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National Aging and Law Conference



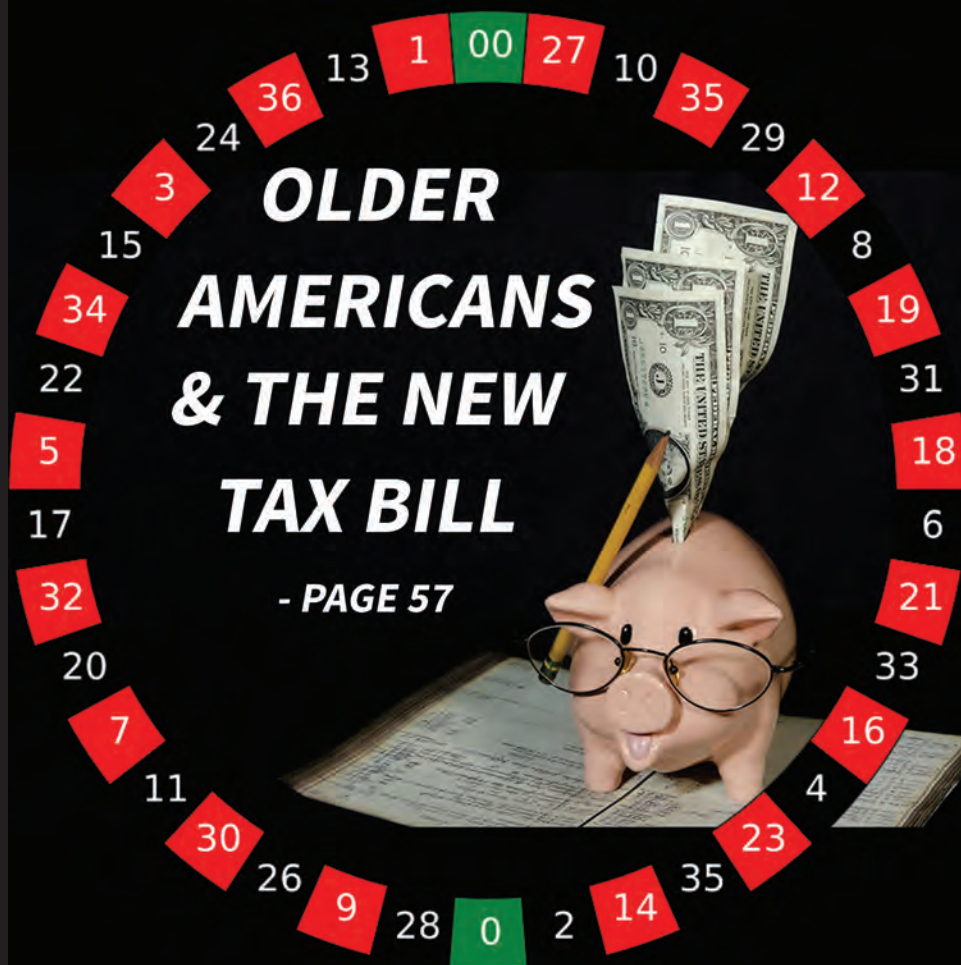
# Bifocal

*A Journal of the ABA Commission on Law and Aging*

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## Bifocal

Journal of the American Bar Association Commission on Law and Aging

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# Older Americans and the New Tax Bill

by David M. Goldfarb  
& Hyman G. Darling



## Last year's \$1.45 trillion tax rewrite is certain to impact older Americans, but how?

The Urban Institute's Tax Policy Center estimates that the new law will reduce taxes on average for all income groups in both 2018 and 2025. A few will see their taxes increase, more over time due to the inclusion of "Chained-CPI,"<sup>1</sup> which grows more slowly than the standard inflation rate. Many more could see an increase after 2025 when much of the individual tax provisions expire.

1) **Editor's Note:** *Chained CPI* is short for *Chained Consumer Price Index for All Urban Consumers*. The new tax law uses chained CPI to compute price increases. The probable consequences of the use of chained CPI are set out in this article. To learn more about the chained CPI concept, read this [article](https://www.bloomberg.com/news/articles/2017-11-20/why-chained-cpi-has-links-to-u-s-tax-debate-quicktake-q-a) from *Bloomberg News*. <https://www.bloomberg.com/news/articles/2017-11-20/why-chained-cpi-has-links-to-u-s-tax-debate-quicktake-q-a>

Today, many seniors do not pay any tax and will not under the new law. That's because a large number of older adults rely almost entirely on Social Security, which is exempt from taxation at lower levels of income.

Older households that do pay taxes tend not to itemize deductions. A major aspect of the tax re-write was to limit the number of households that itemize and to reduce their impact overall. It's likely therefore that as a group they will see a modest benefit, particularly early on, from the tax cuts.

So, whose taxes could increase among older adults? Major itemizers, who are more often those in places with high state and local income and property taxes.

Thankfully though, the new law does not make the radical changes to limiting itemized

deductions that were originally proposed. For instance, the National Academy of Elder Law Attorneys, AARP, and a number of other advocates fought to save the medical expense deduction. Ending the deduction would have caused serious harm to many seniors who have high medical or long-term care costs.

