

BIFOCAL

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Bar Associations in Focus on Aging and the Law

Dual Eligible Demonstrations:

A potential sea change in service delivery for the neediest clients

by Fay Gordon

At the National Aging and Law Institute last fall, I participated in several sessions on Affordable Care Act (ACA) implementation. The sessions explored the changing

eligible demonstrations. States are in various stages of planning and negotiation. We do know that the demonstrations will represent a sea change in the way services are



MMCO has approved four state proposals: three capitated models (MA, OH, and IL), and one managed-fee-for-service model (WA). Massachusetts will be the first state to launch a demonstration and plans to begin enrollment on July 1.

delivered to dual eligibles (beneficiaries that are eligible for Medicare and Medicaid) and the challenges of getting it right will be considerable.

In a few months, when the early states begin enrollment, we'll see what this means for clients and elder law practice. Until then, understanding the demonstration's development, and potential beneficiary issues, will help us prepare to be strong client advocates.

landscape of care for older adults, from managed long-term services and supports to the dual eligible demonstration. Chatting with my seat neighbors after the sessions, I heard a common frustration: "This is all interesting, but what does it mean for *my* practice?"

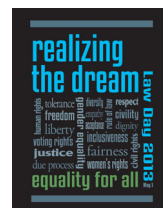
This frustration is particularly palpable when discussing the dual

Dual eligible individuals and the demonstration

Six million individuals qualify for full Medicare and Medicaid benefits. These "dual eligible" individuals are a complex, heterogeneous group, whose only unifying characteristic is that they are eligible for two publicly financed health insur-

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Have you started your 2013 Elder Law Day Planning?



OLDER AMERICANS MONTH 2013

ance programs. Eighty-six percent of dual eligible individuals have an income level below 150% of the federal poverty line,¹ forty-five percent identify with a racial or ethnic minority,² and three out of five dual eligible individuals have multiple chronic conditions.³

Care for dual eligible individuals tends to be expensive,⁴ and for many, their care is uncoordinated and the system is difficult to navigate.⁵

Recognizing this challenge, Congress gave broad authority to the Centers for

Medicare and Medicaid Services (CMS) in the ACA to test new models for financing and delivering care to dual eligible individuals. In 2011, the ACA-created Medicare Medicaid Coordination Office (MMCO) launched the Financial Alignment Demonstration and invited states to design new systems of care delivery based on either of two models. The first model, which most states are proposing, is capitated (managed) care that combines Medicare and Medicaid financing into one funding stream and requires managed care plans to provide and coordinate all Medicare and Medicaid services, including everything from acute care to mental health, home and community based care, and institutional care. The second model, managed-fee-for-service, requires a strong care coordination component, although many services would continue to be provided on a fee-for-service basis. For both models, Medicare and Medicaid would share in anticipated savings.

At the time, MMCO hoped to attract enough state interest that one to two million beneficiaries would participate, allowing MMCO to identify and rapidly replicate successful integration models in

¹ Jacobson G, Neuman T, Damico, A. Medicare's Role for Dual Eligible Beneficiaries. Kaiser Family Foundation (2012) [hereinafter KAISER Paper].

² CMS 2003 Survey, Section 8, Medicare Dually Eligible Population.

³ Kasper J., Watts M., Lyons B., Chronic Disease and Co-Morbidity Among Dual Eligibles: Implications for Patterns of Medicaid and Medicare Service Use and Spending. Kaiser Family Foundation (2010).

⁴ Care for dual eligible individuals accounts for 20% of Medicare spending and nearly 40% of Medicaid spending. See KAISER Paper.

⁵ With the exception of PACE and a few state demonstrations, dual eligible individuals receive health and long-term services and supports (LTSS) through two payment systems, Medicare and Medicaid.

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other states.⁶

By the spring of 2012, 26 states submitted proposals, with an estimated collective impact on three million dual eligible individuals.⁷ As of this writing, MMCO has approved four state proposals: three capitated models (Massachusetts, Illinois, and Ohio), and one managed-fee-for-service model (Washington State). Massachusetts will be the first state to launch a demonstration and plans to begin enrollment on July 1, 2013.

Beneficiary advocates unite to promote consumer protections

Throughout the demonstration, MMCO encouraged meaningful stakeholder engagement in program design.⁸ After states submitted their proposals, academics, providers, legislators, and others questioned aspects of the demonstration's structure, design, and financing. Beneficiary advocates focused on consumer protections in enrollment, integration of long-term services and supports, appeals, and oversight.

Enrollment

All states proposed to use passive ("opt-out") enrollment, a process that automatically enrolls individuals into a new health plan. Advocates pushed MMCO to require voluntary "opt-in" enrollment, guaranteeing dual eligibles retain the right to choose who, where, and from whom they receive their care. Those advocacy efforts met with

partial success.⁹ In their Memorandums of Understanding (MOUs) with CMS, Massachusetts, Ohio, and Illinois agreed to an initial, voluntary enrollment period before the passive enrollment process. As states enroll individuals, attorneys may need to assist clients when they face confusion with new plans, changes in providers with new networks, and potential disruptions in care.

Integration of LTSS

An ongoing concern with capitation is the integration of long-term services and supports (LTSS) into managed care. Most Medicaid managed care organizations (MCOs), which have typically enrolled children and their parents, have little experience serving individuals requiring LTSS and few connections to existing community-based providers. Similarly, because Medicare does not cover LTSS services,

⁹ Advocate comments, letters, and statements available at: www.dualsdemoadvocacy.org/national-advocacy.

