

Advocacy

Alzheimer's Disease and The Role of State Law

By Jack Schwartz

Nearly two million Americans, 65 years of age and older, have Alzheimer's disease (AD). Of these, an estimated 1.1 million have moderate or severe AD. Primarily as a result of the aging of the "baby boom" cohort, the prevalence of the disease will increase sharply over the next decades. By 2015, according to federal estimates, nearly three million people will have at least a mild case of AD. Looking even farther ahead, experts predict that the prevalence of AD will quadruple by 2050, which means that one in every 45 Americans will be afflicted with the disease.

Medicare Takes Steps to Eliminate Discrimination of Alzheimer's Patients, see page 11.

Recognizing the implications of these demographic facts for law and public policy, the ABA Commission on Legal Problems of the Elderly was a co-sponsor (with the Borchard Foundation Center on Law and Aging, the Alzheimer's Association, the National Academy of Elder Law Attorneys, and the University of Georgia School of Law) of the Joint Conference on Legal and Ethical Issues in the Progression of Dementia. The conference, held in December 2000, resulted in a wide range of recommendations to federal and state policymakers and private practitioners.

Many of the conference's recommendations, which were published in the Winter 2001 issue of the *Georgia Law Review*, reflect the importance of state law in defining the context of care for AD and other forms of dementia. State law

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Jack Schwartz is the Maryland Assistant Attorney General.

Legal Services Delivery

Partnering with Local Bar Improves Hotline Services To the Elderly

By Ralph D. Huchteman

I have often described our branch office as a "legal" M*A*S*H Unit. We never suffer from a lack of clients with problems. The challenge is evaluating each matter and deciding which will receive assistance. When dealing with our senior citizen community this problem is particularly acute. Often, quick and easy access to legal advice or services can prevent fraud, preserve limited assets, and boost self-esteem.

The Partnerships in Law and Aging Program's minigrant gave our office the opportunity to work directly with mem-

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Legal Services Delivery: Elder Law Hotline

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bers of the local county bar association to extend and expedite intake procedures, as well as to develop new materials to supplement the advice and counsel given to applicants.

Prior to the implementation of our elder law hotline, we took applications for services from senior citizens as part of our regular intake process, three days per week for 2.5 hours per day. This placed the senior citizen community in a queue with all other applicants for our services. In addition, the intake process operated through a "call back" system (as opposed to placing the caller on hold until personnel were

Editor's Note: The "Recommendation on Assisted Living" to the American Bar Association House of Delegates, which was published in the fall 2001 issue of *BIFOCAL* (Vol. 23, No. 1) was adopted by the House in August 2001, and now stands as Association policy.

BIFOCAL

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

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available), which often hindered assistance by its failure to identify a problem as one that could be handled immediately over the phone. Additionally, we found that many senior citizens have more active schedules than our younger service community. The limited intake times appeared to significantly restrict senior citizen access to our services.

As simple as the concept of expanding intake and advice services is, the problem faced by our office was lack of manpower. Our three-advocate (two attorneys and one paralegal) office provides services to seven counties. Other than the occasional volunteer, we have one support employee who is primarily responsible for all initial client contact. Advocates, when available, assist with intake. Simply put, we could not expand services under our current scheme of operation.

Our plan, therefore, was to develop a part-time hotline facilitator to implement an Elder Law Hotline protocol for volunteer attorneys and non-advocate volunteer personnel to handle the intake process, provide immediate advice to senior citizens, and follow up with printed materials reinforcing the advice given. As available, our staff advocates would assist with the process. Additionally, local attorneys would assist with community education programs through the senior citizen centers scattered across our service area.

We immediately utilized professional staff and volunteer attorneys to promote the hotline through our service area. In a period of three weeks, twelve live presentations were made regarding the hotline and the nature and scope of our services. Additionally, posters were placed at those sites, as well as county courthouses, health services offices, and other gathering places throughout the community. The response was instantaneous and overwhelming.

The implementation plan allowed for operation of the Elder Law Hotline on Mondays and Fridays from 8:30 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. This was in addition to our regular Tuesday through Thursday intake periods. During the initial two months that the Elder Law Hotline was in operation, more than 50 applications for services were made (compared with the 12-per-month average the year prior). Of these initial 50 applications, one half were advice matters and another 40 percent consisted of the provision of brief services such as wills, durable powers of attorney, deeds, and other simple legal documents.

