Managing Someone Else’s Money
New Guides for Financial Caregivers

The Consumer Financial Protection Bureau contracted with the Commission on Law and Aging to develop the series of easy-to-understand booklets to help financial caregivers.
Find out more on page 4.
Inside the Commission

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

Staff Updates

- The 2013-2014 Commission on Law and Aging met on October 18th at the ABA offices in Washington, DC, to discuss plans for the year. It was a productive day.


- Commission Director Charlie Sabatino’s Health and Human Services Health IT Workgroup testimony regarding health decisions is available at: http://bit.ly/19AozVW. The testimony was given on September 23rd.

- The Elder Justice Coordinating Council met on September 24th. Commission staff provided input for the background of the EJCC agenda. Learn more at: http://go.usa.gov/D2UV.

- Information from our Director C. Sabatino on non-family health care proxies was featured on the New York Times blog The New Old Age in a post entitled: When There’s No Family. Read the post at: http://nyti.ms/18PsQts.


- Although this year’s Pro Bono Week was October 20-26, attorneys should keep pro bono opportunities in mind all year long. Take a look at the Commission’s State Emeritus Pro Bono Practice Rules to find out more about the rules for your state: http://bit.ly/12hNTxi.

- The Commission’s Lori Stiegel was invited to speak at the Financial Industry Regulatory Authority’s “Senior Investor Roundtable” on October 30th about soliciting and opening accounts for senior investors.

ABA Updates

- Free Preparing for Mediation guides from the ABA’s Section of Dispute Resolution help make mediation productive. Although Mediation Week 2013 has passed (it was Oct. 13-19), you can still download helpful tools at: http://bit.ly/15nwt7o.

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Subscribe by sending an email with your name and professional affiliation to Trisha.Bullock@americanbar.org with “Subscribe to Bifocal” in the subject line.
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Questions?

Contact the Commission at (202) 662-8690, or at: aging@americanbar.org.
Managing Someone Else’s Money

New Guides for Financial Caregivers

• A daughter manages finances for her elderly mother under a power of attorney or a trust.
• A brother serves as court-appointed guardian to manage the finances of his sister with a severe mental illness.
• A mother is named by Social Security to handle the benefit checks of her adult son with an intellectual disability.

These are all examples of people who have legal authority to manage the finances of a family member or friend. Usually, they have never done this before, and they are looking for guidance on their responsibilities.

The federal Consumer Financial Protection Bureau (CFPB), Office for Older Americans, has released four guides for “lay fiduciaries” entitled Managing Someone Else’s Money. CFPB contracted with the American Bar Association Commission on Law and Aging to develop the package of easy-to-understand booklets to help financial caregivers.

The guides help these caregivers with three things:
• Understanding their responsibilities;
• Watching for and responding to scams and financial exploitation; and
• Knowing where to go for additional help from federal, state and local resources.

While the guides focus on legal duties, they do not give legal advice. Situations and state laws and practices vary. The guides suggest that fiduciaries talk to a lawyer if they have specific questions.
Four Guides and Four Basic Duties
The guides cover four types of fiduciaries:

- Agents under power of attorney
- Guardians of property (sometimes known as conservators)
- Trustees under revocable living trusts, and
- Government benefits fiduciaries (Social Security representative payees and VA fiduciaries).

For each type of fiduciary, the booklets provide practical guidelines for four overarching duties:

1. Act only in your family member or friend’s best interest
2. Manage the money and property carefully
3. Keep the money and property separate from yours
4. Keep good records.

Guide Audience
The primary audience for the guides is family members and friends with legal authority to handle an incapacitated person’s funds. Millions of people have legal authority to manage money for a family member or a friend, and the number may grow with the aging of the population and the rising number of individuals with disabilities. But the booklets have practical tips for managing someone else’s money that could be useful to informal caregivers as well.

Family members and other caregivers may be managing money for an older person with Alzheimer’s disease or other dementia, or for a younger adult with a disability. Even mild cognitive impairments can limit a person’s ability to handle money—and this in turn can make people vulnerable to scams and fraud.

State Guides and Replication Tips
The four new guides are for a national audience, so they don’t address requirements in particular states. However, in the coming year, the CFPB will publish six sets of state-specific guides based on the national models, written by the Commission with input and information from state professionals. The state guides are for Arizona, Florida, Georgia, Illinois, Oregon, and Virginia. These states were selected because they have a high number or percentage of older residents, and also because they are located in different parts of the US. The state guides will address requirements imposed by each state’s laws as well as resources available to people in these states. Also, CFPB will publish replication instructions so that interested professionals and organizations in the remaining states can create their own Managing Someone Else’s Money guides.
Fiduciary Guides Online and in Print

You can download the guides for free on the CFPB’s website at www.consumerfinance.gov/managing-someone-elses-money.

By December, you will be able to order free print copies of the guide as well. For single or small orders, go to http://publications.usa.gov/USAPubs.php?NavCode=K&searchText=CFPB.

Free bulk orders will be available at http://promotions.usa.gov/cfpbpubs.html.

The CFPB’s Office for Older Americans is eager to help all stakeholder groups get the word out about the guides. Please reach out to Naomi Karp at Naomi.Karp@cfpb.gov if you have ideas on distribution channels and strategies.

How Many Fiduciaries Are Out There?

Social Security representative payees:
• In FY 2012, 14% of all Social Security beneficiaries had a representative payee, and half of those (7%) were adults. For children and adults combined, 5.9 million payees managed benefits for 8.4 million beneficiaries; over 4 million adults had representative payees.2
• As of January 2013, family members served as representative payees for about 85 percent of beneficiaries who had a payee.3

VA fiduciaries:
• As of October 2, 2013, VA oversaw approximately 120,000 fiduciaries who provided services to more than 152,000 beneficiaries with VA funds under management exceeding $3.6 billion.4

Guardians:
• An estimated 1.5 million adults in the United States—and possibly over 3 million—have a court-appointed guardian.5

Powers of attorney:
• About 35% of people age 60 and over currently have a power of attorney. That equals about 22 million people.6
• About 95% of people with powers of attorney name a spouse, other family member or friend to be their agent. Only about 5% name a professional or someone other than a family member or friend.7

1 Includes Social Security (OASDI) and Supplemental Security Income (SSI) benefits.
4 http://veterans.house.gov/witness-testimony/dave-mclenachen
2013-2014 Commission on Law and Aging

Each September 1, a new roster of commissioners is appointed by the ABA president. Most commissioners serve for multiple years with a handful of new faces starting in any given year; this year, there are four new commissioners. The next page provides a short biography of our new additions; you will find them to be a diverse and highly expert group in their individual disciplines. The full roster of this year’s Commission is below.

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What We Do:
• Research emerging issues
• Monitor state and federal legislation in priority areas
• Develop policy in areas of concern to older people
• Provide technical assistance
• Foster improved access to legal services for older persons
• Educate lawyers, other professionals and the public

The Commission is a 15-member interdisciplinary body of experts in aging and the law. The Commission’s professional staff addresses a wide range of critical issues affecting older persons, including:
• Legal Services Access and Delivery
• Elder Abuse
• Guardianship and Conservatorship
• Dispute Resolution and Mediation
• Professional Ethical Issues
• Housing Options and Needs
• Health & Long-term Care Quality, Planning and Decision-making
• Social Security, Medicare, Medicaid and Other Benefit Programs

The mission of the ABA Commission on Law and Aging is to serve as a collaborative, interdisciplinary leader of the Association’s work to strengthen and secure the legal rights, dignity, autonomy, quality of life and quality of care of aging persons.
William E. Hopkins

**Newly Appointed Commissioners**

WILLIAM E. HOPKINS focuses his practice on administrative and regulatory defense and litigation. He advises both individual health care providers and institutional health care clients on State and Federal licensure, compliance and enforcement matters, with an emphasis on pro-active measures to ensure compliance and minimize litigation risk. Mr. Hopkins’ expertise includes all aspects of health care professional licensure and practice, long term care licensure, regulation and enforcement, medical staff issues, credentialing and compliance with rules of state and federal regulatory agencies. Mr. Hopkins has litigated on behalf of his clients in both State and Federal Administrative Courts, as well as the District Courts of Texas. Mr. Hopkins has also spoken at the local, regional and national level regarding licensure, compliance and enforcement matters. He is currently the Chair of the ABA Health Law Section Coordinating Committee on Diversity and former Co-Chair of the ABA Health Law Section Physician Issues Interest Group.

