Elder Care Practice Tips

Sanford J. Mall
Mall Malisow & Cooney, P.C.
30445 Northwestern Highway, Suite 250
Farmington Hills, Michigan 48334
Telephone: (248) 538-1800
Facsimile: (248) 538-1801
Toll Free: (866) 699-1800
E-mail: sjmjd@teclf.com
Website: www.TheElderCareLawFirm.com

Introduction

In the midst of our efforts to learn the new Medicaid rules and how the implementation of the Deficit Reduction Act of 2005 in Michigan will affect our clients, it is easy to lose sight of the main objective of eldercare planning – improving / enhancing the quality of life of the elder. In this context, whether it is the elder or her family that hires us, the primary beneficiary of our services is the elder. Our focus therefore in such an engagement is the elder's welfare, even if that sometimes conflicts with the priorities of other family members. Ideally, the elder should set the goals of any such planning directly when possible. If not, then care should be taken to respect the elder's wishes to the extent that they had been previously expressed.

The balance of today's program exemplifies the extent to which the focus of most elder law training emphasizes the "transactional" side of Elder Care related work. This is understandable since the complexities of the practice together with constantly changing rules makes it so hard for most people to focus on little else. These practice tips offer a framework for all Elder Care practitioners to work together toward a common set of objects resulting in optimal quality of care for the elder client. While some of the tips may appear to be philosophical in nature, reflecting on and internalizing these ideals will help you provide enhanced service to your clients and develop your practice by becoming a better Elder Care practitioner. The intent is to motivate professionals to spend ample time thinking about "*why*" and "*how*" to *practice* in this field to help balance the time and attention taken on the nuts and bolts of the transactions.

Each professional should be able to easily identify and respond to Elder Care client issues related to the professional's discipline. However, the Elder Care practice is unique in that clients' needs often implicate an interdisciplinary appreciation to resolve the complex inter-related issues faced by the elder client. Ideally, the practitioner should strive for "transactional excellence" in his or her discipline as the minimum requirement for becoming an Elder Care practitioner. Our challenge as colleagues is to stretch beyond our basic core competencies recognizing when and how to collaborate as part of an Elder Care team.

1) Follow the Golden Rule.

Treat everyone as you wish to be treated. Honor their humanity and dignity. Practice empathy. A good technique to consider is to ask yourself the question, "What would I want to have happen if this were me or my loved one?"

Treat staff and team members with as much dignity and respect as clients. This practice will engender team effectiveness, improve results and set a standard of excellence in your practice. You, your clients and your staff will *feel* the difference.

2) Become familiar with the National Academy of Elder Law Attorneys ("NAELA") Aspirational Standards for the practice of Elder Law. [1]

Even for non-lawyers, the NAELA Aspirational Standards provide insight as to the depth and breadth of Elder Law, and by extension, other Elder Care related practices.

> "The Aspirational Standards with Commentaries *define the meaning of professionalism in elder law*. They *describe best practices* which, when followed in conjunction with independent professional judgment and state disciplinary rules, raise the level of professionalism and enhance the quality of service to clients."[2] (Emphasis added).

3) Medicaid Planning – its about quality of care and quality of life.

Medicaid eligibility can offer important, even invaluable, benefits for those in need. However, the goal of Medicaid planning can all too easily be reduced to a single objective – obtain Medicaid eligibility. Adopting this view risks potentially jeopardizing the broader needs of the person for whom Medicaid is a consideration. For persons with disabilities having the added access to supports and services that Medicaid can provide is generally highly desirable. For this population of Medicaid applicants, eligibility helps to expand the universe of services and funding available. Predictably, a greater number of options help increase the potential for quality of care and by extension, quality of life. On the other hand, Medicaid eligibility for our elder clients is often accompanied by a decrease in care and treatment options in the most restrictive, least desirable setting – the nursing home.

The goal of elder care should be to maximize the number of potential options to provide the elder the highest quality of life and quality of care in the most appropriate setting while respecting their dignity and preserving financial and other resources to accomplish that goal. Most elders and persons with disabilities do not want institutionalized care. Thus, practitioners should not assume that paying for nursing home care is the ultimate or even a desired goal.