Due to the dramatic increase in applications for services, our hotline facilitator and the other volunteers spent all of their time learning intake procedures on the job and giving advice. Thus, protocols were developed based upon experience, rather than theory. Written materials, as time was available to develop them, dealt, generally, with real problems, not abstract hypothetical situations. Without the assistance of

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Vermont's Elder Law Committee

By Brian Sawyer

As a small, rural state, Vermont has been somewhat slow to develop “elder law” as a distinct specialty. Law firms tend to be small and lawyers generalists. Vermont has long had a strong statewide Senior Citizens Law Project, funded by area agencies on aging with Older Americans Act funds. And, to be sure, many lawyers concentrate in estate planning, probate law, guardianship, Medicaid planning, and other areas that comprise what has come to be known as elder law. Yet, relatively few have identified themselves as “elder law” attorneys. However, that number is growing.

When I became the chair of the Elder Law Committee of the Vermont Bar Association (VBA) in September 2000, my overall goals were: 1) to make the committee a resource for practitioners and the public, 2) to increase participation in the committee and foster connections between lawyers in the public sector and those in private practice, and 3) to promote high standards of practice in elder law. Since I have been chair, the committee has been fortunate to have developed an energetic core of members, including lawyers in private practice, probate judges, Senior Citizens Law Project attorneys, the long-term care ombudsman, and a teacher from a paralegal program. These members have given generously of their time and have been willing to take on a number of ambitious and time-consuming projects.

The VBA has recently set a long-term goal of creating a practice manual in all significant areas of practice in Vermont, as a benefit for its members. The Elder Law Committee is the first VBA committee to take on this challenge. The writing of the manual, as well as the long-term duty to update, will be the responsibility of the committee and, thus, be undertaken entirely by volunteers. Our intention is for the manual to be Web-based and to contain discussion

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Brian Sawyer is a Senior Citizens Law Project staff attorney with Vermont Legal Aid, the major legal services organization in Vermont, director of the Vermont Medicare Advocacy Project, and lately, Elder Law Unit Director. He also provides technical assistance on administrative and legislative matters to the Community of Vermont Elders, a citizen organization.

Needs of the Elderly Committee of the Utah State Bar

By TantaLisa Clayton

The Needs of the Elderly Committee (NOE) of the Utah State Bar has been an active committee for over a decade. The committee has focused on educational and volunteer activities in the legal community that have enhanced awareness and helped solve problems of pressing elder law issues.

A major strength of our committee has been its multi-disciplinary membership. Our members have included non-lawyers that are CPAs, psychologists, Ph.D.s, RNs, M.B.A.s, as well as professionals from the state and county aging and human services agencies. This range of perspectives has strengthened our understanding of the holistic nature of elder law. It has improved our ability to develop a wider array of effective solutions to complex elder law problems.

In May 2001, members of the committee helped produce a special elder law issue of the *Utah Bar Journal*. The majority of the journal was dedicated to elder law articles written by members of the committee, and ranging in subject matter from public benefits to capacity issues. In conjunction with this we also obtained a declaration from the governor that established May 2001 as Elder Law Month in Utah.

The major volunteer project coordinated by the committee is providing assistance to patrons of senior citizen centers. This project consists of having volunteer lawyers meet with elderly individuals at Salt Lake area senior centers to assess their need for legal and community services. Each appointment typically lasts twenty minutes. The volunteers are scheduled for appointments on a given day from 11:00 a.m. to 1:00 p.m. The volunteer lawyers may make referral to other lawyers or to relevant community resources. The volunteer lawyers cannot represent the individual unless it is done on a pro bono basis. Our committee is currently averaging 12 to 15 visits to senior centers a month.

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TantaLisa Clayton is an attorney at Utah Legal Services, where she specializes in elder law. She is currently serving in her second year as chair of the Needs of the Elderly Committee of the Utah State Bar.

Bar Profile: Vermont's Elder Law Committee

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of ethical issues and "best practice" tips, as well as to cover substantive law. Working with VBA staff, we have developed a plan and begun drafting the initial sections.

The committee also organizes and conducts one major continuing legal education program each year. In March 2001, we presented a seminar on nursing home law, covering the perspectives of plaintiff and defense attorneys, the role of state government, and an overview of the federal regulatory scheme. We are now planning a program for June 2002, which will explore the medical and legal issues faced by persons with Alzheimer's disease.

Currently the Elder Law Committee is involved in efforts to protect older Vermonters from financial exploitation. In late 2000, the Vermont Attorney General and the Commissioner of the Department of Aging and Disabilities convened a task force to examine abuse and exploitation of elders. I served on this task force, as did several other members of the committee. One area of exploitation the task force identified is financial exploitation using durable powers of attorney. The task force recommended a three-pronged approach. First, the task force recommended revising Vermont's power of attorney statute to provide more protection for persons creating durable powers of attorney and more specificity concerning powers of attorney generally, including the relationship between principals and agents, and the duties of agents. Second, the task force proposed creation of a consumer booklet that would provide information about alternatives for planning for incapacity and include a discussion of the advantages and disadvantages of using durable powers of attorney. Finally, the task force suggested that the Elder Law Committee consider proposing standards of practice for lawyers who draft powers of attorney.

