

## *Legal Services Delivery*

# Internet Resources, Tribal Courts, and Psychiatric Geriatric Program Among Focus of 2001 Law and Aging Partnerships

By Jamie Philpotts

The Partnerships in Law and Aging Program was established to foster the development of collaborative and innovative projects aimed at improving legal access and awareness for older persons. Community-based projects directed to helping those older persons who are in the greatest social or economic need are especially encouraged. The program is administered by the ABA Commission on Legal Problems of the Elderly under the directorship of Associate Staff Director Stephanie Edelstein, with funding from the Albert and Elaine Borchard Foundation Center on Law and Aging and the Marie Walsh Sharpe Endowment. Each year the program awards ten mini-grants of up to \$7,500 to bar groups, legal services providers, aging networks, and other non-profit organizations to support a variety of programs that enhance older persons' legal knowledge.

This year's grantees were chosen from 109 project proposals. Proposals included innovative methods for training, outreach, delivery systems (telephone hotlines, consumer self-help, pro bono), and consumer and advocate education. The proposals also sought to address a wide range of elder law-related issues, including abuse and exploitation, guardianship, grandparent rights, health care decisionmaking, capacity, and predatory lending. Following are profiles of the ten projects that were ultimately selected for the 2001 Partnerships in Law and Aging Program.

## Developing Internet Resources for Legal and Aging Professionals

### *The Virginia Elder Rights Coalition's Notebook and Web Site*

Developing easily accessible and updatable Internet resources for community legal and aging professionals is the

focus of two of this year's program grantees. The Virginia Elder Rights Coalition will develop an "Elder Rights Notebook" and an "Elder Rights Web Site" to provide readily accessible and replicable information to support Virginia's professional legal and aging community. The Virginia-specific hardcopy handbook will contain educational materials for dissemination to elder rights practitioners and advocates. These materials will feature information on a wide range of elder rights issues, such as abuse, guardianship, health and financial affairs management, grandparenting, caregiver concerns, tax law, the long-term care ombudsman program, insurance, public benefits, and housing.

The Web site will include materials available for downloading, as well as updating. Additionally, the site will feature timely updates on issues regarding elder rights in Virginia.

The coalition project will also train aging and legal professionals from organizations within the Virginia elder rights

*Continued on page 2*

---

## In This Issue

- 5 **New Elder Law Section  
of the State Bar of Georgia**
- 6 **Olmstead As Catalyst to Expand  
Services for Elderly**
- 7 **Reauthorization of the Older Americans  
Act and FY 2001 Appropriations**
- 11 **Review of *Another Country: Navigating  
the Emotional Terrain of Our Elders***

---

## Law and Aging Partnerships

*Continued from page 1*

community to present educational programs on various aspects of elder rights from information contained in the notebook and Web site. Both the notebook and Web site will be promoted through conference presentations as well as articles in scholarly and professional journals.

The project's partners comprise the Virginia Elder Rights Coalition, a group of 150 affiliates that represent agencies, organizations, and individuals with extensive knowledge of elder rights issues, including the Virginia Association of Area Agencies on Aging, the Virginia Poverty Law Center, and the Virginia Commonwealth University School of Social Work.

### ***New Hampshire Legal Assistance's Senior Citizens Law Project***

Another group developing internet resources is New Hampshire Legal Assistance (NHLA), headquartered in Manchester, N.H. The organization will develop a "Senior Citizens Law Project" Web page and legal rights training for

service providers and elder rights advocates throughout the state. The Web site will enable anyone with Internet access to find out about the free legal services available to New Hampshire's seniors, regardless of their income or geographic location. The site will also feature instructions on how to access legal advice or representation; substantive pamphlets on legal issues; a legal check-up form; a "frequently asked questions" manual; and pertinent links to other web pages.

The second component of the project will be to develop and produce six regional training seminars throughout the state. Each seminar will cover a topic pertinent to elder law, and include instructions on referring clients for legal advice, counseling, or full representation. The seminars will also explain how to use the "Senior Citizens Law Project" Web site as a basic research tool.

NHLA's project partner is ServiceLink, a network of community-based resources for elders and disabled adults and their families. The state-wide network of ServiceLink sites are staffed by social service workers and volunteers who give information about available services to seniors.

## Delivering Legal Services to Elderly Homebound

### ***Legal Services of Eastern Missouri's Homebound Elderly Outreach***

Reaching out to the homebound elderly is the goal of St. Louis, Mo.'s, Legal Services of Eastern Missouri (LSEM). The "Homebound Elderly Outreach Project" will recruit, train, monitor, and support approximately 75 lawyer and non-lawyer volunteers to provide free, civil legal assistance to the socially and economically needy, homebound elderly who cannot travel to the LSEM office in St. Louis. The legal assistance will include simple wills, durable powers of attorney, and healthcare powers of attorney.

The project will also train 2,500 members of the elderly community about the free legal services available for the homebound and persons temporarily hospitalized.

