

ELDERS Update

Winter Edition 2012, Volume I, 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, Managing Editor, at christine@caswellpllc.com.

Elder Law and Disability Rights Section 10th Annual Spring Conference 2012 – Speakers and Registration Fees

The Inn at St. Johns – Plymouth, Michigan

Friday, March 16, 2012

- 8:30 a.m. – 9:00 a.m. Registration
- 9:05 a.m. – 9:10 a.m. Welcome by Harley D. Manela
- 9:10 a.m. – 10:20 a.m. Debt and the Elderly Client
 - *Josh Ard and Brad Vauter*
- 10:20 a.m. – 10:30 a.m. Break
- 10:30 a.m. – 11:30 a.m. Health Care Issues in Lansing
 - *Senator Jim Marleau (R-Lake Orion)*
Chair, Senate Health Policy Committee
 - *Senator Rebekah Warren (D-Ann Arbor)*
Minority Vice-Chair, Senate Health Policy Committee
- 11:30 a.m. – 12:00 p.m. How to Prevent Malpractice in an Elder Law Practice
 - *Robert Anderson*
- 12:00 p.m. – 1:00 p.m. Lunch - Veterans' Benefits in Michigan
 - *Brigadier General Michael A. Stone and*
Jason Allen
- 1:00 p.m. – 2:45 p.m. Probate Court, DNR and End of Life Decisions
 - *Ryan Deel, Michael Paletta, MD, Andrew Broder and*
Harley Manela
- 2:45 p.m. – 3:00 p.m. Break

- 3:00 p.m. – 4:30 p.m. Hot Topics Concerning Medicaid
 - *Laurie Murphy, John Payne, Patricia E. Kefalas Dudek and David Shaltz*

REGISTRATION FEES

- Section Member: \$100.00
- Non-Member: \$135.00

LUNCH FEES

- Classic Cobb Salad: \$20.00
- NeoClassic Chicken Caesar Salad: \$20.00

Register at <http://www.michbar.org/elderlaw>.

ELDRS Fall Conference

Save the Date

The 17th Annual ELDRS Fall Conference, “Lost in Translation,” will be held October 3-5, 2012 at the Crystal Mountain Resort in Thompsonville, Michigan. One focus this year will be the many ways in which individuals cede or have taken from them (by legal process and/or institutionalization) the power to make decisions concerning health care, residence, personal care and finances. We will explore facets such as appropriateness; process; revocation, modification and termination; abuse; retained rights and possible remedies at both the federal and state level, including those already in existence and those that are cutting-edge.

Please save the dates and look for more information in the May and August editions of the *ELDRS Update*.

Debate on Health Exchange May Be Put Off Until June

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

Health Exchange

One of issues Governor Snyder called upon the Legislature to address in his State of the State address is the creation of a state health exchange. This exchange would be an online marketplace making it easier for individuals to compare, evaluate, and purchase health care insurance. Last fall, the Senate passed Senate Bill 693 which seeks to create the MI Health Marketplace Act. However, it has yet to move in the House.

The House Health Policy Committee held several hearings on the legislation, the most recent on January 19. However, the issue has become a political lightning rod as groups opposed to National Health Care Reform (as embodied in the Patient Protection and Affordable Care Act) have attacked SB 693 as acquiescence to “Obamacare.” The January 19 House hearing on the bill was heavily salted with testimony from individuals in opposition to every aspect of national health care reform and who saw SB

693 as weakening potential legal challenges to it. Many of those speaking against the bill identified themselves with the Tea Party movement and stated that they feared the creation of a health exchange would place even more power in the federal government's hands.

On the other hand, the committee also heard from a number of individuals and groups who favored the creation of exchanges. A representative from the American Heart Association spoke out in favor of the legislation, as did individuals who suffered from serious health situations at a time in their lives when they could not afford insurance.

House Health Policy Committee Chair Gail Haines (R-Lake Angelus) told the audience that she has no plans to hold a vote on the issue until June. That is when it is expected that the U.S. Supreme Court will have decided on the constitutionality of the Affordable Care Act. Governor Snyder has urged the Legislature to take quicker action, stating that the exchange will take time to implement. However, since the issue has become so highly politicized, it is unlikely the House will move before the U.S. Supreme Court makes its ruling.