ROBYN SHAPIRO is a partner in the Health Care Practice Group. Ms. Shapiro provides legal counsel on matters relating to research compliance, bioethics, health care compliance, medical staff matters, health information privacy, informed consent, regulatory and licensing matters, and corporate and commercial issues faced by pharmaceutical and medical device manufacturers and hospitals and academic medical centers. She is a frequent presenter at national conferences and seminars on health care and research compliance issues, and has authored more than 60 articles and book chapters on these and other topics.

SUSAN P. SHAPIRO studies the social construction, social organization, and social control of fiduciary, trust, and principal-agency relationships. Her research has examined white-collar crime, ethics, conflict of interest, the professions, the news media, and medical decision making. Within these settings, studies have addressed regulation (e.g., by the Securities and Exchange Commission), self-regulation (by law firms, fact checkers, first amendment lawyers, news organizations, universities, etc.), as well as the relationship between regulatory strategies and the social organization of white-collar crime and conflict of interest. She is currently conducting observational re-search in two intensive care units investigating how surrogate decision makers make medical—often end-of-life—decisions for patients unable to speak for themselves.

PATRICIA D. STRUCK is the Administrator of the Securities Division of Wisconsin’s Department of Financial Institutions. She is a member of the House of Delegates of the ABA and the State and Local Bar Relations Committee of the ABA Business Law Section; as well as co-chair of the Wisconsin Fellows of the American Bar Foundation. She has served as Chair of the Board of Governors of the State Bar of Wisconsin and served on the Board of Governors. She has chaired the State Bar’s Business Law Section and served on its Board as well as serving on the State Bar’s Multidisciplinary Practice Commission. In 2005-2006, she was president of the North American Securities Administrators Association, the oldest international organization devoted to investor protection, and she currently serves on its Board of Directors. Before beginning her public service career, she was an attorney with a large regional bank and graduated from the American Bankers Association’s National Trust School. She speaks frequently on the subjects of securities regulation as well as the prevention of financial fraud against older investors. She has a B.A. degree from Mount Holyoke College and a J.D. degree from the University of Wisconsin Law School.
Background

The United Nations General Assembly created an Open-ended Working Group on Ageing in December 2010 to consider existing international framework on human rights of older persons, and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.

The ABA House of Delegates adopted a resolution in August 2011, encouraging support of this effort by the U.S. State Department and the U.N. and its member nations. In 2012, the ABA president appointed Bill Pope, member of the ABA Commission on Law and Aging, to serve as the ABA representative to the U.N. Working Group.

The Working Groups most recent meeting was held in August, 2013, at the United Nations in New York. The Working Group meeting was chaired by Mr. Federico Villegas Beltrán of the Argentine delegation. The agenda was divided into five sessions or panels. At each session, a panel of officials and experts presented findings from regional meetings and related research, followed by a general discussion (known as “interactive dialogue”). Below are the remarks made by Bill Pope during the interactive dialogue on Discrimination and Access to Work.

Remarks

For more than 30 years, the Commission on Law and Aging has served as a focal point for The American Bar Association’s work to strengthen and secure the legal rights, dignity, autonomy and quality of life of older persons, particularly low income and vulnerable elders.

The August 2013 meeting is the second meeting of the Working Group at which the ABA has had the privilege to participate. The ABA is deeply committed to securing and strengthening the rights of older persons both in the United States and internationally. In a world that is rapidly aging, we see it as imperative to clarify and strengthen the rights-based standards and protections of all older persons.

After the Open-Ended Working Group on Aging was created by the General Assembly in 2010, the ABA adopted a policy urging:

- The United States Department of State and the United Nations and its member States to support the ongoing processes at the United Nations and the Organization of American States to strengthen the protection of the rights of older persons, including the efforts and consultations toward an international and regional human rights instrument on the rights of older persons.

The meetings of the Open-Ended Working Group have been very effective in shining a light on many of the discriminatory barriers and human rights abuses suffered by elders around the globe, including barriers to access to justice. Charles Sabatino, Director of the ABA Commission on Law, spoke on a panel at the August 2012 meeting of this Working Group, providing examples of serious access to justice barriers that continue to pose challenges here in the United States. Those examples were but a small subset of human rights challenges of the aging population worldwide.

The 4TH Meeting of the United Nations Open-Ended Working Group on Ageing

August 12-15, 2013

Remarks by William L. Pope
ABA Liaison to the Working Group
As the August 2012 report of the Office of the High Commissioner for Human Rights concluded:

There is a demonstrable inadequacy of protection arising from normative gaps, as well as fragmentation and a lack of coherence and specificity of standards as they relate to the experience of older persons. (Normative Standards in International Human Rights Law in relation to Older Persons: Analytical Outcome Paper, p. 3)

The recent compilation by the High Commissioner of existing international legal instruments, documents and programs that directly address the situation of older persons, dated July 11, 2013, provides another insight into the lack of normative coherence and disparate fragmentation of human rights standards as they relate to the experience of older persons.

Some 89 different references are included in this compilation. They all address, directly or indirectly, the situation of older persons. If combined, added to, and properly configured they can bring together the multifaceted experiences of aging persons in a coherent, clear, indivisible design, reflecting clearly on older persons as right-holders and on member states as duty-bearers. This should be our goal.

Statements and testimony across several working group meetings have highlighted progressive policies and best practices that make a tangible positive difference in the lives of older persons. But overall, we believe the human rights landscape exhibits significant deficiencies in both normative standards and implementation efforts intended to safeguard and promote the rights of older persons.

The timely question now is what to do about it. Many useful suggestions have been offered to strengthen existing human rights implementation and monitoring mechanisms to focus more clearly on the situation of older persons, short of embarking on a dedicated convention on the rights of older persons. Many of these recommendations will make a difference and are deserving of strong support; but ultimately, they will not be able to create a truly comprehensive and cohesive framework specific to the multidimensional circumstances of older persons.

To the extent the ABA can help advance this effort, we offer our assistance. But in the end, as was learned in the process that resulted in the Convention on the Rights of Persons with Disabilities, it will be far more important to ensure that non-governmental organizations representing older persons from all walks of life are brought into this discussion and fully engaged in the process.

Thank you.

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**Commission Resource Spotlight**

**International Rights of Older Persons**

For more information about the Commission’s efforts in the area of international rights, visit our [International Rights of Older Persons Resource page](http://ambar.org/COLA).

  - [Listen to the audio recording of the panel](http://ambar.org/COLA) (MP3) (April 17, 2012)
- ABA Policy 106C urging support of the ongoing processes at the United Nations and the Organization of American States to strengthen protection of the rights of older persons, including the efforts and consultations towards an international and regional human rights instrument on the rights of older persons. (Adopted August 2011)

Find these, and other resources, on our website at: [http://ambar.org/COLA](http://ambar.org/COLA).
ABA Policy Update

On August 13, 2013, at the American Bar Association Annual Meeting, the following two resolutions proposed by the Commission on Law and Aging were adopted by the ABA House of Delegates.

Resolution 100A
On Collaboration Between Guardianship Courts and Representative Payment Agencies

Court-appointed guardians and third-party representative payees both fill a role that society calls ‘fiduciaries’—those entrusted to manage property for someone else, often a vulnerable person easily at risk for abuse. Yet instances of misuse and exploitation of funds by guardians, representative payees, and VA fiduciaries have been identified by the U.S. Government Accountability Office (GAO) and other significant studies. Coordination between state courts that appoint/oversee guardians and government representative payee programs, which serve largely the same population—as urged by the GAO for over nine years—would better protect the funds of vulnerable adults.

ABA co-sponsors include:
• Commission on Disability Rights
• Commission on Homelessness and Poverty
• Section on Real Property, Trust and Estate Law
• Senior Lawyers Division

The ABA has extensive policy on adult guardianship, and with the adoption of Resolution 100A, it now addresses needed collaboration among state courts, the Social Security Administration representative payee program, and the VA fiduciary program. Further, the ABA can now have a voice in supporting any proposed legislation in Congress and in state legislatures consistent with the policy, promoting collaboration through state networks, and working with the Social Security Administration, the VA Fiduciary Office, and the HHS Administration on Community Living.

Read the entire Resolution at: http://www.americanbar.org/content/dam/aba/directories/policy/2013_hod_annual_meeting_100A.docx

Resolution 100B
In Support of the SSI Restoration Act of 2013 (H.R.1601) or similar legislation

The federal Supplemental Security Income program (SSI) was created in 1972 to provide income support to low-income persons who were aged 65 or older, blind, or with a disability. Most of its financial eligibility requirements have remained unchanged since its inception more than 40 years ago, despite the fact that the cost of living has increased 5.5 times since then. The result is that a growing number of older and disabled SSI recipients become financially more disadvantaged each year.