The Elder Law Committee could be involved in the implementation of all three task force recommendations. Thus, we will include discussion of ethical issues and best practices in our materials on powers of attorney for the VBA practice manual. In addition, we have begun discussing possible standards of practice and we will review legislation, which has been drafted and is likely to be introduced when the legislature reconvenes.

Bar Profile: Utah's Needs of the Elderly Committee

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This very successful venture has been possible because law firms have donated time for administrative assistants to coordinate the program. The one problem we have recently encountered, however, is finding new volunteers to meet the increasing demand.

The committee presents at least one continuing legal education seminar annually. Additionally, we have provided training at judicial seminars, and mid-year and annual bar conventions. In 2000, our annual session was "Advising Clients on End-of-Life Issues." Several physicians were presenters on such issues as pain and palliative care. This session was definitely successful at opening up a very productive dialogue between physicians and lawyers on this subject.

To date, our committee has now sponsored three trainings on guardianships and conservatorships, with the last one held in November 2001.

The committee also monitors relevant legislative activities in order to stay apprised of trends, to spot any misunderstandings or potential problems regarding elder law practice, and to comment, as individuals, on proposed legislation. During the past few years, there has been significant legislation in elder law matters that committee members have been involved with. In 1999, the Office of Public Guardian was established by the Utah Legislature. The Utah Uniform Probate Code had changes this year regarding duties of appointed agents in powers of attorney. In addition, our Adult Protective Services Statute is proposed for complete revision during the 2002 legislative session.

Currently, our committee is working with court administrators in preparing a brochure that will briefly list the responsibilities of guardians and conservators that will be available at the time conservatorship or guardianship is awarded by the court. We hope this will alleviate the problems created by the fact that the courts in Utah are not currently sending out reminders to guardians and conservators of their annual fiduciary responsibility to send in an accounting of how funds under their care were expended.

Legal Services Delivery: Elder Law Hotline

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Washington County Bar Association volunteer attorneys the increased caseload would have been unmanageable.

Over the grant period we experienced a 66 percent increase in applications for services from senior citizens in our service area. This resulted in a 61 percent increase in the number of senior citizens receiving legal advice and a 57 percent increase in the number receiving brief services. More importantly, in terms of “real people,” 85 more clients received these services than had in the prior year. Access to this segment of our client community was increased beyond our previous capabilities and expectations.

The minigrant also enabled us to develop brochures and pamphlets explaining clients’ legal rights in terms that they can understand. These brochures and pamphlets will continue to serve not only the client community of our service area, but have been adopted system-wide for use in all our offices and by our developing system-wide intake hotline.

Not to be overlooked in the analysis of minigrant results is the establishment of a strong working relationship with our county bar association. Our branch office is the newest in our organization, having been established in 1995. This program allowed the local bar to gain a true appreciation of the nature and scope of services we provide. This has resulted in a heightened understanding that we are not a threat, in terms of taking away from the client base of practicing attorneys, and, in fact, are a complement to the services that they provide to the general public. Over the past year, we have experienced a significant increase in participation on our pro bono panel by local attorneys as they have come recognize our value to both the legal community and the client community of Northeastern Oklahoma.

Recruiting Retired Lawyers For Senior Mediations

By Laurie Hanson

The Legal Aid Society of Minneapolis launched the Active Senior Attorney Project (ASAP) in 1995 with two goals: to improve legal services to seniors and other low-income residents of Hennepin County, Minnesota, and to

provide retired lawyers with an opportunity to practice law on a pro bono basis. In 1997, ASAP’s Mediation Project was developed by volunteer attorneys who recognized that Legal Aid’s clients would benefit from easy access to free mediation services and that mediating disputes was a great way to volunteer.

Over the ensuing years, retired attorneys answered phones, gave advice, represented clients, worked with non-profit organizations on whose boards Legal Aid staff sits, and mediated disputes. However, the number of mediations that the Mediation Project could handle were minimal because of the lack of staff to coordinate each mediation. From 1997 through 2000, the Mediation Project had three mediators and, on average, were able to handle only about 10 cases per year. The Mediation Project knew the need was there, but was hesitant to recruit new volunteer mediators or encourage staff to refer more cases until a coordinator could be hired.

In March 2000, the Partnerships in Law and Aging program granted ASAP \$7,500 to hire a coordinator for ASAP and the Mediation Project. In anticipation of obtaining additional funds, ASAP began to recruit new volunteers through an article published in the *Hennepin County Lawyer* and a letter to 1,300 licensed attorneys over the age of 50 inviting them to a reception regarding ASAP and the Mediation Project. Twenty-five people attended the reception, and eight new Supreme Court rostered mediators and one new ASAP attorney were recruited.