Revenue Forecast Shows Economic Improvement

The House and Senate Fiscal Agencies, along with the State Treasurer's office, gathered on January 13 for the latest Revenue Estimating Conference. For the first time in a long time, the conferees, which included members of the House and Senate Appropriations Committees, heard positive news about state revenues.

First and foremost, the state ended the 2011 Fiscal Year with a \$457 million surplus. State Budget Director John Nixon said that the Governor would prepare a supplemental budget proposal that would be issued in conjunction with his FY 2012 budget proposal on February 9. The extra funds would likely be used to address "hot spots" in the current year budget, such as Medicaid caseload increases.

Going into 2012 and beyond, economists from the University of Michigan predict there will be continued growth in Michigan's economy but that the growth would probably be less rapid than the past year. Another economist from the consulting firm IHS Global Insight cautioned that instability in Europe also had the potential to slow or even reverse the economic growth expected in Michigan and nationally. It was agreed, although there is good news and hope for future growth, the U.S. economy nonetheless remains fragile.

The most depressing portion of the presentation came from an official from the National Conference of State Legislatures who told the committee that, despite increases in state tax revenues, there would be definite future reductions in federal funds coming into Michigan. Cuts to education and public safety were imminent. The official said even food programs and Medicaid—which had been spared so far—would likely see major cuts by 2013.

Buyers Beware: LTC Insurance Providers May Deny ALF Coverage in Michigan

By Robert C. Anderson, Elder Law Firm of Anderson Associates, P.C.

Mary bought a long-term care insurance policy 14 years ago and paid total premiums of \$32,000. Her insurance agent represented that it would cover home health and assisted living facilities (ALF), as well as a nursing home stay. Mary really liked the coverage for home health and ALF since she wanted to avoid going into a nursing home. The agent did not disclose to her that the policy required that only licensed ALFs qualify for coverage and that all the ALFs within 150 miles of her home were unlicensed. Michigan does not specifically regulate or license ALFs; but some Michigan ALFs have obtained licenses as Homes for the Aged (HFA).

Mary recently had a slight stroke. She entered Heavenly Care ALF, a local facility, believing that her LTC policy would cover part of her \$3,200 monthly cost. Although Heavenly Care completely satisfied the LTC policy's standards for an ALF, the LTC insurer denied coverage because Heavenly Care was not licensed. The author's complaint on behalf of Mary with Michigan's Office of Financial Regulation (OFR) got nowhere. The OFR examiner held that the LTC insurer had not violated any statute nor was this a contract violation. The author intends to file suit in Circuit Court.

An important part of the federal Health Insurance and Portability Act (HIPAA) included consumer protection provisions for long-term care (LTC) insurance. Unfortunately, HIPAA's protections only applied to nursing home and home health coverage in LTC insurance policies, leaving assisted living facility coverage for state regulation. Michigan has decided not to regulate or license ALFs. Other states do regulate and license them.

Some LTC insurers in recent years have recognized this problem and have formulated policy provisions which waive the ALF licensing requirement if a state does not require it. The author recommends elder law attorneys review their client's LTC insurance policies to see if the policy contains the unfavorable ALF licensure requirement, and if so, the attorney can advocate for a waiver of the provision or a refund of premiums. The author also would like to see the Council pressure OFR to deny approval of LTC policies which contain an ALF licensure requirement.