This resolution expressly supports enactment of The Supplemental Security Income Restoration Act (H.R. 1601), introduced in April 2013, or similar legislation that updates several of the financial eligibility requirements for SSI. These changes are financially reasonable, long overdue, and absolutely critical to ensuring a minimally decent standard of living for vulnerable persons who cannot financially survive on their own because of age or disability.

ABA co-sponsors include:
• Commission on Disability Rights
• Commission on Homelessness and Poverty
• Section on Real Property, Trust and Estate Law
• Government and Public Sector Lawyers Division

The resolution addresses the problem by calling on Congress to enact H.R. 1601 or similar bill that will update several of the program’s means testing parameters to account for more than 30 years of inflation and changing economic realities faced by low income elders and persons with disabilities. Specifically, it calls on Congress to:
• Update the general income disregard from its current level of $20 to $110 per month.
• Update the earned income disregard from its current amount of $65 to $357 per month.
• Update the resource limit from its current level of $2000 for an individual ($3000 for an eligible couple) to $10,000 ($15,000 for an eligible couple).
• Repeal the in-kind support and maintenance provision which currently reduces the federal payment rate by one-third.
• Repeal the SSI transfer penalty that currently penalizes an applicant for the transfer of a resource for less than fair market value within 36 months of application.

Read the entire Resolution at: http://www.americanbar.org/content/dam/aba/directories/policy/2013_hod_annual_meeting_100B.docx

Candace K. Cliatt is a third-year law student at the University of Georgia School of Law located in Athens, GA. She is currently a member of the editorial board for the Georgia Journal of Intellectual Property and will graduate in May 2014. Ms. Cliatt received a B.A. in English Literature, magna cum laude, from Georgia State University. During her 1L and 2L summers, she worked as a law clerk for the Barnes Law Group in Marietta, GA, under former governor of Georgia, Roy E. Barnes. There, she researched and drafted legal memoranda for ongoing litigation regarding issues in personal injury, medical malpractice, and complex business litigation. She recently interned with Woodhouse, LLC, where she worked on cases involving corporate and business law issues and insurance subrogation. While at the Commission, Ms. Cliatt is researching the status of state POLST legislation as well as the restoration of rights upon termination of guardianship.

Daniel Joslyn is a second-year law student at The George Washington University Law School in Washington, D.C., where he currently is a staff member for the Federal Communications Law Journal. Mr. Joslyn received his B.A. in Communications from Baldwin Wallace College in Berea, OH. Prior to law school Mr. Joslyn worked as Policy Aide for Health and Human Services in the Ohio House of Representatives. He later worked as a legal assistant at a small firm in Las Vegas, NV, specializing in wills and trusts and workers compensation cases. He spent Summer 2013 as a Legal Fellow for Young Invincibles, an advocacy group for 18-34 year olds, where he worked on Health Care, Higher Education, and Employment issues.
National Guardianship Network Launches New Website

The National Guardianship Network, a collaborative group of national organizations dedicated to effective adult guardianship law and practice, is pleased to announce that it has launched a new website. The website is an excellent resource for information about guardianship and is available for use by members of NGN’s organizations.

Visit the new website at: www.nationalguardianshipnetwork.org.

Highlights of the new website include:
• Frequently Asked Questions about Adult Guardianship
• Health Care and Financial Decision Making Without a Guardianship
• State Probate Court Jurisdictions
• Adult Guardianship Reform
• Links to Summit Standards and Recommendations
• NGN Organizations’ Standards of Practice
• Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS)
• And much more!

National Legal Resource Center Annual User-Needs Survey

The National Legal Resource Center (NLRC) provides resources, training, case consultation, technical assistance, and specialized expertise to professionals in aging and legal services.

Recognizing that the needs of older Americans and aging services professionals change, we invite you to tell us: “What can the NLRC do for you?”

Please click below to answer eight short questions to help us develop programs and resources to help you help your clients.

The survey will close on December 2, 2013.

https://americanbar.qualtrics.com/SE/?SID=SV_dmLsuIWN2tTei21

National Aging and Law Institute / National Aging and Law Conference

Your Input Wanted for 2014 and Beyond

The 2013 National Aging and Law Institute will be the last one hosted by the National Academy of Elder Law Attorneys (NAELA). There has been interest expressed in re-forming the National Aging and Law Conference starting 2014 as a fall conference focused on public interest and public policy issues in law and aging.

Please take the following brief survey to help us understand the interest in continuing the Conference.

The survey will close November 15, 2013.


Commission 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 (jointly sponsored by the Commission and the Association for Conflict Resolution’s Elder Decisions Section).

Visit the Commission’s homepage for more information on how to sign up.
All across the country, older adults are seeking options that will allow them to remain in their own homes as they age. This desire is especially prevalent in the baby boomer generation, whose observation of its own parents’ aging has led them to find meaning and balance in their own lives through activity, engagement, and social networks. Aging in the community is a proven way to improve one’s quality of life and health and is seen as a viable alternative to nursing homes, assisted living, or continuing care retirement communities.¹

Over the past 10 years, one innovative aging-in-the-community model to emerge is the Village model, which creates a wide array of supports and facilitates the creation of social networks of older adults in service to each other. Villages are organized as 501(c)3, nonprofit organizations, and, while the business model for the implementation of the Village model varies, most, if not all, rely on small paid staffs, a volunteer board of directors, and an army of volunteers.

At the heart of the Village model is the focus on the individual as the core of the community. In this model, older adults are active members in the service delivery process and provide essential assistance in the planning and implementation of a wide range of programming offered through the Village. Villages’ emphasis on volunteering not only provides manpower for Village programs, but, more importantly, provides an organized way to keep members engaged in their community and help them to make a difference. Fifty-one percent of the members volunteer back to their Village—making the “neighbor helping neighbor” concept the foundation of the model.²

Built on cooperative principles, Villages facilitate access to community support services and connection to on-going civic engagement. According to the Village to Village Network, 115 Villages have opened across the country, providing full-service programs to nearly 22,000 older adults.³ Individual

¹ Kaye, S., LaPlante, M. & Harrington, C. 2009 “Do Noninstitutional Long-Term Care Services Reduce Medicaid Spending?” Health Affairs Vol. 28, Number 1.
Village membership levels range from 100-400 people, with an average membership of 150.

Villages share the following hallmark characteristics:

- They are self-governing, self-supporting, grassroots membership-based organizations.
- They consolidate and coordinate services to members.
- They create innovative strategic partnerships that leverage existing community resources and do not duplicate existing services.
- They are holistic, person-centered, and consumer-driven.
- They promote volunteerism, civic engagement, and intergenerational connections.

Villages focus on expanding choice and access to their members, strengthening the social capital in the community. Villages offer members a network of resources, services, programs, and activities that revolve around daily living needs; social, cultural, and educational programs; ongoing health and wellness activities; and member-to-member volunteer support.

**Expanding Local Capacity for Sustainable Replication**

Village to Village (VtV) Network, LLC, was launched in 2010 as the movement’s national hub. Established as a non-profit, peer-to-peer network of Villages, the VtV Network brings Villages and like-minded organizations together to create a national learning community to support replication in communities across the country. Since its launch in 2010, the VtV Network has amassed 230 member organizations located in 38 U.S. states and three other countries (Canada, Australia, and Netherlands). The VtV Network is the go-to hub for the Village movement; its mission is to enable communities to establish and effectively manage aging-in-community organizations initiated and inspired by their members. The goals of the VtV Network are to:

- Promote the Village model as a community approach to aging for replication;
- Assist new, emerging, and established membership-driven Villages to create sustainable organizations;
- Gather feedback on how the benefits and programs can be revised to meet the needs of individual Villages; and
- Research and evaluate the impact of Villages on a number of social and health factors.

**Common Village Legal Concerns**

The Village to Village Network provides resources and tools for the start up and operations of the Village organizations locally. Through a focus on local leadership development, the VtV Network draws upon expertise from local Village leaders and industry experts to provide start-up support to community leaders nationwide. However, there are a number of inquiries where a licensed professional can provide support in responding to the member. Generally, legal
questions focus on how to incorporate and file as a non-profit and how to mitigate liability.