Thanks to the outcry, the final legislation not only keeps the medical expense deduction, but temporarily expands it for two years.

### **Rethinking “Bunching” with the New Tax Law**

When planning for seniors, major changes to be aware of include the new tax rates and brackets, increases to the Alternative Minimum Tax (AMT), and the impact of doubling the standard deduction. One important planning tool going forward will be “bunching deductions.”

With the shift of income to different brackets, it is important to at least consider what bracket a person will be in and whether to bunch deductions in one year as opposed to taking the standard deduction. Given the elimination of the personal exemption, doubling in standard deductions, and a \$10,000 cap on state and local tax (SALT) deductions, the taxpayer may not have significant medical deductions together with SALT deductions when added to charitable contributions and mortgage interests to file an itemized deduction schedule. This will certainly have a bearing on both the Federal Tax Return as well as on the State Return as in some states, itemized deductions may not be taken on the State Return unless they are taken on the Federal Return as well.

Similarly, the AMT has increased to \$70,300 for a single person and \$109,400 for a married couple. These amounts now phase out when a single taxpayer reaches \$500,000 and a married taxpayer reaches \$1 Million. Again, with limitations on itemized deductions, the AMT may also not be as critical to those payers who do not itemize.

Given the difficulty in itemizing deductions, “bunching” expenses becomes a greater consideration. Taxpayers could potentially reduce their overall tax liability over several years, by pre-paying their real estate taxes and front loading other deductions, such as charitable expenses, in one year, allowing them to itemize their deductions, when they’d otherwise never meet that threshold.

For instance, a taxpayer could pay all of their real estate taxes for 2018 in 2018, and if the fiscal tax year for the city or town they live in begins in 2018 for 2019, the taxes could be paid also in 2018. Charitable deductions for 2018 would also be paid in 2018 as well as having 2019’s pledges or proposed charitable contributions paid in the same year. Therefore, the itemized deductions will be taken in 2018, but perhaps not in 2019. This process would be repeated in 2020, 2022, etc. Keep in mind that many of the changes which were enacted expire at the end of 2025 unless extended. So, attorneys should keep up on the law when considering this procedure.

Also, a taxpayer over the age of 70.5 with their primary income from their IRA and Social Security may be required to pay income taxes on a portion of their Social Security. If their charitable contributions are not deductible, they should consider having the charitable gifts made directly from their IRA to the charities. Their gifts qualify for the minimum required distribution, but the amounts will not be taxable. Therefore, their income is less for 1) amounts will purposes of taxation, 2) inclusion of Social Security Administration benefits, 3) reduction of Medicare D premium, and 4) qualification of any Governmental benefits.

### **Assessing the Broader Impact**

Many aging advocates oppose the legislation not for reasons related to direct taxes, but its broader consequences. One risk already averted was the automatic cuts to Medicare under the budget rules. To avert those cuts, many Democrats

joined Republicans to waive those rules. Yet more concerns remain:

- **Destabilization of the Individual Health Insurance Market.**

The end of the individual mandate threatens to raise taxes and undermine health coverage for many people. Those aged 55-64 often have high health costs, meaning some could be less economically secure and less healthy as they enter traditional retirement age as a result.

- **Pressure on States to Cut Spending.**

The law caps state and local tax deductions to \$10,000. Unless states find a work around, it could undermine the ability of states to finance key programs, such as Medicaid.

- **Decline in Charitable Services.**

By doubling both the Estate Tax threshold and the standard deduction, households will have less incentives to donate to charity. Many seniors rely on non-profits for a wide range of services. Fewer donations mean fewer services available to seniors.

- **Legitimizing Chained-CPI for Social Security.**

In the past, entitlement reformers have offered Chained-CPI as a means to increase Trust Fund solvency by cutting cost-of living increases to beneficiaries. Some advocates fear the use of it in the tax code will add new legitimacy towards applying it to Social Security.

- **Renewed Calls to Cut Entitlements.**

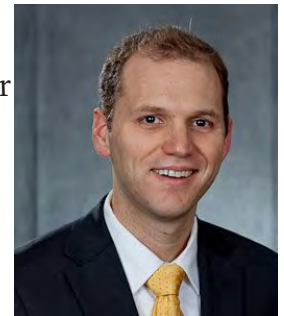
Some worry that the decline in revenues will increase pressure to cut entitlement programs. CBO already gives entitlement reformers plenty of ammunition about U.S. debt, in part by assuming average interest rates will spike to 4.7% in the future and health expenditures will grow 1.0% faster than GDP indefinitely. In addition, Social Security's Actuaries project that the combined Trust Fund is set to lack sufficient funds to pay out all claims starting in 2034.

As long these projections continue, so will the pressure to cut entitlements.

A primary impetus of the tax bill was to lower taxes for Corporations and move to a territorial system, where U.S. companies don't need to report offshore income. Will it really raise wages as Republicans suggest? Or will it lead to greater off-shoring, more stagnant wages, and increased inequality? Its potential impact on the economy and the political consequences that result could ultimately be the most important of all. It's also the hardest to predict.

