NEWSLETTER
ELDER LAW

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Changes likely in recovery rules for annuities

By Ruth Simonis

When used under the right circumstances, Medicaid annuities have been an important and vital planning tool for elder law attorneys. Under current Medicaid rules, annuities must be immediate, irrevocable, nonassignable, nontransferable, nonsurrenderable, have no cash value and must pay out in full during the life expectancy of the owner annuitant (actuarially sound). Under current Medicaid estate recovery rules, Senior and Disabled Services (SDSD) cannot recover against the remainder annuity payments after the death of the annuitant/owner. See Health Care Financing Administration (HCFA) Transmittal No. 64, which contains provisions for treatment of annuities. However, this may change.

In this issue..

Financial issues in elder law

Plus...

On January 24, 2000, HCFA sent a letter to the state of California affirming the use of actuarially sound annuities, but stated that recovery by a state of Medicaid expenditures against the surviving beneficiary may be possible. According to HCFA, if a state chooses to use a broader definition of estate than probate, then annuities can be viewed as an "other arrangement" under Medicaid law. HCFA ruled that a state has the option to recover Medicaid expenses for the annuity policyholder from the surviving beneficiary of the annuity.

Oregon has adopted the broader definition of estate. Prior to making any rule or policy changes, Oregon's estate recovery unit is waiting for HCFA to produce a state Medicaid Estate Recovery Manual slated to be published in the Federal Register within a couple months. Rule changes will be implemented based on this manual. An area of concern is that SDSD has indicated that the new rules may be retroactive.

What does this mean? Medicaid expenditures on behalf of the annuity policyholder who is a Medicaid recipient are recoverable from the surviving beneficiary within current limitations, but no recovery can be made so long as there is a surviving spouse or minor or disabled adult child.

For example, a single person uses X dollars to purchase an annuity. The client qualifies for Medicaid because the annuity is counted as income, not as a resource. However, to the extent that there are any remaining payments at her death, lump sum or otherwise, the estate recovery unit will become the primary payee until the Medicaid expenditures made on behalf of the client are repaid in full.

The results are similar with a married couple where the Medicaid recipient receives annuity payments titled solely in his name. At the death of both the Medicaid recipient and the surviving spouse, Medicaid may recover Medicaid expenditures to the extent any funds were payable to a beneficiary upon the death of the Medicaid recipient. On the other hand, if the annuity is purchased in the name of the community spouse, recov-

Continued on page 2

ery against the community spouse's annuity beneficiaries should not be an issue. The estate recovery unit, however, has not yet conceded this point.

At a recent meeting with SDSD staff, Roy Fredericks, head of Oregon's estate recovery unit stated he does not see the recovery of monthly annuity payments as a problem and is eager to implement the policies that will be permitted under the new Medicaid manual.

Ruth Simonis practices law in Washington County. She volunteers legal services to local senior centers and occasionally addresses local community groups on issues germane to the elder law arena. Her prior training and experience as a social work director in long term care facilities have served her well in addressing issues which face aging seniors and their families. Ms. Simonis thanks Cinda Conroyd for her contributions to this article.

The following is from the letter sent January 24, 2000 by the Department of Health and Human Sevices to Stan Rosenstein, Acting Deputy Director of Medical Care Services in California's Department of Health Services

Dear Mr. Rosenstein:

This is in response to Mr. Porter's October 5, 1998 letter and your December 28, 1999 letter requesting guidance from the Health Care Financing Administration (HCFA) on whether the State of California has the authority to recover annuities under Medicaid estate recovery. After careful consideration of this policy, we have determined that the answer is yes. We regret the delay in our response.

Under the Medicaid estate recovery statute, found in Section 1917(b) (1) and (2) of the Social Security Act (the Act), each State has the option of using either the State's own definition of probate estate or using the expanded definition of estate, which is at Section 1917(b)(4)(B). Most States use a probate definition of estate, which applies to the State's population as a whole, and would usually not include annuities. Annuities, like life insurance policies, are considered to be private contracts that pass ownership outside of probate. If a State does not specifically include annuities in its definition of estate, annuities are not a probate asset. Then, any annuities would go directly to the decedent's beneficiaries and would not be subject to Medicaid estate recovery.