Project partners include the St. Louis, Mo., Area Agency on Aging, the Young Lawyers Division and the Elder Law Committee of the Bar Association of Metropolitan St. Louis, Mo., the Greater St. Louis, Mo., Legal Secretaries Association, and the Law Clinic of St. Louis University School of Law.

### ***Akron Community Legal Aid Services' "Tips to Avoid Financial Scams" Videos and Audios***

Akron, Ohio's Community Legal Aid Services, Inc., (CLASI) will develop and produce educational video and audio cassette tapes entitled "Tips to Avoid Financial Scams" for seniors to view in their own homes. The tapes will coach seniors on how to avoid predatory lending scams. Each tape

## BIFOCAL

Bar Associations in Focus on Aging and the Law  
Newsletter of the ABA Commission on  
Legal Problems of the Elderly

### **Commissioners**

F. Wm. McCalpin, Chair  
Hon. J. Joseph Curran Jr.  
Pamela M. Dashiell  
Nancy N. Dubler  
Martha E. Ford  
Leslie P. Francis  
Roy Hammer  
Hon. John H. Kirkendall  
Robert M. Landis  
Stephen McConnell  
Rebecca C. Morgan  
Martha Pelaez  
Joan Teno  
Natalie Thomas  
Sue Fryer Ward

### **Special Advisor**

Edward Spurgeon

### **Board Liaison**

Victor Futter

### **Commission Staff**

Nancy M. Coleman, Director  
Charles P. Sabatino  
Erica F. Wood  
Stephanie Edelstein  
Lori A. Stiegel  
Leslie B. Fried  
Naomi Karp  
Jamie Philpotts  
Julie N. Pasatiempo  
Stacey V. Brown  
Mellissa Alvarez

### **Law Intern**

Malissa Church

### **Editor**

Jamie Philpotts

*Bifocal*, ISSN 0888-1537, is published quarterly (four times a year) by the American Bar Association Commission on Legal Problems of the Elderly, 740 15th St., NW, Washington, DC 20005. The views or opinions expressed herein do not necessarily represent the policies of the American Bar Association unless specifically adopted as such. Subscription price is \$35 per year. Questions? Contact the

---

will feature two or three short skits dramatizing home and telephone solicitations. One of the skits will portray a scenario in which the scam succeeds. The other skit will portray an astute older customer asking the right types of questions and stating that they cannot sign anything until they have discussed the proposal with their son or daughter. Each skit will be followed by recommended tips for the consumer to consider when thinking about refinancing their home. Written materials will accompany each of the tapes.

The tapes will be distributed through agencies that routinely work with seniors in their homes, such as home delivered meal programs and other home-care coordination services. CLASI's project partners include Stark County (Ohio) Legal Aid, the Ohio District 5 Area Agency on Aging, and Catholic Charities of Portage County, Ohio.

## Targeting Specific Populations

### *The Urban Justice Center's Harlem Law and Psychiatric Outreach Project*

Reaching out to a specific isolated and underserved elderly population in need is an important facet of the Partnerships in Law and Aging Program. One such project is encompassed by the "Harlem Law and Psychiatric Outreach Project," proposed by New York's Urban Justice Center. The project will provide a range of "holistic" services to the patients of the geriatric psychiatry unit of Harlem Hospital.

The project will partner staff from the Urban Justice Center's Mental Health Project with volunteer law students from Columbia Law School's Public Interest Program and mental health staff from Harlem Hospital's Psycho-Geriatric Program.

These interdisciplinary teams will provide services to outpatients of the hospital's geriatric psychiatry department that will address a broad range of legal issues, including access to Social Security and Medicare benefits, pending evictions, guardianship, living wills, and trust and estate matters.

### *San Louis Obispo Seniors Legal Services' Latino Elders Outreach*

Another targeted effort is that of the San Louis Obispo Seniors Legal Services' "Project Latino Elders Outreach." This project aims to develop ties to the Spanish speaking elderly in the rural portions of California's San Louis Obispo county—98 percent of which is unincorporated farmland. The project will focus on making these geographically (and culturally) isolated seniors aware of the services available to them, to explain the legal aspects of problems they may encounter on a daily basis, and to provide legal assistance when needed.

The project will collaborate with Latino Mesas Redondas (Latino Elders Roundtable), a community program that entices isolated Latino seniors away from their homes for a shared meal and discussion. The monthly roundtables will provide the forum for the outreach project to provide legal information and services. Attorneys from the project will address the roundtables on a regular basis about pertinent legal topics. They will also train roundtable peer counselors to listen for legal issues and provide a "font line" to alert project attorneys of the needs of the senior Latinos, as well as to accompany clients to the project lawyers' office for assistance as needed.

## Where There Is a Will

### *King County Bar Association's Neighborhood Wills Clinic Outreach Project*

Seattle's King County Bar Association (KCBA) proposed the "Neighborhood Wills Clinic Outreach Project" to provide information and drafting of wills for elderly people of low and modest means. The clinic will also enable those seniors with limited mobility to gain legal access when they would not otherwise travel outside of their immediate community to meet with lawyers.