Recent News for the Elder Practitioner

By Christopher W. Smith, Michigan Law Center, PLLC

Topics

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By The Numbers

- 17.1% of American adults lack health insurance, the highest uninsured rate since Gallup began tracking it in 2008. [Elizabeth Mendes, More Americans Uninsured in 2011, Gallup, January 24, 2012.](#)
- One in 30 babies born in the United States is now a twin, up 76% from 1980. Two-thirds of the increase is attributed to fertility treatments, and the other third is attributed to an increase in the average age of women giving birth. [Nicholas Bakalar, Twin Births in the U.S., Like Never Before, N.Y. Times, January 23, 2012.](#)
- “About 20% of American adults suffer some sort of mental illness each year, and about 5% experience a serious disorder that disrupts work, family or social life” according to the U.S. Substance Abuse and Mental Health Services Administration. Mental illness is a bit more prevalent in women, and slightly less than half of those with mental illness receive treatment. Also, “about 4% of adults contemplate suicide each year.” [David Brown, Government Survey Finds That 5 Percent of Americans Suffer from a ‘Serious Mental Illness,’ Washington Post, January 19, 2012.](#)
- In 2009, 1% of the U.S. population accounted for 21.8% of all health care expenditures, averaging \$90,061 per person. Meanwhile, the bottom 50% of the U.S. population accounted for only 2.9% of health care expenditures. [Steven B. Cohen and William Yu, The Concentration and Persistence in the Level of Health Expenditures over Time for the U.S. Population 2008-2009, Agency for Healthcare Research and Quality, January 2012.](#)
- U.S. health spending rose slightly by 3.9% in 2010, largely the result of individuals delaying or foregoing doctors or prescriptions because of the economy in the preceding year. Medicare spending increased 5%. Americans spent \$849 billion on health insurance premiums, while insurers paid out \$746 billion to providers. [Robert Pear, Recession Holds Down Health Spending, N.Y. Times, January 9, 2012.](#)
- Death rates for cancer “went down by 1.8% a year in men and 1.6% a year in women” between 2004 and 2008, according to the American Cancer Society. From “1990 through 2008, death

rates plunged almost 23% for men and just over 15% for women.” [Cancer Death Rates Down for Adults, Chicago Sun Times, January 6, 2012.](#)

- Just 51% of U.S. adults are married, and the average age of first marriages has never been higher (26.5 for brides, 28.7 for grooms). [D’Vera Cohn, Barely Half of U.S. Adults Are Married – A Record Low, Pew Research Center, December 14, 2011.](#)
- According to the 2010 U.S. Census, 40.3 million people (13% of the total population) are over the age of 65, an increase of 5.3 million since 2010. Between censuses, the over-65 population is growing at a faster rate than the total U.S. population (15.1% vs. 9.7%). 85- to 94-years olds represented the fastest growing population segment at 29.9%. And there is some good news for men’s longevity. While there are about twice as many 89-year-old women as there are 89-year-old men, this “doubling point” occurred at age 85 in the 2000 Census. [U.S. Census Bureau, 2010 Census Shows 65 and Older Population Growing Faster Than Total U.S. Population, November 30, 2011.](#)
- The “wealth gap between younger and older Americans” has never been greater, according to the Pew Research Center. Households “headed by a person age 65 or older has a net worth 47 times greater than a household headed by someone under 35.” The gap is double what it was in just 2005. [Hope Yen, U.S. Wealth Gap Between Young, Old Is Widest Ever, The Huffington Post, November 7, 2011.](#)

Alzheimer’s/Dementia

- The Obama administration announced that it “is developing the first National Alzheimer’s plan” to better address treatment and day-to-day care for Alzheimer’s/dementia patients. A draft of the goal marks 2025 as the target date “to have effective treatments and ways to delay if not completely prevent the illness.” [Lauran Neergaard, U.S. Wants Effective Alzheimer’s Treatment By 2025, AP, January 17, 2012.](#)
- Hearing loss increases the odds of dementia. “For each 10-decibel loss in hearing, the risk of dementia” increases by about 20%, according to a study published in the Archives of Neurology. [Jane E. Brody, Personal Health: Lifelines for People with Hearing Loss, N.Y. Times: Well Blog, January 16, 2012.](#)

Guardianship

- The Canadian Centre for Elder Law created an impressive 212-page report on various elder and guardianship mediation practices. [The Canadian Centre for Elder Law, Report: Elder and Guardianship Mediation, January 2012.](#)
- The ABA Commission on Law and Aging issued a report summarizing changes in guardianship laws across the United States. In 2011, “27 states passed a total of 39 adult guardianship bills.” The majority of the laws passed had to do with increasing guardian accountability. [ABA Commission on Law and Aging, American Bar Association, State Adult Guardianship Legislation: Directions of Reform – 2011.](#)