⁶ Melanie Bella, Director, Medicare Medicaid Coordination Office, at Senate Finance Hearing "Dually-Eligible Beneficiaries: Improving Care While Lowering Costs" (September 21, 2011). Hearing transcript available at: <http://www.finance.senate.gov/hearings/hearing/?id=1e16d50e-5056-a032-523f-da1cd1bd91aa>.

⁷ The states are Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Massachusetts, Minnesota, Michigan, Missouri, North Carolina, New Mexico, New York, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. Five states (New Mexico, Oregon, Minnesota, Tennessee, and Hawaii) are no longer pursuing the Financial Alignment Demonstration in its current form.

⁸ Medicare-Medicaid Coordination Office, Financial Alignment Initiative Overview.



Medicare Advantage plans have no experience in meeting LTSS needs. Plans face a steep learning curve and their ability to build their infrastructure and capacity quickly remains unknown. Careful monitoring for disruptions in care and poorly planned care transitions will be critical in early stages of the demonstration.

Ombuds, appeals, and oversight

Beneficiary advocates agree that an independent, conflict-free advocate's office that will help individuals navigate the new systems and also represent enrollees on larger systemic issues is critical for the success of the demonstration. The inclusion of an ombuds office appears to be a priority for MMCO. An ombuds office will require adequate funding, and advocates are working with the States to design programs and secure funding.¹⁰ Attorney advocacy is need-

¹⁰ Recommendations for designing a dual eligible ombuds program available at www.dualsdemoadvocacy.org/national-advocacy.

ed to make sure States follow through with supporting ombuds and oversight office, and maintain them through the life of the demonstration. Ensuring that new appeals systems include all hard-won Medicare and Medicaid protections is also a top priority.

These are just a few of the issues clients may face in demonstration states. While the demonstrations hold great promise for improved efficiency and coordination, diligent advocacy and monitoring by attorneys who work with dual eligible clients will be critical for ensuring continued access to care and services. The National Senior Citizens Law Center is working with advocates in the demonstration states, and provides resources for those interested in the projects at www.dualsdemoadvocacy.org.

Fay Gordon is a Staff Attorney at the National Senior Citizens Law Center in Washington, DC. ■

Rush University Online Curriculum on Capacity Assessment Next Course Block Opens March 18

Rush University Medical Center and the ABA Commission on Law and Aging have released an [interactive educational curriculum on assessing the capacity of older adults](#), funded by The Retirement Research Foundation.

The course is aimed at physicians with a variety of backgrounds, but is suitable and valuable for all health care clinicians and students.

Course Content and Components

The curriculum includes six modules:

- The importance of evaluating patients' capacities;
- Key principles and practices;
- The evaluation process and content;
- Specific capacities and situations;
- When to conduct an evaluation yourself and when to refer; and
- Working with courts in guardianship proceedings.

Taking the Course

The curriculum is expected to take no longer than four hours to complete, and need not be completed in one sitting. Viewers will be able to log off and then log back on. There is a brief post-test (about five questions) at the end of each module. **The next course blocks open March 18 and May 13.** For more information, contact Michelle Hochwert at 312-942-0417 or Decisional_Capacity@rush.edu. ■





Managing our Miracles

Dealing with the Realities of Aging

by Monsignor Charles J. Fahey

The process of aging and being aged pose challenges for all persons in both their personal and professional lives. While this part of the human experience is as old as humanity, we are to some extent in unfamiliar territory because of rapid changes in demography, family relations, and public policy based on an explosion of knowledge and technology and their application to the human condition. Social structures are having difficulty keeping pace with these rapid changes, particularly as they affect the process of aging. As individuals and practitioners, personally and professionally, lawyers are deeply enmeshed in the experience.

Essentially, law involves interactions and exchanges among individuals and groups. As one advances in age, relationships continue to be vital though the capacity of some elders may be compromised, thus requiring the assistance of advocates—whether informal or formal. Lawyers may need to be more conscious of relationships in the aging process, not only for clients, but for loved ones and even for themselves.

The Stages of Aging

A brief overview of the aging process might help clarify the challenge facing in-

dividuals and society, the legal profession, and its practitioners.

The underpinning of the human journey is biology—we grow from cells and molecules into the fully functioning organism we characterize as a human being. From the first moment of conception until death, human beings age.

In the first age, our biological makeup matures over time until physical maturity. The capacity to participate in reproduction, and the ability to satisfy basic urges for physical, emotional, and even spiritual intimacy usher in the second age. Historically, this was the period of maximum physical capacity to perform the basic tasks necessary for personal and species survival; only in the last 100 years has a third age become “normal.” Heretofore, relatively few people survived past the second age. However, as a result of our growth in knowledge and its application to the human condition we have, to a large degree, eliminated many causes of premature death—primarily through immunizations and various medical interventions.

As we have dramatically increased life expectancy, we have the challenge of “managing our miracles” both as individuals and as a society.