The project will operate on a four-part scheme. The first part is a public seminar to explain why people need wills, what is involved in drafting these documents, and what people need to think about when planning to draft their will. The seminar will be given by an estate planning attorney in conjunction with a community leader. Directly following the seminar will be small-group breakout session, where an estate planning attorney and community leader will meet with a small group of four or so people for more specific discussion. Part three will be the actual drafting of the documents in a one-on-one consultation. Part four will be the follow-up visit, approximately two-weeks after the initial clinic, and the execution of the documents that were drafted on the day of the clinic.

The project will be developed as a prototype, or "ready-to-go" package, that can be offered by various groups around the state, with only a minimal effort on the part of the local organization to arrange community-specific logistical details and informational flyers.

The project's partners include the King County Bar Association Foundation, the National Academy of Elder Law Attorneys (NAELA), the Loren Miller Bar Association, Northwest Women's Law Center, the Leave-a-Legacy of Western Washington, and the Washington State Bar Association's Section on Real Property and Probate.

*Continued on page 4*

---

## Law and Aging Partnerships

Continued from page 3

### Expanding Legal Awareness

#### *Alabama State Bar Volunteer Lawyers Program's Elder Law Community Legal Education*

The Alabama State Bar Volunteer Lawyers Program, in Montgomery, Ala., proposed the “Elder Law Community Legal Education” project to develop and present five model legal education programs on elder law issues for individuals with incomes at or below 125 percent of the Federal Poverty Level. The five programs will cover topics such as wills, living wills, powers of attorney, and consumer issues, among others. Resource materials will be developed for each topic. An instruction notebook will also be compiled to ensure easily reproducible programs, and will include such features as a timetable, a checklist of step-by-step instructions, reproducible brochures, forms, questionnaires, publicity materials, and sample correspondence.

Each of the five model programs will be held at a different location within the state. Each program, however, will be comprised of the same tri-part format: 1) participant registration and income eligibility screening; 2) a general lecture and distribution of written materials on a relevant elder law issue (open to anyone, regardless of income); and 3) individual counseling and advice on specific issues (for eligible individuals).

The Alabama State Bar’s project partners include Legal Services of Montgomery, Ala., Legal Services of South Alabama, and Legal Services of Huntsville, Ala.

#### *Riverside County Department of Community Action Dispute Resolution Center's Seniors Community Outreach, Recruitment, and Training*

The Riverside County Department of Community Action, Dispute Resolution Center, in Riverside Calif., proposed the “Seniors Community Outreach, Recruitment, and Training Program.” The project’s goal is to expand awareness of and knowledge about dispute resolution throughout the senior community. The project also intends to address a number of seniors’ actual disputes.

The project will enhance older person’s awareness of mediation and conciliation through a print and radio media campaign, community meetings, and informational flyers. The project will also train 20 seniors from emerging populations to become volunteer mediators in their communities, encourage cultural sensitivity training, and bilingual participation. Importantly, the project seeks to provide seniors with an alternative solution to the judicial system throughout the different stages of conflict.

The project’s partners include the Riverside County, Calif., Office on Aging, 12 senior centers throughout Riverside County, and additional city and county departments that work with senior populations.

### (Re)Training Elders to Serve as Peacemakers

#### *Dakota Plains Legal Services' Lakota Elders and Traditional Peacemaker Courts Project*

Training seniors to resume their role as community leaders and peacemakers is the goal of the Dakota Plains, S.D., Legal Services “Lakota Elders and Traditional Peacemaker Courts Project.” The project will retrain tribal elders in the traditional Lakota roles of peacemaking, arbitration, community leadership, and mediation in select areas of law, such as family disputes and vandalism. The training will also empower elders to resume an important leadership role in reservation social and legal life. A “bonus” aspect of this project is that the research and gathering of information on the justice system of the indigenous Sioux peoples will be recorded and archived.

The first component of the project will be to host a symposium on traditional Lakota law. The symposium will provide a forum from which to gather knowledge of traditional justice. Next, Lakota individuals age 65 and over will be trained in the traditional peacemaking processes, or community courts, of the Sioux Nation. Finally, a pilot “court” will be created. The pilot court will be initiated in a community where the majority of residents still speak Lakota as a first language. This effort will allow for cultural nuances to be incorporated into court procedures, as well as into a manual, so that the “Peacemaker Court” can be exported to the remaining 19 tribal communities.

Partners in this project include the Dakota Plains Legal Services, the Lakota Studies Department of Sinte Gleske University, and the National Association of Public Interest Law.

### For More Information

See the commission’s Web page at [www.abanet.org/elderly](http://www.abanet.org/elderly) for more information on the Partnerships in Law and Aging Program, including a program description, list of past and current grantees, request for proposals, and grant application form. The announcement and request for proposals for the next round of grants will be posted in August 2001.



## **Profile of the New Elder Law Section of the State Bar of Georgia**

By Eleanor M. Crosby

The Georgia Bar has a long tradition of activity in the area of elder law. The Elder Law Committee of the Younger Lawyers Division (formerly the Legal Services to the Elderly Committee) had always been one of the bar's most productive committees—publishing a wide variety of elder law materials, sponsoring community education activities, and advocating for legislation.