However, additional funds to hire a coordinator were not procured, and, by the end of 2000, ASAP still could not provide increased mediation services. Shortly thereafter, a Mediation Project volunteer set up a meeting with the executive director of the Minneapolis Mediation Program (MMP), a non-profit community mediation program, to learn how her organization coordinated mediations. She explained how each mediation actually begins with the first phone call and that to get the parties to the table, it is imperative that a case management process is followed by a trained person. At that meeting, a collaboration was forged. Instead of hiring a coordinator, MMP is now the case manager for all Mediation Project mediations.

As a result of this collaboration, from January 1, 2001, through September 1, 2001, 33 cases have been referred to the Mediation Project. Of that group, twelve were mediated, and of those, nine were settled and one is still pending. Two additional disputes were settled in the mediation process and five referrals are still awaiting resolution. Nearly 58 percent of referrals were either settled prior to mediation or were mediated. This rate of success is better than the national average for non-profit community mediation centers.

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Laurie Hanson is the supervising attorney of the Law Offices of the Legal Aid Society of Minneapolis.

Legal Services Delivery: Recruiting Retired Lawyers

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The ASAP Mediation Project has handled many different kinds of cases, including housing, grandparent custody, disputes in nursing homes, class action consumer, and government benefit cases. Mediation lends itself particularly well to landlord-tenant, nursing home, and grandparent custody disputes, where the parties must continue to interact with each other once the dispute is resolved.

In May 2001, ASAP hosted a day-long training entitled “Mediating Nursing Home Disputes.” In the morning session, the executive director of MMP trained advocates, ombudsmen, home- and community-based service workers, adult protection staff, and nursing home lawyers on mediation and how to refer someone to the Mediation Project. The Mediation Project mediators came for lunch and stayed for the afternoon session, which focused on the law relevant to nursing facility, assisted living, and home- and community-based services disputes. Since then, the Mediation Project has conducted two mediations of nursing home disputes, both of which were successfully resolved. The Mediation Project will also conduct further training on mediating kinship caregiver and landlord-tenant disputes, as well as mediating with mentally ill or incapacitated clients. This grant was the perfect catalyst to increase ASAP’s capacity. We intend to build on this foundation and continue our collaboration with other community groups to increase our clients’ access to mediation.

In Their Own Language And Community: Providing Legal Services For Latino Elders

By Karen C. Buck

A walk through the streets of Philadelphia reminds us that this is truly a city of neighborhoods and immigrant communities—one which reflects the diversity of our nation as a whole. Growing populations of Hispanic residents, in partic-

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ular, continue to expand throughout our region. Elderly Hispanic in Philadelphia face poverty at the alarming rate of 2 in 5—almost 40 percent of Hispanic elderly live in poverty. More than half of those, age 65 and older who speak Spanish, speak little or no English. Elderly immigrants face not only the challenges of aging that are universal to us all, but also the obstacles of a new language, culture, government, and health system. Too often, they also confront the added hardships of exploitation, isolation, and poverty.

With the support of the American Bar Association Commission on Legal Problems of the Elderly, the Borchard Foundation Center on Law and Aging, and the Marie Walsh Sharpe Endowment of the ABA Fund for Justice and Education, the Senior Citizen Judicare Project of Philadelphia (Judicare) launched the Hispanic Elderly Neighborhood Legal Project, providing direct legal and community education services to low-income Hispanic elders in their own neighborhoods and own language. This community-based project has increased access to legal services and information, promoted knowledge and awareness of elders’ legal rights and interests, helped in the prevention of legal problems through education, and addressed barriers of isolation, culture, language, and disabilities.

Philadelphia has the largest and one of the poorest concentrations of senior citizens among this country’s 20 largest cities. Philadelphia’s senior citizens experience a higher poverty rate than their peers in other parts of Pennsylvania and the nation. Almost 1 in 4 are living at or near the poverty level of \$716/month. These senior citizens have little access to crucial legal services, which affect their homes, financial survival, health safety, and quality of life.

All of these conditions exacerbate the growing isolation and vulnerability of the elderly population in Philadelphia, particularly the Hispanic elderly. The inability to speak English and the extremely high poverty rate of this immigrant elderly population precludes them from seeking legal counsel or available assistance, creates fear of the judicial and legal systems, and isolates them in their own neighborhoods. Lack of knowledge of their legal rights in their new country, as well as language barriers, prevents them from advocating for themselves. Being poor, frail, and elderly makes our senior citizens more vulnerable to exploitation, fraud, abuse, and neglect, not only by their caretakers, but by home contractors, unwanted tenants, and others.