The broader definition of estate includes language that will support a State's recovery from annuities. That definition expands "estate" beyond those assets covered by "probate estate" and includes assets conveyed "through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement." Annuities can be viewed as an "other arrangement" under Medicaid law, and can be treated like trusts, life estates, or joint tenancies, without regard to how much of the remainder interest has been "transferred" by ownership to an heir. This is possible so long as the State has adopted the expanded definition of estate.

HCFA will be providing language in the State Medicaid Manual at Section 3810 that will permit recovery from annuities for deaths that occur 90 days past publication of the manual material. California should submit a State Plan Amendment (PA) detailing that annuities will be included in its expanded definition of estate. The SPA can be effective on the first day of the calendar quarter in which the 90th day after publication of the manual section is reached. We would also suggest that California notify the public of its intent to claim against annuities by notice with a State regulation.

California should be cautioned, however, that no estate recovery can be made and, therefore, no annuities can be recovered, so long as there is a surviving spouse or dependent child under the age of 21 or a blind or disabled child of any age. Where a deceased Medicaid beneficiary has left an annuity that provides for income support for a surviving spouse or dependent child, the State may not interfere with that income stream. If there is neither a surviving spouse nor a surviving child who meets the criteria of Section 1917(b)(2) of the Act, the State must seek recovery from the estate. If annuities are part of that estate, and the State is using the expanded definition of estate, as California is, then recovery from annuities would be appropriate.

Sincerely,
Linda Minamoto
Associate Regional Administrator
Division of Medicaid

Elder law attorneys should be alert for signs of financial abuse of elderly

By Holly Robinson

Many elderly persons unwittingly become the victims of financial abuse. Alone, lonely, isolated, trusting, they are highly susceptible to family members, caretakers, or others who show an interest in them, befriend them, and exert overt or subtle pressure to make decisions that financially benefit the manipulators. The victim, even when he or she is aware of what is happening, is often too embarrassed to tell anyone else what is going on.

Financial abuse has long been viewed as a civil rather than criminal matter, because the weapons misused to facilitate most of the crimes are legal documents, including powers of attorney, quit claim deeds, refinance documents, and wills. However, financial abuse is beginning to be viewed for what it really is: criminal theft.

Legal remedies for financial abuse

Allegations of financial exploitation, defined as "the illegal or improper use of another individual's resources for personal profit or gain," may be reported to the local Area Agency on Aging or Senior and Disabled Services office, which will conduct an investigation and offer intervention and protection. Last year 1,192 allegations of financial abuse were reported, and 34% were substantiated.

Investigations may result in criminal prosecution, civil lawsuits, or both, depending on the facts of the case and the resources of the victim and the family. An investigating agency is required to notify law enforcement immediately if there is reason to believe a crime has been committed (OAR 411-020-0050), and potential criminal charges include criminal mistreatment and theft. Avenues for recovery include a specific statute that has provisions to recover minimum or actual damages, plus attorney fees (ORS 124.100 et seq.).

Elder law attorneys can help prevent abuse

Elder law attorneys are in a unique position to take steps to prevent financial abuse, to stop it, and to recover lost money and property. Listen very closely when your client speaks with you—particularly if he or she is single or lives alone. Listen for new names, new friends who may be helping out, family members who have come to visit for a few days and stayed for a few months. If a client is experiencing unanticipated financial problems, ask questions about where the money is going and who has access to the account.

If you are involved in the execution of a power of attorney, a trust, a quit claim deed, or a will, pay special attention to the dynamics of the relationship between the parties when they meet with you. The four main offender groups that financially abuse elderly persons are:

(1) adult children, grandchildren, or other relatives;
(2) professional or hired caretakers;
(3) friends or others in position of trust; and
(4) professional criminals who target the elderly.

When discussing a person who may be named an attorney-in-fact, guardian, or conservator, pursue any reservations you may have about the appropriateness of that appointment.

Be aware that your client may be subject to willful efforts to manipulate her or him. It is important that you recognize when this is occurring and help your client take steps to stop it.

Holly Robinson was until recently the Legal Services Developer for the Senior and Disabled Services Division

Nine tips lawyers can give clients to make the most of retirement savings

By Jonathan A. Levy

Saving for retirement is the bedrock of estate planning and elder law. Without it, there may be no estate to plan, no cushion for old age, and no money to leave to children or to charities. Sensible tax and beneficiary elections, as much as thrift and investment success, help preserve a comfortable nest egg. Lawyers can use their expertise to guide clients through the maze. Here is a checklist of nine tips for clients, each followed by a brief explanation for lawyers.