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# POLST: Avoid the Seven Deadly Sins

By Charlie Sabatino

The POLST — or Physician Orders for Life-Sustaining Treatment — Paradigm is a valuable person-centered clinical process designed to facilitate communication between health care professionals and patients with serious illness or frailty or with the patient's authorized surrogate.<sup>1</sup> The process is intended to encourage shared, informed medical decision-making leading to a set of portable medical orders that respects the patient's goals for care in regard to the use of cardiopulmonary resuscitation, the level of treatment aggressiveness desired, and other medical interventions. Portability of POLST is a key feature; it is applicable across health care providers and settings, and should be reviewed and revised as needed.

The effectiveness of POLST in increasing documentation of patient preferences and in delivering end-of-life treatment concordant with those preferences has been convincingly demonstrated.<sup>2</sup>

1) The terminology of POLST varies across jurisdictions. Examples include *Medical Orders for Scope of Treatment (MOLST)*, *Provider Orders for Scope of Treatment (POST)*, *Medical Orders for Scope of Treatment (MOST)*, and even *Transportable Physician Orders for Patient Preferences (TPOPP)*. A full list of terms may be found at [www.polst.org/map](http://www.polst.org/map).

2) Hickman SE, E Keevern, and BJ Hammes (2015). "Use of the Physician Orders for Life-Sustaining Treatment Program in the Clinical Setting: A Systematic Review of the Literature." *Journal of the American Geriatrics Society*, 63(2):341-350; Hickman SE, CA

However, because the POLST form is such a powerful tool in directing care and treatment, its improper use poses an equally powerful risk of undermining person-centered, informed decision-making at the end of life if the form does not truly reflect the informed preferences of the patients.

I have had the opportunity to observe the development of the National POLST Paradigm and to have some small hand in its development as a legal advisor to the National POLST Paradigm Task Force since it was established in 2004. At that time only six states had POLST Paradigm Programs: New York, Oregon, Pennsylvania, Washington, West Virginia and Wisconsin. Today, virtually every state (and Washington D.C.) has a POLST program under some stage of development and 22 of them have programs that meet the voluntary endorsement standards of the Task Force for programs and forms.

The growth of POLST programs has benefited countless individuals and families facing advanced illness. But it has also brought many challenges in education, quality assurance, and monitoring. The

Nelson, AH Moss, SW Tolle, NA Perrin, and BJ Hammes (2011). "Consistency between treatment provided to nursing facility residents and orders on the physician orders for life-sustaining treatment form." *Journal of the American Geriatrics Society*, 59(11):2091-2099.

National POLST Paradigm Task Force has set a high bar for meeting those challenges in its standards, guidance and educational efforts.<sup>3</sup> Yet, as one observer of its growth, I think certain errors are serious enough to call out more clearly and target for careful avoidance. These are all missteps that undermine patients' informed decision-making. Health care providers should be aware of and conscientiously avoid the following seven deadly sins of POLST:

**1) Using POLST with people who are too healthy.**

POLST is for individuals with a serious illness or frailty whose health care providers would not be surprised if they died within the next year or so. It is also an entirely voluntary option for patients. The specificity of the medical orders contained in a POLST order set are justified by the proximity between the patient's current condition and the critical care decisions likely to be faced by patients in the here and now. Using the form further "upstream," such as for patients who reach a specific age or for all patients who enter a nursing home, eliminates the connection between the orders and immediate medical circumstances and forces patients to address increasingly hypothetical rather than known circumstances.

One illustration of the immediacy of POLST comes from a study of advance care planning in LaCrosse, Wisconsin, which found that among a sample of 400 decedents, advance directives were completed an average of 3.8 years before death versus an average of 4.3 months for POLST forms.<sup>4</sup> In another study, death certificates of 18,285 Oregon decedents were matched to the state's POLST registry. The study

3) For example, see the Task Force's guidance titled, POLST Paradigm Fundamentals, available at <http://polst.org/wp-content/uploads/2016/09/POLST-Paradigm-Fundamentals.pdf> and Appropriate POLST Paradigm Form Use Policy, available at <http://polst.org/wp-content/uploads/2017/05/2017.05.18-Appropriate-POLST-Paradigm-Form-Use-Policy.pdf>.

4) Hammes BJ, BL Rooney, and JD Gundrum (2010). "A Comparative, Retrospective, Observational Study of the Prevalence, Availability, and Specificity of Advance Care Plans in a County that Implemented an Advance Care Planning Microsystem." *Journal of the American Geriatrics Society*, 58(7):1249-55.

found that the median interval between POLST completion and death was just 6.4 weeks.<sup>5</sup>

**POLST is for individuals with a serious illness or frailty whose health care providers would not be surprised if they died within the next year or so.**

The error that some nursing homes have fallen into is that of using POLST forms for all or most residents, possibly because they are required to document the code status of all residents. The POLST Paradigm is far more than a documentation of code status. Its misuse with residents who enter a nursing home for short-term rehabilitation puts them in the position of having to make decisions about a range of premature and out-of-context interventions inappropriate to their situation. Moreover, the expectation that all residents should have a POLST form undermines its voluntary nature.