The Senior Citizen Judicare Project of Philadelphia is proud to have responded to these needs with new programs and services to protect the legal rights and interests of low-income Hispanic elders, especially those with limited English capacity. Judicare provides a wide array of legal services to low-income elders, including legal representation, counsel, community education, outreach, information and referral ser-

vices, and advocacy. Through the energies of its small legal staff and its panel of volunteer attorneys, Judicare provides essential services that can have a dramatic impact on the lives of low-income elders and their families, including young children that are cared for by many elderly Philadelphians. All of Judicare's services are free.

Judicare was founded in 1978 by members of the Philadelphia Bar Association to help meet the legal needs of Philadelphia's elders in specific impoverished neighborhoods of the city. Today, as an independent 501(c)(3) nonprofit agency, Judicare serves thousands of elders each year. Since its founding in 1978, Judicare has provided free legal services to more than 30,000 needy seniors, has educated more than 75,000 seniors through community-based education, and has assisted over 100,000 seniors by providing advice, information, and referral services.

Historically, approximately 75 percent of our clients have been minorities, primarily African American women. Although we continue to reach out to those of all backgrounds and languages, we know that many elders, including many immigrants, are facing legal problems for which they need assistance. Our focused services, set in a familiar and culturally sensitive environment in the communities in which the underserved immigrant elders live, have proven tremendously successful.

The core of this project is a bi-monthly community-based bilingual legal clinic at our community partner, the Mann Older Adult Center, a senior center in a struggling section of North Philadelphia. The center serves a largely Hispanic elderly population, including those from Puerto Rico, Colombia, Costa Rica, Ecuador, the Dominican Republic, Cuba, and Mexico. Seniors meet privately with the project coordinator to discuss legal concerns, seek advice and counsel, obtain information about other nonlegal senior services, or be assigned an attorney for direct individual representation. In the year of services funded by the migrant, Judicare provided legal advice, information, and referral services to 48 Hispanic seniors and direct individual legal representation to an additional 49 Hispanic clients. These latter cases included a wide range of substantive legal disputes, such as home repair contractor claims involving the recovery of thousands of dollars, obtaining a protection-from-abuse order to evict a physically abusive adult son, the preparation of simple wills and powers of attorney, and lengthy custody litigation for a grandparent raising several minor grandchildren. Nearly 36 percent of direct representation cases involved housing (ranging from homeowner to landlord/tenant problems), 33 percent involved advance planning (wills, powers of attorney, living wills, simple estate administration), 27 percent were consumer protection (utilities, contract disputes, contractor fraud, collection and credit problems),

and 4 percent were family law (kinship care custody and support, protection from abuse).

Reflecting the financial struggles of Hispanic elders in Philadelphia, 84 percent of the project's direct representation clients were living at or below poverty level (\$698 in 2000, \$716 in 2001). A surprising 53 percent were male, a much higher percentage than Judicare's general client population, which is typically 78 percent female. Client ages ranged from 61 years to 89 years old, with 39 percent who were 75 years of age and older, and 61 percent who were 60 years to 75 years old. Almost three-quarters of these clients lived alone.

In light of the success of our first community site, we have already been requested by another senior organization to develop a second legal clinic in their community. We are pleased to report that Judicare opened a second Hispanic legal services clinic in April at our new community partner, the Norris Square Senior Center. The Norris Square center serves elders in a beautiful new building that accommodates not only a lively Spanish language senior center, but also senior housing for Hispanic elders on the upper floors.

The second component of the project—community education workshops in Spanish—promotes awareness and empowerment to help prevent legal problems before they occur. In the first year of the project, we have educated more than 250 Hispanic seniors about their substantive legal rights, including consumer protection and advance planning issues through group workshops at senior centers, senior housing facilities, and Senior Partners (a Hispanic community site for the local Medicare plan).

Brochures and other written outreach materials have been translated into Spanish and have been distributed to attendees for future reference and referral. The project coordinator has also translated numerous other materials, including the Judicare retainer document, client satisfaction surveys, and advance planning documents into Spanish. Energized outreach and publicity at churches, and senior and community centers have drawn Spanish-speaking immigrants and refugees from other countries of origin and other areas of the city.

Our community partners' established presences in their neighborhoods have enabled us to reach those who are most in need of our services. We have also pursued other creative and far-reaching methods of outreach, namely our appearance on "Punto y Aparte," a Spanish language/Hispanic community radio station (WSSJ Classica 1310 AM) that reaches hundreds of listeners, and in a key article published in the Philadelphia weekly Spanish language newspaper, *El Hispano*.

