

## **MSBA ELDER LAW SECTION E-NEWSLETTER FEBRUARY 3, 2009**

### **E-Newsletter Editorial Staff:**

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### **GOVERNOR'S BUDGET RECOMMENDATIONS**

On January 27, 2009, Governor Pawlenty released Budget Recommendations for the Minnesota Department of Human Services for the 2010-11 biennium. The recommendations span 357 pages and reduce DHS spending by \$1.4 billion as part of a larger effort to balance the state's \$4.85 billion deficit. However, the new federal stimulus package may restrict the states' ability to limit certain programs, such as Medicaid, as a means of balancing state budgets. Below are a few recommendations of interest:

- Create a marital interest as a legal title interest in the context of MA estate recovery which will create the authority for Counties/State to collect from the estate of the recipient's surviving spouse for MA benefits received, thus overturning the Barg decision (page 132). NOTE: The MSBA Real Property Council voted to oppose this Recommendation of the Governor.
- Restrict allowable asset reductions in order to achieve MA eligibility for the month of application or a retroactive month to payment of bills for health services only (page 133).
- Require trustees to submit an annual financial report for a pooled or special needs trust; Clarify that a transfer of assets into a pooled trust for a person age 65 or older must be evaluated as a transfer for less than fair market value; and clarify that only taxes and administrative expenses may be deducted from pooled trust funds before MA is reimbursed in full (page 136).

The full report is available at:

<http://www.mmb.state.mn.us/doc/budget/narratives/gov/human-svcs.pdf>

### **ELDER LAW NEWS**

Pawlenty's budget proposal cuts 1,100 positions by 2011

[http://www.twincities.com/politics/ci\\_11595071](http://www.twincities.com/politics/ci_11595071)

Health care budget could put federal aid at risk

[http://www.twincities.com/ci\\_11589740?IADID=Search-www.twincities.com-www.twincities.com](http://www.twincities.com/ci_11589740?IADID=Search-www.twincities.com-www.twincities.com)

Freezing death of Mich. man in house sparks anger, soul-searching, resolve to prevent repeat

<http://www.startribune.com/nation/38562727.html?elr=KArksUUUU>

Minnesota Health Department issues pandemic flu plan

[http://www.twincities.com/ci\\_11590435?IADID=Search-www.twincities.com-www.twincities.com](http://www.twincities.com/ci_11590435?IADID=Search-www.twincities.com-www.twincities.com)

If pandemic hits Minnesota, who would be treated first?

<http://www.startribune.com/local/38705357.html?elr=KArksUUUU>

### **UPCOMING EVENTS AND CLE PROGRAMS**

**ABCs of Will and Trust Drafting Plus Planning for Dementia & Incapacity**

**Live Presentation**

February 6, 2009, 9:00 am – 4:15 pm

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

**Medical Assistance and Long Term Care 2009**

**Live Presentation**

March, 16, 2009, 8:30 am – 4:30 pm

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

**Hospice Minnesota's 2009 End-of-Life Conference**

Mystic Lake Casino Hotel, Prior Lake, MN

April 6 - 7, 2009

Contact Information:

<http://www.mnhospice.org/displaycommon.cfm?an=1&subarticlenbr=197> or 651-659-0423.

### **ELDER LAW SECTION ACTIVITIES**

**GOVERNING COUNCIL MEETING:** The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, February 13, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Karla Nelson with Schmitz & Schmidt. P.A., at 651-291-2405.

## MINNESOTA CASES

*Following is a Minnesota Court of Appeals unpublished decisions released on January 27, 2009.*

A08-0263

### **In re the Estate of: Marie M. Moldenhauer, Decedent**

TOUSSAINT, Chief Judge

This is an appeal from the district court's denial of a petition to probate a September 5, 2003 will executed by decedent Marie M. Moldenhauer. Appellant Charles W. Eginton, Moldenhauer's son-in-law and a named beneficiary of that will, challenges the district court's finding that Moldenhauer lacked testamentary capacity at the time she signed the will. Based on evidence that due to dementia, Moldenhauer did not understand the scope of her estate and could not identify her heirs, the finding of incapacity is not clearly erroneous, we affirm.

The decision is available at: <http://www.mncourts.gov/opinions/coa/current/opa080263-0127.pdf>.

*Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2006).*

## STATUTES, REGULATIONS, BULLETINS

### **DHS BULLETIN # 09-25-01: PROPOSED ELDERLY WAIVER CUSTOMIZED LIVING TOOLS, INSTRUCTIONS, AND IMPLEMENTATION PLAN.**

Customized living and 24 hour customized living are “bundled” home and community based services in the Elderly Waiver (EW) program with an established monthly rate to purchase the type and amount of allowable, individual services. The customized living services stand in contrast to individual service types typically billed in hourly or daily amounts. In 2007, in response to a change in Minnesota law and in order to meet federal requirements, the DHS initiated program integrity strategies for the customized living program, resulting in the current proposed *EW Customized Living Tools*. The bulletin dated January 30, 2009, is available at:

[http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16\\_144053.pdf](http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_144053.pdf)

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**DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE.** Here's what you can find on the Website: Links under “What's New” to the DHS Health Care Programs Manual, the updated Income and Asset Eligibility Figures for Minnesota Health Care Programs, the DHS Bulletin on treatment of

uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, and a legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Minnesota Senior Federation; Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

**To access the ELDER LAW SECTION WEBSITE**

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>

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Please send eNewsletter contributions by noon on Saturday of each week to Suzy Scheller at [sscheller@prslegal.com](mailto:sscheller@prslegal.com).

If you do not wish to receive this eNewsletter, send your request to be removed from the mailing list to Kim Basting at [kbasting@statebar.gen.mn.us](mailto:kbasting@statebar.gen.mn.us).

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