For these "healthier" residents, nursing homes need to find a distinct way to document code status.

**2) Signing a POLST form without meaningful discussion.**

Completion of a POLST form requires discussion of: (1) the status of individual's medical condition; (2) the choices or trade-offs faced in the person's care and treatment; (3) the individual's goals and priorities given their current diagnosis and prognosis; and (4) the effect of each of the choices offered on the POLST form.

The discussion is the heart of the POLST process and also its Achilles heel if done poorly. Sometime the compact nature of the POLST form is misperceived as a shortcut advance planning tool. Nothing could be further from the truth. As a medical order, it is short and succinct. But getting to that end product requires skillful communication, time, and attention, often

5) Zive DM, EK Fromme, TA Schmidt, JNB Cook, and SW Tolle (2015). "Timing of POLST Form Completion by Cause of Death." *Journal of Pain and Symptom Management*, 50(5):650-58.

**The discussion is the heart of the POLST process and also its Achilles heel if done poorly.**

from a team of providers. We have few good quality measures for these discussions, so professional and ethical diligence of providers is imperative.

### **3) Having patients complete their own POLST form.**

Yes, this does happen, and it illustrates a grave misperception that a POLST form is a type of advance directive. The two are complimentary but quite distinct creatures. Among their differences are the following:

- A POLST form is a medical order set for immediate circumstances; an advance directive appoints a surrogate decision-maker and/or provides general decision-making guidance for hypothetical future circumstances.
- A POLST form is completed by medical professionals in a health care setting for seriously ill or frail patients; an advance directive is completed by an adult at any stage of health in any setting.
- Review and portability of POLST forms across care settings is the responsibility of health care providers; for advance directives, it is the responsibility of the individual.

### **4) Providing incentives for completing more POLST forms.**

Health system experts have long recognized that incentives profoundly affect the delivery of health care, causing both intended and unintended

consequences.<sup>6</sup> Most often incentives are financial. The most popularly cited examples are fee for service payment systems that tend to incentivize more medical procedures, versus capitated payments in managed care systems that may incentivize reduced numbers of services. Paying “bonuses” for certain behaviors, such as completing POLST forms will increase the number of POLST forms, but that’s likely to happen at the cost of the quality, appropriateness, and voluntariness, where those variables are not incentivized. Paying for the time it takes to have advance care planning discussions is understandably important, but if that is measured simply by the number of advance directives or the number of POLST forms, the same unintended consequences are likely.

Incentives can be non-monetary, too, such as in the use of “report cards” comparing performance, or even simply counting certain behaviors such as in the above example of POLST form completion. These can indirectly incentivize behaviors in, subtle, unanticipated ways. It is a complicated stew of variables. Avoid financial incentives for form completion rate goals and be wary of all behavioral incentives.

### **5) Failing to review POLST forms.**

Patients experiencing advanced illness are not a stable lot. In their weakened states, they are highly vulnerable to change. Because POLST prescribes a critical care plan for the person’s *immediate* condition, it needs to be reviewed whenever there is a substantial change in the person’s health care status, or when the person is transferred from one care setting or care level to another, or when the patient goals of care or treatment preferences change. A POLST form provides clear medical orders when critical care decisions must be made during a medical emergency, but when the time for review is available, review is essential.

### **6) Letting POLST disappear.**

Perhaps the most innovative, systemic impact of POLST is its portability across care settings, a characteristic that enhances continuity of care across settings, from hospital to nursing home to community setting and during transport in between. Bringing this about has required unprecedented coordination across care settings, and increasingly, the creation of quick

6) See e.g., Hillman AL (1991). “Managing the Physician: Rules Versus Incentives.” *Health Affairs*, 10(4): 138-146.



access registries such as Oregon's. Implementation depends on the diligence of institutions to ensure the current POLST form is visibly present and immediately accessible in the record and promptly transfers to the next institution or setting to which the individual is taken. If that doesn't happen, its value is entirely undermined. Failure to transfer or forward a patient's POLST form is a medical error.

### 7) Failing to evaluate your use of the POLST Paradigm.

Ever since its inception in the early 1990's, the POLST process has undergone changes and improvements in form and procedure, as technology has changed, as lessons are learned, and as health organizations evolve. To some extent, the POLST Paradigm will always be a work in progress, but it will only be progress if monitoring and evaluation are integral to state POLST programs. Skimping on that process threatens its quality and its legitimacy as a tool for person-centered care. As already counseled above, just counting numbers is risky. The kind of outcomes that reflect the person-centered quality of the POLST process include questions such as:

- Do providers utilize clear triggers and communication skills for POLST discussions and completion of POLST forms?
- Do patients or their surrogates remember a discussion about POLST?
- How do patients and their surrogates perceive the timing and value of the POLST discussions?
- Do patients and their surrogates feel they had adequate opportunity to reflect and talk to family members to be sure they understood how POLST would be used?
- Do they feel POLST accurately reflected their values and goals of care?
- Do patients or their surrogates feel the orders in a POLST form were known by their health care providers and honored?
- When and how were POLST form orders reviewed with the patient or surrogate?