However, the committee was part of the Younger Lawyer's Division (YLD), and many of the members had long since "aged out" of the younger lawyer category. In fact, one of the YLD presidents once cornered the author at a bar function and suggested it was time for her to "graduate."

"Graduating" posed a problem, however. The Elder Law Committee was the only place in the bar to interact with others with an interest in elder law. In addition, as the committee's focus had always been on service to the community many members relied upon the committee as a forum to share information on how to develop an elder law practice, to discuss thorny cases, and to exchange ideas on ways to enhance professional development in the elder law arena.

Out of the needs of the "graduates" came the impetus for forming an official Elder Law Section of the state bar. Staff from the ABA Commission on Legal Problems of the Elderly assisted by sharing information and materials from several states that had successfully achieved section status.

Because Georgia has a mandatory bar, it was necessary to obtain approval from the board of governors in order to create this new section. The board of governors meets quarterly and its agenda is tightly controlled by the executive committee. We drafted petitions and obtained signatures from attorneys all over the state who were interested in supporting the Elder Law Section. In addition we developed a formal proposal explaining the purpose of the new section and the specific ways the section would support attorneys in the practice of elder law. Because elder law is not a discrete

practice area but rather an approach to serving a specific client population (who might have any one of a variety of legal problems), we also solicited letters of support from other sections with overlapping interests, including Health Law, Fiduciary Law, Individual Rights, and Administrative Law.

After the board approved our proposals for the Elder Law Section, the state bar sent notice of the new section to all members with their bar fees notice. In our first year, nearly three hundred members joined the section making it one of the fastest growing sections in Georgia bar history.

This year, we started modestly and focused efforts on trying to build an operating structure and leadership. A quarterly newsletter was started to provide elder law attorneys with notice of upcoming events, helpful web links, case law updates, practice tips, book reviews, and information about local elder law sections and committees. In addition, our section sponsored its first two day-long continuing legal education seminars, one on guardianship law and practice and the other on elder law generally.

We also sent a survey to all members to ascertain their areas of interest and what services and programs would be most helpful for the section to provide. We plan to organize our committees around the interests of our members. Although the section has a web page for its members as part of the Bar web site, we are sponsoring an independent site for the public that will contain basic legal information and referral sources.

We see our section's main role as supporting attorneys who practice elder law. An important function of this role is to act as a clearinghouse for local bar associations and other groups interested in elder law and to promote membership in these local groups. As with every new effort, we have made occasional mistakes and have learned a lot during our first year. Nevertheless, the response to the section has been overwhelmingly positive. What has been most gratifying is the recognition of a much larger community of people interested in the elder law area of practice. We hope that the section will play an important role in our state's elder law community and therefore help older clients and their families be better served by the profession.

---

*Eleanor M. Crosby is the managing attorney of the Georgia Senior Legal Hotline and chair of the Elder Law Section of the State Bar of Georgia.*

## Olmstead: Catalyst to Expand Services for Elderly

By Leslie B. Fried

Elder law attorneys and advocates should follow the example of those in the disability law community and use the Americans with Disabilities Act (ADA) and the recent Supreme Court *Olmstead* decision as a catalyst to expand services for the elderly. As a result of *Olmstead*, states are in the process of developing and implementing plans to provide community services to disabled individuals in the most integrated settings. Elder law attorneys and advocates should work together with the state Medicaid agencies to develop comprehensive plans that ensure the necessary level of care and support for disabled and disabled older individuals to live safely in our communities.

In *Olmstead*, the Supreme Court issued its most significant decision interpreting the public services provisions (Title II) of the ADA, which prohibits discrimination in provision of public services to individuals with disabilities (*Olmstead v. L.C.*, 119 S.Ct. 2176 (1999)). The court held that unjustified institutionalization of an individual with disabilities is a form of discrimination in violation of the ADA. The court recognized that “institutional placement of persons who can handle and benefit from community settings perpetuates an unwarranted assumption that persons so isolated are incapable or unworthy of participating in community life.” In addition, “confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.” The court urged states to develop a comprehensive, effective working plan to place individuals with disabilities into less restrictive settings. Although the plaintiffs were two women with mental retardation and mental illness who were confined to the psychiatric units of a state hospital, the decision itself is applicable to residents in, or at risk of admission into, nursing facilities.

In its January 14, 2000, letter to state Medicaid directors, the Health Care Financing Administration (HCFA) confirmed that “no one should live in an institution or a **nursing home** if they can live in the community with the right support” (emphasis added.) Medicaid funds are the primary

financial resource utilized by states to prevent and correct inappropriate institutionalization, and to provide services to individuals with disabilities in the most integrated settings. HCFA urged states to increase access to community-based services for individuals with disabilities by developing comprehensive, effectively working plans. Many states have established task forces to develop the working plans. Task force members often include representatives of the disability and aging communities, government agencies, health care providers, and elder law and disability rights attorneys. As a member of the Medicaid Community Access Task Force in Maryland, this article will reflect the difficult issues that states must address to develop a strategy to serve individuals with disabilities in more integrated residential settings.

