

**MSBA ELDER LAW SECTION E-NEWSLETTER**  
**March 1, 2011**

**Vol. 4, No. 9**

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Ruthanne Vos, WMCL student

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**THOUGHTS FROM THE CHAIR**

**Prioritizing Community-Based Care**

Since I first began practicing elder law in 1988, I have been puzzled, frustrated, and sometimes enraged by the contradiction between, on the one hand, the received medical wisdom and oft-repeated fiscal policy that the best long-term care setting for elders is the least institutionalized setting that can meet the elders' care needs and, on the other hand, state and federal Medicaid policies that clearly favor nursing home care over every other kind of care. This contradiction has long and rather random historical roots. When Medicaid first began covering long-term care, people thought the only possible option (other than unpaid family care) was nursing home care. When assisted living and in-home care options began to develop, the waiver program was glued onto the existing Medicaid long-term care coverage as an afterthought.

We are all aware of the many obstacles encountered by people seeking to receive long-term care in the community from Elderly Waiver (EW). In the first place, unlike regular Medicaid coverage of nursing home care, EW is not treated as an entitlement. Under regular Medicaid, everyone who meets the eligibility requirements must be provided with benefits. Under EW, the state can run out of funds and put eligible elders on waiting lists. In order to qualify for EW in the first place, people must be certified to qualify for nursing home level of care; thus this policy distinction pushes folks into nursing homes who could be living in community-based settings. The overall result of this policy distinction is poorer quality care for elders at a higher cost to the state.

Secondly, under EW, state benefits cannot pay for the "room and board" component of care. Elders must have enough income of their own to pay for their housing and food. If they do not have sufficient income, then they are too poor to receive care under EW. Of course they can go into a nursing home where Medicaid will pay for the costs of housing and feeding the elders, as well as all other costs of care. Again, many elders are pushed into less desirable care at a higher cost.

Third, elders on EW who live in assisted living or housing with services care settings have significantly fewer protections than those on Medicaid who live in nursing homes.

They are not protected against provider discrimination against elders receiving long-term care benefits. They have no legal protections when a care provider decides to decertify from the Medicaid program. There is no requirement that a community-based provider must accept EW payments from a Medicaid-eligible resident. In all of these ways elders in assisted living or other housing with services fail to receive the legal protections accorded to nursing home residents. Few of the resident protections that apply to nursing homes, who participate in the Medicaid program, apply to assisted living or other community-based care providers who participate in EW.

The problems I identify above are just a few of the starting points for suggestions to revamp public coverage of community-based long-term care. Although many of the reasons behind these distinctions between nursing home care and community-based care are based on historical chance rather than considered policy, there are, of course, now many vested interests in favor of maintaining the status quo. With the approaching “grey tsunami” of elders requiring long-term care, it is past time to take a fresh look at the distinctions that push many elders into nursing homes even when they could be receiving better, more appropriate, and cheaper care in the community.

If you find yourself similarly puzzled, frustrated, and/or enraged at this policy snafu, I recommend that you take a look at a series of well-documented and well-researched policy papers by the National Senior Citizens Law Center on some of these issues. See <http://www.nslc.org/> . Talk to your congress people and senators. Make some noise!

Submitted by Jennifer L. Wright, Chair  
Elder Law Section  
Minnesota Bar Association  
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### **LINK OF THE WEEK**

#### **The Geriatric Mental Health Foundation**

This site is dedicated to raising awareness of psychiatric and mental health disorders affecting the elderly, to promoting healthy aging strategies, and to increasing access to quality mental health care for the elderly. The site features Consumer/Patient information and a robust list of resources for the elderly, their caregivers, and professionals.

The link is available at: <http://www.gmhfonline.org/gmhf/default.asp>

Submitted by Law Student Committee  
William Mitchell College of Law  
Ruthanne Vos, Committee Representative  
[ruthanne.vos@wmitchell.edu](mailto:ruthanne.vos@wmitchell.edu)

## MINNESOTA CASES

*There are no Minnesota Cases to report this week.*

## STATUTES, REGULATIONS, BULLETINS

*There are no Statutes, Regulations, or Bulletins to report this week.*

## UPCOMING EVENTS AND CLE PROGRAMS

### **Social Security Benefits Practice in Federal District Court Social Security and Disability Pre-Section of the Minnesota State Bar Association**

March 3, 2011

Contact Information:

[https://members.statebar.gen.mn.us/eSeries/source/Meetings/cMeetingFunctionDetail.cfm?section=Events&product\\_major=SSDMAR02&functionstartdisplayrow=1](https://members.statebar.gen.mn.us/eSeries/source/Meetings/cMeetingFunctionDetail.cfm?section=Events&product_major=SSDMAR02&functionstartdisplayrow=1)

### **Minnesota State Bar Association**

#### **Medical Assistance & Long Term Care Benefits: Making Do With Less**

March 8, 2011

Contact Information: <http://www.minncle.org/seminardetail.aspx?ID=101791101>

### **Ramsey County Bar Association**

#### **Trusts and Estates Section**

March 10, 2011

Contact Information:

[https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=RCBA&WebCode=EventDetail&evt\\_key=0171df4b-70c8-42cd-a26a-20c57e3389f2](https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=RCBA&WebCode=EventDetail&evt_key=0171df4b-70c8-42cd-a26a-20c57e3389f2)

### **Minnesota State Bar Association**

#### **Probate & Trust Law Section Conference**

June 6 & 7, 2011

Contact Information: <http://www.minncle.org/seminardetail.aspx?ID=100641101>

## ELDER LAW SECTION ACTIVITIES

**MA COMMITTEE MEETING:** The next MA Committee meeting will be at 3:30 p.m. on Tuesday, April 19, 2011. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at [creher@mnelaw.com](mailto:creher@mnelaw.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. Please be reminded that the meeting location is: Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room.

**GOVERNING COUNCIL:** The next meeting of the Elder Law Section Governing Council will be 3:30 p.m. on Friday, April 22, 2011, at Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room. For further information, please contact Jennifer Wright, Chair, at [jlwright1@stthomas.edu](mailto:jlwright1@stthomas.edu).

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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 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://www.mnbar.org/sections/elder-law/index.asp>

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Please send E-Newsletter contributions by 10 p.m. on Sunday of each week to Marjorie Austin at [mj@mjaustinlaw.com](mailto:mj@mjaustinlaw.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](mailto: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/newsletter.asp>.