The POLST Paradigm has become a powerful tool for identifying and honoring the goals of care of seriously ill or frail individuals. But that power can be turned against patients if health care providers misunderstand

or misuse it. Each of these seven deadly sins require resolute reconsideration for redemption.

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## Connect With Us!

### Discussion Lists

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

- **Elderbar**, an open discussion list for professionals in law and aging,
- **Collaborate**, a discussion list on aging, disability, and dispute resolution.
- **COLA-AgingSolo**, a discussion of topics related to solo older adults

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# Everything You Need To Know About The New Medicare Cards (But Beware Of Scams)

by Judith Graham, Kaiser Health News

In April, the government will start sending out [new Medicare cards](#), launching a massive, yearlong effort to alter how 59 million people enrolled in the federal health insurance program are identified.

Historically, Medicare ID cards have been stamped with the Social Security numbers of members — currently, about 50 million seniors and 9 million people with serious disabilities. But that's been problematic: If a wallet or purse were stolen, a thief could use that information, along with an address or birthdate on a driver's license, to steal someone's identity.

For years, phone scammers have preyed on older adults by requesting their Medicare numbers, giving various reasons for doing so. People who fall for these ruses have found bank accounts emptied, Social Security payments diverted or bills in their mailboxes for medical services or equipment never received.

The new cards address these concerns by removing each member's Social Security number and replacing it with a new, randomly generated 11-digit "Medicare number" (some capital letters are included). This will be used to verify eligibility for services and for billing purposes going forward.

Such a major change can involve bumps along the way, so there will be a transition period during

which you can use either your new Medicare card or your old card at doctors' offices and hospitals. Both should work until Dec. 31, 2019.

If you forget your new card at home, your doctor's staff should be able to look up your new Medicare number up at a secure computer site. Or, they can use information that's already on file during the transition period.

"We've had a few people contact us and ask 'If I don't have the new card at a doctor's appointment, does that mean my provider won't see me?'" said Casey Schwartz, senior counsel for education and federal policy at the Medicare Rights Center. "That shouldn't be an issue."

Cards will be sent to people covered by Medicare on [a rolling basis](#) over a 12-month period ending in April 2019. Older adults in Alaska, California, Delaware, the District of Columbia, Hawaii, Oregon, Pennsylvania, Virginia and West Virginia will be the first to receive the mailings, between April and June, along with several U.S. territories — American Samoa, Guam and the Northern Mariana Islands.

The last wave of states will be Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio and Tennessee, along with Puerto Rico and the Virgin Islands.

"If your sister who lives in another state gets her

card before you, don't fret," the Federal Trade Commission explained in a [new alert](#). Since the cards are going out in waves, "your card may arrive at a different time than hers."

If you think Social Security might not have your current address, call 1-800-772-1213 or check your [online Social Security account](#), the FTC advised.

When you get your new Medicare card, don't throw your old one in the trash. Instead, put it through a shredder or "spend time cutting it up with a pair of scissors" to make sure the part showing your Social Security number is destroyed, said Amy Nofziger, a fraud expert for AARP.

Those numbers remain sought-after by scammers, and AARP and Senior Medicare Patrol groups tell of receiving fraud reports related to Medicare cards since last year.

In one scam, reported by [California's Area 1 Agency on Aging](#), a caller purporting to represent Medicare or another government agency claims to need your bank account information so Medicare can arrange a direct deposit of funds into your account. The new Medicare cards are used as an excuse for the call.

In [another](#), circulating in Iowa, scammers threaten to cancel seniors' health insurance if they don't give out their current Medicare card numbers. "We're telling people, don't ever give someone this number — just hang up," said Nancy Ketcham, elder rights specialist at the Elderbridge Agency on Aging, which serves 29 counties in northwestern Iowa.

A month ago, Alfonso Hernandez, 65, who lives in Moreno Valley, Calif., received a call from a

man who told him, in Spanish, that Medicare was going to issue new cards and that he needed to verify some information, including Hernandez's name, address and Social Security number.

"I said no, normally, I don't give my Social Security number to anyone," Hernandez said. At that point, the caller put his "supervisor" on the phone, who said the government needed

to make sure it had correct information. Caught off guard, Hernandez recited his Social Security number and, "as soon as I did that, they hung up."

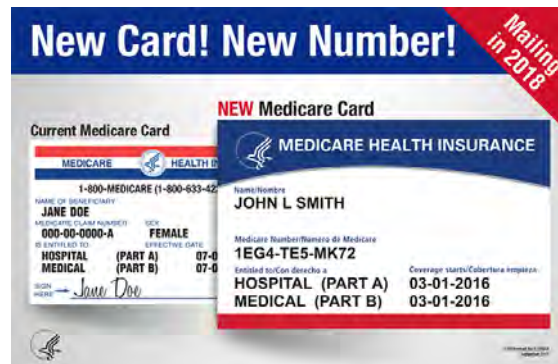
"Immediately, I'm like 'oh my God, what did I do,'" said Hernandez, who quickly contacted credit agencies to

have them put an alert on his account. "I just keep praying that nothing happens."