Health Care and Medicine

- Nursing home residents are more likely to die from surgery than non-nursing home residents. The risk of death (nursing home residents vs. other Medicare beneficiaries) is as follows: ulcer surgery (42% vs. 26%), colon surgery (32% vs. 13%), appendectomy (12% vs. 2%), and gallbladder removal (11% vs. 3%). Nursing home residents are also more likely to need invasive interventions (e.g., feeding tubes) afterwards. The study emphasizes the importance of considering alternatives to surgery for nursing home residents. [Paula Span, Avoiding Surgery in the Elderly, N.Y. Times: The New Old Age Blog, January 25, 2012](#), citing [Emily Finlayson, Major Abdominal Surgery in Nursing Home Residents: A National Study, Annals of Surgery, December 2011](#).
- Physicians are increasingly referring patients to other physicians/specialists. In 2009, physicians referred a patient to another physician 9.3% of the time, up from 4.8% in 1999. [Michael L. Barnett, Trends in Physician Referrals in the United States, 1999-2009, Archives of Internal Medicine, January 23, 2012](#).
- Because bone loss and osteoporosis develop slowly, a woman 67 or older with a normal bone density test has just a 10% chance of developing osteoporosis in the next 15 years, according to a study published in the *New England Journal of Medicine*. Medicare will pay for a bone density test every two years, but this research suggests that may be more often than needed. [Gina Kolata, Patients with Normal Bone Density Can Delay Retests, Study Suggests, N.Y. Times, January 18, 2012](#).
- Prescription and medical device manufacturers will soon have to disclose any payments “made to doctors for research, consulting, speaking, travel and entertainment,” as required by the Affordable Care Act, if they have any product covered by Medicare or Medicaid. The reported data will be available on a website. The comment period for the proposed rules ends February 17. [Robert Pear, U.S. to Force Drug Firms to Report Money Paid to Doctors, N.Y. Times, January 16, 2012](#).
- Express Scripts customers cannot fill their prescriptions at Walgreens, as of January 1, 2012. [Bruce Japsen, Walgreens Is Firm on End of Express Scripts Deal, N.Y. Times, January 11, 2012](#).
- Do doctors have an ethical responsibility to provide “parsimonious” (i.e., cost-effective) care? Yes, according to the American College of Physician’s Ethics Manual. [Do No Harm – And Keep An Eye On Costs, Kaiser Health News, January 11, 2012](#).
- Losing a loved one can break a heart. The risk of a heart attack is 21 times higher the day after a loved one dies, six times higher the first week after a loved one dies, and remains elevated for the first month, according to a study published in *Circulation: Journal of the American Heart Association*. [Anahad O’Connor, Really? The Claim: Grief Can Cause A Heart Attack, N.Y. Times: Well Blog, January 9, 2012](#).
- Per capita Medicare and Medicaid health care spending varies widely by state with Massachusetts having the highest per capita spending (136% vs. the national average) and Utah the lowest (74% vs. the national average). Michigan has the lowest per capita spending in the Great Lakes region at \$6,618 per person, just below the national average of \$6,815. [Christian Torres, CMS: States’ Health Spending Gap Widens, Kaiser Health News: Capsules Blog, December 7, 2011](#).
- An increasingly popular and faster form of radiation therapy for breast cancer, brachytherapy, may be less effective than conventional whole breast radiation. Medicare records for 130,000

women showed that those who underwent brachytherapy were twice as likely to have a mastectomy in the following five years. [Andrew Pollack, Study Raises Concerns about a Faster Radiation Therapy for Breast Cancer, N.Y. Times, December 6, 2011.](#)