1 Make sure your account records are accurate.

Employees do not always receive the correct payments from retirement accounts. Mistakes happen. Records fade into the mists of mergers and mass layoffs. However, one can reduce the risk of being shortchanged. Those still working should review their periodic plan statements to confirm they are receiving full credit for plan contributions and hours of work.

Retirees and those about to retire should obtain from the plan administrator a written statement of assumptions used to calculate benefits, such as years of service, pay history, age, and projected Social Security benefits (if those reduce pension amounts). Employees have a right to this information under the Employee Retirement Income Security Act of 1974 (ERISA). See 29 U.S.C. § 1025(a); Roeder v. General Signal Corp., 901 F. Supp. 124 (W.D.N.Y. 1995). The data provided should match annual pay statements and similar records. Employees should complain in writing to the account administrator if there is a discrepancy.

2 Obtain a copy of the terms of your retirement accounts and then read those terms, or find someone to interpret them for you.

ERISA imposes many rules for retirement plans. However, plan sponsors may set their own, stricter rules, Prop. Reg. § 1.401(a)(9)-1, Q&A A-3(c), and many sponsors have done so. Participants need to know the terms of their particular plan to make sound choices—which may include moving the funds to a more flexible IRA if the plan is too restrictive.

3 Understand the different ways to withdraw retirement benefits.

Deciding how to withdraw retirement benefits can be intimidating. Life savings are at stake. However, the main alternatives can be readily explained. Clients may either: (1) withdraw the account balance in a lump sum; (2) withdraw the balance and roll it over to an IRA; (3) withdraw money in installments; or (4) take the money as an annuity for life. Some plans do not offer all of these choices. Other plans permit a blend, such as taking part as an annuity and the rest in periodic installments. Nevertheless, understanding the basics will prepare clients for most possibilities.

A lump-sum withdrawal can make sense if the employee is comfortable managing his or her own investments or hiring and monitoring a money manager, or if the employer's plan has poor investment choices or inflexible beneficiary designations. However, many company retirement plans are well run and reasonably flexible.

If an employee takes a lump sum without rolling it over to an IRA (or other tax-deferred account), he or she will owe income taxes on much, if not all, of the withdrawal. Certain special rules for lump-sum distributions may ease the tax bite, but most employees are better off moving the funds to an IRA for continued tax deferral. The best way to do this is with a "direct rollover" in which the funds are transferred directly by the plan administrator to the IRA.

If the funds remain in the retirement plan or are rolled over, most employees (or their surviving spouses) eventually choose between installment payments and a lifetime annuity. An advantage of installment payments is that if the owner dies before the money is used up, the balance belongs to the owner's beneficiaries. Also, payments may increase with inflation. The disadvantage is that the owner can outlive the money.

In contrast, an annuity usually ends at the employee's death (or perhaps the death of the survivor of the employee and spouse). The annuity issuer pockets any remaining funds. Because the issuer can predict actuarially how often this will happen, it can afford to pay more while recipients are alive. For those who surpass their life expectancies, payments continue. Plan sponsors can give projections to compare these alternatives. A CPA or actuary can also help review the numbers.

Continued on page 5

Withdrawal choices and other retirement-plan elections mentioned in this article are discussed in greater detail in *Estate Planning for Retirement Benefits with Natalie Choate* (OSB CLE 2000); Natalie Choate, *Life and Death Planning for Retirement Benefits* (3d ed. 1999); Louis Mezzullo, *An Estate Planner's Guide to Qualified Retirement Plan Benefits* (2d. ed. 1998).

4 Consider whether your pension should continue if your spouse survives you.

Married employees may have a choice of taking retirement benefits in the form of an annuity that lasts only for the employee's single life, or a joint annuity with smaller monthly payments that continue while either the employee or the spouse is alive. For many couples, it makes sense to elect to continue the pension for the survivor's life. Otherwise, a spouse who outlives the employee could end up destitute. On the other hand, if the spouse has adequate outside resources, or is sickly and unlikely to outlast the employee, then the greater monthly income to the employee favors a single-life annuity.