### Identifying Individuals for Integration

At the initial phase, states must determine how to identify individuals who are appropriate to live in the community and what supports and services are necessary for them to reside there. Due to budgetary and resource constraints, every person currently residing in a state residential or nursing facility cannot be immediately assessed and provided the necessary community services. Should a state’s initial priority, then, be to evaluate the individuals who have inappropriately languished in state facilities for years? Or, should state’s focus their efforts on individuals currently living in the community, with housing and community supports intact, but “at risk” of institutionalization? This “at risk” population may require fewer interventions and services to prevent institutionalization in the first place.

### Housing and Transportation Services

Although the primary focus of this article is Medicaid and home- and community-based services, the availability of these services are irrelevant if disabled individuals cannot obtain affordable, accessible housing outside the institutions or nursing homes. Over the past ten years, financial housing assistance has failed to keep pace with demand. Landlords

---

Leslie B. Fried is Associate Staff Director of the American Bar Association Commission on Legal Problems of the Elderly.

Continued on page 8

## **Reauthorization of the Older Americans Act**

By Stephanie Edelstein

On November 13, 2000, President Clinton signed P.L. 106-501, legislation reauthorizing the Older Americans Act of 1965 for five more years. The act is the nation's major source of support for services for older persons in greatest social and economic need, and funds a variety of state and local elder rights and advocacy programs. These programs include statewide legal hotlines, the long-term care ombudsman, legal assistance, elder abuse prevention, and a legal assistance developer responsible for coordinating advocacy efforts in each state.

On the national level, the act funds the American Bar Association Commission on Legal Problems of the Elderly, the National Senior Citizens Law Center, the AARP Foundation National Training Project, the National Consumer Law Center, and the Center for Social Gerontology, to provide support on law and aging issues to legal services programs, the elder law community, and to the aging network.

***Area Agencies on Aging must give priority to programs that provide counseling and representation on fundamental legal issues—economic security, housing, and consumer issues.***

The act is one of the nation's largest sources of funding for legal services. Area Agencies on Aging must spend an "adequate proportion" of their Title III-B funds on legal assistance, unless they can establish that the need is being met through other means. In addition, these agencies must give priority to programs that provide counseling and representation on fundamental legal issues (economic security, housing, consumer issues, etc.) in making funding decisions.

The reauthorization underscores the importance of legal services by retaining these requirements and by exempting

legal assistance from cost-sharing—solicitation of voluntary contributions from recipients. Additionally, after some discussion on the degree to which volunteers are able to meet the need for legal services, the reauthorization allows state agencies to consider both the capacity and the actual performance of volunteer programs in assessing the need for area agencies to fund legal assistance.

The recent reauthorization retains the requirement that services be targeted to persons in greatest social and economic need, with particular attention to low-income minority elderly, Native Americans, persons with Alzheimer's Disease and related disorders (and their families), and rural elders (who were previously included in some, but not all, targeting language).

The bill continues funding for statewide legal hotlines, national support, pension counseling, the state long-term care ombudsman program, the Eldercare Locator, and the legal assistance developer. It also creates a new National Family Caregiver Support Program, and calls for a White House Conference on Aging by December 2005.

### **FY 2001 Appropriations**

The FY 2001 Department of Labor/Department of Health and Human Services/Department of Education bill increases overall funding for Older Americans Act programs by \$170 million. Of that:

- | \$325 million is allocated for Title III-B supportive services (which includes legal services);
- | \$14 million for Title VII elder rights; and
- | \$37.7 million for Title IV state and local innovations and projects of national significance. Of that \$37.7 million:
  - | \$18.4 million is earmarked for specific state and local groups and research projects;
  - | \$1.3 million is slated for hotlines; and
  - | \$759,878 for national support.

---

*Stephanie Edelstein is Associate Staff Director of the American Bar Association Commission on Legal Problems of the Elderly.*

*Continued on page 8*

---

## Reauthorization 2000

Continued from page 7

### Following are provisions of the Older Americans Act that the ABA encourages Congress to retain and fund.

- I **Title III-B Legal Assistance** is among the nation's largest sources of funding for legal services. Area Agencies on Aging are required to spend an "adequate proportion" of their Title III-B funds on legal assistance, and to give priority to programs that provide counseling and representation on fundamental legal issues.
- I **Title VII Vulnerable Elder Rights Protection Activities** requires states to provide leadership in improving the quality and quantity of legal assistance and advocacy through the development and coordination of a comprehensive system for vulnerable elder rights protection. In addition, this system includes the long-term care ombudsman, elder abuse prevention, the legal services developer, and outreach, counseling, and assistance programs.
- I **Title IV Training, Research, and Discretionary Projects and Programs** have, over the years, supported numerous projects that have effectively served the needs of older individuals. Currently, Title IV funds statewide legal hotlines, and national resource and support centers that provide education, training, and ongoing technical assistance to the legal community and the aging network.
- I **Legal assistance providers**, with the support of state legal assistance developers and national legal assistance support centers, help older people attain an adequate income, access to health and long-term care, and a secure place to live. Without legal assistance, many older persons of modest financial means cannot prepare for future incapacity or protect their rights; may not be assured the receipt of health care, benefits, and pensions to which they are entitled; and may not enjoy access to housing or transportation in the face of disability discrimination. Should they become victims of fraud or abuse, they may not have the resources to defend themselves. For many older persons who cannot afford the services of private attorneys, but who do not meet the eligibility or case priority guidelines of pro bono or poverty law programs, OAA funded legal assistance programs can be the only access to the legal system.

