

# Patricia E. Kefalas Dudek & Associates

Passionate Advice and Advocacy  
for all Stages of Life

February 2020



## MDHHS activates Community Health Emergenc

### MDHHS activates Community Health Emergency Coordination Center in response to 2019 Novel Coronavirus

As cases of 2019 Novel Coronavirus (2019-nCoV) continue to increase in the United States and internationally, the Michigan Department of Health and Human Services (MDHHS) activated the Community Health Emergency Coordination Center (CHECC) today to support local and state response to the outbreak.

“We at MDHHS recognize the potential threat associated with this virus and are working to identify any suspect cases in Michigan along with our local health partners,” said Dr. Joneigh Khaldun, MDHHS chief medical executive and chief deputy for health. “To help coordinate Michigan’s response to 2019 Novel Coronavirus, we are opening the Community Health Emergency Coordination Center to assist the multiple public health jurisdictions involved in the response and prevention of coronavirus here in our state.”

The CHECC will develop and distribute guidelines and educational materials concerning 2019-nCoV to public health agencies and healthcare providers as needed. This includes coordination with local health departments, including Detroit and Wayne County Health Departments especially as Detroit Metropolitan Airport has become a 2019-nCoV screening location.

To date, there are no confirmed cases of 2019 Novel Coronavirus in Michigan. MDHHS has issued statewide messages through the Health Alert Network encouraging healthcare providers across Michigan to assess patients for exposures associated with the risk of 2019-nCoV infection, including travel to China or close contact with a confirmed case, and for symptoms consistent with 2019-nCoV infection. This includes coughing, shortness of breath and fever.

[Click Here to Read the Full Press Release](#)

## **Encourage Older Adults to Make Sure They Are Counted**

U.S residents should begin receiving census forms by email or mail starting in mid-March. Since this year's census will be the first to be completed largely online, some are concerned that older adults may face challenges in participating.

Thankfully, there are multiple ways to complete the 2020 Census—online, on paper, by phone, and in different languages. People can choose the method they are most comfortable with. If the older adults you serve need help with the forms, support is available at [DisabilityCounts2020.org](https://www.disabilitycounts2020.org). Older adults should be encouraged to fill out the census form and send it back as soon as they receive it, even though the “official” census date is April 1.

The information people share with the Census Bureau is confidential and protected by law. Only statistics are reported. Encourage the older adults you serve to make sure they're counted by the Census. The benefits they rely on may depend on it.

If a resident isn't counted, their needs may not be met. Critical funding for public libraries, early childhood education, school lunch programs, health services, affordable housing, and special education depend on an accurate census count. The same is true for programs older adults rely on like Medicaid and Meals on Wheels.

For more information, go  
to: [DisabilityCounts2020.org](https://www.disabilitycounts2020.org), [census.ca.gov](https://www.census.gov), or [census.gov](https://www.census.gov).

[Click Here to See the Notice at PEKD's Blog](#)

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## **IRS outlines new tax law effect on tax exempt organizations**

The Internal Revenue Service wants tax-exempt organizations to know about recent tax law changes that might affect them. The Taxpayer Certainty and Disaster Tax Relief Act, passed on December 20, 2019, includes several provisions that may apply to tax-exempt organizations' current and previous tax years.

[Click Here to Access IR-2020-23 from January 28, 2020](#)

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## **Congress Reverses Recent Changes to the Kiddie Tax**

A major bipartisan bill, signed into law by President Trump in December, includes significant tax changes for people with assets in a special needs trust for a minor.

The changes center on the so-called "kiddie tax," which just underwent a major overhaul in 2017 that dramatically increased the tax burden for certain families.

[Click Here to Read More About this Tax](#)

## **MDHHS invites public input on aging for new state plan**

The Michigan Commission on Services to the Aging and the Aging & Adult Services Agency are inviting the public to join community conversations throughout the state to discuss the needs of older adult residents.

Every three years the Aging & Adult Services Agency, which is part of the Michigan Department of Health and Human Services, develops a state plan and seeks input regarding the needs and gaps in programs and services. The feedback is used to ensure priorities are on track with its support of the health and well-being of Michigan's older adult population.

The goal is to complete the new state plan by July 1.

The State Plan on Aging serves as a blueprint that outlines the coordination and advocacy activities undertaken to meet the needs of older adults, including integrating health and social services delivery systems.

"Michigan is one of the most rapidly aging states in the country," said Dr. Alexis Travis, senior deputy director of Aging & Adult Services Agency. "By 2025, the number of Michiganders age 65 and over will outnumber those under the age of 18. As people are living longer, we must be strategic, collaborative and innovative in our work. That means we need the opportunity to hear from the public about the realities of aging in Michigan and hope to have great participation in these community conversations."