The spouse may be able to veto an employee's choice of a single-life annuity. The spouse's rights derive from the Retirement Equity Act of 1984 (REA), which amended ERISA. For pension plans and many defined-contribution plans, a surviving spouse is entitled to (1) a pre-retirement survivor's annuity or (2) a joint-and-survivor annuity, depending on whether the employee dies before or after reaching retirement age. The spouse may consent to a waiver of REA benefits, if the plan complies with complex requirements. See IRC §§ 401(a)(11) & 417; Reg. § 1.401(a)-20; Louis Mezzullo, *supra*, 85-100.

There are no REA rights with IRAs. However, the spouse still may be entitled to some portion of the account that was accumulated during the marriage while the couple lived in a community-property state. See Andrew Pharies, "Community Property Aspects of IRAs and Qualified Plans," *Probate & Property*, Sept./Oct. 1999.

5 Ask the right questions when you hire and monitor your money manager.

An employee who takes a lump sum—whether or not rolled over to an IRA—will likely need to hire and monitor money managers. Possibilities include mutual funds, stockbrokers, bank trust departments, registered investment advisors, and financial planners. Although lawyers cannot give investment advice, they should be familiar enough with investment markets to help clients ask the right questions of potential managers. This calls for a working knowledge of stocks and bonds, mutual funds, portfolio diversification, cash-value life insurance, tax-deferred annuities, and how money managers are paid and regulated.

6 Determine if you qualify for a tax break for lump-sum distributions.

If a client takes a taxable lump-sum distribution from a qualified retirement plan (but not an IRA), special rules may reduce the income taxes due. With ten-year averaging, a qualifying lump sum is taxed separately from other income, and likely at much lower effective rates. Capital-gains treatment offers a lower tax rate on the part of the plan balance attributable to pre-1974 employment. See IRS Form 4972 instructions. Both of these rules are available only to individuals born before 1936.

A third special rule, available to departing employees of any age, involves net unrealized appreciation on an employer's stocks that have been contributed to a retirement account. See IRC § 402(e)(4); Reg. § 1.402(a)-1(b). If the stocks are withdrawn in kind, rather than in cash, as part of a lump-sum distribution, the employee owes income taxes only on the shares' value as of the date of contribution to the account, and not on the (likely greater) value on the date of distribution. The remaining tax is due when the stock is later sold, at favorable capital-gain rates. This tax deferral can be invaluable for low-basis shares.

7 Pick the right IRA beneficiary to stretch out tax deferral.

For a married client, the spouse is normally the best person to name as IRA beneficiary. At the owner's death, the spouse can either (1) keep the money in the IRA and withdraw it, even before age 59, without paying the usual 10% early-withdrawal penalty tax; or (2) convert the account to his or her own IRA, and name new designated beneficiaries. If the new beneficiaries are younger, this can slow down the pace of required distributions, perhaps extending tax deferral by decades.

If the IRA beneficiary is not the owner's spouse, the beneficiary cannot name new beneficiaries at the owner's death. However, if the owner timely complied with the "designated beneficiary" rules of

Continued on page 6

Proposed Regulation § 1.401(a)(9)-1, the beneficiary may withdraw the account balance in installments, again with the potential for substantial further tax deferral. If the spouse is already amply provided for, naming children or grandchildren as beneficiaries is often a good choice.

Designating no beneficiary or naming the owner's estate as beneficiary is usually the worst alternative. Depending on the facts, the entire account balance may have to be withdrawn and exposed to income taxes within as little as one year after the owner's death.

Some clients, for estate-planning reasons, wish to name a trust as the retirement plan beneficiary. This brings additional complex rules into play. See Jonathan Levy, "Making Retirement Benefits Payable to Trusts," *OR Estate Planning & Administration Section Newsletter*, June 2000.

8 Don't miss the required beginning date.

The required beginning date (RBD) is a crucial deadline. For most participants the RBD is April 1 of the year after the calendar year in which the participant turns 70. Generally, the RBD is the deadline for retirement plan participants to: (1) start taking minimum required distributions, discussed in the next paragraph; (2) designate a beneficiary, or irrevocably be treated as having no designated beneficiary; and (3) elect whether to "recalculate" their life expectancies for measuring required distributions. Recalculation can have a major impact on tax deferral and the risk of outliving one's retirement benefits. See Natalie Choate, *supra*, at 33-35; Louis Mezzullo, *supra*, at 28.

