challenges, and the August 5 elections could reshape the November election dynamics should any of them be defeated. Here are a few of the more hotly contested races:

4th Senate District (Detroit) - Democrat

- Sen. Virgil Smith
- Rep. Rashida Tlaib
- Howard Worthy

Sen. Smith is the incumbent, but he faces a tough challenge from Rep. Tlaib. Most observers give the edge to the incumbent, but Tlaib is a strong campaigner who could surprise.

11th Senate District (Oakland County) - Democrat

- Sen. Vincent Gregory
- Rep. Ellen Cogen Lipton
- Rep. Vicky Barnett

Incumbent Sen. Vince Gregory gave the impression in 2013 that he would forego a second term in the state senate to run for Congress. When he decided to instead run for his second term, Rep. Ellen Cogen Lipton and Rep. Vicky Barnett had already announced their candidacies to fill Sen. Gregory's seat. The end result is a three-way slugfest which anyone could win.

13th Senate District (Oakland County) - Republican

- Marty Knollenberg
- Rocky Raczkowski
- Chuck Moss

Three former Michigan House members are the frontrunners for the Republican nomination. Marty Knollenberg may have the best name recognition in the district, but Raczkowski and Moss are still in the fight.

31st Senate District (Bay City and northern Thumb area) - Republican

- Sen. Mike Green
- Rep. Kevin Daley

Incumbent Sen. Green is facing a challenge from Rep. Daley. Green likely has the upper hand as the incumbent, but he may be vulnerable in the Republican primary since he voted against the Right-to-Work law.

32nd Senate District (Saginaw) - Democrat

- Rep. Stacey Erwin Oakes
- Garnet Lewis

Rep. Stacey Erwin Oakes and Democratic Party Activist Garnet Lewis face off to win the right to contend for what will be a hotly contested general election for this open senate seat. Erwin Oakes has snagged the key UAW endorsement, while Garnet Lewis has the strong backing of the LGBT community.

The Changing Demographics of Persons with Disabilities

By Michele P. Fuller, Michigan Law Center PLLC

People with disabilities come from all walks of life; both the rich and the poor and everyone in between can be affected by a disability. Some persons with developmental disabilities have had them since birth; others arose due to aging; and others become disabled as a result of injuries or accidents. Also, some disabilities are physical while others are mental. The special needs planning issues for a person with autism or Down syndrome may be much different than for a person who is blind or uses a wheelchair. All of these factors are considered in predicting the most significant upcoming changes in disability rights.

The greatest change will be the overall number of persons with disabilities who will require planning. Also, certain types of disabilities will significantly increase due to the explosion of autism cases and an aging population, while, with advances in genetic testing, other types, such as Down syndrome, may virtually disappear. Additionally, a new type may arise, possibly called an avoidable or voluntary disability.

In addition to increasing numbers, the next major issue is maintaining the gains of the disability rights' movement. Recent efforts by this community have created several planning options for

persons with disabilities that never existed before. Historically, this group was unable to participate in society because of barriers that excluded them from employment and health care. But with legal and technological advances, as well recent changes that came with the Affordable Care Act (ACA), people with disabilities have been able to be more self-supporting and to participate more in their communities.

By the Numbers

Around one in seven Americans is currently considered disabled, and that number is expected to swell in the next 30 years, according to the most recent study by the Institute of Medicine (IOM).¹ The IOM has tracked disability for more than 20 years, and its 2007 study focused on predicting the number of persons with disabilities.² Alan M. Jette, MPF, Ph.D., chair of the committee that wrote the IOM report, stated, “If one considers people who are now disabled, those likely to develop a future disability and people who are or will be affected by the disabilities of family members or others close to them, it becomes clear that disability will eventually affect the lives of most Americans.”³

Citing the 2004 Census, the IOM predicted that as the baby boomer population ages, the number of individuals over age 65 will increase 20 percent, swelling from 35 million in 2000 to more than 71 million in 2030.⁴ Historically, disability has been directly related to age. But, interestingly, the current number of older adults with disabilities has decreased since the first IOM study, due largely to advances in medical technology. Also, advances in medical care and treatment have helped people with disabilities live longer, requiring more sophisticated plans that take into account longer life expectancies.