---

[1] ASPIRATIONAL STANDARDS FOR THE PRACTICE OF ELDER LAW WITH COMMENTARIES, National Academy of Elder Law Attorneys, November 2005. The full text is available on the web at: http://www.naela.com/Applications/News-app/Files/112105final.pdf.

[2] NAELA http://www.naela.com/Applications/News/index.cfm?fuseAction=fullArticle&ArticleID=186.

For some, elder law and Medicaid planning have become synonymous with one another. However, Medicaid planning is often inconsistent with what elders want to receive from long-term care planning especially when predicated on the ability to preserve an inheritance, rather than to protect the resources for the elder's well being[3]. In most instances, planning for elder care should first consider a plan that allows the elder to age in place. This type of planning requires the practitioner to evaluate the elder's current condition, care needs, living environment, family and informal support systems, formal support systems, legal, financial and tax planning.

4) Be clear about who the client is.

In the elder care and disability advocacy practice we are often communicating with a range of interested parties including client, interested loved ones, and bill payors. Never lose sight of who the client is and make sure to communicate it regularly so as to avoid any confusion or inference to the contrary. You may occasionally lose a client family but if you do be thankful to be done with a problem case.

5) Set, reset and adjust realistic expectations.

It is important to set realistic expectations for the client to avoid later disappointment, confusion, and frustration. This is a complex practice area. Never be afraid to admit what you do not know. Clearly communicate to the client what you will, will not, can and cannot do. The setting of expectations and the honest communication of them is probably one of the most common weaknesses among professionals generally. In part, this is an extension of the professional "mystique" or "culture." However, it is exactly why some clients / patients feel disappointed by their professional advisors.

6) Recognize the value of facilitating the conversations.

Be willing to ask the tough questions and if necessary, help facilitate the conversations between client and loved ones; spouses; siblings; client and advisors. Help clients understand that what is left unresolved likely comes back to haunt them later. Your ability to serve the client's needs will be enhanced if you are aware of whether everyone is cooperating and what conflicts exist – between whom.

The critical conversation(s) include discussing incapacity / infirmity, loss of control, long-term care, end-of-life decision-making, familial relationships and any of the skeletons in the closet.

Some of the common problems caused by not discussing and not working through uncomfortable issues include: lack of understanding / misunderstandings, no planning / incomplete planning, mistakes, family discord, increased emotional expense, increased taxes, professional fees, and other related costs.

---

[3] See David L. McGuffey, *"Care Planning Across the Long-Term Care Continuum: Fundamentals"* presented at the 2007 NAELA Symposium, Cleveland, Ohio, May 4, 2007. The full text is available on the web at: http://www.tn-elderlaw.com/documents/careplanning.pdf.

7) Build your network of team members – mentors, colleagues, and collaborators.

Build a network of professionals in the Elder Care services community with whom to discuss issues, problems and challenges. Within your practice area, get together with colleagues to help learn best practices and newest techniques. If you have not yet achieved "transactional excellence" in your field / profession, find a mentor to help develop your abilities.

Initiate collaboration. Collaboration leads to better outcomes, better experiences, less burnout and development of a shared culture. The holistic, interdisciplinary team approach works best because it gives us insight and perspective into other disciplines.

> "Interdisciplinary function is generally the aim of specialist [] teams, with members contributing from their particular expertise. The team shares information and works interdependently. Leadership is task-dependent, with tasks defined by the individual patient's [client's] situation."[4,5]

Use your strengths / strengthen your weaknesses. As a first step in developing your team consider a self-assessment.[6] Taking stock of your own practice will help you best determine the your scope of your services and similarly identify the needed complements to add to your team. If you can afford it and your practice will support it, you may consider hiring the expertise. For example, if you are in a predominantly transactional type practice consider hiring a social worker or geriatric care manager to add new dynamics and insights to your practice.