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Legal Services Delivery: In Their Own Language and Community

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The project has also provided legal training to professionals working with the Hispanic elderly, including Hispanic community groups, elder service networks, protective service workers, and the Refugee Services Project of the Area Agency on Aging. More than 63 Spanish-speaking professionals who focus their work in the Hispanic Community were trained on Judicare services and legal issues of vital concern to Hispanic elders. The project's coordinator also trained the Area Agency on Aging's Latino Advisory Committee, of which she is an active member, and which brings together service providers and resources to expose Latino elders to mainstream services, assess their needs, and advocate, generally, for the Latino community.

The project's objectives have been pursued by the combined efforts of Judicare's executive director, Karen Buck, Esq. (who has taught ESL to immigrants and refugees for the past 10 years), Judicare's managing attorney, Angel Recchia, Esq. (now in her eighth year as supervisor of the legal staff at Judicare), and the project's coordinator, Maria Leticia Meana, an attorney from Spain.

Judicare's legal staff works with volunteer attorneys drawn from the Philadelphia Bar Association and the private bar generally, who provide pro bono services to elders in need. In an effort to recruit new bilingual volunteers to serve the growing demands of low-income senior citizens who cannot afford or access legal help, Judicare is also partnering with the Hispanic Bar Association of Pennsylvania (HBA). Several HBA members have attended recent Judicare substantive trainings, represented elders needing advance planning documents, and have continued to work with Judicare on the development of special projects. Ideas in the planning stages include bringing a corps of bilingual volunteer attorneys to our community partner sites to provide on-site counseling, intake, and direct representation, and a second project partnering Hispanic attorneys and local law students as a team to represent Judicare's Hispanic elderly clients.

Aging in a foreign land presents new challenges to elders. Legal services agencies must recognize the diversity of the populations we serve, and take affirmative steps to provide creative, effective, culturally sensitive, and language-appropriate services. Such efforts are neither easy or cheap, but they are necessary. The elderly of all our communities deserve not only our compassion and respect, but our professional attention and efforts as lawyers, whether we be in the public interest or private practice arenas.

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Questions?

Contact Jamie Philpotts at (202) 662-8688.

Books

Dictionary of Eldercare Terminology, Second Edition

By Walter Feldesman (Baltimore, Md.: National Information Services Corp., 2000).

Reviewed by Jamie Philpotts

The *Dictionary of Eldercare Terminology, Second Edition*, is a comprehensive and up-to-date compendium of the non-medical terminology of eldercare. Intended for professionals, as well as for sophisticated consumers, this dictionary provides lucid, practical definitions for the terms and concepts of the language of eldercare—a language that is ever evolving as a result of new and shifting state and federal legislation and regulations.

The second edition of the *Dictionary*, published three years after the first edition, is banking upon its currency. To emphasize this point, the author reminds us that the term “Medicare+choice” did not even exist four years ago. Thus, many of the terms are not only defined, but explained in the context of current policy and regulation. For example, the entry for “durable medical equipment” not only defines the term, but also explains the Medicare coverage of this service.

Many of the terms are not only defined, but explained in the context of current policy and regulation.

Each of the dictionary’s nearly 1,000 entries is a term, phrase, or concept from one of the major subject areas that constitute eldercare, including homecare, housing, managed care, Medicare, Medicaid, private insurance for long term care and Medigap coverage, and social security. The entries also include gerontological terms, as well as those relating to wills, trusts, taxes, annuities, and other financial and legal matters that affect the elderly.

As an added feature, the dictionary includes twelve overviews of the most important subjects in eldercare. These extended treatments are intended to serve as an introduction to the subject, and they cover such key issues as alternative housing facilities, health maintenance organizations, home care, long-term care, Medicaid, Medicaid Mandatory Managed Care, Medicare, Medicare+Choice, Medicare Supplemental Insurance, and Social Security. Each of the overviews is presented in outline format, with a detailed topical index at the back of the book for quick reference.

Medicare Handbook

Judith A. Stein, Esq. and Alfred J. Chiplin, Jr., Esq., Editors-in-Chief (New York, Aspen Publishers, 2000).

Reviewed by Daniel G. Fish*

This book is an authoritative legal treatise on the Medicare program whose unique attribute is its underlying advocacy perspective. It is intended to alert the lawyer representing the beneficiary to erroneous denials of coverage and the winning method of challenging those decisions. The goal is to ensure proper coverage for Medicare beneficiaries.

It is authoritative because it is derived from extensive actual practice. *Medicare Handbook* was compiled by the most knowledgeable group of experts on the intricacies of the Medicare program. It is a scrupulously scholarly work that is clearly informed by the 6,000 annual telephone inquiries received by the Center for Medicare Advocacy. The years of experience behind the book show through in the very practical tone of the work.