The Third Age

During this relatively new third age, a period necessary neither for reproduction nor for persons with physical strength, we experience changes in the power structures of and our needs in both personal and societal relationships. Basic biological realities come into play. In the first two ages there are consistent, orderly, balanced degradation and repair functions occurring at the cellular level.¹ “It is the cornerstone of modern biology that a purposeful genetic program drives all biological processes that occur from conception to reproductive maturation.”). In the third age, the balance is disrupted; the repair function cannot

¹ See Leonard Hayflick, *Aging Is No Longer an Unsolved Problem* 1100 BIOGERONTOLOGY: MECHANISMS AND INTERVENTIONS, ANNALS N.Y. ACAD. SCI., 1–13 (Apr. 2007).

keep pace with cellular failure, resulting in progressive intermittent frailty (often referred to as PIF).

There is a third age phenotype, evident across the entire older population, with changes in hair, hearing, teeth, skin, eyes,

critical at all stages of frailty, especially the most acute. Its absence makes it ever-more difficult to deal with frailty. Unfortunately the loss of dear ones is difficult, if not devastating, to older persons.

Resources and the Third Age

The third age is a period of consumption of economic resources, rather than their production and accumulation. A fortunate few have been able to accumulate assets they can rely on to help moderate their frailty by securing various aids—both human and mechanical/ technological. As income and assets are becoming ever more bifurcated in the United States, the financial viability of many in the third age and the Baby Boomers entering this period is becoming more problematic. Potential modifications of Social Security, Medicare, and Medicaid may exacerbate the problems for many. For half of persons in the third age, Social Security is their primary source of income.

Health expenditures are problematic in the private and public sectors for individuals, businesses, and governments at every level. Despite our huge investments in health services, our outcomes, as compared to those of other countries, indicate that our efforts, while costly, are not very efficient.

In addition to lowering premature death throughout the life span and thus increasing life expectancy, medical interventions, rehabilitation activities, management of chronic illnesses, pharmacological agents, and prosthetic devices all lessen frailty but have personal and societal costs.

Healthcare Decision Making

Healthcare decision making has for some time been front and center in the public agenda. There are many questions that will not go away: Who should make decisions and on what basis? Will decisions be “evidenced based” and include quality of life considerations? Should ability to pay be the rationing tool? Both private and public sectors effectively “ration” by what they will reimburse. Should government instrumentalities be the determiners? Can



organ reserve, and energy. For women, menopause is particularly dramatic marker.

In medicine there is a growing recognition of physical frailty as a syndrome, a collection of symptoms or markers primarily due to the aging-related loss and dysfunction of skeletal muscle and bone that place (mostly) older adults at increased risk of adverse events such as death, disability, and institutionalization.

Frailty as used here, however, has a broader meaning. Frailty is both physical and social in its etiology. It tends to be progressive, ultimately ending in death, but manifests itself both differently from individual to individual and expresses itself in an uneven course with each person with periods of relative exacerbation and remission. It encompasses the disequilibrium between an individual's personal capacity and external demands. Any number of relational factors, including physical and social environmental factors, will intensify or remediate this disequilibrium.

The presence of willing supportive others, ideally with instrumental, emotional, and even financial help (in-kind, too), is

and should the matter be left to individuals and their physicians or other health care providers?

Whatever direction public policy takes, all individuals will need and want health services. They will require trusted advisers to help them understand what is possible and to advocate for what is their due. And lawyers have an increasingly important role to play. Advance directives are a first step. They can be utilized in the event a person does not have the capacity at a given moment or over time to make important healthcare decisions. Virtually all states have developed statutes in this regard.

In general, an advance directive is one of two general types: either the person enumerates explicitly and in detail what he or she wishes or does not wish to be done in particular circumstances, or the person appoints a healthcare proxy (essentially a durable power of attorney approach), where a person is delegated to be the decision maker. Often the state statutes cover elements of both types. In most jurisdictions attorneys need not be involved, but often they are.

From my perspective, the healthcare proxy approach is preferable as long as it is drawn and executed appropriately. The proxy should be agreeable to assuming the responsibility and have a thorough understanding of what it entails. The proxy should understand the person's wishes and have the ability to negotiate with health professionals in what may be difficult circumstances and be ready to be supportive

to all involved.

A brief vignette may be helpful. My healthcare proxy is my niece Sharon, an attorney who is a board member of a hospital and the former chair of a long term care system. I said to her, "Sharon you know this is like an engagement, an indication of our love and respect for one another. We have known one another since you were a little girl. I want you there not only if I am incapable of making a decision but whenever I might be in trouble. Even while technically capable I may have diminished decisional acuity and would need your intellectual, moral, and emotional support. Oh yes, in the event I am in extremis, I will not burden you with what you should be doing with regard to technical interventions, but I will ask you to honor these three simple requests: Can I say another prayer? Can I give or get another hug? Can I enjoy another martini?"

Monsignor Charles J. Fahey is chairman of the National Council on Aging, a program officer of the Milbank Memorial Fund, and Marie Ward Doty Professor Emeritus, Fordham University. He is a priest of the Roman Catholic Diocese of Syracuse, New York. This article was originally published in Experience, Summer 2012, 22:2 as A Prayer, a Hug, and a Martini: Dealing with the Realities of Aging. ■

As we have dramatically increased life expectancy, we have the challenge of "managing our miracles" both as individuals and as a society.



Commission Resource Spotlight: Health Care Power of Attorney

Access the ABA Commission's free multi-state guide and easy-to-use, legal form for all adults: [Giving Someone a Power of Attorney for Your Health Care](http://ambar.org/COLA).