Dona Wishart, chair of the Commission on Services to the Aging, said public input is vital. "Whether you are an older adult, a caregiver, or someone working with older adults in a volunteer or professional capacity, we urge you to participate in these community conversations. Your feedback is imperative to ensuring the new state plan addresses the critical needs of older adults in our state."

Community conversations will take place in 16 locations across the state:

[Click Here for the Press Release & List of Locations](#)

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## **Harvard Captioning Consent Decree**

Harvard Captioning Consent Decree The settlement expands upon Harvard's new digital accessibility policy, which was announced in May. Harvard must provide captions for all online resources, including school-wide events that are live-streamed, content from department sponsored student organizations and any new audio or video hosted by third-party platforms such as YouTube, Vimeo, and SoundCloud.

NAD Press Release

<https://www.nad.org/2019/11/27/national-association-of-the-deaf-announces-landmark-settlement-with-harvard-to-improve-online-accessibility/>

[PEKD Website - With Consent Decree](#)

## **State Not Entitled to Recover Medicaid Benefits From Community Spouse's Annuity**

A Massachusetts trial court holds that the state is not entitled to recover Medicaid benefits from a community spouse's annuity. [\*Dermody v. The Executive Office of Health and Human Services\*](#) (Mass. Super. Ct., No. 1781CV02342, Jan. 16, 2020).

[Click Here to Read More](#)

## **Supreme Court Ruling on Public Charge Will Harm the Disability Community**

The U.S. Supreme Court voted 5-4 to allow the Trump administration's discriminatory public charge rule to go into effect. Following the ruling, the American Association of People with Disabilities issued the following statement from President and CEO Maria Town.

"The immediate and real-world effect of this week's Supreme Court ruling to lift the nation-wide injunction on the Department of Homeland Security's discriminatory 'public charge' rule will be particularly devastating for immigrants with disabilities and their families", said AAPD's President and CEO Maria Town.

"The vast majority of people with disabilities who utilize public benefits — both citizens and immigrants — do so with the intent of being able to live independently, become employed, support their families, contribute to their communities, and pay taxes. To cut immigrants off from a path to citizenship due to use of such assistance and prejudiced perceptions of disability is unquestionably cruel. It is also harmful to the principles of independence and personal dignity which are foundations of our society.

"While we are disappointed by this decision, it is our fervent hope that lower courts will pay particular attention to its profoundly negative impact on people with disabilities, continue to find the rule to be unlawful, and promptly issue as broad injunctions as possible consistent with this ruling."

[Click Here to Read the AAPD Press Release](#)

## **Medicaid Applicant's Accounts Are Available Asset Despite Guardian's Difficulty in Accessing Them**

A New Jersey appeals court rules that a Medicaid applicant's guardian did not prove that the applicant's cognitive impairment and the difficulty in getting information about the applicant's accounts and property rendered the applicant's resources unavailable. [\*H.R. v. Division of Medical Assistance and Health Services\*](#) (N.J. Super. Ct., App. Div., No. A-2996-17T1).

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## **Here's how seniors and retirees can file their taxes for free**

(IRS Tax Tip 2020-16, February 10, 2020)

For taxpayers on a fixed income, every penny saved matters. Many of these are seniors and retirees who can file their taxes for free. IRS Free File provides free online tax preparation for taxpayers with income less than \$69,000 a year.

Free File is one of several ways that older taxpayers can save money and file their taxes. Here are some facts about these programs to help these taxpayers determine which one fits their needs.

[Click Here to Read About the Program](#)

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## **IRS video tax tip: ABLE Accounts**

Here is a video tax tip from the IRS:

*ABLE Accounts* [English](#) | [Spanish](#) | [ASL](#)

Subscribe today: The IRS YouTube channels provide short, informative videos on various tax related topics in English, Spanish and ASL.

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[www.youtube.com/irsvideosASL](http://www.youtube.com/irsvideosASL)

[Click Here to Go to the IRS Page](#)

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## **Court ruling says NC is illegally segregating people with disabilities**

North Carolina has been illegally segregating people with intellectual and developmental disabilities in institutions or putting them at risk of institutionalization, a court ruled Thursday.

The lawsuit was filed by Disability Rights North Carolina in 2017 against the state, the N.C. Department of Health and Human Services and Secretary Mandy Cohen.

It argued that insufficient state funding and inattention to disabled people's needs are causing many to be placed in an institution or live without the services they require.

[Click Here to See the Full Story](#)

## **About Half Of Adults With I/DD Use Web-Based Technologies & Half Have Disability-Related Impediments To Technology Use**

(Open Minds—January 19, 2020)

About 44.6% of adults with intellectual/developmental disability (I/DD) use devices such as tablets, smartphones, or desktop computers to access social media and other web-based technologies, according to a survey about technology use among this population. The remaining 46% of people with I/DD were identified by their caregivers as having a disability that prevents them from using technology. Among those not using any device, 30.7% indicated interest in technology as follows: computer/laptop, 42.9%; tablet, 36.5%; and smartphone, 20.6%.