In your areas of weakness push yourself to understand enough to have sufficient sensitivity to the issues and appreciation for the necessity of the skills and talents outside your expertise. For example, if you do not understand why it is so important for clients to have updated legal planning in effect in the time of need, then you need to learn more about what happens when outdated or incomplete planning fails. Appreciation for how the right planning provisions help clients and their families maintain control, avoid probate court and have their wishes carried out helps the non-lawyer Elder Care professional recognize why a legal review should be recommended.

8) Adopt the "no wrong door" mindset.

Recognize and embrace the value and practice of holism. The holistic / interdisciplinary practice model is not for everyone. However, even if you choose not to adopt such a practice, it is hard to argue with the benefits that the holistic team provides clients. Adopting a holistic practice allows us part to become part of the systemic solution. A holistic mindset helps us identify weak links in our clients' preparedness and enables us

---

[4] See Attachment A - MJA 2003; 179:532-534, Team Working: palliative care as a model of interdisciplinary practice Gregory B. Crawford and Sharonne D. Price.

[5] See also NAELA website "Questions & Answers When Looking For an Elder Law Attorney", http://www.naela.org/public/QA.htm.

[6] See Attachment B - Elder Care Self Assessment Tool, copyright 2007, Sanford J. Mall, JD, CELA.

to illuminate the paths they will tread. In this way we act as our clients' guide applying our expert insights to prevent later problems. This happens when we accept the challenge to be part of the systemic solution for our clients.

> "Holistic ElderCare Planning results in the development of a uniquely individualized person-centered plan built by a Holistic ElderCare Team. Such a Team makes up the client's "Network of Support" into which there is truly "no wrong door." Initial contact with any one of the Holistic Team Members is access to the entire Network of Support."[7]

Holistic / interdisciplinary practice is typically messier with the progression of the engagement evolving (sometimes in real time) as the client's needs change.

> "Recently it has been possible to discern a subtle shift in emphasis away from multidisciplinary care towards interdisciplinary care. The concept of multidisciplinary care is based on the premise that health care is delivered by a team, each member of which has a different professional training and brings different skills to bear. The main task is therefore to coordinate the team effort. Interdisciplinary care, although not denying the importance of specific skills, seeks to blur the professional boundaries and requires trust, tolerance, and a willingness to share responsibility. Although such sentiments may sound trite in the current climate--which is more conducive to maintaining than dismantling barriers to collaborative working--trust, tolerance, and a willingness to share responsibility are what is needed."[8]

Embrace the chaos, confusion and frustration of the process and create tools to help facilitate communications within the team. For example, consider a cross-professional intake form that helps all team members appreciate the unique case facts and client objectives while identifying action step priorities and interdisciplinary recommendations.

9) Patient / client centered advocacy.

An advocate can accomplish amazing results through helping to assure quality of care as a paramount priority. The care system (doctors, hospitals, rehabilitation centers, nursing homes, treatment centers, etc…) is difficult to navigate. Most of our clients assume and expect that effective care planning will occur even without advocacy. Similarly, most clients also expect that if something else, other or different is needed – the doctor, hospital, nursing home, home care aide, will recommend it. Sadly, this is precisely why

---

[7] See Attachment D - Definition of Holistic ElderCare Planning, copyright 2007 Sanford J. Mall, JD, CELA.

[8] BMJ 1995; 311:305-307 (29 July), Education and debate towards an ethos of interdisciplinary practice, Mike Nolan. The full text can be found on the web at: http://www.bmj.com/cgi/content/full/311/7000/305#R16.

we have all become so disappointed by the system.[9] Even worse, disappointment has lead many people to despair. As elder care professionals, we can help. In our practice, we have learned that care advocacy happens when we take personal responsibility to know our rights, know when something less than optimal care is being provided and knowing what to do when the system breaks down.

Learn how the care planning process should occur and help clients understand their rights to receive such planning. Learn how controlling law such as the Patient Bill of Rights[10], Resident Bill of Rights[11], Federal Patient Self-Determination Act[12] as well as Medicare[13] and Medicaid[14] regulations can be used to protect client rights and enhance quality of care. Advocacy is especially important at transition points (eg. transition from independence to assistance; from home to hospital; and discharges to or from hospital, rehabilitation center, nursing home or assisted living). These transition points are where care will typically breakdown[15]. Know what can be done when planning fails or when care services fall short.