There is no substitute for hands-on experience and this book is like having nine national experts as your co-counsel. For example, the appendix to chapter four explains how to submit a demand billing. A sample letter is included with advice on who may sign if the beneficiary is incapacitated. The relevant sections of the Medicare Intermediary Manual are attached and are followed by a checklist for home health care hearings and what information should be found in the report of the attending physician.

Medicare Handbook is very user friendly. The layout, typeface, examples, practice tips, and organization assume that the book will be referred to frequently. This is a desk-top reference text for the practicing elder law lawyer. Each chapter is followed by primary source material.

It is equally valuable to the general practitioner who faces occasional Medicare questions. For example, section 9.07[B] “MSP Collection Duties of Personal Injury Attorneys” gives a complete description of the disputed positions of HCFA and the personal injury bar regarding the Medicare Secondary Payer (MSP) program. HCFA has taken the position that it has a lien on personal injury recoveries where Medicare has made payments and that there is an obligation on the part of personal injury attorneys to assist HCFA in its recovery attempts. Personal injury lawyers have disputed that position. The detailed discussion in the book includes

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Books

Medicare Handbook, *Continued from page 9*

citations to a law review article, the C.F.R., the controlling statute, and federal court cases.

The book covers in depth the basic provisions of the Medicare program such as eligibility, enrollment and hospital care, home health care, hospice care, and part B coverage. These chapters are followed by in-depth chapters relating to Medicare Covered Managed Care, Medicare Services, and Medicare Secondary Payer. There is much more information that may be revealing even to lawyers who have relatively extensive understanding of Medicare, such as the reminder that a Medicare policy may be suspended when the policyholder applies for Medicaid and reinstated if the Medicaid coverage is subsequently lost.

Most impressive is the chapter "Dual Eligibles: Issues for Medicare Beneficiaries also Eligible for Medicaid." Since its legislative inception in 1965, the Medicare program has become more complicated. Elder law attorneys now need to be informed about Medicare+Choice, Qualified Medicare Beneficiaries (QMBs), Specified Low-income Medicare Beneficiaries (SLMBs), Qualified Disabled and Working Individuals (QDWIs), and Qualified Individuals (QIs).

Medicare Handbook successfully bridges the practical world in which the Medicare questions arise and the bureaucratic world where the program is administered.

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Aging and the Law: A Comparison Between French and American Law

[**Vieillesse et droit à la lumière du
droit français et du droit américain.**]

**By Marie Mercat-Bruns (Paris: Librairie
Générale de Droit et de Jurisprudence, 2001)
(in French).**

Book Abstract by Marie Mercat-Bruns

A comparison between French and American law can improve our understanding of the relationship between law and the aging process. It clarifies the distinction between ref-

erences in the law to the criterion of age on the one hand, and the judge's evaluation of the aging process at the end of professional life and of life itself, on the other hand. Conversely, a closer look at the legal impact of aging deepens and expands our perception of the legal subject and the rule of law.

Indeed, chronological age does not necessarily reflect individual aging: it is based on factors inherent to the individual and by the person's interaction with his or her environment. However, the demographic concept of an aging population has helped justify references to age in the law, especially in the areas of employment and social security. As a result, laws based on advanced age have gradually been introduced, which characterize the older worker and the older retiree as either physically or economically vulnerable. Employment law, in particular discrimination law, guardianship law, and statutes on long-term care do not resolve the "dilemma of difference," which Professor Martha Minow refers to in her book entitled *Making All the Difference: Inclusion, Exclusion, and American Law*.^{*} Such laws either categorize the subject in terms of his age or simply negate his difference.

How can the law handle difference constructively? A first look at social policy and discrimination law in France and the United States shows how these rules perpetuate victimization of the older worker and older retired person, defining them as separate and offuscating the relations with others that "make that difference."

The emphasis should no longer be on the individual deemed different, but, rather, on the problem causing that difference. Issues such as work adjustment, autonomy, or capacity need to be examined from that perspective and be viewed in relative terms, especially as regards the interpretation and construction of legal mechanisms applicable to older individuals. The law can shed a new light on potentially vulnerable individuals. The law can clarify the relationship between the individuals characterized as different and those who legally identify them as such, in order to better understand the framework and the root cause of such a differentiation.

This analysis may also illustrate how law, through litigation and mediation, can increasingly foster dialogue on those differences and even bring out the common interests between opposing parties. Instead of stigmatizing individuals because they belong to a certain age group or exacerbating conflict between their interests and those of others, this approach views the complex and diverse phenomena of aging as an opportunity to enhance and tighten relations stemming from that very process.

^{*}M. Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (New York: Cornell University Press, 1990).