Use of technology devices was higher among younger people with I/DD than among older people with I/DD. Among those age 18 to 29, 65% of respondents used a device. Among those age 30 to 39, 57% used devices. Among those age 40 to 59, 40% used devices. Above age 60, 18% used devices.

Additional findings were as follows:

- About 21.6% of respondents indicated that they use some type of assistive technology. Of those using assistive technology, 70.9% used it to communicate; 62.5% used it to “do things faster;” 62.5% used it to do things they could not normally do; and 31.3% used it to learn new things.
- About 95% of those who used technology used it mostly at their home. About 97.5% said they liked using it, and 95% said they were comfortable using it.
- About 70.3% said they have Internet access at their residence.
- About 15.5% of the individuals said they were uncertain whether they would face challenges regarding the use of assistive technology.
- About 7.4% of respondents said they needed training and/or ongoing support to use such technology.

About 86.8% of those who used technology devices said they did not use social media. Of the 13% who used social media, the majority were under age 40. About 59% of the users were ages 18 to 29, and 28% were ages 30 to 39.

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## **Trust Beneficiary Who Asked to Change Provision in Trust Regarding Successor Trustees Violated No-Contest Clause**

Wyoming’s highest court rules that a trust beneficiary did not state a claim for legal malpractice against the attorney who drafted the trust and acted as trustee and that the beneficiary violated the trust’s no-contest clause by asking the court to remove a requirement regarding a successor corporate trustee. [Gowdy v. Cook](#) (Wyo., No. S-19-0005, Jan. 8, 2020).

[Click Here to Read Further](#)

## **The Americans with Disabilities Act 30th Anniversary: Furthering the Promise**

2020 marks the 30th anniversary of President George H.W. Bush signing the Americans with Disabilities Act (ADA) into law. Throughout this 30th anniversary year, the Division is publishing a monthly series of blog posts highlighting the impact that our recent ADA enforcement efforts have made in people's everyday lives. We celebrate the many ways in which the ADA has transformed American society and enabled a generation of Americans with disabilities to thrive. At the same time, we recognize that too many barriers to equal opportunity remain. We recommit to our work of making the promise of the ADA a reality, enabling all Americans with disabilities to achieve their dreams and reach their full potential.

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## **Proposed Rule Could Make Proving Housing Discrimination Against Those with Disabilities Harder**

It could soon be significantly harder for people with disabilities to pursue discrimination claims under the Fair Housing Act (FHA) if new regulations proposed by the Department of Housing Urban and Development (HUD) take effect.

The proposed rule, published in the Federal Register on August 19, attracted numerous responses from disability rights advocates during the 60-day public comment period that concluded in November.

A legal concept known as "disparate impact liability" frees people filing discrimination complaints from having to prove a discriminatory intent or motive. Disparate impact (or disparate effects) liability allows people to prove that otherwise neutral policies are nevertheless discriminatory, such as through statistical analysis and other types of evidence.

For disability rights activists, disparate impact liability has historically been essential to successfully challenging everything from bank lending practices, to landlords discriminating against people with housing subsidies, to zoning ordinances that limit the placement of group homes.

[Click Here to Read More](#)

## **Key Elder Law Numbers for 2020: Our Annual Roundup**

Below are figures for 2020 that are frequently used in the elder law practice or are of interest to clients.

[Click Here to See The Figures from Elder Law Answers](#)

## **Medicare Advantage Continues to Drive Up Medicare Costs – Congress Must Act to Level the Playing Field with Traditional Medicare**

The Center for Medicare Advocacy has long advocated for leveling the playing field between Medicare Advantage (MA) and traditional Medicare. Over the last several years, however, legislative and regulatory policy changes have continued to tip the scales in favor of MA over traditional Medicare. Such efforts include the as-yet-unimplemented Executive Order issued by President Trump in October 2019, along with recent coverage expansions to only the MA program. In addition, while the Affordable Care Act has reined in excessive overpayments to MA plans, those private plans still get higher payment per-beneficiary than traditional Medicare due to “quality” bonus payments and inappropriate manipulation of risk-adjusted payments. Despite such overpayments, MA enrollee quality outcomes are decidedly mixed.

Higher payment to MA plans, coupled with MA-only coverage expansions and enrollment advantages, continue to drive higher enrollment in MA plans and exacerbate the differences between MA and traditional Medicare. As discussed below, recent projections by the Congressional Budget Office (CBO) show that Medicare Advantage will cost the Medicare program even more than previously thought. As pressure grows on the federal budget – and Medicare specifically – indiscriminate cuts to the program would inevitably harm beneficiaries. A recent Health Affairs Blog by researcher Dr. Ricard Kronick outlines a policy change Congress can enact that would both rein in wasteful payments to MA plans and help level the playing field between MA and traditional Medicare.