Just last week, California's Senior Medicare Patrol program received a report of another scam detected in Riverside County: a caller claiming that before a senior can get a new Medicare card, he or she has to pay \$5 to \$50 for a new "temporary" card, according to Sandy Morales, a case manager with the program.

Nofziger of AARP said a Medicare representative will never contact an older adult by phone or email about the new cards and will certainly "never ask for money or personal information or threaten to cancel your health benefits." The new Medicare cards are free and you don't need to do anything to receive one: They're being sent automatically to everyone enrolled in the program. Don't give out any information to callers who contact you by phone, she advised.

If you suspect fraud, report it to the FTC, AARP's fraud help line, 1-877-908-3360, or your [local Senior Medicare Patrol program](#).



If you're among nearly 18 million seniors and people with serious disabilities who have coverage through a Medicare Advantage plan, keep the card that your plan issued you. Medicare Advantage plans are offered by private insurance companies, which have their own way of identifying members. Similarly, if you have prescription drug coverage through Medicare — another benefit offered through private insurance companies — keep your card for that plan as well.



This article is reprinted from Kaiser Health News. [Kaiser Health News \(KHN\)](#) is a national health policy news service. It is an editorially independent program of the [Henry J. Kaiser Family Foundation](#) which is not affiliated with Kaiser Permanente.

**Book Review:**  
***Adventures In The Old Folks Home***  
by Carol Netzer

*Adventures in the Old Folks Home* is a delightful collection of short essays about life in an assisted living community in New York. The stories offer immense insight into the lives of the residents, how they came to be in assisted living, what they value, personal and family issues, the process of adjustment to assisted living, their likes, dislikes, and values.

The essays are entertaining and thought-provoking. I found myself taking a few moments at the end of each chapter to ask myself “what is really happening here? This would be a great book for a discussion group or class.

The book is a fast read at 140 pages, well written and edited, easy to read, and intriguing. It is available on Amazon in print or Kindle editions. [https://www.amazon.com/Adventures-Old-Folks-Home-collection/dp/1530494591/ref=sr\\_1\\_2?ie=UTF8&qid=1483387306&sr=8-2&keywords=carol+netzer](https://www.amazon.com/Adventures-Old-Folks-Home-collection/dp/1530494591/ref=sr_1_2?ie=UTF8&qid=1483387306&sr=8-2&keywords=carol+netzer)

-reviewed by David Godfrey, senior attorney, ABA Commission on Law and Aging.



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## Good News from the State of Washington!

Washington State's Office of Administrative Hearings has an innovative approach to accommodating persons with disabilities.

[Washington State's Office of Administrative Hearings \(OAH\)](#) plans to offer "suitable representatives" to assist parties with disabilities navigate its hearing process. As of January 1, 2018, a new rule authorizes and charges the Office of Administrative Hearings to (1) establish a process for administrative law judges or any party to refer an individual to OAH's Americans with Disabilities Act coordinator when there is a concern that the individual's disability precludes meaningful access to the OAH adjudicative process, (2) establish a network of "suitable representatives" who can provide assistance, and (3) establish standards for training. For more information about the process of promulgating this new rule see OAH's [website](#).

Under this novel approach a suitable representative is an accommodation for a disability akin to a sign language interpreter. The role of the suitable representative is to assist a party with navigating the administrative hearing process, which may include appearing on time for

hearings, gathering evidence, and scheduling appearances. The suitable representative, who need not be an attorney, is not meant to advocate on the person's behalf.

Within two years of its implementation, the program will be assessed for effectiveness. OAH and the Commission on Law and Aging are unaware of any similar programs in other states. Please e-mail any information about similar programs to [aging@americanbar.org](mailto:aging@americanbar.org).

For more information about Washington's program, contact The Honorable Lorraine Lee, Chief Judge Administrative Law Judge at [Lorraine.Lee@oah.wa.gov](mailto:Lorraine.Lee@oah.wa.gov).

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## Now more than ever America's elders need your support

*Help the Commission on Law & Aging continue its research, education and advocacy on behalf of older Americans.*

### Please Donate Today!

#### —Write a Check—

Make payable to Fund for Justice and Education (designate ABA Commission on Law and Aging on memo line) and mail to:  
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Discuss a specific gift of support at:  
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Your contribution is tax-deductible.

Now is the time to start making travel plans for NALC 2018!

# NALC PREVIEW

This year's National Aging & Law Conference is shaping up to be an exciting mix of presentations and training on tried-and-true topics such as guardianship issues, Elder Abuse, and Medicare/Medicaid along with new groundbreaking topics such as legal services in a disaster zone, Medicaid work requirements, and representing older immigrants.

The conference, which is being held from Thursday, October 24 to Friday, October 26, in Alexandria, Virginia, features a pre-conference, and two days of wide-ranging presentations on elder law and elder care issues. Back from last year is the popular Lightning Round Plenary. This is the 4th year for Rapid-Fire, now known as Lightening-Round. The preliminary agenda, which is subject to change without notice, is below. To learn more or to register, visit the [NALC Website](http://www.nalc.org).