Villages can benefit from pro bono or discounted legal services especially in the early stages of incorporation. VtV Network members have access to a collection of Village peer-developed documents through an online document library, providing good examples and promising practices for emerging organizations. However, these do not replace the need for professional, skilled legal advice to ensure the organization is set on a firm legal foundation from the beginning. Alternatively, many Villages have been utilizing fiscal agents to ease the level of the start up “legal lift.” Setting up a good partnership with clear roles and responsibilities with the fiscal agent requires a bit of negotiation to ensure the relationship will support both entities.

The reliance on volunteers to support the coordination of member benefits also opens the organization up for liability concerns. According to a report issued by the American Bar Association in 2012, Villages can best mitigate their risk for liability by establishing and maintaining the integrity of their internal processes. This requires an establishment of operating policies and procedures for volunteer recruitment, training and management, selection of preferred providers for information and referral and other “consistent risk management [activities] should be able to shield Village organizers, members and volunteers from fear of liability.” The Aging-in-Place Village Concept: Addressing Liability Concerns guide has been made widely available to VtV Network members and provides good guidance to local leaders.

The reality is that people need and want a variety of services and supports as they age. Choice, convenience, and customization increasingly characterize consumer expectations. Successful aging of older adults who wish to age in their homes and communities requires these “whole person” models that address essential needs related to: safe, affordable, and accessible housing; community engagement; health and well-being; independence; and autonomy. Quite simply, the Village movement represents an expanding collective voice among older adults who are seeking—and creating—alternatives to the antiquated aging service delivery system. For more information on how you can support the national Village movement, please contact the Village to Village Network at 617-299-9NET or visit the website at www.vtnetwork.org.


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The Aging-In-Place Village Concept: Addressing Liability Concerns.
This publication, and others on housing and long-term care, is available on the website of the ABA’s Commission on Law and Aging: http://www.americanbar.org/groups/law_aging/publications/housing_options_and_long-term_care.html.
There is no disputing that ever-expanding life expectancy is the new normal for Americans. Data for the year 2010 shows an increased life expectancy for men of 76.2 years and an increased life expectancy for women of 81 years. With this “new normal” comes the increased likelihood that people will need some level of long-term care at some point in their lives. While many expect to live to the age of 75, 80, or older without the need for any long-term care assistance, the reality is the odds are against us doing so.

This article will define long-term care and discuss the importance of planning for long-term care funding for ourselves, our families, and our clients. This article will also highlight ways to fund long-term care without Medicaid. This is only an introduction, because the benefits, complexities, nuances, and strategies of each method cannot be thoroughly addressed in just one article. Moreover, it is important to note that what works for one family may well not work for another, and it is certainly not unusual for a person or family to utilize multiple strategies in tackling the issue of funding long-term care.

What is Long-Term Care?
Long-term care is an umbrella term for services needed to meet the medical and nonmedical needs of persons who, due to age or disability, have lost some capacity for self-care. Long-term care, in simple terms, refers to the assistance we need when our age or health (or both) prevents us from functioning entirely on our own. And, long-term care is not just limited to residential nursing home care. More and more people are “aging in place” and long-term care takes place wherever people are and wherever they live, be it in their own home, an assisted living facility, or some other living arrangement.

The assistance offered through long-term care may encompass a wide array of health care services such as wound care, injections, or medication assistance, as well as personal care assistance with activities of daily living (ADLs) such as bathing, dressing, toileting, feeding, and ambulation. Many people will utilize a variety of care services as their care needs change over time. The goal of long-term care is generally not to cure an illness or disability, but to maximize a person’s functioning and independence.

Why Talk about Long-Term Care?
The Department of Health and Services estimates that 70% of people over the age of 65 will need some type of long-term care at some point in their lives. Even without this statistic, common sense tells us that with the aging process it is normal to lose some ability to function, and that loss continues as people age. In view of the statistics and our own life experiences, the topic of long-term care planning is an important one that should be discussed and addressed as part of a normal life planning process. We like to say we help clients “plan to live.”

The Cost of Long-Term Care
The median rate for licensed personal care services and home health aide services in 2013 was $19 per hour (annual median cost of $39,326). The median monthly rate for an assisted living facility (private, one bedroom) in 2013 was $3,450 (annual median cost of $41,400). For a nursing home (semi-private room), the median monthly rate was $6,296 ($75,555 annually). It is not unusual for the cost of care to run significantly higher than these reported cost figures.

And what of the significant hidden cost to families where a family member or friend acts as an unpaid caregiver for a loved one? Besides the tremendous emotional and physical toll a caregiver may suffer, there is now evidence that caregivers and their families suffer a long-lasting financial setback. A Met Life study determined that caregivers sacrifice an average of $659,139 in wages, pension, and Social Security benefits over their lifetime.

Medicare
Many Americans believe that Medicare will pay for all their long-term care needs, when in fact it only provides limited coverage. Because of this broad misperception, it is worthwhile to discuss what Medicare covers.

In general terms, Medicare is a national health insurance program. Persons entitled to Social Security retirement and who are 65 years of age and older, and persons entitled to Social Security disability benefits for not less than 24 months are eligible to participate. There are other classes of persons eligible to participate, such as persons receiving railroad retirement benefits and individuals suffering from certain medical diagnoses. Those who are not otherwise eligible for Medicare, but who are over age 65, may purchase coverage by paying a monthly premium.

Medicare should not be confused with Medicaid; unlike with Medicaid, a person’s income and assets are not a consideration in determining eligibility or benefit amount for Medicare. Medicare is a national program and procedures do not vary significantly from state to state.

Medicare Parts A and B
Medicare coverage is similar to that provided through private insurance in that it covers a portion of the cost of medical care; there may be deductibles and co-payments required of the participant. There are two substantive coverage components in Medicare coverage: Part A and Part B. Part A provides coverage for inpatient hospital care, hospice care, inpatient care in a skilled nursing facility, and some home health services. Part B is optional and covers doctor-provided medical services, durable medical equipment, and some outpatient care and home health services. Many people also use their own funds to purchase Medicare supplement policies through private insurance companies, which provide additional insurance to cover the costs of the deductibles and co-pays.

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2 http://longtermcare.gov/the-basics/who-needs-care/
4 Id.
5 Id.
6 42 USC Chapter 7, subchapter XVIII, Health insurance for Aged & Disabled; see also www.medicareadvocacy.org.
The Medicare skilled nursing care (nursing home) benefit has a maximum coverage period of 100 days. If coverage requirements are met, the person is entitled to full coverage for the first 20 days of a nursing home stay and for days 21-100, the person pays a daily co-pay amount that is adjusted annually.

Generally, the Medicare home health benefit requires the patient to be homebound and need skilled nursing care on an intermittent basis. The physician must sign a care plan and the care must be provided by a Medicare certified provider. The approval for home care is generally for specific periods of time and can frequently be extended, based on new orders from the treating physician.

The homebound requirement can be met if leaving home requires considerable effort, as for example, the needing of personal assistance or the use of a wheelchair. Attendance at an adult day care center is not an automatic bar to meeting the requirement. There is no co-pay or deductible and home health services may include part-time or intermittent nursing care and physical, occupational, or speech therapy.

**Medicare Part C**

Increasing numbers of Medicare recipients are choosing to opt out of traditional Medicare (Parts A and B) and into Medicare Advantage Plans, also known as Medicare Part C. These are private insurance plans that replace Medicare and Medicare supplemental insurance. A Medicare Advantage Plan can be structured as a health maintenance organization (HMO), preferred provider organization (PPO), or private fee-for-service model. Medicare Advantage Plans receive a fee from Medicare for insuring the recipient and the plan may or may not charge an additional premium (like Medicare supplemental insurance.) Keep in mind that Medicare Advantage Plans must provide at least the same core coverage as Medicare, including limited coverage for nursing home coverage and in-home care, and may provide more coverage.9

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**Long-Term Care Insurance**

Long-Term Care Insurance is privately contracted health insurance for long-term care expenses. The coverage is generally activated when the insured needs assistance with certain activities of daily living as defined by the terms of the policy. A long-term care policy generally will provide coverage for: home health care (beyond that covered by Medicare); care offered where one resides in assisted living, memory care, or personal care facilities; and nursing home care. Additionally, a policy may provide coverage benefits for adult day care, respite care, and hospice care (beyond that covered by Medicare).10

This type of private insurance first began gaining popularity in the late 1980s. Unfortunately, the early policies often offered limited coverage such as only covering skilled nursing care (i.e. nursing homes), implementing low daily benefit rates, or even excluding coverage for dementia-related claims. These early policies may have been more affordable than those presently available, but they were certainly not always more valuable. A good long-term care policy today, for example, will not limit coverage to skilled nursing care but also provide coverage for an in-home or an assisted living setting.