Hospitals

- 13.5% of hospitalized Medicare beneficiaries experience an adverse event (harm as a result of medical care) during their hospital stay. Unfortunately, only 14% of adverse or temporary harm events requiring treatment were reported by hospitals to Medicare as required. [Office of Inspector General, Department of Health and Human Services, Hospital Incident Reporting Systems Do Not Capture Most Patient Harm, January 2012.](#)
- Four medications and medication groups “were responsible for two-thirds of emergency hospitalizations among” Americans over 65. Those responsible: warfarin (33%), insulin injections (14%), antiplatelet drugs that prevent blood clotting (13%), and diabetes drugs taken by mouth (11%). [Annahad O’Connor, Four Drugs Cause Most Hospitalizations in Older Adults, NY Times: Well Blog, November 23, 2011.](#)
- Older patients receive less pain medication in emergency rooms than younger patients, according to a study of more than 88,000 emergency room visits that appeared in the Annals of Emergency Medicine. Whereas pain medication was given to 65% of those under 75, only 49% of those over 75 received pain medication. Those who were cognitively impaired or unable to report pain were not included in the study. [Nicholas Bakalar, Disparities: In the E.R., the Elderly Get Less Pain Relief, N.Y. Times, November 21, 2011.](#)
- 30% of a hospital’s Medicare bonus is now based on Medicare approved patient-satisfaction surveys. Medicare now takes patient satisfaction into consideration when determining bonus payments for hospitals. (See the Michigan section to learn how various Michigan hospital regions are doing.) [Jordan Rau, Test for Hospital Budgets: Are the Patients Pleased?, N.Y. Times, November 7, 2011.](#)

Insurance

- Private insurers are increasingly reliant on government programs for revenue. Large insurers now receive 42% of their revenues from Medicare and Medicaid, up from 36% three years ago. [N.C. Aizenman, Private Insurers Increasingly Reliant on Government Business, Washington Post, January 4, 2012.](#)
- Does offering retiree health insurance to individuals before age 65 encourage employees to retire earlier? Yes, but not by much. A 62-year-old with retiree insurance is 3.7% more likely to retire, and a 63-year-old is 5.1% more likely to retire. Overall, retiree insurance “reduces the total number of person-years worked between ages 56 and 64 by 9.6% relative to no coverage.” [Steven Nyce, et al., Does Retiree Health Insurance Encourage Early Retirement?, National Bureau Of Economic Research, December 2011.](#)
- Aetna filed an antitrust lawsuit against Blue Cross/Blue Shield of Michigan claiming that it raised consumer rates and used the proceeds to “reward hospitals with higher payments if they charged Blues’ competitors the same or higher rates.” The lawsuit is similar to allegations made earlier by the U.S. Department of Justice against BC/BS of Michigan alleging that BC/BS of Michigan gave hospitals favorable rates if they agreed to give competitors less-favorable terms. [Patricia Anstett, Legal Challenges Mounting for Blue Cross Blue Shield of Michigan, Detroit Free Press, December 7, 2011.](#)

Long-term Care

- According to Northwestern Mutual's Cost of Long Term Care Study:
 - National average cost for Home Health Aides: \$20.65/hour
 - Michigan: \$19/hour
 - Assisted Living - Private Room: \$40,469/year; \$3,372/month
 - Michigan: apx. \$45,408/year; \$3,784/month
 - Nursing Home - Private Room: \$89,812/year; apx. \$7,484/month; \$246/day
 - Michigan: apx. \$90,520/year; apx. \$7,543/month; \$248/day

[Northwestern Mutual, Cost of Long Term Care Study, November 2011.](#)

Medicaid

- Due to the SSI cost-of-living increase, the new Michigan Waiver income limit increased to \$2,094. Asset limits of \$2,000 for an individual and \$3,000 for a couple remain the same.
- CVS paid \$5 million to settle a claim that it misrepresented prices for certain prescription drugs on Medicare.gov's Plan Finder. [FTC Press Release, CVS Caremark Corporation Settles FTC Deceptive Pricing Charges, January 12, 2012.](#)
- The Kaiser Family Foundation issued a brief on Medicaid's role for women of all ages. 37% of all women on Medicaid are seniors 65 and older. Women account for 69% of Medicaid beneficiaries 65 and older, 73% of nursing home residents, and 67% of home health users. In Michigan, 16% of women aged 18-64 are uninsured. [The Henry J. Kaiser Family Foundation, Issue Brief: Medicaid's Role from Women across the Lifespan: Current Issues and the Impact of the Affordable Care Act, January 2012.](#)
- While most states are moving toward turning Medicaid over to for-profit insurers and managed plans, Connecticut just took its Medicaid plans away from for-profit insurers, stating that the insurers did not provide the promised savings. Oklahoma is the only other state that had private plans and later stopped the program. [Phillip Galewitz, Connecticut Drops Insurers from Medicaid, Kaiser Health News, December 29, 2011.](#)
- Three states, Texas, Ohio and Washington, accounted for nearly half (46%) of the transitions out of institutional settings and into the community under the government's Money Follows the Person demonstration program (MI Choice in Michigan). The average participant is "50 years old, took 4.6 months to transition home." 8.3% returned to an institution. [The Kaiser Family Foundation, Money Follows the Person: A 2011 Survey of Transitions, Services and Costs, December 2011.](#)