Find it, and other resources, on our website at: <http://ambar.org/COLA>.

United Nations Adopts Principles and Guidelines for Access to Legal Aid for Criminal Defendants

by David Godfrey

You have a right to remain silent. Anything you say can be used against you. You have a right to consult an attorney and to have one present during questioning. If you cannot afford an attorney, one will be appointed for you.

The words of the *Miranda* warning are so enshrined in American culture that most of us could quote them in our sleep. These rights are not universal and the United Nations recently adopted a set of principles and guidelines for criminal justice systems to use in developing due process protections. Since the 1966 case of *Miranda v. Arizona* (384 U.S. 436 (1966)), the *Miranda* warning has become standard police procedure in the United States and has been permanently imprinted on the American psyche by television. The obligation of the state to provide an attorney to criminal defendants who cannot afford one, rooted in the 6th amendment to the United States Constitution, was clarified by the case of *Gideon v. Wainwright* (372 U.S. 335 (1963)). All 50 United States have criminal legal aid or public defender programs that provide legal assistance to persons accused of a serious criminal offense who are unable to afford an attorney. But around the world, the right of criminal defendants to receive legal assistance in criminal cases is not always a part of the criminal justice system. To address this, on December 20, 2012, the United Nations General Assembly adopted “United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems” (available at:

http://www.uanet.org/sites/default/files/RES_GA_UN_121003_EN.pdf).

The principles and guidelines recommend basic protections for persons accused of serious crimes including the right to legal assistance, the right to remain silent, the right to legal counsel starting at the moment an individual is detained, access to the full spectrum of legal aid providers including attorneys, paralegals, civil society groups, and law school clinical programs, and the need to develop independent legal aid systems with sufficient resources to meet the need for legal assistance.

A basic principal of human behavior is that for people to respect, honor, and obey laws, they must believe that they will be treated fairly in the legal system. When individuals lack belief in the legal system, they have little reason to obey laws. A core need of a system of laws is to establish basic due process protections including providing legal assistance to individuals in serious legal matters who are unable to afford an attorney.

While the United States system could easily serve as the model for these United Nations principles and guidelines, our system is not perfect. Our criminal defender programs are chronically underfunded and overworked. There is a misconception in popular culture that “every person accused of crime is entitled to an attorney,” but the reality is that only the poorest of the poor accused of serious crimes are able to talk to criminal public defenders. Persons slightly above the poverty level are often denied a court appointed attorney in a criminal matter and persons accused of many misdemeanors are not eligible for criminal

legal aid in some jurisdictions. Persons in need of civil legal assistance face an even bleaker picture. Studies consistently show that civil legal aid providers are only able to meet the need of a tiny fraction of low income clients. While we have well-developed due process protections, the chronic

underfunding of our legal aid systems, both criminal and civil, undermines confidence in the fairness of our legal system.

David Godfrey is a Senior Attorney at the ABA Commission on Law and Aging. ■



National Probate Court Standards Now Available

Probate courts are people's courts. They deal directly with the everyday personal and financial matters of people who cannot

handle their own affairs for one reason or another. Most people think that probate courts deal exclusively with wills and financial affairs of people who have died. However, Probate Courts also deal with guardianships of children, guardianships and conservatorships of adults, mental health treatment, trusts, as well as elder abuse and dependent adult restraining orders. Probate courts also follow up on those appointments and review the actions of the appointed person or agency according to state law.

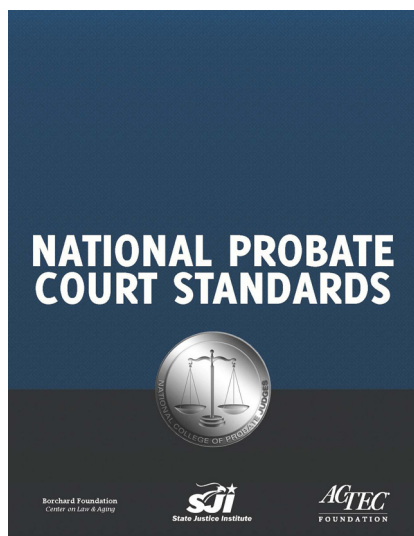
The National College of Probate Judges (NCPJ), is a national organization exclusively dedicated to improving probate law and probate courts throughout the country. NCPJ recently announced the publication of newly revised National Probate Court Standards. The Revised National Probate

Court Standards are intended to promote uniformity, consistency, and continued improvement in the operations of probate courts and have been adopted by the NCPJ and other national court and bar associations. Promising practices from probate courts around the country have been included.

This large-scale revision to the National Probate Court Standards updates the original standards which were first published in 1993. Since then, significant technological, legal, policy, procedural, and demographic developments have affected the way probate courts can and should operate.

Adding urgency to the need generated by these developments is the impact that the "Baby Boom" population bulge will have on the probate courts. Within the next decade, the number of Americans age 65 or older will increase by 50%, from nearly 40 million to about 60 million.

The Standards can be found online here: http://www.ncpj.org/images/stories/pdfs/National_Probate_Court_Standards.pdf.



Model Michigan State Long Term Care Policy Statement Available for Adaptation

by Bradley Geller, J.D.