9 Be sure to withdraw the required minimum distribution each year.

The IRS regulations require that payees of retirement plans, including most IRAs, withdraw a varying percentage of the account balance each year, starting at the required beginning date. Each year's mandatory withdrawal is known as a minimum required distribution (MRD). The account owner is free to take out money faster than the MRD rate. If the actual withdrawal during the year is less than the MRD, the taxpayer owes a 50% excise tax on the shortfall. IRC § 4974(a). Roth IRAs are a major exception, since no distributions are required during the life of the original owner.

Some retirement plans leave it to payees to calculate their MRDs. If so, your clients may need help with the calculation.

Conclusion

Much of the discipline of "retirement planning" involves what lawyers have always done: apply legal and tax rules to clients' individual needs. Familiarity with retirement benefits should be part of the tool kit of those who advise retirees, present and future. This checklist does not attempt to cover every issue, but perhaps it will be a useful starting point.

Jonathan A. Levy practices law in Portland, with a focus on estate planning and elder law. His experience includes five years as the main staff lawyer for U.S. Bank's trust department and stock brokerage. He is a member of the Elder Law and Estate Planning and Administration Sections of the Oregon State Bar, a member of the latter section's executive committee, and a past chair of the Oregon trust bankers' association. Levy graduated from Harvard College and the University of Michigan Law School.

Jonathan Levy's article consists of some highlights from his chapter on "Legal Issues in Retirement Planning and Investing" in the pending OSB publication *Elder Law Handbook*.

Chapter topics include predicting clients' needs and resources; working with IRAs and other retirement plans; an overview of investment strategy; cash-value life insurance and tax-deferred annuities; and legal issues in the selection and monitoring of money managers.

Social Security earnings limit repealed

On April 7, 2000, President Clinton signed into law a bill that removes the Social Security retirement earnings limit. Seniors aged 65 to 69 will no longer lose $1 of Social Security benefits for every $3 they earn above the earnings limit, which is $17,000 per person for the year 2000. Earnings limit for persons age 62 to 64 will remain in effect.

Agency and Professional Relations Subcommittee reports on meeting with SDSD

The Agency and Professional Relations Subcommittee met on April 25 with staff from the Senior and Disabled Services Division (SDSD). The following is from the report on the meeting, which was presented to the executive committee.

Some key points concerning estate recovery

- Within the next few months, the Health Care Financing Administration (HCFA) will publish a state Medicaid manual for estate recovery. The goal is to make estate recovery more uniform nationally.
- Some states with the expanded definition of "estate" will begin estate recovery from annuities. Oregon—which is one of only six or seven states with the OBRA 93 expanded definition of estate—will take direction from the new manual. (See article on Page 1.)
- SDSD will consider arguments contesting the validity of recovering against life estates actuarially valued the moment before death, and holding that the rule which went into effect February 1, 2000 should not be made retroactive to 1995. (The subcommittee will prepare a letter outlining the Elder Law Section's position on this issue.)
- Some states have received approval from HCFA to recover for any aid given to a permanently institutionalized person before age 55.
- Roy Fredericks, Manager of the Estate Administration Unit, stated that SDSD has the authority to withdraw funds from a client's account unilaterally at the time of his or her death. Although banks are not supposed to release funds if the account is held jointly with another person, mistakes sometimes happen. The state will refund to the family any money required for expenses with a higher priority.

Other issues discussed

- Policy Analyst Jeff Miller noted that it was likely Congress will pass rules allowing prescription coverage for the elderly, on a means-related basis that would be determined by the states.
- Miller indicated that the new SSI transfer rule, expected to be effective next October, would affect the transfer of exempt assets for Medicaid eligibility.
- Although there is a trend elsewhere, there is no movement in Oregon to allow for the payment for the establishment or administration of a guardianship from a client's own funds if he or she is on public assistance. There is an exception if an income trust exists, but payment for a guardianship outside of an income trust would require legislative action.
- Miller stated that he will allow a reserve of $50 per month to an income trust trustee and $50 a month for administrative expenses. Sums over that amount must be objectively verified.
- Miller also said that he is in the process of reviewing the average private pay rate for calculating ineligibility based on transfer of assets.
- A new rule will allow payment from an income trust of a community spouse's Medicare and private insurance premiums, if the insurance covers both spouses.

