

Elder Law Advocate

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Newsletter of the Elder Law & Advocacy Section

May 2004

2004 Elder Law & Advocacy Spring Conference Report

Sandford Mall

The Spring Conference held at the MSU Management Center, Friday, March 19, 2004 was attended by close to 100 of our colleagues. Sessions included: Nuts & Bolts of Medicaid Planning for Elderly and Disabled Clients, Essential Estate Planning for Elderly and Disabled Clients, Estate Recovery, Using Probate Court for Advocacy and Asset Preservation Planning, Section 8 Housing for Elder and Disabled Clients and Legal Services Beyond Estate and Medicaid Planning.

Thanks to the hard work of the planning committee - Jim Schuster, Don Rosenberg and Rob Rogers the conference was an overwhelming success! Plans are already in the works for next year's Spring Conference. If you are interested in planning for and/or participating in next year's program please contact me via e-mail at sjmjd@mallhamilton.com.

For copies of the program materials (including over 300 pages of valuable information) send payment for \$50.00 (payable to the State Bar of Michigan) to my office at Mall, Hamilton & Associates, P.C., 31000 Northwestern Highway, Suite 220, Farmington Hills, Michigan 48334.

Changes in the Adult Home Help Policy

Lisa P. Lepine

On January 15, 2004, the Michigan Department of Community Health (DCH) issued a Beneficiary Eligibility Bulletin regarding the Adult Home Help (AHH) policy. AHH is a program available through the Family Independence Agency (FIA) that provides money to caretakers of persons of age and adults with disabilities for the care that they provide to those individuals. The new policy

Save the Date!

2004 Fall Conference

*Ten Miles Behind Me,
Ten Thousand More to Go*

Thursday, October 7, noon,
through
Saturday, October 9, noon.

Treetops Resort. Gaylord, Michigan

The theme of this year's event will be long-term care, in its broadest sense. Registration for the event will be available soon.

There are a variety of accommodations available, with the least expensive being \$69 a night + taxes. Rates are good Wednesday night through Saturday night, should you wish to arrive early or stay on after. There are a limited number of rooms available at the \$69 rate, though the resort will try to increase these.

(Reservations can be changed or cancelled if necessary, though they will be considered firm by September 1.)

was scheduled to be effective for all new applications as of March 1, 2004 and for any on-going cases as of June 1, 2004.

The proposed policy changed the eligibility criteria, as well as the dollars available for the independent activities of daily living (IADL). To determine eligibility, need would have to be established through the completion of a Medical Needs form. In order to be determined eligible for any funding from the program, a beneficiary would have to have required assistance with at least one activity of daily living (ADL), assessed at a Level 3 or greater. ADL's were enumerated as: eating;

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toileting; bathing; grooming; dressing; mobility; and transferring.

Many individuals would have been considered able to complete the enumerated ADLs with simple prompts, thus not meeting the assessment requirement. Eligibility for the program would have been denied, and assistance for the IADLs such as laundry, housework and meal preparation would not have been available to many who rely on this program for the assistance necessary to live their lives. Additionally, for those who were determined eligible, the number of hours available for the IADLs was capped. For example, a person who qualified could receive no more than 25 hours per month for assistance in meal preparation, despite individual need.

Hundreds of calls and complaints reached the Department and on April 8, 2004, the DCH Director Janet Olszewski immediately suspended implementation of the proposed policy change until further notice. This respite was short-lived, though.

During the week of April 26, 2004, a new *proposed* policy was introduced. Although eligibility for the program was not mentioned, it sets limits on the number of AHH hours for specific services on a monthly basis, i.e., shopping, laundry, meal preparation, etc. Again, the imposed limitations do not recognize that need should be determined on an individual basis.

Public comments regarding the proposed policy are due by May 29, 2004. We encourage everyone to submit comments, citing specific difficulties individuals will face as a result of the limitations. For example, individuals who are on special diets whose meal preparation exceeds the allotted time of 25 hours per month, or, individuals who have issues with incontinency who require significant assistance with laundry, which has been capped at 7 hours per month. This policy does not recognize the needs of individuals, rather, it focuses on generalizations for a large and diverse population of vulnerable adults.

Public comments should be sent to: Deanna Mitchell, Michigan Department of Community Health, Medical Services Administration, P.O. Box 30479, Lansing, Michigan 48909-7979. Telephone: (517) 335-5104; Fax (517) 335-5136; e-mail address: eligibilitypolicy@michigan.gov.

Estate Recovery is Coming!

Although no bill has yet been introduced in the legislature, Estate Recovery has been and will continue to be the subject of committee hearings in Lansing. A legislator has agreed to sponsor a bill. Now is the time for us to educate legislators about the experience of the 49 other states that have enacted Estate Recovery and for our clients to let them know the effect it would have on their lives. We have provided the enclosed flyer to make it easier for everyone to participate in this effort. Feel free to reproduce it as often as you wish.