A long-term care policy can be helpful by expanding choice of providers and facilities. Such a policy may result in asset preservation and avoiding the need for Medicaid. When analyzing a long-term care policy, here are factors to be considered:

(1) whether family members can be paid for services;
(2) the number of days of disability required before benefits will begin;
(3) how facilities and ADLs are defined;
(4) the amount of the daily benefit rate and whether there a cost of living increase built into the policy benefit;

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(5) whether there is a waiver of premium when benefits are being paid out;
(6) annual cost and what the forfeiture provisions are in the policy;
(7) the total maximum benefit amount that will be paid out under the policy (i.e. the maximum benefit period); and
(8) the services covered."

Before a decision to purchase any long-term care insurance is reached, a careful analysis of needs should be done; consider the person’s age and health, their assets, their expected sources of income, and the expected daily cost of care when it is needed. Long-term care insurance may not be a sound purchase for persons of modest means, who may be near the income and asset limits for Medicaid. It may be appropriate to purchase a limited period of coverage, such as for a period of three to five years as part of an overall plan for their care.

The limits of long-term care insurance include its cost and age restrictions, as this option becomes less affordable the longer a person waits to purchase coverage. Additionally, some people may be excluded due to certain pre-existing conditions and such policies may be oversold to those who may currently be eligible for, or very easily qualify for, Medicaid benefits.

Long-Term Care Partnership Programs

When considering long-term care insurance, one should be aware of Long-Term Care Partnership Programs. These plans are currently available in most states, though their type may vary from state to state. The most common provision is the insured receives asset protection to the extent of the long-term care insurance benefits: a “dollar for dollar” plan, further discussed below. Anyone purchasing a long-term care policy would be advised to make sure it is a Partnership policy.

A Partnership-qualified long-term care policy allows you to apply for Medicaid under modified eligibility rules that include a feature called an “asset disregard.” This allows a person to keep assets that they otherwise would not be allowed to keep in order to qualify for Medicaid. The basic concept of the Partnership Program is that the amount of assets Medicaid will “disregard” when determining eligibility is equal to the amount of benefits the policyholder has received under their long-term care partnership policy prior to applying for Medicaid. Further, those funds will not be subject to Medicaid estate recovery after death.

Many Partnership Programs will allow conversion of existing long-term care policies to Partnership policies as long as certain requirements are met. Generally, it is recommended that a policyholder convert to a Partnership policy, if given the option to do so.

12 http://www.naic.org/index_ltc_section.htm.
13 http://w2.dehpg.net/LTCPartnership/.

With long-term care planning you are helping clients “plan to live.”
Veteran’s Benefits

There are numerous Veterans Affairs (VA) programs and benefits available to veterans and their family members that can help cover the cost of long-term care. This article will focus on VA health care, but will also mention or briefly touch other benefits and programs.\textsuperscript{14}

**VA Health Care**

The first program to discuss is VA health care. To be eligible for VA health care benefits, generally the veteran must be enrolled in the VA health system, unless they meet certain requirements relating to VA disability or VA pension benefits.\textsuperscript{15}

Aside from the traditional health care coverage one thinks of, VA health benefits can include Adult Day Health Care, which is an outpatient day program for veterans needing assistance with ADLs. Respite Care is a program that provides short term services to the veteran, in order to give a caregiver time off from the demands of caring for an ill or disabled veteran. A veteran may be entitled to other benefits such as home health care benefits or skilled nursing care benefits. There are also special benefits for blind veterans. All of the aforementioned programs have specific eligibility criteria.\textsuperscript{16}

**Home Improvements & Structural Alterations Grant**

Another program offered by the VA is the Home Improvements and Structural Alterations (HISA) Grant. The grant offers up to $6,800 to a veteran with a service connected disability, or $2,000 to a veteran with a non-service connected disability, to make a veteran’s home more accessible. This may include building ramps, widening doorways, raising or lowering sinks or counters, and improving electrical or plumbing for medically sustaining equipment.\textsuperscript{17}

**Pension Program**

The VA also has a Pension Program for veterans and their surviving dependents, such as a spouse or disabled child. The program pays monthly cash benefits to wartime (as defined by the VA) veterans suffering from a non-service connected disability. If the veteran is deceased, their surviving dependents may be eligible to receive a pension benefit.\textsuperscript{18}

The Pension Program is a means-tested program for persons who have limited income and limited assets. Many elderly or disabled veterans are considered to have low income because their out-of-pocket medical expenses are more than their income. The cost of assisted living and similar facilities are considered medical expenses.

The VA does not provide a strict dollar amount in order to determine whether a veteran is “over resourced.” Instead, it has a guideline based on age, marital status, income, medical expenses, and other factors. Thus, the amount of assets a claimant is allowed to have and still qualify for the benefit varies.

The benefit amount varies depending on many factors, including the claimant’s income, medical expenses, and level of disability. There are three levels of disability payments. The first is referred to as the “base level” and is the actual pension. A veteran meets the base level by either obtaining a high enough disability rating through the VA, or by being at least 65 years of age. In addition to the base pension, additional amounts may be added to the benefit for special monthly compensation in the form of a Housebound Allowance or an Aid & Attendance Allowance. A claimant is homebound if he/she cannot leave home alone. A claimant is in need of aid and attendance from another person if he/she needs help performing ADLs. The VA pension benefit with an Aid & Attendance Allowance offers the possibility for the largest monthly benefit, up to $2,054 per month.\textsuperscript{19}

\textsuperscript{14} All benefits available to veterans can be found in Title 38 of the USC; see also \url{http://www.va.gov/landing2_vetsrv.htm}.

\textsuperscript{15} \url{http://www.va.gov/health}.

\textsuperscript{16} See 13 above.

\textsuperscript{17} 38 USC § 117(a)(2)(A) and (B).

\textsuperscript{18} (38 USC §§ 1521-1525); \url{http://www.benefits.va.gov/pension}.

\textsuperscript{19} 38 USC §§ 1521 (original amounts) and 1532 (increases with Social Security cost of living adjustments). Monthly benefit could be higher if you have two veterans married to each other or if the veteran has a dependent child.
The entire pension benefit from the VA is referred to informally by some as “Aid & Attendance,” although that is not technically correct. Keep the difference between the three levels of payments described above in mind when discussing VA benefits.

**Reverse Mortgages**

A reverse mortgage is a special type of home loan that allows someone age 62 and older to access the equity they have in their homes and defer payment of the loan until the point in time when the borrower dies, sells, or moves out of the home.\(^{20}\) It requires no monthly mortgage payments. The borrower is still responsible for payment of property taxes and homeowner’s insurance and the home must be a primary residence. Any existing mortgages on the home must be paid off at or before closing on the new reverse mortgage.

As there are no required mortgage payments, the interest on the loan is added to the loan balance each month. In view of this, the loan balance can conceivably grow to exceed the value of the home; however, the borrower is generally not required to repay any loan balance in excess of the value of the home. Reverse mortgages generally have higher costs associated with them than a home equity loan or line of credit. The vast majority of reverse mortgages are insured by the Federal Housing Administration (FHA) as part of its Home Equity Conversion Mortgage (HECM) Program.\(^{21}\)

A reverse mortgage can be used as a way to supplement income and pay health care expenses. However, borrowers should be aware of risks associated with this type of mortgage. The Consumer Financial Protection Bureau (CFPB) conducted a study on reverse mortgages and its findings included that reverse mortgages are complex and difficult for consumers to understand and that borrowers are taking out loans at younger ages than in the past; in 2011, nearly half of borrowers were under age 70.\(^{22}\) By accessing their home equity early, a homeowner may have problems later on covering unexpected expenses or financing a move to another home.

Further, the CFPB found that borrowers are withdrawing more of their money up-front than in the past. In 2011, 73% of borrowers took all or most of the available funds up-front at closing. Many used some of the monies to pay off existing mortgages. As of February 2012, 9.4% of borrowers were at risk of foreclosure as a result of nonpayment of taxes and insurance. And, if the borrowing spouse dies or needs to move, the non-borrowing spouse must sell the home or otherwise pay off the debt.\(^{23}\)

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\(^{21}\) *Id.*


of borrowers who are not listed as co-borrowers may well have no idea they are at risk of losing their home.