Subcommittee recommendations

- We need to review the proposed rules to determine their effect. Perhaps a research or litigation team should be formed to address those trends which can be contested.
- The new hearings process should be addressed by a speaker at the Elder Law CLE seminar.
- We need a "patient liability" worksheet for in-home care, similar to those used for nursing homes and community-based care.

Elder Law Section Agency and Professional Relations Subcommittee members:
Sam Friedenberg, Chair
Cinda Conroyd
Kristianne Cox
Donna Meyer
Jane Patterson
Ruth Simonis

The Computer and Technology Subcommittee is recruiting members.

If you are interested, contact Greta Gibbs in Portland at 503.525.6659 or by e-mail at greta@ipinc.net

Central Oregon Elderly Legal Assistance Program connects senior citizens & attorneys

By Holly Robinson

"What can I do for you?"
"I just want to know if this is okay..."
"How can I help you?"
"I was gonna ask you about this..."
"What brings you to the clinic today?"
"We need to know what to do."

Four times a year, conversations like these take place between people over sixty years of age from Deschutes, Jefferson, and Crook counties and local lawyers who volunteer their time to staff the law clinics at five senior centers in the area. The service is provided by the Central Oregon Regional Office of Legal Aid Services of Oregon (LASO) through its senior law contract with Central Oregon Council on Aging. LASO recruits private attorneys, who furnish the first half hour of consultation at no charge to the senior. Any legal work that might arise from the meeting is either completed by the attorney pro bono or for a fee, or referred to another attorney.

The Oregon Elderly Legal Assistance Program is funded under Title IIIB of the Older Americans Act, which was initially passed in 1965 and significantly amended in 1973. Congress recognized that older Americans encounter the same legal problems as individuals throughout society. In addition, seniors confront problems specific to their age and circumstances.

The seniors who attend the central Oregon clinics are generally on a fixed income and may be experiencing problems for which they cannot find answers from anyone other than an attorney. They seek help with wills and estate questions, landlord-tenant problems, consumer problems, debt collection issues, real property issues, and family law issues. The seniors served by the program are very gracious and grateful for the advice and assistance they receive from the volunteer attorneys.

Five private attorneys provide this valuable community service. Their reasons for giving of their time and expertise vary as much as their ages and the length of time they have been practicing law. Judge Joe Thalhofer, a former District Court Judge for Deschutes County, enjoys staying active as an emeritus member of the Bar. Judge Thalhofer does not practice law except for providing 40 or more hours of legal services annually to indigent clients referred by an Oregon State Bar certified pro bono program. A local boy and graduate of Prineville High School, Judge Thalhofer shares his legal wisdom and experience, his knowledge of the area, and his own complaints about aging with the clients he serves. Redmond attorney Steve Bryant, and Madras attorneys Don Reeder and Paul Sumner do not distinguish between pro bono work and community service. For them, providing pro bono services stems from being members of a small community that comes together regularly to support its own. Bend attorney Lisa Bertalan shares her passion for elder law, a cornerstone of her private practice, with her senior-center clients.

Through Oregon Elderly Legal Assistance Programs like this, seniors are given a unique opportunity to meet with an attorney at no charge to help them determine the seriousness of their problem, whether a legal remedy exists, and how to pursue it. These attorneys are a key component in the network of state agencies, area agencies on aging, and organizations that provide direct services to seniors and advocacy on their behalf.

The strength and beauty of the Central Oregon Legal Assistance Program lie in the individuals who make the program so successful:

- the staff at LASO and at the senior centers who efficiently coordinate the quarterly clinics
- the lawyers who personally welcome clients, make them feel valued, return their trust and respect, and answer their questions patiently and thoughtfully
- the seniors themselves, who are hesitant to impose, who only want to ask one question, who are experiencing problems and don't know where else to turn or who else to ask for help, and who are so appreciative of the advice and assistance they receive.

If you would like to volunteer for a senior law clinic in central Oregon, call Legal Aid Services of Oregon in Bend at 541.385.6950. If you live in another part of the state, there are other volunteer opportunities for low-income clients who can use your help. For more information about the Emeritus program or about volunteer opportunities, please contact Barbara Herget at the Oregon State Bar, 800.452.8260, extension 323.