But the overall largest increase of persons with disabilities will actually be for those who are under age 65. The number of children with disabilities has increased due to greater numbers being diagnosed with conditions such as autism. Further, due to child obesity and Type-2 diabetes, many other children are expected to have disabling conditions. However, these people may be considered to have a “voluntary” disability because it may be considered “avoidable,” much like how government treated those with alcoholism or drug addiction in the past.⁵

¹ *Id.*

² Institute of Medicine (US) Committee On Disability In America, *The Future Of Disability In America* (Nat’l Academies Press, 2007).

³ *Id.*

⁴ *Id.*

⁵ In 1996, Congress passed legislation that removed drug and alcohol addictions as disability impairments. PL 104-193, § _____ 110 Stat. 2105 (1996).

Another under-65 population to consider is returning veterans. The U.S. involvement in armed conflict in Iraq and Afghanistan has created another significant class of persons with disabilities.⁶

For special needs planners, all of this means job security. There will be greater pressure on available resources, both public and private. Special-needs planners may need different approaches to zealously advocate for their individual clients and to maintain the rights gained over the last 30 years. The role of organizations, such as NAELA, may need to be expanded. These organizations will play a vital role in maintaining the advances already received by persons with disabilities.

Children with Disabilities

The IOM study, citing the US Census Bureau statistics, stated that in 2004, more than 4 million children ages 5-20 (6.5 percent of the population) had disabilities, while 20 million people ages 21-64 (12.1 percent of the population) had disabilities.⁷ The IOM reported that, while “the risk of an individual experiencing disability is lower in this age group [under age 65], the total number of younger adults with disabilities currently *exceeds the total for the population ages 65 and over* [emphasis added].”⁸ The study explains that much childhood illness and conditions that were previously fatal are now survivable, albeit the child remains disabled. The IOM study has received attention for identifying that among adults under age 65, disabilities arising from physical or mental conditions, such as autism, are not the major impact on the predicted explosion of disability. Rather, lifestyle choices are at issue.

The effect of lifelong obesity and diabetes significantly contributes to complications, which routinely leads to disability in adulthood. The solution is often perceived to be voluntary. While there are certainly some cases of obesity that have a physiological nature, the increase in childhood obesity is a reflection of a dramatic change in lifestyle. The cost of fresh food, especially “organic” produce, is prohibitive to most family budgets, resulting in quickly available meals of poor nutritional value. American children (and adults) need to get out and play more, eat less, and make better food choices. One probable result of this type of disability will be a societal backlash against so-called “voluntary disabilities” or disabling conditions which are

⁶ Nearly 45% of the 1.6 million veterans of the Iraq and Afghanistan wars are filing for veteran’s disability benefits because of service connected disabilities. Of those who have sought VA care, more than 1,600 of them lost a limb; many others lost fingers or toes; at least 156 are blind, and thousands of others have impaired vision; more than 177,000 have hearing loss, and more than 350,000 report tinnitus—noise or ringing in the ears; thousands are disfigured, with as many as 200 of them injured so badly that they may need face transplants. Marchione, Marilynn. “New Veterans Seeking Disability at Record Rate, with 45% Filing” *USA TODAY* May 28, 2012.

⁷ *Id.*

⁸ *Id.*

perceived as avoidable and resulting from someone who is obese and leads a sedentary lifestyle. The backlash could take the form of government agencies refusing to provide assistance.

Autism Spectrum Disorder

Also, the new definition of autism as autism spectrum disorder (ASD) will be critical to the special needs planning practitioner. He or she must understand what services will be provided to persons with an ASD diagnosis and whether a high functioning, non-diagnosed person will still need appropriate services and how to access and maximize such services.