The Michigan State Long Term Care Ombudsman Program has developed a [Policy Statement](#) to clarify the broad area of the law which we term surrogate decision-making. The statement is in three parts: Advance Directives, Family Decision-Making, and Guardianship, and is directed toward nursing home administrators, social workers, directors of nursing, admissions personnel, and nursing home surveyors. For ease of reading, the information is presented in a question-and-answer format and could be adapted for use in other states. The Statement is available online at: www.michigan.gov/ltc under [Health Care Decision Making](#).

The Policy Statement can be used by nursing homes to help fulfill federally mandated responsibilities to educate staff; to provide community education; and to assist willing residents to complete an advance directive.

In reviewing the particulars of the law, it is important to keep in mind the grand purpose of this statutory and regulatory scheme concerning surrogate decision-making: to honor the wishes, values, and dignity of the individual. And it is also important to recognize the unfortunate chasm between the law as it is written, and the law as it is practiced.

The law has long been clear that an adult who is able to give informed consent to medical treatment—who understands her or his condition, treatment options, intended effects, and possible side effects of these choices—has sole right and authority to make those decisions. Residency in a nursing home does not affect this right.

The law concerning who has authority to make medical decisions if an adult lacks the ability to do so has evolved over the years through new laws and court decisions. The process in Michigan has been episodic, non-comprehensive, and incomplete.

The situation is understandably confusing to long-term care residents, family members, health care providers, long-term care ombudsman, and state officials charged with overseeing the quality of nursing home care.

For years, surveyors cited nursing homes if every resident did not have either an advance directive or a guardian. This misinterpretation of the law had adverse consequences for residents and for nursing homes.

Nursing home staff can be under the misimpression that a patient advocate has authority immediately upon the signing of an advance directive, or that a guardianship preempts almost all rights of a resident.

Some nursing homes have pushed for guardianship for the convenience of the nursing home rather than the needs of the residents.

The Michigan State Long Term Care Ombudsman Program has developed other materials on surrogate decision-making for residents of long term care facilities and their families. More resources, including the booklet [Advance Directives: Planning for Medical Care in the Event of Loss of Decision-Making Ability](#), are available on the Michigan Long Term Care website (www.michigan.gov/ltc).

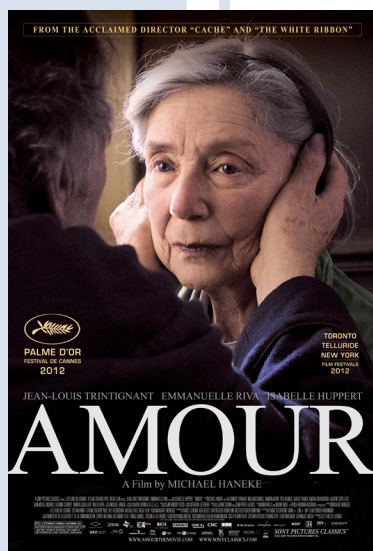
Bradley Geller has initiated legislative reforms, policy development, and educational efforts focusing on surrogate decision-making as counsel for the Judiciary Committee of the Michigan House of Representatives, counsel for the Washtenaw County Probate Court, and as an assistant long term care ombudsman. ■



Movie Review

Amour

by Mary Joy Quinn



This controversial film has been termed depressing and sad by many critics. Quite possibly, some of those comments are a result of being frightened by the depiction of old-old age, disability, and death on screen. It *is* frightening.

It looms as a possible future for everyone. Some of us have already had the experience of caring for an older loved one whose health failed and who then died. For those of us who are over 55 and career free, it is part of our interior landscape on a daily basis.

For a gerontologist, the film is inspiring and lives up to its title of *Amour*. We see the husband loving his wife tenderly in her disability and abiding by her wishes spoken and when unspoken, known by him. He never stops although he may falter here and there. He is steadfast. He picks up her share of the household labor; he deals with in home help most appropriately and carefully. He feeds her. He fires a caregiver he believes is abusive. This is how a man loves a woman. In a way, he is imprisoned by the love he has for his wife. He has no choice but to care for her. He does not, however, feel the caregiving as a burden but rather as what one does for a long term partner.

Their daughter by contrast, is not helpful. She presents her father with options that are unthinkable for him ("Place her in a nursing home."). She also attempts to get her impaired mother, who can barely speak, to purchase a home for her and her husband. At the same time, she is deeply distressed and mourns her mother's increasing disability. But she does not pitch in or help her parents. She travels for her work but she does not do what she could have done. She is not a comfort to either parent. This is not uncommon with adult children. Often, it is impossible for them to

think of their parents as struggling humans and they feel helpless in the face of parental need. And, truth be told, maybe her parents did not want her that involved in their lives—ever.

The film is clean and taut. The role of the husband as caregiver is truthful. The ending is unexpected although the opening scene foretells it in a fashion. The ending is consistent and loving. There is no manipulating of the viewer. The audience is not pandered to and there is no false cheerfulness. In fact, there is nothing false at all. It is realistic both for the role of the husband caregiver and the anguish of the daughter both for her parents and herself.

The film took courage to create, produce, and distribute. The actors are splendid to the point that you cannot believe they are acting—it has the feel of a documentary. The film sheds light on a hidden part of life and for that reason, is refreshing and relieving.

What shall we take away from this disturbing film?