The market for reverse mortgages has been small, but that could well change with the millions of baby boomers reaching the age of eligibility for reverse mortgages. There are concerns with the cost and complexities of these mortgages and with the trend toward persons taking out this type mortgage before age 70 and taking all available loan money up-front in one lump sum. No doubt, some of these people will outlive their monies. Clearly, there needs to be a careful analysis of the individual's needs and past spending habits when considering this option.

Older Americans Act Support

The Older Americans Act (OAA) of 1965 is legislation with an expansive vision for helping older Americans. It was the first federal-level initiative to focus on the comprehensive needs of older adults, not just medical care. The OAA was designed to build an infrastructure for community-based services specifically designed to provide support and care to older adults so they can live independently in their environment of choice for as long as they can. Since 1965, the building of the infrastructure of community-based services has taken place and is indeed well developed; however, the number of people served is limited due to budget constraints. Whether this infrastructure can sustain itself is largely dependent upon future government spending.

The state units on aging under the OAA oversee the administration of statewide programs and services for seniors and disabled individuals, which may be administered locally by area agencies on aging or planning and service districts. These programs include a network of Senior Citizen Centers providing information and assistance, disease prevention and health promotion programs, elder abuse prevention programs, volunteer opportunities, and social services and activities for older persons. These Centers may also serve as meal sites where seniors can receive a meal up to five days a week.

The OAA also provides funding for home-delivered meals (Meals on Wheels). There is also a transportation assistance program providing transportation for seniors to get to the Senior Center or for non-emergency medical transportation needs. Other programs include the National Family Caregiver Support Program that assists families with their roles as caregivers.

Conclusion

These are interesting times in the world of long-term care funding. With the millions of baby boomers entering the senior population, and the 80 and older population growing by leaps and bounds, one can expect changes in the way seniors live and fund their long-term care needs. There will in all likelihood be new types of residential and assisted living communities, new programs and changes to existing programs, along with new technology and products geared to assist the senior population. An elder law attorney can be in a position to offer important guidance to clients regarding planning for long-term care funding.


A Kentucky-focused version of this article appeared in the Kentucky Bar Association's Bench & Bar Magazine, May 2013.
On September 19, 2013, the Federal Trade Commission (FTC) held a Roundtable event on “Consumer Protection and the Healthcare Marketplace” at its Conference Center in Washington, DC. This conference centered around the recent uptick in consumer fraud to coincide with the roll-out of the Affordable Care Act (ACA). Mila Kofman, the Executive Director of the DC Health Benefit Exchange Authority, noted that historically there has always been an increase in scams after a change to the health care system, as well as when the economy has taken a downturn.

While panelists assured attendees that law enforcement is ready to deal with these problems, the combination of the ACA with ongoing national economic challenges has resulted in a large increase in fraudulent activities.

Seniors are a particular target for scammers. Criminals often use a grain of truth that is “ripped from the headlines” to confuse seniors. Richard Goldberg, the Assistant Director of the U.S. Department of Justice, Consumer Protection Branch, described several scams that law enforcement agencies have already spotted.

In one scam, telemarketers called seniors seeking personal information so that they could send a new Medicare card or a “national health insurance card.” They told seniors they were required by law to give out data such as their social security number or bank account information. In reality, there are no such requirements in the ACA. So how can seniors protect themselves from scammers?

How Seniors Can Protect Themselves from Health Care Scams

by Daniel Joslyn

Here are a few key tips to help figure out if someone is attempting to defraud you:

**They call you and say they’re from the government**

The government will never cold call seniors or sell insurance door to door. Some government agencies may send you a letter, but they will never ask you for a credit card number, or for you to “confirm” your social security number. Anyone calling, sending an email, or a texting a senior and saying they are from the government and want to talk about health insurance is a scammer.

**They try to charge for helping you find insurance**

While there are certified Navigators who can assist eligible individuals in finding health insurance in the new Health Insurance Marketplaces, they are specifically prohibited by law from charging fees for their services.
They say you need to pay a fee for a new “Insurance Card”
There is no such thing as an “Obamacare Card,” or any other new card that seniors need to purchase in order to continue receiving insurance. Some scammers may say seniors need to pay a fee for a new Medicare card in order to continue receiving benefits under the program, but in reality Medicare is unaffected by the ACA.

They offer a “limited time” insurance special
Some fake insurance agents may claim you need to “act now” to get a special rate on your insurance, to avoid a penalty, or to keep Medicare benefits. If you have Medicare, the enrollment rules and period have not changed. While there are some insurance agents who can help you find a plan through the Marketplace, never give any personal information to someone who contacts you unsolicited.

There are places to find good information and get help

- Those looking to shop for legitimate insurance on the Health Insurance Marketplace can go to www.healthcare.gov.
- Anyone who thinks they’ve been the target of a scam can call the Federal Trade Commission at 1-877-FTC-HELP or go to www.ftc.gov/complaint.
- You can also contact your state insurance commission through www.naic.org/state_web_map.htm, and report Medicare fraud at 1-800-MEDICARE.
- Those looking for more information on health care scams targeting seniors can visit the AARP’s website at: www.aarp.org/fightfraud.

Daniel Joslyn is a second-year law student at the George Washington University Law School in Washington, D.C., and is serving as a 2013 fall extern with the Commission on Law and Aging.
Bifocal is pleased to publish this article written by Mr. Zimring for the National Academy of Elder Law Attorneys about one of the roles that elder law attorneys can play in preventing the extensive and expensive problem of elder financial exploitation. While some of the terminology used in the article is California-centric, the issues and ideas posed by Mr. Zimring are national in scope and relevant to practitioners in other states.

In many cases, an Elder Law attorney can be the first line of defense against fiduciary elder abuse. Proper counseling, planning, and drafting of estate planning documents can build protective mechanisms, safeguards, and checks and balances into the estate plan to protect the elder for years to come.

Here are some strategies to help reduce the possibility of financial elder abuse:

**Encourage transparency**

Public scrutiny is one of the best ways of keeping people honest. Where a senior’s financial affairs are in the hands of one individual, consider advising the senior to have reports sent to other family members, a friend, or advocate on a regular basis, giving this person oversight, responsibility, or the capacity to inquire regarding financial matters. This is best done in a Durable Power of Attorney for Asset Management or in the client’s Living Trust.

**Familiarize yourself with the agent**

If a trust or durable power of attorney is used to manage the elder’s assets, consider obtaining the client’s permission to meet with or, at the very least, write a letter to, the agent or trustee to outline what is expected under the document.

A representative payee receives the Social Security or Supplemental Security Income (SSI) payments if the Social Security Administration (SSA) determines that it is in the recipient’s best interests. While the SSA is required to investigate a potential representative payee before the appointment, these investigations may be lax or cursory. Because there is little oversight of representative payees by SSA, a frail elder can be the subject of fiduciary abuse by a person who obtains appointment as representative payee and thereafter converts the elder’s benefits to his own use and benefit.

An elder law attorney who believes a client’s Social Security or SSI benefits are being misappropriated should assess ethical and legal responsibilities and consider whether to notify the SSA or a law enforcement agency.

One would think that, since conservators or guardians are already subject to ongoing court supervision, elder abuse would be unlikely in such cases. Unfortunately, this is not true.
Given current case loads, it can be years before a court discovers that a conservator has failed to carry out his statutory duties. Thus, the vigilance of family, friends, and advocates can be most helpful in reviewing the periodic accountings filed by the conservator and lodging appropriate objections with the court. A conservator who is determined by the court to have acted improperly may be surcharged for the damages caused by the conservator’s breach of duty or removed from office.

**Be on the lookout for power of attorney misuse**

A durable power of attorney is an extremely powerful, and therefore potentially dangerous, document. Unfortunately, most durable powers are executed, and often drafted, with little thought to the enormous power contained in them. Since the forms can be obtained from the Internet site, they are seen as a quick and inexpensive method of avoiding the disadvantages of conservatorship or the expense of paying an attorney. Unfortunately, an unscrupulous agent can, without the knowledge of the principal or those around him, change title to assets, empty bank and stock brokerage accounts, rearrange the principal’s estate plan, and be long gone before anyone even suspects something is wrong.

The best way to avoid abuse by the agent is to include provisions designed to address that purpose when drafting the document. For example:

- Consider including some built-in protection for the principal, such as the appointment of “friends,” “advisors,” or “protectors” with whom the agent is required to consult or advise before performing specific acts such as conveying real property, liquidating assets, making gifts, etc. Similarly, the agent could be required to account to a third party or the elder law attorney on a regular basis for actions taken.