Medicare

- According to the Government Accountability Office, the U.S. paid Medicare Advantage plans \$3.1 billion more than it should have in 2010 because the government miscalculated the health of beneficiaries. [Alex Wayne, Medicare System Overpaid Insurers \\$3.1 Billion in 2010, Bloomberg, January 27, 2010.](#)
- Medicare Advantage plans may have an extra incentive to offer "free gym memberships." A study published in the New England Journal of Medicine found that enrollees in plans with gym membership were more likely to report themselves in excellent or good health (6.1% higher) and less likely to report an activity limitation (10.4% lower). Because MA plans are not legally allowed to cherry-pick enrollees, these small percentages can provide a competitive advantage.

[Alicia L. Cooper, Fitness Memberships and Favorable Selection in Medicare Advantage Plans, The New England Journal of Medicine, January 12, 2012.](#)

- Beginning January 1, 2012, “Medicare Part D plan [Prescription Drug Plan] enrollees who are unable to obtain a prescription drug at the pharmacy are now, in most instances, entitled to a written notice explaining how they can contact their Part D plan in order to initiate an appeal.” However, the final model notice has not yet been issued to pharmacies. [Center for Medicare Advocacy, Inc., New Medicare Part D Pharmacy Notice Rule in Effect; Stay Tuned for Final Model Notice, January 5, 2012.](#)
- Medicare now covers (without co-pays) obesity screening and counseling services. According to Medicare, over 30% of the Medicare population is considered obese. [Center for Medicare Advocacy, Inc., Reminder: Medicare Covers Obesity Prevention with No Cost-Sharing, January 5, 2012;](#) [CMS Press Release, Medicare Covers Screening and Counseling for Obesity, November 29, 2011.](#)
- Medicare will allow “its extensive claims database to be used by employers, insurance companies and consumer groups to produce report cards on local doctors and hospitals.” Doctors will be individually identifiable and these “report cards” may become available in late 2012. [Feds to Allow Use of Medicare Data to Rate Doctors, AP, December 15, 2011.](#)
- Blue Cross/Blue Shield of Michigan and the Michigan Attorney General’s Office agreed to freeze the cost of its Medigap products until July 31, 2016. In exchange for the rate freeze, the attorney general agreed not to contest the BC/BS of Michigan’s purchase of a minority stake in AmeriHealth Mercy, a Philadelphia-based Medicaid managed care insurer. [Melissa Burden, Blues Medigap Rates Frozen, The Detroit News, December 2, 2011;](#)
- Part D co-pays for brand name prescriptions drugs went up this year. According to a study by Avalere, co-pays for preferred brand-name drugs went up 40% and non-preferred brands by 30%. The increase suggests that while Part D premiums have held steady, insurers are shifting costs to chronically ill beneficiaries in the form of higher co-pays. This quiet cost shift emphasizes the importance of reviewing Part D prescription drug plans every year. [Richard Alonso-Zaldivar, Higher Copays Seen for Medicare Brand Name Drugs, The Huffington Post, November 16, 2011.](#)
- The Kaiser Family Foundation issued a brief on Medicare Advantage quality ratings. 26% of Medicare Advantage enrollees are in plans with quality ratings greater than 4 stars, but the majority of Medicare Advantage enrollees (59%) are in plans rated average (3 or 3.5 stars). By company, Kaiser Permanente had the highest average quality ratings and Humana the worst. As a whole, not-for-profit plans received quality bonuses of \$93/person more than for-profit plans. In Michigan, while the average quality star rating was better than the national average (3.73 vs. 3.49), the average bonus per beneficiary was below than the national average (\$255 vs. \$281), presumably because more Michiganders are enrolled in the lower quality plans. Western Michigan had higher rated Medicare Advantage plans than the rest of the state. [Kaiser Family Foundation, Medicare Advantage Plan Star Ratings and Bonus Payments 2012, November 2012.](#)