Of course, that will be up to each individual. Certainly, planning for the possibility of disability and the inevitability of death itself is one course of action. We can face our own mortality in a matter of fact manner. Preparing a team of those who would care for you and would "see you out" would provide comfort and peace of mind for both you and loved ones in your life. Planning helps ensure that you will have as much control as possible and that your wishes will be honored even if you become disabled. Guidelines do exist. What else—well, there is one's own community plus state and federal agencies and policies to consider becoming involved with for those who thrive in the advocate role. We have *Amour* to thank for illuminating these possibilities.

Mary Joy Quinn is the Commission's liaison from the National College of Probate Judges and Director (ret.), Probate Court at San Francisco Superior Court in San Francisco, CA. ■

Book Review

Race for Relevance: 5 Radical Changes for Associations

by Harrison Coerver and Mary Byers

by David Godfrey

This book is about improving the function and management of an organization. I found that it forced me to rethink the way the organizations I am involved with do business. The basic premise of the book is that the business climate has changed dramatically over the past 20 years and most associations and nonprofit organizations have not. The book was authored by experts at the ASAE (the Center for Association Leadership) on modernizing the business model for associations.

The book proposes five recommendations for radical change, starting with: *overhaul the governance model and committee operations*. The authors urge reducing the size of boards and committees to increase their functionality. The authors argue that with oversized boards, board functions are often delegated to smaller committees and task forces. They

urge reducing the board to the size of a small group that can serve as a functional committee.

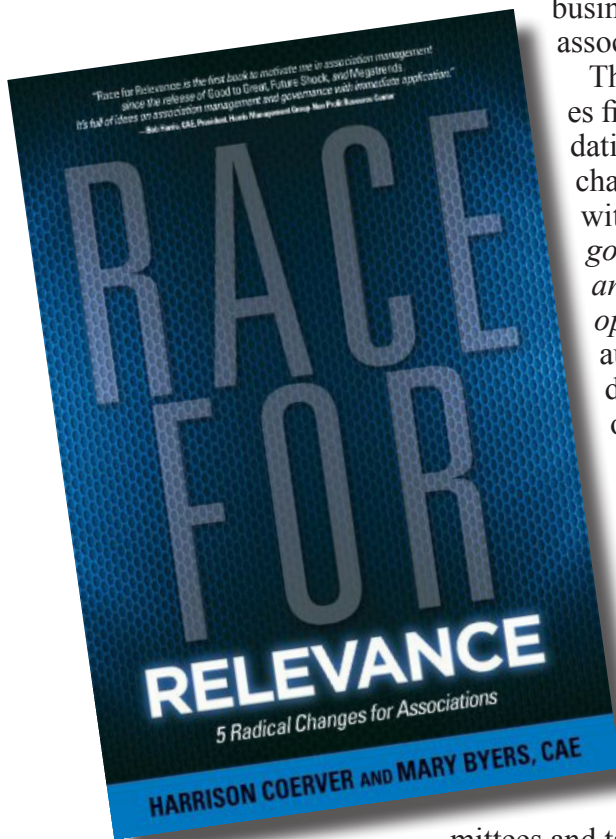
The book then urges that organizations *empower the CEO and enhance staff ex-*

pertise. To do this you recruit professional association managers and staff capable of leading critical organization functions and empower them to do the job. Few board members or volunteers have the time or expertise to operate the organization and day-to-day operations are best carried out by professional staff with direction and oversight from the Board.

The authors next urge organizations to *rigorously define the member market*. Organizations always have limited resources. The authors argue that by trying to meet the needs of every potential member, we serve no member well. They argue that by focusing on a smaller core market, you can improve your perceived member value.

The next move is to carefully *rationalize programs and services*. The authors point to research that shows that the average organization commits 80% of available staff and volunteer resources to programs and services that serve only 20% of members. They cite examples of organizations that devote months preparing for conferences that are attended by a tiny percentage of members. The text urges a careful examination of the commitment of resources for each project in relationship to the number of members served. Rational management leads to the majority of resources being focused on providing services to the greatest number of members.

Lastly, the authors urge organizations to *build a robust technology framework*. Associations and non-profits are frequently years behind in adapting to technology (how many organizations have a smart phone app?). A common excuse is that not all members use emerging technologies; a philosophy that results in what is de-



scribed as a technology strategy driven by the “lowest common denominator.” They urge meaningful budget commitments to expansion of technology and ongoing experimentation and exploration of emerging technology. If we wait to see what works and what lasts, we will always be behind the curve and out of date in our technology use.

The book is well written, easy to read and most of the concepts can be applied to any type of association or non-profit organization. The authors offer some tips on how to approach some of the more

radical ideas (downsizing a board). They acknowledge that some change may take time to implement, but urge you to think and talk about changes that will improve the effectiveness and efficiency of your organization.

The book is available in print edition (\$27.95) and Kindle edition (\$26.55). This is the most expensive Kindle book I have bought, and I have to say it was well worth the price.

David Godfrey is a Senior Attorney at the ABA Commission on Law and Aging. ■

Inside the Commission

Find these resources, and more, online at: <http://ambar.org/COLA>.



2012 Guardianship Update

Read about the 29 adult guardianship measures enacted during the year in this annual Commission report, the [2012 State Adult Guardianship Legislative Update](#).

Health Care Decisionmaking

An updated version of [Health Decisions Resources](#) (Jan. '13) is now available, along with new [Legislative Analysis](#).