## Olmstead

Continued from page 6

are resistant to making or allowing for the structural modifications that may be necessary for individuals with wheelchairs or other assistive devices. In addition, Medicaid is prohibited from paying for room and board, except in limited circumstances. Although assisted living facilities have sprouted in communities throughout the nation, the high cost of room, board, and additional services are unaffordable to most elderly and disabled individuals on fixed incomes.

Similarly, accessible transportation services are not consistently available for individuals who would choose to live in the community, especially rural communities. Medicaid provides transportation services for qualified individuals for medical appointments. However, transportation services are not provided for daily needs, such as going grocery shopping, attending religious services, or attending social functions.

### Education and Assessment of Individuals

States must also develop a program to ensure that individuals receive adequate education, support, and counseling to make an informed decision regarding care options and living in the community. Many community-based programs strongly emphasize self-identification as a manner to determine which individuals are ready to move from an institution into a community. Self-identification suggests that individuals are committed to working with a support network to make community living a success. Yet, individuals cannot properly consider their options without adequate information and education about community supports and services.

A process must be in place for individuals to request a timely assessment, once they have been provided the information on community alternatives. For example, some states have dedicated toll-free hotlines to receive requests from individuals who desire an assessment for long-term care information and referrals. An individualized, professional assessment should identify individuals' needs and match them with available supports that exists in the community.

### Access to Services

In general, states rely on the federal Medicaid program to finance certain long-term care services in the community. There is significant financial incentive for state governments to take advantage of the federal government's payment through Medicaid of a proportional share of the cost of the services. With few exceptions, states' Medicaid expenditures for nursing home care far exceed spending for community-

Continued on page 9



---

based services. Although states are required to provide some long-term care services, such as home health care, under their Medicaid state plan, most home- and community-based services are provided under waivers approved by HCFA.

In order to be eligible for waiver services, an individual must meet the criteria for nursing facility level-of-care (LOC) in the state. Every state is permitted to establish their own criteria for nursing facility LOC. Given the breadth of the population whose needs must be addressed, and the impact of cost of services on the Medicaid budget, states have adopted different approaches to the issue.

Budgetary constraints have caused states to wrestle with decisions regarding which populations will be served and what services will be provided. In order to control Medicaid expenditures in nursing facilities, some states have adopted stringent LOC criteria for individuals to be medically eligible for Medicaid payment of their nursing home care. If the criteria is too stringent, then it will be a barrier for individuals to be eligible for home- and community-based services. For example, in 1994, Maryland adopted a new criteria for determining medical eligibility for Medicaid reimbursement that requires the resident to need skilled nursing or rehabilitation services. Since the same criteria must be used for the home- and community-based waivers, individuals may be too impaired to safely live in the community.

Other states have adopted a less restrictive medical criteria and broadened the population to be served. However, the states restrict the services to which the individuals are entitled. This restriction on services could create a barrier to safely maintaining individuals in the community if they cannot receive the scope, frequency, or duration of services needed. Thus, if these individuals cannot be adequately served in their community, they will end up in a nursing facility or institution, contrary to the intent of the waiver, the ADA, and the *Olmstead* decision.

Many states utilize the home- and community-based waivers to target specific services to defined populations. In Maryland, the Medicaid Agency and Office on Aging maintains four waivers: for individuals with developmental disabilities, for medically fragile children, for older adults, and adults with physical disabilities. States look favorably on waivers because they can determine the number of beneficiaries that will be served, which provides some certainty as to the fiscal impact of the waiver on the Medicaid budget. In addition, federal law gives states broad latitude and flexibility to decide what and how services will be provided to individuals under a waiver.

Contrasted to the requirements of a Medicaid state plan, which requires that all services be provided to all eligible

individuals, a waiver allows a state to vary services and service delivery depending on the needs of the waiver population. It is important to remember that home- and community-based services, such as home health care, personal care and assistance, and targeted case management, can be offered under the Medicaid state plan. If these services are included in the state plan, they must be provided to all Medicaid beneficiaries who have a need for the service. Under the home- and community-based waiver system, however, states can limit the number of people served under the waiver.

States can be creative and versatile when designing the waiver programs. Such services have included case management/care coordination, personal care/assistance services, residential habilitation (including at adult foster care and assisted living facilities), assistive devices and aids, home modification, and expanded skilled nursing services, to name a few. The pertinent principle is that states can design waiver programs to provide services necessary to maintain disabled, older individuals in the community, and out of institutions and nursing homes.