10) Understand client's benefits programs and coordination of benefits.

Obtain a working knowledge of the core benefits programs affecting your clients. At a minimum these include:
Traditional Medicare (Parts A and B)
Medicare Advantage (Part C)
Medicare Prescription Drug Coverage (Part D)
Medicare Hospice benefits (contained within Parts A, B, and C)
Private health insurances (both employer and non-employer provided, both regular and managed care)
Long-term care insurance (LTCI)
Medicaid (consists of over 30 separate programs including long-term care, prescription drug coverage, mental health services, basic health care and hospitalization coverage)
Veterans' Benefits – including Tricare

11) Learn, learn, learn…. Join, join, join…. Teach, teach, teach…

Learn, learn, learn . . . [16]

---

[9] See Attachment E - May 30, 1996 Testimony of Linda Peeno, M.D. before the U.S. House of Representatives Committee on Commerce Subcommittee on Health and Environment.
[10] M.C.L.A. § 333.20201
[11] M.C.L.A. § 333.21765
[12] 42 U.S.C.A. §§ 1395cc(a)(1)(Q), 1395mm(c)(8), 1395cc(f); 42 U.S.C.A. §§ 1396a(a)(57),(58), 1396a(w); 42 CFR 483.10(a)(4).
[13] See 42 CFR 405 – 413.
[14] Program Eligibility Manuals (PEMS) available at: http://www.mfia.state.mi.us/olmweb/ex/pem/pem.pdf. Program Administrative manuals available at: http://www.mfia.state.mi.us/olmweb/ex/pam/pam.pdf.
[15] See "The Care Transitions Intervention: Results of a Randomized Controlled Trial, Coleman and Chalmers, *Arch Intern Med.* 2006;166:1822-1828. http://archinte.ama-assn.org/cgi/content/abstract/166/17/1822.
[16] Se Attachment F - ASPIRATIONAL STANDARDS FOR THE PRACTICE OF ELDER LAW WITH COMMENTARIES, National Academy of Elder Law Attorneys, November 2005, Standards D1-3.

Attend programs to enhance your expertise and expand your scope of knowledge. Push yourself to attend programs outside your expertise raising your sensitivity to other issues Continuing to stretch yourself can pay big dividends to your team, your client, and to you.[17] Your commitment to learn is required in this practice – the "dabblers" do everyone a disservice. Knowing that this is a complex practice area. If you are not sure about how to do something, refer out (or in) and learn from the process. Recognizing that this is a complex area of practice that overlaps so many others is also important in helping clients understand what is happening. Remember, clients will be confused even after you have explained everything – several times. Be patient.

Join, Join, Join…
Some of best learning opportunities come from being a part of special interest group / track that shares your interests and objectives. You can also meet potential colleagues, mentors, and collaborators at these events. The following organizations are a good place to start:

Attorneys
- Elder Law and Disability Rights Section of the State Bar
- Institute of Continuing Legal Education
- National Academy of Elder Law Attorneys
- Academy of Special Needs Planners
- Estate Planning Councils
- Local Bar Associations

CPAs / Accountants
- Michigan Association of Certified Public Accountants (State and local chapters)
- America Institute of Certified Public Accountants - Elder Care
- Estate Planning Councils

Financial Advisors
- Financial Planning Association (Michigan and National)
- Estate Planning Councils

Geriatric Care Managers
- National Association of Professional Geriatric Care Management

Social Workers
- National Association of Social Workers Michigan and National Chapters

Teach, teach, teach…
The best way to learn is to have to teach, especially to all of your team members.

12) Remember KISS
Clients may not care how much you know – but they will know how much you care.

[17] Driven people less prone to Alzheimer's: Purposeful personality may guard brain against decline, researcher says, The Associated Press, Updated: 4:00 p.m. ET Oct 1, 2007. Full text of the article available on the web at: http://www.msnbc.msn.com/id/21087188/.