Utah Law Review Guardianship Issue

The [Utah Law Review's special issue](#) with the Third National Guardianship Summit recommendations and papers is now available. Read COLA's Erica Wood's coauthored piece with Naomi Karp, "[Choosing Home for Someone Else: Guardian Residential Decision-Making](#)."

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Discussion Lists

The Commission provides a forum for legal professionals to communicate and share ideas on two active discussion lists:

- *Elderbar*, an open discussion list for professionals in law and aging, and
- *Collaborate*, a discussion list on aging, disability, and dispute resolution.

Visit the [Commission's homepage](#) for more information on how to sign up.

What are Your Plans for Elder Law Day 2013?

Planning

For some state and local elder bar sections and committees, Elder Law Day is an opportunity to educate older people about their rights.

Looking to freshen-up your program? Here are some ideas:

- Mock trial or mock jury experiences
- Tour of your local courthouse
- “Ask a Lawyer” workshop with volunteers from your community

Let us know about your organization’s or bar group’s plan for an Elder Law Day program in your community (for May 1 or any other time in the month of May, which is also Older Americans Month) and we may include news of it in upcoming issues of *BIFOCAL*. Email Andrea Amato at andrea.amato@americanbar.org.



Publication Alert

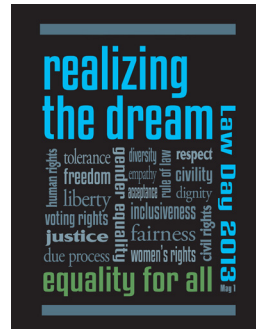
The Commission on Law and Aging is beginning to update its outdated Elder Law Day Planning Guide and is hoping for your help.

- Do you coordinate or participate in an annual Elder Law Day event in your community?
- Do you have planning documents, fliers, or other collateral that you would be willing to share with us?

Please email Andrea Amato at andrea.amato@americanbar.org with your responses!

May 1, 2013—Law Day Theme

Realizing the Dream: Equality for All



The promise of equality under the law is what has made America a beacon to other nations. It is, in the words of Abraham Lincoln, the proposition to which our nation is dedicated. The year 2013 marks the 150th anniversary of the issuance of the Emancipation Proclamation. In 1963, during the Proclamation’s centennial, Rev.

Dr. Martin Luther King Jr. called upon our nation to live up to the great promise of equality for all.

Law Day, May 1, 2013, will provide an opportunity to explore the movement for civil and human rights in America and the impact it has had in promoting the ideal of equality under the law. It will provide a forum for reflecting on the work that remains to be done in rectifying injustice, eliminating all forms of discrimination, and putting an end to human trafficking and other violations of our basic human rights.

The ABA’s Division for Public Education has more information at its website: www.lawday.org.

May 2013—Older Americans Month Theme

Unleash the Power of Age!



Every year since 1963, May has been the month to celebrate the vitality and aspirations of older adults and their contributions

and achievements. It is a proud tradition that shows our nation’s commitment to honor the value that elders continue to contribute to our communities. This year’s Older Americans Month theme emphasizes the important role of older adults.

To learn more about activities and events planned for Older Americans Month, or to find ideas for your own program, contact your local Area Agency on Aging office by visiting www.eldercare.gov.

COLA Moving Sale!

Take advantage of our DC office's May '13 relocation with the special pricing below. Act soon, as quantities are limited!



Softcover Book: Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers

This handbook offers elder law attorneys, trusts and estates lawyers, family lawyers, and general practitioners a conceptual framework and a practical system for addressing problems of client capacity, in some cases with help from a clinician. The publication represents a unique collaboration of lawyers and psychologists. It offers ideas for effective practices and makes suggestions for attorneys who wish to balance the competing goals of autonomy and protection as they confront the difficult challenges of working with older adults with diminished capacity.

Page length: 72

Publication date: 2005

Regular individual price: \$25

Sale: Individual copy: \$10

25-copy quantity: \$50

66-copy quantity (case): \$89

Pamphlet: Health and Financial Decisions: Legal Tools for Preserving Personal Autonomy

Information on powers of attorney, trusts, health care advance directives, living wills and other planning tools. A wonderful waiting room resource, this pamphlet outlines the options available with easy-to-understand bullet points broken down into these categories: "What is it?," "What is it good for?," "Creating," and "Things to think about." The pamphlet also includes a brief planning checklist.

Page length: 10

Publication date: 2005

Regular individual price: \$2

Sale: 100-copy quantity: \$25

250-copy quantity: \$50

**To place an order, please contact us at (202) 662-8690
or at aging@americanbar.org.**

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Catch Up on Missed CLE Events

Grandparents Raising Grandchildren

This program provides an overview of the different legal relationship options available to a family with a child being raised by grandparents or other relatives.

Spousal and Domestic Partner Issues in Pensions and Retirement Income

This program covers the essential elements that you need to know about spousal and domestic partner rights in traditional defined benefit pensions, IRAs, 401ks and other defined contribution plans, and Social Security retirement benefits.

Drafting Financial Powers of Attorney: Avoiding Financial Exploitation of the Elderly

Learn smart drafting and counseling skills and how state law is changing to strengthen the effectiveness and safety of powers of attorney for finances.

Elder Care Mediation and Why It's Important to Your Practice

Learn from an experienced mediator and attorney about how senior mediation can address sibling, extended family, and intergenerational disputes in elder care—and what it can mean for your practice.