## Conclusion

The *Olmstead* decision should serve as a catalyst for elder law attorneys and aging advocates to join coalitions and task forces in order to ensure that state's plans to provide services to disabled individuals in the most integrated settings are both comprehensive and effective. Significant hurdles exist, ranging from states' budget deficits to staffing shortages for home health and personal care aides. However elder law attorneys and aging advocates can work together with state Medicaid offices to clear these hurdles and develop plans to provide the necessary care and services to the disabled and disabled older persons in our communities.

### For Further Reference

National Association of Protection and Advocacy Systems' (NAPAS) Web site: [www.protectionandadvocacy.com](http://www.protectionandadvocacy.com)

Health Care Financing Administration's Web site: [www.hcfa.gov/medicaid/olmstead/olmshome.htm](http://www.hcfa.gov/medicaid/olmstead/olmshome.htm)

Henry J. Kaiser Family Foundation's Web site: <http://www.kff.org/content/2000/2185/>

---

## Another Country

Continued from page 11

this point is the caption for the story of “Vicky,” the daughter, and “Ann,” her mother—Ann says “Before I talked to Vicky, I thought I was happy” (Pipher, p 102). As Dr. Pipher demonstrates, different generations have different experiences, different values, and different views of what to expect from life.

Dr. Pipher opens the first segment of her book with a quote from May Sarton and a recognition of the age-old metaphor of aging and death as a visit to another country. “Old age . . . is really a search for a place in the universe, both figuratively and literally” (Pipher, p. 15). In our current society we lack the rituals to turn our “old people” into our “elders” (Pipher, p. 17). Dr. Pipher points out an urgency to understand and adapt to an aging culture. To paraphrase cartoonist Walt Kelly’s comic strip character Pogo, I have seen the e1derly and it is soon to be I (Walt Kelly, 1971)! The me-generation should take heed of this message from Dr. Pipher. Before long, the solutions we develop for caring for our elders will be applied to us. Not only that, we are teaching our children through our actions. “The kindness, the indifference, the ignorance, and the wisdom will be passed on. The more we love and respect our elders, the more we teach our children to love and respect us” (Pipher, p. 17).

Dr. Pipher’s book is full of stories—some heart-warming and some so very sad—but all with valuable lessons to be had, not to mention the recognition of the importance of the individual who tells the story. This book will help those of us with elders to teach ourselves well, while there’s still time to prepare for our elders’ aging and our own.

For some, reading this book will be like standing naked in front of a mirror. We will see ourselves in Dr. Pipher’s blunt assessment of our society’s shortcomings in caring for our elders—and we won’t like what we see. But we have to see and understand the reality to change it. “When people are in their thirties, they worry about losing their looks. In their fifties, they worry about losing capacities. By their seventies, people worry about losing everything—control, relationships, and their very lives” (Pipher, p. 161). We need this connection with each other—we need to feel loved and needed.

Dr. Pipher tells a story about a trip she took to Banff, Alberta, Canada, with her husband. On a hike,

they received a warning to watch out for the grizzlies, especially grizzly number 10. At dinner that night she remembers the story of her husband’s family trip to that very location some 40 years earlier. She thinks of her table that night as crowded with those that she loved, now absent. She recalls a line about the seriousness of time, and links the end of life with the park ranger’s admonition of the grizzlies. “Time was our adversary, our worthy opponent, to whom we would always lose. Grizzly number 10 would find us all in the end” (Pipher, pp. xviii-xix).

It is not easy for us to face the realities of our own aging or that of our parents: “The only thing worse than having aging parents is not having aging parents” (Pipher, p. 123). We can slow, but not stop the aging process. We can prolong life, but not defeat death. We can, however, visit that other country and return our society to an intergenerational culture, following the suggestions that Dr. Pipher provides in her book, so that we can face grizzly number 10 with courage, dignity, respect and, so importantly, together. Dr. Pipher reminds us poignantly through these stories of the value of aging and each generation’s need for the other.

## Reference

Brokaw, T. 1998. *The Greatest Generation*. New York: Random House.

### Nursing Home “Watch List” Posted at *Consumer Reports Online*

Important consumer information on nursing homes is now available for free in the “Highlights” section of *Consumer Reports Online* at <http://www.ConsumerReports.org>

The site provides information to help older persons and their families select the best nursing home care. Features include a state-by-state “Watch List” of nursing homes with the most questionable patterns of deficiencies on state inspection surveys, as well as “Key Shopping Tips” for choosing a nursing home. The nursing home survey and “Shopping Tips” are excerpted from the recently released *Consumer Reports Complete Guide to Health Services for Seniors*, by Trudy Lieberman and the editors of *Consumer Reports*. The book also features information on long-term health insurance, Medicaid, home health care, assisted living facilities and options for keeping relatives at home with in-home or community support. Additionally, the book includes ratings for Medicare HMOs and Medicare supplemental insurance policies in 30 cities. The book is published by Three Rivers Press and is available for \$19.95 at most bookstores, or by calling 1-800-500-9760.

## Another Country: Navigating the Emotional Terrain of Our Elders

Mary Pipher. New York: Riverhead Books, 1999, 328 pp., hardcover, \$24.95

By Rebecca C. Morgan, J.D.