Medicare Takes Steps to Eliminate Discrimination Of Alzheimer's Patients

Commission and Alzheimer's Association's Medicare Advocacy Project Scores Significant Victory

By Leslie B. Fried

In a significant development, the Centers for Medicare and Medicaid Services (formerly HCFA) recently issued a Program Memorandum, which prohibits the automatic denial of claims for medical services based solely on the diagnosis of dementia. A Program Memorandum provides specific rules and guidelines for the Medicare program. For years, Medicare has refused to pay for some medical services for beneficiaries with Alzheimer's disease solely because of their diagnosis. Beginning September 1, 2001, Medicare will not use the dementia diagnostic codes alone as a basis for determining whether Medicare covered services are reasonable and necessary. The Program Memorandum, entitled "Medical Review of Services for Patients with Dementia," can be obtained on line at <http://www.hcfa.gov/pubforms/transmit/AB01135.pdf> or from Leslie Fried at the ABA Commission on Legal Problems of the Elderly.

The issuance of the Program Memorandum is the result of extensive advocacy by the Commission and the Alzheimer's Association. Two year ago, we presented then-HCFA staff with documentation of the systematic denial of claims for medically necessary services for individuals with Alzheimer's disease and dementia. We presented them with an analysis of carriers' Local Medical Review Policies in five different categories of services and compared them to evidence-based practice guidelines to demonstrate how they conflict. After several meetings with Jeff Kang, director of Office of Clinical Standards and Quality, and his colleagues, a medical directors' workgroup on dementia was established. During a meeting with the chair of the workgroup, Jeff Kang,

and his colleagues, it was agreed that HCFA would issue a Program Memorandum stating that contractors could not deny services solely because of the dementia diagnosis.

How This New Policy Will Affect Individuals with Alzheimer's Disease

The new Program Memorandum explains that, due to advances in diagnostic techniques, physicians and psychologists can diagnose individuals with certain dementias at the earliest stages of the disease. It makes clear that individuals with Alzheimer's disease may benefit from pharmacological, physical, occupational, speech, and other therapies. Therefore, Medicare will cover evaluation and management visits, as well as therapies, if these therapies are reasonable and necessary for the Alzheimer's beneficiary. For example, if an individual with Alzheimer's disease has an unsteady gait and physical therapy is necessary, Medicare will pay for the individual's physical therapy. Medicare payment of medical services and procedures will be determined based on the individual assessment and needs of the Alzheimer's beneficiary, rather than denied solely because of the dementia diagnosis.

Action Steps for Advocates

Although the issuance of this Program Memorandum is significant, it is only the first step to removing the barriers to medically-necessary care for Alzheimer's beneficiaries. Now, we have to educate providers, beneficiaries, and caregivers about the new policy, as well as monitor its implementation by the insurance companies that process the Medicare claims (called carriers and intermediaries.)

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Alzheimer's Disease and State Law

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can have a dramatic effect, for example, on whether a person with mild AD can continue to drive, or whether a patient with AD can get needed services in the community rather than in a nursing home, or whether someone whose genes indicate an elevated risk of future AD can buy long-term care insurance.

In an effort to carry forward the work of the Joint Conference, Maryland Attorney General and ABA Commissioner J. Joseph Curran, Jr. directed his staff to conduct a study of Maryland legal and public policy issues related to AD. This effort is intended to identify and promote public discussion about the legal and policy environment in which AD care is delivered in Maryland. The process has included reviewing the pertinent literature, interviewing experts, and meeting with those directly affected by this ailment. The project will result in the publication of a report in early 2002, which Attorney General Curran hopes will stimulate similar efforts elsewhere.

In the meantime, Attorney General Curran's office is inviting public comment on the portion of the report, about half, that has now been drafted. The following draft chapters

have been posted on the Attorney General's Web site: Chapter 1, Alzheimer's Disease: Assessing Its Impact and Its Policy Environment; Chapter 2, Health Care Decisions: Patient Capacity and Proxy Decision Making; Chapter 4, Advance Planning: Health Care Choices and Research Participation; Chapter 9, Genetic Discrimination; and Chapter 10, The Driving Issue. The draft chapters are available at the following Web page: <http://www.oag.state.md.us/Healthpol/index.htm>.

Other important topics will be covered in the remaining chapters. These include guardianship, advance planning for financial matters, the role of the state Medicaid program, health facility regulation, and abuse and financial exploitation. Drafts will be posted for comment soon. Check the same Web page for updates.

Although lawyers and public officials cannot do much to directly ease the burden of AD, they can learn how laws and policies affect AD patients, their families, and their professional caregivers. Maryland, and every other state, ought to be a place where law and policy promote research into AD, support high-quality care for those with AD, and prohibit genetic discrimination against those at heightened risk of AD. The road to achieving this goal is long, but it is important to take the first steps.

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See the new online *Law and Aging Guide*, a 50-state profile of elder law-related resources for consumers and lawyers, at www.abanet.org/elderly.