[Click Here to Keep Reading](#)

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## **NAELA E-Bulletin - Asset Transfer Penalty Imposed on 65-year-old Medicaid Recipient's Transfer of Assets to Pooled Trust Reversed**

After he was injured at home, 65-year-old David Pfoser moved to a skilled care facility and received long-term care Medicaid. When it became apparent that Pfoser would not return home, the property was sold and Pfoser's guardian and conservator received court approval to transfer his share of the sale proceeds into a pooled special needs trust (PSNT) sub-account for Pfoser's benefit. The Dakota County Human Services imposed a 4-month penalty period of ineligibility on the basis that a transfer to a PSNT by a Medicaid recipient age 65 or older is a *per se* improper uncompensated transfer. The Minnesota Department of Human Services Commissioner affirmed the transfer penalty, concluding Pfoser did not receive adequate compensation or fair market value (FMV) for the transfer of cash to the PSNT at the time the transfer was made.

[Click Here to Finish Reading the Bulletin](#)

## **Incorrect Implementation of the Jimmo V. Sebelius Settlement in a Skilled Nursing Facility: A Case Study**

### **I. Background – The Jimmo Settlement**

In 2013, a U.S. District Court approved the settlement agreement in Jimmo v. Sebelius, requiring the Centers for Medicare & Medicaid Services (CMS) to confirm that Medicare coverage of home health, skilled nursing facility (SNF), and outpatient therapy services is determined by a beneficiary's need for skilled nursing and/or therapy, not on a beneficiary's potential for improvement. The Jimmo Settlement clearly directs that Medicare covers skilled services not only to improve a resident's condition, but equally to maintain or slow the decline of a patient's condition. Sadly, seven years later, beneficiaries and their families are still being denied skilled care on the basis of an erroneous "Improvement Standard."

### **II. Case Study**

In early 2020, the son of a Medicare beneficiary in traditional Medicare wrote the Center for Medicare Advocacy (the Center) to describe his experience with the poor implementation of the Jimmo Settlement. He stated that his father's Medicare coverage in a SNF was terminated because he had "plateaued" and was purportedly no longer making progress in skilled therapy.

During the expedited appeals process, Medicare contractors "stressed . . . in advance over the phone that they would only consider medical records as evidence and they would absolutely refuse to consider any violations of Jimmo law when they ruled on our appeal." A 1-800-MEDICARE representative told him that "[t]he Jimmo regulations were from 2014, and they are outdated now and don't apply anymore." After pointing to CMS's Jimmo-dedicated webpage,[3] the Medicare representative escalated the case to the Advanced Resolution Center (ARC). Unfortunately, the ARC also refused to discuss the SNF's violation of the Jimmo Settlement.

[Click Here for More Information & Access to the Case Study](#)

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## **No Penalty Period for Medicaid Recipient's Transfer to Pooled Special Needs Trust**

A Minnesota appeals court holds that a penalty period is not appropriate for a Medicaid recipient who transferred funds into a pooled special needs trust because the recipient showed valuable consideration for the transfer by providing evidence of the goods and services he intended to receive from the trust. *Pfoser v. Harpstead* (Minn. Ct. App., No. 19HA-CV-18-3466, Jan. 13, 2020).

[Click Here to Read More](#)

## Communication Strategies for Attorneys Representing or Interviewing Clients with Dementia

(ElderLawAnswers Podcast Episode 114)

In *ElderLawAnswers for Attorneys Podcast, Ep. 114*, dementia expert Teepa Snow joins ELA National Director Rebecca A. Hobbs to discuss interview and communication skills that elder law attorneys should be well versed in and utilize when working with a client living with dementia. Teepa Snow is one of the world's leading advocates and educators for individuals living with dementia. In 2006, Teepa founded *Positive Approach, LLC*, which offers person-centered training in dementia care and competence in the United States, Canada, Australia, and the UK.

Teepa begins the conversation by explaining that communication strategies with individuals living with dementia are unfortunately one of the most missed skill sets among elder law attorneys. She notes that people absorb information in five ways: through hearing, sight, touch and movement, smell, and taste.

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## CT High Court Remands Post-Divorce Dispute Over Assignment of Alimony to SNT for Further Proceedings

In a dispute over the assignment of alimony payments to a special needs trust (SNT), the Connecticut Supreme Court finds no evidentiary basis for findings of civil contempt and litigation misconduct against a former spouse who objected to a court order directing creation of a trust that she maintained was not a legally valid SNT. *Puff v. Puff* (Conn., SC 20058, Jan. 14, 2020).

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