Michigan

- How satisfied are we with Michigan’s hospitals? Based on 295 hospital referral regions around the country using Medicare customer service data, the following areas did better than the national average (69.8%) in customer satisfaction: Traverse City (75.1%, #15), Grand Rapids (72.9%, #46), Petoskey (72.4%, #68), Marquette (71.8%, #88), St. Joseph (71.4%, #105), Lansing

(71.2%, #111), Muskegon (71.2%, #113), Saginaw (70.9%, #125), Kalamazoo (70.8%, #130), and Ann Arbor (70.4%, #143). The following were below the national average in satisfaction: Royal Oak (69.8%, #160), Dearborn (67.9%, #217), Detroit (67.5%, #232), Pontiac (65.9%, #262), and Flint (64.9%, #269). [Kaiser Health News, Table: Hospital Patient Satisfaction Ratings by Region, November 7, 2011.](#)

- Michigan ranked 30th in overall health according to America's Health Rankings (a project of United Health Foundation). Michigan finished in the bottom 10 percent of cardiac heart disease, cardiovascular deaths, obesity, underemployment and unemployment. The only area where Michigan finished in the top 10 was for immunization coverage (#9) with 92.9% of children ages 19 to 35 months immunized. Vermont was the healthiest state and Mississippi the worst. You can find all the rankings at the very interactive website <http://www.americashealthrankings.org>.

Social Security

- Due to the 3.6% cost-of-living increase to Social Security benefits, the maximum Supplemental Security Income increased to \$698 in 2012.

Special Needs

- The definition of autism is being reassessed by the American Psychiatric Association as it completes its revision of the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (the D.S.M). Under the proposed narrower definition, one study estimated that about 24% of those diagnosed with classic autism, 76% of those with Asperger syndrome, and 84% of those with P.D.D.-N.O.S. would not meet the proposed definition for autism spectrum disorder. Autism advocates fear a reduction in available government benefits and programs if the new definition is approved. [Benedict Carey, New Definition of Autism Will Exclude Many, Study Suggests, N.Y. Times, January 19, 2012.](#)
- Both Merrill Lynch (<http://specialneedscalc.ml.com/>) and Met Life (http://www.metlifeeasier.com/metdesk/calc_step1.asp) have basic calculators to estimate a lump sum needed to continue the care of special needs individuals after a caregiver's retirement or death. The N.Y. Times has a brief review of each. [Ann Carrns, Financial Planning Calculators for Those with Special Needs, N.Y. Times, January 11, 2012.](#)

Book Club

- Who says you have to sacrifice a stylish house to age in place? A new book, *Unassisted Living: Ageless Homes for Later Life*, looks at 33 residences that bridge the gap between younger and older age. [Julie Lasky, On Aging Baby Boomers and the Question of Where to Live, N.Y. Times, November 23, 2011.](#)
- Practical life advice from over 1,000 older Americans is summarized in a new book called *30 Lessons for Living*, authored by the Cornell University Legacy Project. The *New York Times* highlighted several of the life lessons. [Jane E. Brody, Advice from Life's Graying Edge on Finishing with No Regrets, N.Y. Times, January 9, 2012.](#)

Just For Fun

- If you are going to scratch, scratch your ankle. According to a Wake Forest study published in the *British Journal of Dermatology*, individuals get more pleasure out of scratching ankles than

the back or forearm. No word yet if this important study will be expanded to other areas of the body. [Joe Palca, Scratching an Ankle Is Hard to Beat, NPR: Shots Blog, January 27, 2012.](#)

- John Tyler, born in 1790, the 10th president of the United States has two living grandchildren. John Tyler sired Lyon Gardiner Tyler at age 63. Lyon sired a child at 71 and again at 75, and both are still alive. Three generations now span 221 years. [Gerry W. Beyer, Two of John Tyler's Grandchildren Still Living, Wills, Trusts & Estate Prof Blog, January 26, 2012.](#)
- Want to leave a Facebook message after you die? Try the "If I Die" Facebook application. In addition to your other fiduciaries, you will need three Facebook trustees to confirm your death before your message will post. [Gerry W. Beyer, If I Die: An App for the Dead, Wills, Trusts & Estates Prof Blog, January 8, 2012.](#)

The Pros and Cons of Lady Bird Deeds

By Robert C. Anderson, Elder Law Firm of Anderson Associates, P.C.