- Include prohibitions or limitations on specific kinds of activity, such as prohibiting the sale of the principal’s residence.

By being proactive, a good elder law attorney can give both an elderly client and those who care about the client’s peace of mind a level of security that might otherwise not be available.

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Stuart D. Zimring, CAP, is an Elder and Special Needs Law attorney in North Hollywood, CA. He is a Fellow, Past President, and current member of the National Academy of Elder Law Attorneys (NAELA).

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**Commission Resource Spotlight: Elder Financial Exploitation**

For more information about elder financial exploitation, visit the [Elder Abuse Resource](http://ambar.org/COLA) page of the Commission on Law and Aging.

- [Durable Power of Attorney Abuse](http://ambar.org/COLA)
  A National Center on Elder Abuse Fact Sheet for Consumers

  Three-part interview with Alex Forger, an expert witness for the prosecution. Conducted by Lori Stiegel, Senior Attorney, ABA Commission on Law and Aging.

Find these, and other resources, on our website at: [http://ambar.org/COLA](http://ambar.org/COLA).
Alzheimer’s and The Law blends substantive information with practice pointers and interdisciplinary advice. The end result is a book that is informative and interesting to read. Every lawyer working with older clients will encounter clients with Alzheimer’s and other dementias. This book focuses on how to help these clients and their families with the most common personal legal issues.

The text covers key areas starting with an overview of Alzheimer’s and other dementias. There are few ethical issues more complex than working with a client with diminished capacity. The book goes beyond rule 1.14 (a client with a disability) and examines the ethical implications of the client’s dementia on the lawyer-client relationship, confidentiality, and conflicts of interest. The text next explores the importance of advance health care planning and powers of attorney in assisting persons with dementia. There is a chapter on special needs trusts that provides a good overview of a very complex topic. Paying for health care and long-term care are major concerns for persons with dementia and their loved ones and the text covers the basics of Medicare, Medicaid, and Veterans Benefits.

Guardianship is not inevitable for every person with dementia—but becomes a factor when there is a lack of advance planning, or the planning in place fails. The book provides an excellent overview of the full spectrum of guardianship and conservatorship issues. Persons with dementia are especially vulnerable to exploitation, abuse, neglect, and scams. The book has an excellent chapter on these important issues.

The final chapter is on personal care agreements and nursing home contracts. This chapter contains the best explanation of personal care (in-home care) contracts that I have read. The chapter reviews why personal care agreements are important and offers guidance on how to draft personal care contracts that fit the person and family. This chapter covers employment law basics, tax law basics, and the importance of caregiver agreements when applying for Medicaid. The last section talks about the importance of a lawyer reviewing nursing home contracts before clients sign them.

The authors are well-known and respected attorneys from Chicago. The book has a noticeable Illinois influence balanced with explanations of several areas of the law in other states illustrating an understanding that the law does vary from state to state. The book contains a “50-state-survey” of health care power of attorney and advance directive laws, but not of other areas of the law. There are a few points where you can tell that the book has multiple authors. In a few places the book would have benefited from more careful editing. These concerns should not overshadow this excellent text on Alzheimer’s and the law.

David M. Godfrey is a Senior Attorney at the ABA Commission on Law and Aging.
This is an excellent book about practice and procedure in the Court of Appeals for Veterans Claims (CAVC). I have to admit that a wave of dread passed over me when I realized that I had volunteered to review a book on practice rules and civil procedure in a specialized Court, but within a couple of pages I realized that this is clearest, most straightforward practice and procedure book I have ever read. The authors did an amazing job of explaining complex rules of practice and procedure in ways that are clear and very understandable.

There are about 600,000 pending claims for Veterans benefits. Helping Veterans with these cases can be personally rewarding. Representing Veterans is a way of helping those who have given so much for our country. This book will be a huge help to attorneys wishing to navigate a case through the CAVC.

The text starts with a brief overview of Veterans Benefits, rapidly moves into how cases move into the CAVC, and then details what happens and how it happens in this Court. The book uses a step-by-step format to walk the reader through the process for the CAVC. The authors make generous use of sample documents and practice tips. Carefully guiding the reader through the Court’s e-filing requirements, the publication also advises on the most common challenges in using the system.

The CAVC is in Washington, DC, but the vast majority of cases are handled on paper and by phone; oral arguments are rare. The book explains eligibility for payment of attorney’s fees by the government, the process of requesting fees and getting paid.

If you are going to practice in the CAVC, you should have a copy of this book on your desk.

The book concentrates on practice and procedure. It does not attempt to cover the laws and regulations governing benefits eligibility. The book is well edited and designed. Don’t let the book’s compact 125 pages fool you—there is a lot of content in the pages with a very efficient use of words. If your law school civil procedure book had been this well written, civil procedure might have been one of your favorite classes. I recommend this book for anyone thinking of taking a case to the Court of Appeals for Veterans Claims.

David M. Godfrey is a Senior Attorney at the ABA Commission on Law and Aging.
The Velocity of Autumn

by Candace K. Cliatt

DC meets New York in the second-floor living room of a tiny Brooklyn brownstone: passion and wit, embodied in the form of this exclusive pre-Broadway engagement, greet the District and extend a warm invitation to come in. Eric Coble’s *The Velocity of Autumn*, performed beautifully in the Kreeger Theatre at Arena Stage, delightfully details the pains and frustrations associated with growing older and the responsibilities of care that ensue. It is a gripping tale of reality for some, and a constant reminder for many, that the effects of aging are common to us all. However, Coble effectively weaves in bouts of humor, seemingly to inform the audience that gaiety exists even in the midst of family conflicts surrounding difficult decision making.

Sound designer Darron West introduces the audience to the play through a series of blaring police sirens. The set, designed by Eugene Lee, reflects the sophistication of a resident in a New York brownstone. There are shelves of books, even a John Grisham novel on the floor, and the stage is teeming with what appear to be empty wine bottles. Yet, the bottles contain film-developing fluid, there are empty spaces on the walls where paintings used to hang, and there are chairs and tape across the door to keep unwanted guests out. Soon, the correlation between the sirens and the set is made known: it has been creatively laid out to symbolize the imprisoning affects aging can have on maturing citizens.

Inside this ingenious set, Alexandra (Academy Award-winner Estelle Parsons) begrudgingly greets her son Chris (Tony Award-winner Stephen Spinella) who is trying to convince her to move into a nursing home against her wishes. The dialogue between mother and son is endearing; through their bickering back and forth, Alexandra fights for her role as matriarch while Chris wrestles with the question of how much influence he should try to assert in his mother’s life. Love is the only constant in this heated conversation as both mother and son realize they have more similarities than differences—both share the undying need for independence and freedom. Spinella is simply amazing; his portrayal of a loving, but oft misunderstood, son is Alexandra’s spine—uplifting her, buttressing her very character. Likewise, Parsons’s performance is admirable. Her ability to outwit her son, moving him to tears, and to ultimately reach her own conclusions is inspiring.
Artistic Director Molly Smith has assembled an amazing show with a lucid focus and cohesiveness that is not only impressive, but also engaging to audience members of all ages.

Also, the costume design of Linda Cho provided an interesting irony. Alexandra wears a long floral-printed dress that is reminiscent of spring—not autumn. Perhaps, her wardrobe choice was included for a statement all its own: the fight for youth and autonomy do not go easily into the night. Parsons and Spinella, the dynamic duo, end the night receiving a standing ovation, and Alexandra closes with a curtsy, so graceful that it would receive the approval of even the late Mrs. Astor. This was an absolute job well done and a joy to behold.

The Velocity of Autumn ran Sept. 6–Oct. 20 at Arena Stage’s Kreeger Theater in Washington, DC.

Candace K. Cliatt is a third-year law student at the University of Georgia School of Law in Athens, GA, and is serving as a 2013 fall extern with the Commission on Law and Aging.

Brooklyn Law School Launches Elder Rights Clinic

This fall marks the launch of the Elder Rights Clinic at Brooklyn Law School. The news is timely as more baby boomers enter the 60+ age bracket and the legal needs of older adults continue to expand. By 2030, it is estimated by the Department of City Planning that the borough of Brooklyn alone will have as many as 410,000 residents over the age of 65. Yet today, 53 percent of Brooklyn residents in that same demographic struggle with desperately low incomes.

To address these pressing needs, Brooklyn Law School has collaborated with the Brooklyn Legal Services Elderlaw Project and the Weinberg Center for Elder Abuse Prevention at the Hebrew Home at Riverdale to create the new clinic. It is the latest in the Law School’s 30-year history of clinical and externship programs to benefit from close partnerships with community-based organizations.