Pre-Conference Day, Wednesday, October 24, 2018

Register and learn more at: [www.ambar.org/NALC](http://www.ambar.org/NALC)

TIME	Madison North and South	Private Dining Room
9:00 a.m.		9:00 AM – 5:00 P.M. <b>NALSD Symposium</b> (By invitation only.)
1:00 p.m. – 5:00 p.m.	<i>Skills You Can Use: Practical Training for Aging Services Advocates &amp; Attorneys.</i> (Optional, separate <a href="#">registration</a> and fee required for pre-conference.)	
1:00 p.m.- 2:15 p.m.	<i>Legal Issue Spotting, Intake &amp; Referrals</i>	
2:15 p.m.- 2:30 p.m.	Break	
2:30 p.m.- 3:45 p.m.	<i>Legal Interviewing of Older Adults</i>	
3:45 p.m.- 4:00 p.m.	Break	
4:00 p.m.- 5:00 p.m.	<i>Legal Ethics When Counseling Individuals with Diminished Capacity</i>	

Time	Presidential Ballroom	Kennedy	Roosevelt East	Roosevelt West	Madison North & South
8 a.m.-5 p.m.	<b>Registration and Check In, Top of the stairs</b>				
8:-9:30 a.m.	<b>Coffee and Tea Pre-Conference Area</b>				
9:30-10:30 a.m.	<i>Medicare 101</i>	<i>Elder Abuse &amp; Guardianship: Impact of Civil Litigation and Representation</i>	<i>Guardianship, Solos and Independence: Lessons Learned in the American Heartland</i>	<i>Representing Older Immigrants: Issue Spotting for Public Benefits</i>	<i>NCLER Legal Basics: Build Your Elder Law Program with Skills &amp; Smart Partnerships</i>
10:30-10:45 a.m.	<b>Break</b>				
10:45 – Noon	<i>NCLER Plenary: Elder Justice Coordination at the Federal Level</i>				
1:00 – 2:00 p.m.	<i>Mapping the Community Response to Elder Abuse</i>	<i>A Tool Box for Helping Clients Age with Dignity</i>	<i>Cybercrime &amp; Older Adults: Trends, Tips &amp; Tools</i>	<i>Court-Based Access to Justice Projects for Older Americans</i>	<i>NCLER Legal Basics: Medicaid Long-Term Services and Supports: At Home or in Congregate Settings</i>
2:00-2:15	<b>Break</b>				
2:15-3:30	<i>Community-Based Programs and Online Tools that Empower Older Adults to Age with Dignity</i>	<i>Hot Topics for Representing Dual Eligibles</i>	<i>Recognizing Undue Influence: Tools for Law and Aging Professionals</i>	<i>Serving the Needs of Older Veterans</i>	<i>NCLER Legal Basics: Helping Older Adults Age in Place by Preserving Affordable Utilities</i>
3:30 -3:45	<b>Break</b>				
3:45 – 5:00	<i>The Elderlaw Clinic (Canada) &amp; Eldercaring Coordination (US): Similarities &amp; Differences in Effectuating Participatory Justice</i>				
5:00 – 6:00	<b>Opening Reception – Refreshments and snacks.</b>				
6:00 – 7:00 P.M.		<i>NALSH Meeting</i>			

Time	Presidential Ballroom	Kennedy	Roosevelt East	Roosevelt West	Madison North & South
7:30 - 8:30 a.m.	<b>Hot Breakfast Buffet</b> Pre-conference area and Ballroom.				
8 a.m. - 4:15 p.m.	<b>Registration and Check In</b>				
8:30 – 9:45 a.m.	<b>Lightening Round Plenary</b> <ol style="list-style-type: none"> <li>1. <i>The Consumer Financial Protection Bureau’s New Tools on Reverse Mortgages</i></li> <li>2. <i>Fraud and Older Adults: Facts from the Federal Trade Commission</i></li> <li>3. <i>The Juggling Act of the Modern Caregiver</i></li> <li>4. <i>Legal Risk Detection Technology: Innovation to Identify Seniors’ Legal Problems</i></li> </ol>				
9:45-10 a.m.	<b>Break</b>				
10 -11 a.m.	<i>Intersection of Elder Justice, Income Security Abuse and Exploitation</i>	<i>SSA’s Representative Payee Program: What’s New...</i>	<i>Legal Services in a Disaster Zone – One Year After Hurricane Maria</i>	<i>Advancing Legal and Medical Collaboration in Advance Care Planning</i>	<b>NCLER Advanced:</b> <i>Defending Evictions from Nursing Homes and Assisted Living Facilities</i>
11 – 11:15 a.m.	<b>Break</b>				
11:15-12:15	<i>Practical Answers to Ethical Questions Arising in Elder Abuse Cases</i>				
12:15-1:15 p.m.	<b>Lunch</b>				
1:15 – 2:30	<i>Medicaid Waivers and Older Adults: Work Requirements, and More</i>	<i>Protecting Residents in Nursing Homes &amp; Assisted Living: Regulatory &amp; Advocacy Essentials</i>	<i>Between Independence and Incapacity: Protecting and Advocating for Vulnerable Seniors</i>	<i>After the Storm: An Empowered Approach to Emergency Legal Services</i>	<b>NCLER Advanced:</b> <i>Social Security Overpayments and Low-Income Clients</i>
2:30-2:45	<b>Break</b>				
2:45 -4:00	<i>Medicare Discharges and Appeals – Practice Tips Across Care Spectrums</i>	<i>Understanding &amp; Advocating for the New Uniform Act on Guardianship</i>	<i>Community Impact through Pro Bono – LCE to SeniorLAW Center</i>	<i>In-Kind Support and Maintenance in the Supplemental Security Income Program</i>	<b>NCLER Legal Basics:</b> <i>Financial Exploitation</i>
4:00	<b>Stampede to the Airport</b>				






