

MSBA ELDER LAW SECTION E-NEWSLETTER

December 8, 2009

E-Newsletter Editorial Staff:

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EDITOR'S NOTE: Please note the following correction from the E-Newsletter dated 11/23/09: the correct e-mail address for Kristine Mullmann, the contact person for Health Care Decisions Day is kmullmann@estatecrafters.com.

LATEST ON HEALTH CARE REFORM BILL:

Check out the latest links below for the most up to date information about the bill that is now before the Senate.

Bill Language

House Version: H.R.3962 - Affordable Health Care for America Act

<http://www.opencongress.org/bill/111-h3962/show>

Senate Version: [H.R.3590](#) - Patient Protection and Affordable Care Act (Legislative Vehicle)

<http://www.opencongress.org/bill/111-h3590/text?version=ocas>

News

Health Reform: What's in It for You? Here's how the House and Senate bills stack up
<http://health.usnews.com/articles/health/healthday/2009/11/30/health-reform-whats-in-it-for-you.html>

Senate Considers Health Bill Amendment to Bar Federal Funding of Abortion

<http://www.foxnews.com/politics/2009/12/07/senate-confront-abortion-health-care-debate/>

McCaskill: Abortion amendment to health care bill goes too far

<http://www.news-leader.com/article/20091207/BREAKING01/91207006/McCaskill--Abortion-amendment-to-health-care-bill-goes-too-far>

Senate Health Care Reform Spells Trouble for Nebraska Grace-Marie Turner Omaha World-Herald, Dec. 6, 2009

http://www.galen.org/component,8/action,show_content/id,13/category_id,8/blog_id,1318/type,33/

Reid's Health Care Bill by the Numbers

<http://biggovernment.com/2009/12/06/reids-health-care-bill-by-the-numbers/>

Reid: Obama pledges to help Senate Democrats 'in any meaningful we he can' on health care bill

<http://blog.taragana.com/business/2009/12/06/reid-obama-pledges-to-help-senate-democrats-in-any-meaningful-we-he-can-on-health-care-bill-7506/>

Testing, Testing: The health-care bill has no master plan for curbing costs. Is that a bad thing?

http://www.newyorker.com/reporting/2009/12/14/091214fa_fact_gawande

Medicare cuts stay in Senate's health care bill, AARP, the seniors' lobby, threw its weight behind the Democrats

http://www.msnbc.msn.com/id/34258944/ns/politics-capitol_hill/

Reform could mean end to state health care pool

http://www.startribune.com/business/76408642.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUT

Who pays for health care reform?

<http://minnesota.publicradio.org/display/web/2009/11/23/midmorning1/>

WHAT TO DO WHEN THE NURSING HOME TAKES AWAY YOUR CLIENT'S POWER CHAIR?

Submitted by John A. Wehrly & James A. Long, certified law students at the University of St. Thomas' Elder Law Clinic

Is it permissible for a care facility to restrict an elder's access to his or her power chair? Recently this legal question was presented to the student-attorneys of the Legal Services Clinic – Elder Law Practice Group of the University of St. Thomas School of Law. Factually, Ms. B suffered an injury to her lower legs when she attempted to maneuver her power chair in an area of limited space. The staff of Ms. B's residence, a long-term care facility, responded to the injury by administering a skills test and informal observation by an occupational therapist over a brief period of time. Subsequently, a care conference was convened, whereby Ms. B. was informed that she would no longer have access to her power chair.

The care facility has a clear interest in avoiding liability as a result of injuries that a resident may inflict on oneself or on others as a result of careless or reckless use of a power chair. Thus, if the care facility believes that the elder appears to operate the power chair in an unsafe manner, then the facility will restrict the elder's access to the power chair. But what if the elder does not agree? What recourse does the elder have?