The Elder Rights Clinic allows for hands-on work across diverse projects and cases. At Brooklyn Legal Services, students will handle eviction cases specific to senior citizens and take on client representation—from case intake through strategic case assessment, motion practice, court appearances, and possibly even hearings or trial. This direct client interaction with the older adult population will build invaluable client-interviewing skills and an ability to assess client capacity. Students may also have the opportunity to identify and intervene in cases of elder abuse, and to evaluate other basic food, housing, and health care needs. The process of advocating for an older adult at an administrative hearing offers another invaluable experience for learning.

The ever-changing laws and regulations surrounding Medicaid benefits, health-care and insurance provides an area ripe for students to position themselves on the cutting edge of a practice that most long-time practicing attorneys are learning as well.

The weekly seminar will complement the case and project work by exploring foundational legal concepts and developing necessary skills. Topics will include advance legal planning, older adult benefits, eviction proceedings, and the guardianship process. In addition, students will work on projects assigned through their seminar that focus on older adults’ rights including: attorney-client ethics, privacy rights, consent to sexual activity, and access to justice.

Jane Landry-Reyes, Senior Housing Attorney with Brooklyn Legal Services, is responsible for assigning and supervising caseloads while Deirdre Lok, Assistant Director and General Counsel for the Weinberg Center, is teaching the seminar. Find out more about the Clinic at http://www.brooklaw.edu/academics/curriculum/coursedescriptions/course.aspx?id=L_180.
FEMA: Removing Barriers to Alert Accessibility

Recognizing that alert and warning information is only effective if received means understanding how people choose to receive information. And, if the goal is to alert everyone, then it is vitally important not to overlook the approximately 25% of the population who rely on assistance or accommodation in their day-to-day lives. Pushing information to TV and radio is simply no longer enough.

FEMA’s Integrated Public Alert and Warning System (IPAWS) is moving quickly toward the goal of making sure alerts and warnings are fully accessible by the whole community. This multi-platform approach to pushing information through a variety of devices attempts to ensure access to critical information by everyone. But there are still some final hurdles to overcome.

On FEMA’s website, you’ll find a paper serving to demonstrate how IPAWS addresses the challenges of reaching the whole community, including those who might need assistance. It argues that while IPAWS doesn’t solve all of the challenges, it can mitigate them—particularly with greater stakeholder engagement and public awareness.

Learn more at: http://www.fema.gov/library/viewRecord.do?id=7599.

Elderlaw & Ethics: A Three-Part Webinar Series

Working with older clients can be a rewarding experience; it can also present some unique ethical challenges for attorneys. Trying to determine who the client actually is, whether the client has capacity to enter into an attorney-client relationship, and how to handle family members are just a few of the questions that we, as elderlaw attorneys, are faced with on a regular basis.

The Center for Elder Rights Advocacy, a partner in the National Legal Resource Center, is hosting a three-part webinar series on Elderlaw & Ethics. Prof. Kimberly O’Leary, Director of 60+Elderlaw Clinic at Thomas M. Cooley Law School, has developed methodical approaches to identifying and handling some of the most challenging ethical issues that elderlaw attorneys face.

In each of these webinars, you’ll receive resources to analyze the issues and the presenter will examine examples by using a step-by-step process.

- **Competency** 11/14/2013
  This webinar will present steps for attorneys to follow to determine whether a new client has sufficient competency to engage in the attorney-client relationship and how to handle a situation where a question of competency arises during representation.

- **Confidentiality** 12/12/2013
  This webinar will present steps for attorneys to follow to ensure they are keeping client’s privacy in an elderlaw practice. It will explore the traditional “who is the client?” issue that often arises in elderlaw as well as typical ways practitioners engage the assistance of third parties to help their clients.

- **Multi-representation** 1/16/2014
  This webinar will present steps for attorneys to follow when asked to represent more than one client in an issue. It will explore representing couples as well as members of the same family. It will NOT discuss class action representation.

To register, please visit the Center’s website at: http://www.ceraresource.org.
Free webinar

The Affordable Care Act: What it Means for Seniors

The Affordable Care Act brings new opportunities and challenges for seniors, including the expansion of Medicaid in many states and enrollment in health insurance plans through marketplaces or exchanges beginning on January 1, 2014. This presentation will provide a summary of these changes and their impact on seniors.

- Wednesday, November 6, 2013
- 12:00pm - 3:00pm EDT
- Register at: [https://attendee.gotowebinar.com/register/1854438864364731137](https://attendee.gotowebinar.com/register/1854438864364731137)

The presentation may be most relevant to people in states that are choosing to expand access to Medicaid, but all may participate.

This webinar will cover:

- What is expansion Medicaid and who is eligible
- What are the healthcare exchanges and who is eligible
- How are seniors impacted (or not impacted) by these programs, including a discussion of the transition from these programs when an individual turns 65 or obtains Medicare
- Other changes under the ACA impacting Medicare

Full-day training for advocates and consumer attorneys

Consumer Rights Advocacy for Domestic Violence Survivors

While this training will be framed around issues faced by domestic violence survivors, we welcome elder advocates to attend, as many topics will be applicable to both populations.

- Friday, November 8, 2013
- Arlington, VA
- Registration fee of $89 includes all materials, continental breakfast, and coffee break.

Economic security is central to the goals of safety, agency, restoration, and justice for both domestic violence survivors and vulnerable older Americans. Consumer law can be a powerful tool for addressing economic abuse, including: debt incurred or coerced by abusers, credit damage created by abusers, identity theft, and other financial difficulties.

Topics will include:

- Credit reporting law and advocacy,
- Debt prioritization and collection defense,
- Federal tax advocacy, and
- Building partnerships to enhance consumer rights for abuse survivors.

This training runs concurrently with NCLC’s Consumer Rights Litigation Conference, held Nov. 7-9 in the same venue. If you are interested in more information on the Conference, including day-long trainings on Bankruptcy Options for Distressed Homeowners and Consumer Class Actions, visit [www.nclc.org](http://www.nclc.org).

The Center for Medicare Advocacy seeks an experienced attorney for a senior management position in its Connecticut office.

The person in this position will be a significant member of the management team working to accomplish the Center’s mission—providing fair access to health care for older and disabled people.

Resumes are due by November 30, 2013. For more information about the Center and for application details, please visit [www.medicareadvocacy.org](http://www.medicareadvocacy.org).
Register now!

Advocacy for elders and persons with disabilities is at a tipping point today—making aging in place according to one’s own terms possible in caring communities or giving in to an unbalanced world of haves and have-nots. You can’t afford to miss the Institute. You’ll find the knowledge, skills, and moral support needed to make the former a reality.

— Charles P. Sabatino, 2013 NALI Co-Chair

The Top 5 Reasons to Register Today!

1. Hear from the top leaders of CMS, including Jonathan Blum, Director of the Center for Medicare at CMS, about their vision for Medicare and Medicaid.

2. Engage with a prominent member of the Senate on the aging legislative agenda.

3. Learn how the Affordable Care Act will change the way you advise your older and special needs clients.

4. Ethically enhance your interviewing skills and understand the ethical issues of communicating with non-clients — learn from experts in Elder and Special Needs Law.

5. Re-charge your batteries and recall the reasons you chose Elder and Special Needs advocacy by networking and sharing valuable solutions with others.

Visit http://www.naela.org/2013nali

ABA Senior Lawyers Division Webinar

Tuesday, November 12, 2013

A Medicare Pitfall:
What You and Your Clients Need to Know About Observation Status

There has been a dramatic rise in the use of the observation status for Medicare clients who are in the hospital, or at least they think they are. If they are designated as on observation status rather than actually admitted to the hospital, these clients face not only higher costs while they are in the hospital but risk no Medicare coverage for post-hospital rehabilitation in skilled nursing facilities. Often the first time they find out about this is when they receive the bills, which can total thousands of dollars.

Learn more at: http://apps.americanbar.org/cle/programs/t13mos1.html.

This program will help you understand what observation status is, why it is used, and how you can help your clients who find themselves in this situation. You will also learn about the various efforts to change this situation via both proposed federal legislation as well as a pending lawsuit filed by the Center for Medicare Advocacy, and how you can be involved in these efforts.

Presenters:

- Hon. Louraine Arkfeld, Tempe Municipal Court
- Hon. Ruth Kleinfeld, Office of Disability Adjudication and Review
- Alice Bers, Esq., Center for Medicare Advocacy