The Benefits of Belonging to the ABA

ABA members enjoy a range of benefits that enhance their lives personally and professionally. Learn how the ABA can help you unlock your potential.

New! Lawyers and judges in government or legal/public service, or a solo practitioner in private practice are eligible for a special dues rate. Find out more about the ABA's membership rates online.



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- **Practice Management:** Explore your entrepreneurial side with vital news and resources for maintaining a thriving practice.
- **Public Service and Government Affairs:** From pro bono opportunities to policy-shaping initiatives, the ABA salutes and supports those passionate about public service and government.
- **Resources for Who You Are:** We've cultivated a well-rounded set of resources to reflect our diverse membership—designed for attorneys of all ages, specialties, and backgrounds.
- **Member Advantages:** Everyone loves a good deal—and as an ABA member, you're eligible for discounts on products, travel, and other services you need at work, at home, and at leisure.

Invest in your future. [Join the ABA now.](#)

2013 NALI Call for Workshop Proposals

2013 National Aging and
Law Institute Theme:
Client Advocacy in
Caring Communities



The National Academy of Elder Law Attorneys and co-sponsors of the National Aging and Law Conference invite you to [submit proposal\(s\)](#) to share your knowledge, expertise, and experience with private bar and public interest colleagues at the 2013 National Aging and Law Institute, which will be held on November 7-9 at the Omni Shoreham Hotel in Washington, DC.

Workshop proposals are requested at all levels of expertise. The deadline for submission is March 29, 2013.

Do the elder law and aging rights communities have the advocacy skills to ensure clients will age in a caring community? Making a caring community a reality for clients

is a formidable task at a time when health and long term care systems are out of reach for many, public benefits programs face budget cuts, and the population is aging rapidly. This Institute aims to provide attendees with the multidisciplinary skills and knowledge to ensure they can meet clients' and communities' needs holistically.

To this end, the programming will be divided into three tracks: Practice that Works; Policy on the Cutting Edge; and Making Caring Communities a Reality for Clients.

The proposal form can be found here: www.naela.org/NAELADocs/PDF/Meeting%20PDFs/2013%20NALI/nalicfwp.docx.

Get Connected, Stay Connected on Elderbar

Join **Elderbar**, the discussion list that brings together public and private sector legal advocates and the aging network.

Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

Elderbar is a project of the **ABA Commission** as part of its role in the National Legal Resource Center, funded by the Administration on Aging. It is a closed list; messages can only be posted and read by members. To get connected to **Elderbar** send your name, e-mail address, and professional affiliation to david.godfrey@americanbar.org.

Elderbar is for:

- Elder law attorneys
- Title III-B legal services providers
- Legal services developers
- Senior hotline attorneys or staff
- Long-term care ombudsmen
- Senior Health Insurance Benefits Program staff
- Area agency on aging staff
- State unit on aging staff
- OAA-funded elder rights advocates
- LSC, IOLTA-funded, or other non-profit or public sector legal services organizations
- Law school elder law or clinical staff
- State or local bar association elder law sections or committees
- Service providers in the aging network
- National law and aging advocates

• • • • • **Emerging Issues in LGBT Law Series** • • • • •

Live Webinar & Teleconference ■ Wednesday, April 17, 2013 ■ 1:00 PM – 2:30 PM Eastern

Advance Directives and Estate Planning for LGBT Adults

OUR EXPERT FACULTY:

Christy Mallory

Reid Rasmussen Fellow of Law & Policy, The Williams Institute
Los Angeles, CA

Thomas Sciacca

Attorney, Law Offices of Thomas Sciacca, PLLC
New York, NY

David Godfrey (Moderator)

Senior Attorney, ABA Commission on Law and Aging
Washington, DC

COURSE LEVEL:

Intermediate

PRESENTED BY:

The ABA's Commissions on Law and Aging, Individual Rights & Responsibilities, Sexual Orientation and Gender Identity, Disability Rights; the Senior Lawyers Division; the Section of Real Property, Trust & Estate Law; and the Williams Institute; the National LGBT Bar Association; the Lesbian & Gay Bar Association of Chicago; and the ABA Center for Professional Development

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For more information and to order visit www.ShopABA.org and search by program title or [click here](#).

DESCRIPTION:

This program will give an overview of the unique issues that arise when doing advance care and estate planning for same-sex couples, including relationship recognition, document preparation, financing elder care, and the impact of possible changes in the legal landscape.

Not only will the program address the basics of estate planning but the panelists will also discuss Medicaid spousal impoverishment protections, transfer tax concerns, and employer sponsored retirement plans. Finally, the program will conclude with a discussion on the possible changes in the legal landscape, including the CMS letter allowing states to extend spousal impoverishment protections to same-sex couples and the pending DOMA case in the Supreme Court.



CLE CREDIT:

The ABA will seek 1.5 hours of CLE credit in 60-minute-hour states and 1.8 hours of CLE credit in 50-minute-hour states in states accrediting ABA live webinars and teleconferences.*

NY-licensed attorneys: This non-transitional CLE program has been approved for experienced NY-licensed attorneys in accordance with the requirements of the New York State CLE Board for 1.5 New York CLE credits.

**The ABA does not seek direct accreditation of live webinars and teleconferences in IN, KS, NE, NJ, OH, and PA.*

All participants must be registered for the program. Cancellation policy is available on the ABA website. Scholarship applications are also available upon request.