The State of Minnesota has no standardized skills test that can be administered to determine if an elder is operating a power chair in an unsafe manner. The general practice is for an occupational therapist at the care facility to create and administer a skills test. The skills test may challenge the elder to weave the power chair in-and-out of cones or maneuver around obstacles. Or the skills test may require that the elder stop the power chair abruptly, such as having staff step out in front of the elder from behind doorways in order to test the elder's reflexes. Unfortunately these in-house skills tests fail to objectively demonstrate the ability of the elder. Thus, it is important that when a care facility attempts to restrict the elder's access to his or her power chair, the elder should seek to have a power chair skills assessment performed by an independent source.

Here are some tips when selecting an independent assessor. First, select an organization that routinely offers power chair assessments; such as Gillette Lifetime Specialty Healthcare, located in St. Paul at the Phalen Clinic. Further, select an organization that not only provides an assessment of the elder's skill level when operating the power chair but will also evaluate and recommend alterations to the power chair in order to better accommodate the driver of the chair. Finally, select an organization that is willing to provide a written report. This report is essential for the next care conference; the one that returns the power chair to your client.

ELDER LAW NEWS

[More Seniors Considering Health Insurance Switch](http://www.prnewswire.com/news-releases/more-seniors-considering-health-insurance-switch-78129142.html)

<http://www.prnewswire.com/news-releases/more-seniors-considering-health-insurance-switch-78129142.html>

[Economic forecast due: All signs point to deep deficit](http://www.startribune.com/politics/state/78239072.html?elr=KArks7PYDiaK7DU2EPaL_V_9E7ODiUiD3aPc:_Yyc:aUU)

http://www.startribune.com/politics/state/78239072.html?elr=KArks7PYDiaK7DU2EPaL_V_9E7ODiUiD3aPc:_Yyc:aUU

[Health Reform: What's in It for You? Here's how the House and Senate bills stack up](http://health.usnews.com/articles/health/healthday/2009/11/30/health-reform-whats-in-it-for-you.html)

<http://health.usnews.com/articles/health/healthday/2009/11/30/health-reform-whats-in-it-for-you.html>

[Medicare cuts stay in Senate's health care bill, AARP, the seniors' lobby, threw its weight behind the Democrats](http://www.msnbc.msn.com/id/34258944/ns/politics-capitol_hill/)

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[Reform could mean end to state health care pool](http://www.startribune.com/business/76408642.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUT)

http://www.startribune.com/business/76408642.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUT

[Adult day-care centers worry about funding](http://www.washingtonpost.com/wp-dyn/content/article/2009/11/30/AR2009113002997.html)

<http://www.washingtonpost.com/wp-dyn/content/article/2009/11/30/AR2009113002997.html>

Veterans home talks proceed

<http://www.bemidjipioneer.com/event/article/id/100013578/>

NY law regulates 'life settlement' industry that allows elderly to cash in policies for resale

<http://www.startribune.com/business/76051337.html?elr=KArksUUUoDEy3LGDIO7aiU>

Gayle Kvenvold, Patti Cullen: Minnesota at forefront in care for the elderly

<http://www.startribune.com/opinion/commentary/70662492.html?elr=KArksUUUoDEy3LGDIO7aiU>

H1N1 registry' a fraud, officials warn

http://www.postbulletin.com/newsmanager/templates/localnews_story.asp?z=49&a=427880

Forensic nursing home opens

<http://www.stpeterherald.com/news.php?viewStory=2090>

Editorial: Our boomer-elders are a state asset

<http://www.startribune.com/opinion/editorials/71946457.html?elr=KArks:DCiUIOiP:DiiUiD3aPc: Yyc:aUU>

Who pays for health care reform?

<http://minnesota.publicradio.org/display/web/2009/11/23/midmorning1/>

Consumer drug ads drive up health costs -US study

<http://www.reuters.com/article/mediaNews/idUSN2327475820091123>

Invention provides self-reliance, dignity for the wheelchair-bound

<http://www.argusleader.com/article/20091123/NEWS/911230338/1001/news>

Don't try to make us feel older than we are

<http://minnesota.publicradio.org/display/web/2009/11/27/hanson/>

Technology And The Elderly

<http://www.npr.org/templates/story/story.php?storyId=120709839&ft=1&f=2>

Who's Gaming Now? Seniors Turn To Wii Bowling

<http://www.npr.org/templates/story/story.php?storyId=120705467&ps=rs>

MINNESOTA CASES

There are no Minnesota Cases to report this week.