To better assist clients and their families, be aware of the political dynamics of autism, including how it is defined. These clients will need the staunch support and advocacy of special needs planners to ensure those children who would otherwise fall through the cracks are receiving the services they need. Because of the cost of services, most families cannot afford critical therapies and must rely on school-based services, Social Security benefits, Medicaid, and insurance coverage.

Special needs planners will also have to be adept at connecting families with local resources and services, including low-cost advocacy services. Many children with autism, especially those who will no longer meet the criteria for ASD, will have impairments that need to be assisted through planning. This impairment, while not obvious, may show itself in poor choices or an inability to sustain friendships or partners. It may also result in an inability to maintain employment. Special needs planners must recognize and accommodate this growing category of children by drafting fully discretionary spendthrift trusts which are like special needs trusts, but with more flexibility, so that personal growth is rewarded while limiting the effect of poor decision making or other impairments.

Aging with Disabilities: Uncharted Territory

Young adults who were born with or acquired their disabilities in early childhood often experience advanced aging, as early as their 30's or 40's.⁹ As people with disabilities age, they are at significant risk of developing additional disabilities.¹⁰ Common secondary conditions are identified as depression, arthritis, pain, pressure ulcers, fatigue, contractures, and urinary tract infections, depending on the type of primary disability. The medical profession is struggling to meet the demands of this group of adults that are surviving childhood conditions which were once fatal. This is a new development for special needs planners and advocates. The future plan

⁹ *Supra* note 31 at 5, SECONDARY CONDITIONS AND AGING WITH DISABILITY.

¹⁰ *Id.*

will need to recognize the impact of premature aging for these persons and special needs families.

In addition to this population, some of these individuals are able to find employment but will lose that employment as they prematurely age, resulting in a loss of independence. This puts greater pressure on family caregivers and certainly affects the individual's physiological well-being while diminishing his or her overall quality of life. Health care education has not advanced quickly enough to accommodate this growing group. Health care workers do not know how to effectively treat secondary conditions that arise with age. Even the facilities themselves are not accommodating and create barriers to effective care. Special needs planners need to allow for and allocate resources for future home adaptations and equipment to support independence and community involvement, as well as to access resources to monitor out-of-home living arrangements when it is not possible for the individual to remain in the community.

Conclusion

As people with disabilities live longer with age-related health issues, their care needs will increase at an accelerated rate. The practitioner will need to take into consideration the projected costs involved and be prepared to make modifications to that plan over time. Working with experienced financial advisers to plan for the financial needs of these individuals, preferably one that has experience creating a financial plan for an individual who is unable to work, will help. Drafting documents alone will not be enough. Keeping in touch with those planned for will be important to make sure as needs change, the plans change. This is especially important for families who wish to allow their family member with disabilities to age in the family home.

Calendar of Events

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

NAELA – www.naela.org

- January 29-31, 2015 – NAELA Summit Exhibit, Newport Beach, CA
- For NAELA's July GAO update, click [here](#).

ICLE/SBM – www.icle.org

- September 4 - Post-Death Tax Planning & Preparing Fiduciary Estate, and Gift Tax Returns, Plymouth
- October 23 - Drafting an Estate Plan for an Estate Under 5 Million, Plymouth

- November 18 - Experts In Estate Planning: Estate & Distribution Planning for Retirement Benefits, Plymouth
- December 4 - Estate Planning for Retirement Assets, Plymouth

Other Events

- August 2 - ELDRS Council Meeting, Steward & Sheridan, Ishpeming
- August 6 - SBM Committee & Sections to Present Seminar to Empower Senior Citizens in 51 Counties on Estate Planning Decisions. A Living Trust Education Initiative: Who Should You Trust? Avoiding Estate Planning Mistakes.
- September 6 - ELDRS Council Meeting, Caroline Dellenbusch PLC, Grand Rapids
- October 1-3 - ELDRS Fall Conference, Mission Point on Mackinac Island
- October 3 - ELDRS Annual Meeting