Volunteers needed to provide assistance to seniors in Clatsop and Tillamook counties

Here is your chance to provide some much-needed help to the senior citizens of two Oregon counties. The Hillsboro Regional Office of Legal Aid Services of Oregon (LASO) recently received a grant to establish Legal Advice for North Coast Elders (LANCE), and needs volunteers to help with the project.

LANCE provides legal advice, information, and brief services to seniors 60 years of age and older. Staff at North Coast Senior Services (NCSS) answer calls coming into a dedicated advice line (1-877-95LANCE). They obtain information about the caller's legal needs, describe the programs and services they offer to north coast seniors, and explain that the caller's request will be conveyed to LASO, which will return the call.

LASO provides advice in civil legal matters, including Social Security, SSI, veterans' benefits, consumer rights, Medicare, Medicaid, tenants' rights, nursing home residents' rights, protection against guardianship and loss of independence, and protection from family and caretaker violence. Volunteer attorneys are needed both to provide telephone advice and to accept case referrals.

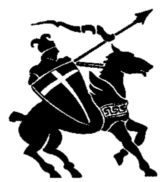
Elderly residents of coastal counties have unmet legal needs

The need for legal assistance for seniors in Clatsop and Tillamook counties is particularly great. An exceptionally high percentage of the population is over the age of 60. The area is extremely rural, with 56,800 people spread across 2,200 square miles. Between eight and ten percent of the households in the two-county region have incomes below the poverty level. The Legal Aid Services of Oregon office that serves the north coast area is in Hillsboro, approximately 100 miles from the population centers of the area, and across a mountain range. Travel can be problematic, especially in winter.

The Senior Needs Assessment conducted by North Coast Senior Services in 1999 showed that eleven percent of the region's elders have unmet legal needs. According to the assessment data, the average age of those needing some legal assistance is 71 years, and seventy-two percent are female. The majority of legal issues identified by the elders within the north coast region lend themselves to the telephone advice format.

The *Study of Access to Justice in Oregon* (M. Dale, March 2000) found that there is a great need for civil legal services for low and moderate means individuals which is not adequately met by the existing legal services delivery network. One of the special populations surveyed was vulnerable seniors, who reported a very high need for legal advice in the areas of wills and estates and elder abuse. Other areas with high legal needs included landlord-tenant issues, consumer issues, guardianships, and conservatorships.

Involvement of Elder Law Section is crucial



LANCE was established under the Partnerships in Law and Aging Program, cosponsored by the ABA Commission on Legal Problems of the Elderly. The Elder Law Section is a proud collaborator on this project, which will significantly improve access to the legal system for older persons who reside in the rural communities of the north Oregon coast.

Section members are strongly encouraged to volunteer to provide telephone advice in specific subject areas, or to be available to accept case referrals on a pro bono, reduced fee, or regular fee basis. Before referring a person to a volunteer attorney's office, LASO will contact him or her to discuss availability to provide either telephone advice or to consider a case referral.

Attorneys may express an interest in providing telephone advice or being referred cases in a specific subject area including: estate planning, probate, personal injury, medical malpractice, workers' compensation, family law, guardianship and conservatorship, insurance, consumer law, discrimination, landlord tenant, or public benefits.

The success of LANCE is critically important because it will provide a model for other rural Oregon communities who seek to increase seniors' access to legal advice and representation. We all have a role to play in making access to justice a reality for all of Oregon's seniors. The Elder Law Section has more than 400 members. If every section member offered to return one LANCE call during the next year and help a senior with a legal question, we would go a long way toward meeting the legal needs of Oregon's older people and making access to justice a reality. Please join us!

For more information, or to volunteer, please call Leslea Smith, Regional Director, LASO, Hillsboro, at (503) 648.7163.

Resources for elder law attorneys

Events

The Criminal Neglect of Vulnerable Adults

Fifth annual multidisciplinary conference
Sponsored by Oregon Department of Human Services Senior and Disabled Services
See Page 3 for details.