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #09-03-09: FFY 2009 Food Support Program Management Evaluation (ME) Results Reported; FFY 2010 Management Evaluation Review Process Announced.

The bulletin informs counties of the FFY 2009 Food Support ME review results, and FFY 2010 review priorities. The bulletin, dated December 3, 2009, is available at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_147413.pdf.

DHS BULLETIN #09-03-08: Minnesota to Participate in the Public Assistance Reporting Information System (PARIS) Interstate Match Program.

PARIS is a federal and state partnership, administered by the Department of Health and Human Service's Administration for Children and Families (ACF), which helps states maintain program integrity and detect or deter improper payments of public assistance. PARIS has three components: an interstate match, a match against the Department of Veterans Affairs (VA), and a match against federal civilian and military wage and benefit payments. DHS will initially participate in the interstate match only. The PARIS interstate match provides information regarding possible duplicate participation of public assistance recipients submitted by participating states. A PARIS interstate match may occur because of recipient error, agency error, or fraud. The bulletin provides information and instructions needed for eligibility workers to identify and respond to PARIS interstate matches beginning in December 2009. The bulletin, dated November 24, 2009, is available at:

http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_147304.pdf.

DHS E-Newsletter Dated November 29: Open house held for state forensic nursing home in St. Peter.

A ribbon-cutting ceremony for the new state-operated forensic nursing facility was held Nov. 19. The facility provides services to people in need of nursing home level of care who are committed to the DHS commissioner as mentally ill and dangerous, a sexually dangerous person or sexual psychopathic personality or who are on medical leave from the Minnesota Department of Corrections.

UPCOMING EVENTS AND CLE PROGRAMS

Elder Law Institute

Video Replays

January 21-22, 2010 – Duluth

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

Estate Planning in Uncertain Times (including Medical Assistance)

Video Replay

December 10, 2009 – Mankato

December 11, 2009 – Crookston

December 11, 2009 – Park Rapids

February 12, 2010 - Duluth

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

Estate Planning for the Final Years of Life

Lorman Teleconference

January 20, 2010, 1:00 p.m.

Contact information:

<http://www.lorman.com/teleconference/teleconference.php?pid=207029> or 1-866-878-9329.

ELDER LAW SECTION ACTIVITIES

COMMUNICATIONS COMMITTEE MEETING: The next meeting of the Communications Committee is tentatively set for Monday, December 14, 2009, at Noon at the offices of Long, Reher & Hanson, P.A., 5881 Cedar Lake Road, St. Louis Park, MN 55416. Contact Laurie Hanson at 952.929.0622 or lhanson@mnelderlaw.com for more information.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, December 15, 2009, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at creher@mnelderlaw.com, or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, December 18, 2009, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Vicki McIntyre at vmcintyre2@yahoo.com or 612-722-8572.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, January 28, 2010 at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., 100 S. 5th Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at klabore@prslegal.com or Joel Smith at joel@koslaw.com for more information.

GREATER MINNESOTA COMMITTEE: Please contact Bonita Kallestad at 1-320-235-9600 or bkallestad@westernlegal.org with issues you would like the Greater Minnesota Committee to address. Also contact Bonita if you would like to serve on the Greater Minnesota Committee.

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE. Here's what you can find on the Website: Links to the DHS Health Care Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, 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>.

Please send E-Newsletter contributions by noon on Saturday of each week to Suzy Scheller at sscheller@prslegal.com.

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Elyse Farnsworth at efarnsworth@statebar.gen.mn.us.

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available at: <http://www2.mnbar.org/sections/elder-law/newsletters.asp>.