## Raise the Bar!

*Share your ideas with the Elderlaw Community by submitting articles to BIFOCAL.*

When you write for BIFOCAL, you ensure that your ideas will have the attention of the key policy makers in elderlaw and advocacy because BIFOCAL is distributed online to more than 2,000 subscribers. These subscribers include elder bar section and committee members, legal services providers, elder law and other private practitioners, judges, court staff, elder advocates, policymakers, law schools, elder law clinics, law libraries, and other professionals in the law and aging network. Articles are also posted on the Commission on Law and Aging website where anyone is free to read them.

BIFOCAL invites the submission of news about elder bar section's activities, as well as articles of interest to elder law and other professionals in the aging advocacy network. Authors may share news about an entity's initiatives towards the delivery of direct legal assistance to older persons; pro bono and reduced fee programs; community legal education programs; multi-disciplinary partnerships; and new resources that are helpful to professionals and consumers. Also welcome are substantive articles on legal issues of interest to state area agencies on aging, bar association entities, private attorneys, legal services projects, law schools, and others in the law and aging network.



**NATIONAL HEALTHCARE  
DECISIONS DAY**  
★ *your decisions matter* ★

### National Healthcare Decisions Day is Monday, April 16, 2018.

Healthcare decisions cover more than just living wills. National Healthcare Decisions Day educates people across the U.S. on the value of advance healthcare planning. Its goal is to demystify healthcare decision-making through a 50-state annual initiative.

On Healthcare Decisions Day stakeholders throughout the nation organize events that provide clear, concise, and consistent information on healthcare decision-making to both the public and providers/facilities. The emphasis is to make simple, free, and uniform tools (not just forms) to guide the process available to all.

BIFOCAL runs short update-type pieces that are 1,000-1,500 words and longer pieces of 2,000-2,500 words. Our audience is mixed (attorney and non-attorney) and so we prefer to minimize footnotes and legalese.

We love hi-res photos (defined as 1M or more) in jpeg or gif format. When sending us a photograph, please make sure that you provide information on the image's creator and the publication rights associated with it.

We accept articles on a rolling basis in Word format. You can email your submission directly to the editor.

You can see the index for our most recent issues here: <http://www.americanbar.org/publications/bifocal.html>.

# National Law Day, 2018



Law Day is held on May 1st every year to celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession.

## About the 2018 Law Day Theme: Separation of Powers: Framework for Freedom

The U.S. Constitution sets out a system of government with distinct and independent branches—Congress, the Presidency, and a Supreme Court. It also defines legislative, executive, and judicial powers and outlines how they interact. These three separate branches share power, and each branch serves as a check on the power of the others. “Ambition must be made to counteract ambition,” James Madison explained in Federalist 51. Why? Madison believed that the Constitution’s principles of separation of powers and checks and balances preserve political liberty. They provide a framework for freedom. Yet, this framework is not self-executing. We, the people, must continually act to ensure that our constitutional democracy endures, preserving our liberties and advancing our rights.

The Law Day 2018 theme enables us to reflect on the separation of powers as fundamental to our constitutional purpose and to consider how our governmental system is working for ourselves and our posterity. Law Day often has an Elder Law component. In some communities, the bar association, agencies on aging and other partners have collaborated to plan presentations by lawyers on the legal rights of older persons.

## Join the Conversation on Social Media

Share any of the following action items on Facebook, Twitter or Instagram using the hashtag #powercheckchallenge during the week of Law Day (April 30-May 4, 2018).

- Take a selfie with our social media sign, sharing your written thoughts about what Separation of Powers means to you.
- Post a video of yourself talking about why the 2018 Law Day theme is important to you.
- Share a story about an educator who helped you learn about the separation of powers.
- Share a photo of yourself with any Law Day 2018 swag.
- Take a picture in front of your local courthouse.
- Follow us on Facebook, Twitter and Instagram and share our fun facts throughout the week!

## Law Day Hashtags

- #powercheckchallenge
- #checkyourpowerschallenge
- #separationofpowers
- #lawday2018
- #lawday

To learn more about Law Day, visit the [National Law Day Web Page](#).