Senior Expo

Friday, September 8 & Saturday, September 9
Oregon Convention Center in Portland

☛ **Volunteers are needed to help staff the OSB booth. Contact Jennifer Maldonado at OSB: 503.620.0222, Ext. 377**

Problem Solving in Elder Law

OSB Elder Law Section CLE seminar
Friday, September 22, 2000
8:00 a.m–4:00 p.m.
Oregon Convention Center in Portland

On the Internet

Oregon Administrative Rules online

http://arcweb.sos.state.or.us

Oregon State Bar

http://www.osbar.org

Elder Law Section Discussion List

To subscribe: listserv@facweb.law.stetson.edu
Leave the subject line blank, and do not include a signature block. The body of the message should be:
Subscribe orelder your first name your last name
To send messages: orelder@facweb.law.stetson.edu

Some guidelines for the discussion list:

- If you simply use your "reply" function in response to a message sent to you, your reply will go to all the members of the discussion list. You may want to respond only to the person who sent the original message. In that case, be sure to enter his or her e-mail address.
- If you are posting a question or message to the list, be sure to include your e-mail address in your post. If you want people to respond privately to you, say so.
- Avoid any implication of antitrust. Avoid discussions of pricing or fees.
- When quoting from other sources, include attribution.

In print

By Shirley Bass

Author! Author!

Our own Cynthia Barrett, always a prolific writer, has been busy again. Cindy has co-authored *Representing the Elderly or Disabled Client*, a loose-leaf tome of documents and checklists, together with commentary and diskettes. Of great value to the practitioner are suggested forms for everyday use—from client interview forms to those used to customize wills for Medicaid eligibility to intra-family transfers and much more. The manual is designed to accompany *Advising the Elderly or Disabled Client* by Professor Lawrence Frolik and Melissa Brown. Cindy's co-author is Thomas D. Begley, Jr. Both authors are Fellows of the National Academy of Elder Law Attorneys. The manual, a valuable addition to the elder law attorney's library, was published this year by Warren, Gorham & Lamont of RIA. It can be ordered for $195 by calling 1-800-431-9025. The book will be updated twice a year.

Not one to rest on her laurels, Ms. Barrett has also authored an article entitled "Disclaimer and Elective Share in the Medicaid Context" in the Spring, 2000 (Volume 1, Number 4) issue of *Elder's Advisor*, published by Panel Publishers (1-800-638-8437). Noting that both disclaimers and the failure to claim an elective share could trigger a period of Medicaid disqualification, Cindy has attacked these thorny problems with a thorough article complete with forms and endnotes.

Other articles of interest to practitioners are found in recent issues of *Trusts and Estates*. The March, 2000 (Volume 139, No. 3) issue features a special section on elder care, and the April, 2000 (Volume 139, No. 4) issue includes an article entitled "Communicating More Effectively with Older Clients."

Elder Law Section Executive Committee business meetings

Saturday, July 15, 2000 in Bend

Friday, October 20, 2000
OSB offices, Portland

Important elder law numbers

Supplemental Security Income (SSI) Benefit Standards	Eligible individual	$512/month*
	Eligible couple	$769/month*
Medicaid (Oregon)	Asset limit for Medicaid recipient	$2,000**
	Burial account limit	$1,500**
	Personal needs allowance in nursing home	$30/month**
	Monthly maintenance standard for long-term care in community Room and board $433.70* Personal needs allowance $80.00*	$513.70*
	Long term care income cap	$1,536/month*
	Community spouse minimum resource standard	$16,824*
	Community spouse maximum resource standard	$84,120*
	Community spouse minimum monthly allowance standard	$1,407/month***
	Excess shelter allowance	Amount above $422/month***
	Food stamp utility allowance used to figure excess shelter allowance	$216/month****
	Average private pay rate for calculating ineligibility based on transfer of assets	$3,320/month*****
Medicare	Hospital deductible per illness spell	$776*
	Hospital deductible for days 61-90	$194/day*
	Hospital deductible for days 91-150	$388/day*
	Skilled nursing facility co-insurance for days 21-100	$97/day *
	Part B premium	$45.50/month*
	Part B deductible	$100/year*
	Part B co-insurance	20% of Medicare approved charge
	Balance billing	15% of Medicare approved charge

* These numbers may change annually on January 1.
** These numbers have not changed in a million years, more or less.
*** These numbers may change annually on April 1.
**** This number may change annually on October 1.
***** This number is supposed to change annually, but doesn't.

Save the date

Oregon State Bar
Elder Law Section
CLE Subcommittee
presents

Problem Solving in Elder Law

Friday, September 22, 2000

8:00 a.m. – 4:00 p.m.

Oregon Convention Center
Portland

Newsletter Board

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar's Elder Law Section, Richard Pagnano, Chair.

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