Much has been made in the press recently of the aging of our society. As time marches on, inexorably for all, but in particular for millions of baby boomers, we focus now, more so than ever before, on the fact of aging and the implications that aging holds for ourselves and for our society.

Aging is not a new phenomenon—it is not something we boomers invented. Yet aging well and interacting with aged persons is, for some, a mystery or something to be put on the back shelf of one's mind, to be dealt with tomorrow. The boomers, many of whom were children of the 60s, now find themselves as the heads of families, and often responsible for both their children and their aging parents. When did this happen? How do we meet these challenges? In her book *Another Country: Navigating the Emotional Terrain of Our Elders*, Dr. Mary Pipher deals with these very challenges posed by aging, age segregation, and intergenerational issues.

In Tom Brokaw's *The Greatest Generation*, he examines today's older persons and the marks they have left on our society. He reminds us that our old are our living history, with stories to tell, stories that will be lost forever if not told before their deaths. Contributing to this theme, Dr. Pipher interviewed a great number of Midwesterners in their seventies and above, interspersing their stories throughout the book.

Current demographics make the issues of aging unique. Now more than ever before, families live apart. Instead of grandma living upstairs, she lives in Florida or Arizona. Adult children must cram a year's

worth of chores and aid into their vacations or holiday visits and cannot always "be there this minute" when help is needed (Pipher, p. 5). Additionally, more than ever before, both adults in a family unit work (Pipher, p. 6), leaving less time for caregiving than in traditional situations where only one adult (usually the husband) worked outside the home.

In a society that emphasizes youth, it has been only recently that we have regularly seen television programs with positive older models, rather than caricatures. As Dr. Pipher points out, "[m]any older people are living in a world designed for young people. They can't drive, walk through shopping malls, or deal with rushed doctors in managed care systems . . . They have access to expensive and sophisticated medical care that can prolong their life, but often must sacrifice their savings to afford it . . . [or] choose between medications and food" (Pipher, pp. 6-7).

Dr. Pipher's goal in writing this book is "to map out the *terra incognita* between older people and their children, to help each generation understand each other" (p. 8). Dr. Pipher recognizes the value of generations connecting and interacting. Today, our culture does little to encourage contact between generations.

According to Dr. Pipher, we now live in an age-segregated society. By dispensing with age segregation and returning to an intergenerational culture, our mental health and the health of our society will be improved and enriched (Pipher, p. 18). Dr. Pipher asserts that many of our modern conveniences serve to foster social isolation and slowly constrict our connectedness to an intergenerational family, to a nuclear family, or to just oneself. Although Dr. Pipher had anticipated the "great divide" to be technology, she instead found it to be psychology (p. 92). Counseling and psychotherapy is something common to today's generation, but not so for our elders. Illustrative of

---

*Rebecca C. Morgan, J.D., is a professor of law and the director of the Center for Law and Aging at Stetson University College of Law, in St. Petersburg, Fla. Professor Morgan is also a commissioner of the ABA Commission on Legal Problems of the Elderly. This article has been reprinted with permission from The Journal of Mental Health and Aging, Springer Publishing, Inc., New York, NY.*

Continued on page 10

---

**Now Available!**

**Our Aging Population: Promoting Empowerment, Preventing Victimization, and Implementing Coordinated Interventions**

The proceedings report from the Department of Justice (DOJ)/Department of Health and Human Services (HHS) symposium entitled "Our Aging Population: Promoting Empowerment, Preventing Victimization, and Implementing Coordinated Interventions," held on October 30-31, 2000, in Washington, D.C., is now available.

DOJ and HHS (through the Administration on Aging) plan to send a copy to every symposium participant, state unit on aging director, state attorney general, state adult protective services administrator, state long-term care ombudsman, and state medicaid fraud control unit director. If you are a member of one of those six categories, look for your copy in the mail soon.

If you are not a member of one of those six categories, you can obtain a free copy through the National Criminal Justice Reference Service (NCJRS), which runs all DOJ Office of Justice Programs (OJP) clearinghouses and resource centers—all OJP publications are available through NCJRS. The publication number of the report is NCJ 186256. You can order the publication by contacting NCJRS at its toll-free number 1-800-851-3420 (if you are in the DC metropolitan area, call 301-251-5500), or via the NCJRS Web site at <http://www.ncjrs.org>. You can also download the report from the NCJRS Web site, but make sure you have a full toner cartridge in your printer because the document is approximately 300 pages long.

**National Aging and Law Conference**

**October 10-13, 2001  
Arlington, Virginia**

The AARP Foundation National Training Project has announced the second National Aging and Law Conference, to be held October 10-13, 2001, at the Crystal Gateway Marriott in Arlington, Va.

For more information on topics, registration, and reservations, contact Ada Allbright at (202) 434-2197.

---

**BIFOCAL**

**American Bar Association  
Commission on Legal Problems of the Elderly  
740 15th St., N.W.  
Washington, DC 20005-1022**

**[www.abanet.org/elderly](http://www.abanet.org/elderly)**