A "lady bird deed," also known as a "transfer on death" (TOD) deed, is a transfer to grantees wherein the grantor retains an "enhanced life estate," including the power to sell without the consent of the named grantees (or remaindermen).

The term lady bird deed comes from unsubstantiated lore that President Johnson once used this type of deed to convey land to his wife, Lady Bird. While most of the states that recognize lady bird deeds do so pursuant to statute, Michigan recognizes them pursuant to Standard 9.3 of the Michigan Land Title Standards.

The lady bird deed offers these advantages: a simple and inexpensive method to avoid probate; the grantor can maintain complete control of the property; the grantees receive a stepped-up tax basis upon the grantor's death; and certain Medicaid advantages for the homestead.

The lady bird deed also has significant disadvantages, especially for elder clients.

First, upon death of the grantor, his or her life estate expires, causing the freeze on the taxable assessment to be uncapped. If the property's state equalized value (SEV) is higher than the taxable value, the deed grantees will be stuck with higher property taxes. In contrast, the Michigan Supreme Court, in March 2011, held that joint survivorship property does not trigger an uncapping event when the original owner dies.

Second, for nonhomestead property, the grantor's retained unrestricted control and possession of a life estate in a lady bird deed can have disastrous consequences for Medicaid applications. The countable value of such land will be 100 percent, and Medicaid's 60-month look-back never starts running.

As for the homestead, lady bird deeds work well under current Medicaid law. As a result of the grantor's retained control and life estate, a divestment penalty should not be imposed, and Medicaid's homestead exemption will be captured. Also, in avoiding probate, a lady bird deed passes outside Michigan's current Estate Recovery Plan adopted on July 1, 2011. However, this will not be the case if

Michigan adopts an expanded form of Estate Recovery which attaches to life estates. The Michigan legislature is considering such a proposal.

Before deciding on the use of a lady bird deed, clients need to consider its potential property tax and Medicaid consequences.

Upcoming Events

(Rev. 1/24/2012 by K. Casey Danielak)

DATE	ORGANIZATION	TITLE	LOCATION	WEBSITE
February 18, 2012	SBM Probate Section	Council Meeting	East Lansing, MI	www.michbar.org/probate/meetingschedule.cfm
February 28, 2012	SBM Taxation Section/ICLE	After Hours Tax Law Series: Hot Topics in Estate and Gift Tax	Plymouth, MI	www.icle.org
March 6, 2012	SBM Probate Section/ICLE	Drafting an Estate Plan for an Estate Under \$5 Million (Seminar)	Plymouth, MI	www.icle.org
March 6, 2012	SBM Taxation Section/ICLE	Tax Court Luncheon	Detroit, MI	www.michbar.org/tax/news.cfm
March 7, 2012	SBM Health Care Law Section/ICLE	18 th Annual Health Law Institute	Plymouth, MI	www.icle.org
March 16, 2012	SBM ELDRS	Spring Conference	Plymouth, MI	http://michbar.org/elderlaw/calendar.cfm
March 17, 2012	SBM ELDRS	Council Meeting	Plymouth, MI	http://michbar.org/elderlaw/calendar.cfm
March 17, 2012	SBM Probate Section	Council Meeting	East Lansing, MI	www.michbar.org/probate/meetingschedule.cfm
April 18-21, 2012	National Association of Professional Geriatric Care Managers	28 th Annual NAPGCM Conference	Seattle, WA	www.caremanager.org
April 25-28, 2012	NAELA	2012 NAELA Elder & Special Needs Annual Conference	Seattle, WA	www.NAELA.org
October 3-5, 2012	SBM ELDRS	Fall Conference	Thompsonville, MI	www.michbar.org/elderlaw/calendar.cfm