Wayne County Establishes Elder Abuse Advisory Group

K. Graham and D. McClorey

In May 2003, the Wayne County Council Against Family Violence established the Elder Abuse Advisory Group. The objective was to create an elder abuse "advisory group" incorporating agencies and departments that provide services to seniors, and/or are mandated to address elder abuse. The establishment of an advisory group would provide opportunities to network, learn from one another, initiate working partnerships, and would lay the foundation for grant opportunities on elder abuse prevention and intervention projects. The result is a very dynamic collaboration which brings together key agencies working with seniors in Wayne County.

Warning! Medicaid Estate Recovery Could Threaten Your Home!



The State Legislature is currently debating whether to implement a program called Medicaid Estate Recovery in Michigan. This program would allow the government to “recover” the estates of those Medicaid recipients who receive long term care (e.g. nursing home care and care at home) after they are deceased.

Michigan citizens who have worked and paid taxes their entire lives to pay for a house to pass on to their children could lose everything if a long term illness forces them to enroll in the Medicaid program. Such a law could also be devastating for family farms.

Contact your Legislator and ask them to oppose efforts to enact Medicaid Estate Recovery in Michigan!

State Representative _____

Phone: _____

State Senator: _____

Phone: _____

Get more info about the Legislature at www.michiganlegislature.org

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Several of these agencies have collaborated on various grants. The Elder Law and Advocacy Section Council supported a recent submission to provide Elder Abuse training to law enforcement, court personnel, and others who work with victims. If funded, many of these projects will become models for development throughout the rest of the state.

The Wayne County Prosecutor's Elder Abuse Unit is a recent addition to the Advisory Group. When Kym Worthy was sworn in as new Wayne County Prosecutor in early January of this year, one of her first actions was to establish a new Elder Abuse Unit. Assistant Prosecuting Attorney, Dave McClorey was named as director of the unit. The unit became operational almost immediately. The unit's protocol calls for it to handle the following cases. First, homicides of an Elderly person by a perpetrator who is related by blood or marriage or is a caregiver or a resident of the same household. Second, all assaultive felonies against an elderly person. This includes Robbery Armed, Robbery Unarmed, Larceny from a Person, Arsons, Home Invasion 1st, 2nd, and 3rd degree, all Aggravated Stalking, all Criminal Sexual Conducts, all Assault with Intent to Murder and Assault with Intent to do Great Bodily Harm. Third, all cases brought under the Vulnerable Adult Statute: 750.145(m) and (n). Fourth, all felony cases arising in an Adult Foster Care Home or Nursing Home (including operating such facilities without a license).

Currently, the unit staff consists of one attorney and one victim advocate, with a second attorney scheduled to join the unit on May 3, 2004. A request for two additional attorneys and one investigator has also been made. With the additional staff, the unit can expand into the area of economic offenses against the elderly including probate matters, scam artists, and other consumer related offenses. It is hoped that the new Wayne County Consumer Protection Task Force will be

able to investigate many of these economic offenses.

Although only in existence for just over two months, the unit already has taken on over 30 cases including two Murder 1st Degree cases, an operating an adult foster care home without a license, several armed and unarmed robberies, and numerous assault and aggravated stalking cases.

Each case is vertically prosecuted, that is, the unit handles the case from issuance of the warrant to sentencing. This is done so that the victim has one lawyer to deal with rather than a different prosecutor at each stage of the proceeding. It also allows the victim advocate, Dwane Alston, to interact with each victim throughout the entire proceeding.

It is hoped that when fully established and staffed, the unit can make a big impact on the quality of life and the safety of all seniors in Wayne County.

Medical Eligibility for Medicaid: The Sneak Attack

Doug Chalgian

Expect to be hearing about the Medicaid "universal screening tool."

While elderlaw attorneys have been focused on estate recovery and other possible changes to the financial eligibility rules for Medicaid assistance, the Governor has continued to pursue the idea that the more efficient way to cut costs is to "screen out" individuals seeking Medicaid services in the long term care programs (the nursing home and Home and Community Based Waiver Medicaid programs) by raising the level of disability required to be eligible. This sneak attack has the potential to impact the availability of services to our clients more significantly than any change currently being

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contemplated with respect to the financial eligibility rules.

Currently individuals seeking Medicaid services in the nursing home or through the Home and Community Based Waiver Medicaid program are medically eligible if their doctor says so. This will change if the State goes through with its plan to adopt a "universal screening tool." The "tool" will establish a standard for measuring the level of disability necessary to be eligible for services. The same tool will screen out applicants for both the nursing home and Home and Community Based

Waiver Medicaid programs. A similar step of raising the medical eligibility bar for services is already underway for services available through the Medicaid Home Help program.

The end result may be that persons with dementia, who need custodial versus skilled care, may find themselves excluded from receiving services through either of these programs, and as a result, will be forced to fall back on Home Help and other Medicaid services, which services provide substantially less assistance, and which programs do not include the spousal impoverishment protections that are available in the nursing home and Home and Community Based Waiver Medicaid programs.

As elderlaw attorneys, we should be prepared to address any move which will leave our clients without adequate protections, and which would reintroduce divorce as the best or only method for financial protection to individuals who are unfortunate enough to be afflicted with certain chronic diseases.

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