Maximum Medicaid Transfers:
from Classic Elder Law Cuisine

by Natalie J. Kaplan, Esq.

Recent computational jitters on the NAELA Listserv disclose the need to re-publish an early elder law discovery which provided for easy computing of optimal Medicaid transfers.

In 1990, Chef Gregory Wilcox, CELA presented the elder law bar with his innovative and witty “Half-A-Loaf Recipe.” Many will be surprised to learn that, the Wilcox Recipe did not provide a procedure for computing savings by hacking assets in half, tinkering endlessly to transfer some, while leaving enough behind for the penalty period created by the transfer. Before the Recipe, we were all hacking and tinkering. That’s pre-historic.

But a subsequent mutation of his coup, into a so-called rule of halves, has mislead lawyers and judges all over the country and deprived them of modern advances. Forget the “rule” of halves. There never was one.

Classic Cuisine

The Half-a-Loaf Recipe showed that, under some conditions, half of all assets could be saved for transfer, even with one proverbial foot in the nursing home door. It listed the following three necessary ingredients and the formula that saved the most dough:

Total assets (“T”);

Average monthly regional nursing home rate (“A”); and,

Private monthly rate at the patient’s nursing home (“P”).

The Recipe yielded optimal transferrable savings (“S”) in dollars by: a) multiplying the average monthly regional nursing home rate by the total assets, then, b) dividing that product by the sum of the average regional nursing home rate and the private monthly

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As many of you may know, the NAELA Board of Directors meets in person three times a year and, as necessary, throughout the year via conference call. Traditionally, the first board meeting of each President’s term takes place during the board retreat in July. The retreat is an excellent way to start the year since it gives us the opportunity to orient the new board members, review Academy policies and procedures, and set priorities. As President, I oversaw the weekend’s activities and must tell you that you, the NAELA members, have elected an outstanding Board for 2002-2003. We welcomed the following new board members at the retreat: Bill Brisk, Ed Boyer, Craig Gordon, Morris Klein, and Lauchlin Waldoch. The weekend focused on integrating our board, developing a strong working relationship and handling the work of the Academy. We were joined by Past Presidents Dan Fish and Clifton Kruse who added a wealth of information, history and experience to our discussions.

Several key decisions were made at the board meeting:

- At the request of the NAELA Technology and Program Committees, the board approved $15,000 to continue upgrades to the NAELA website that will allow members to register online for multiple programs at the same time.
- At the request of the NAELA Publications Committee, the board approved soliciting requests for proposals for NAELA to purchase an e-bulletin information service to keep our members abreast of current issues, case decisions, and trends in elder law.
- At the request of the NAELA State Waiver Task Force, the board approved a request for $10,000 to continue the task force’s efforts in response to the proposed Medicaid waiver sought by the state of Connecticut. In furtherance of the board’s actions, NAELA recently retained the services of Hogan & Hartson LLP in Washington, DC to assist us in connection with

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President’s Message
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the Connecticut waiver situation. Our task force has also noted that several states are considering requests for waivers and NAELA needs to be prepared to deal with these issues as they arise.

- At the request of the NAELA Diversity Task Force, the board approved the continuance of the Internship Program for 2003.

- The board also approved the Wingspan recommendations with comments submitted by the NAELA Public Policy Committee.

- The board authorized the NAELA Affinity Task Force to seek proposals for affinity programs in the following areas: long-term care insurance, office supplies and equipment, software, and credit card programs.

- The Board directed the Chapters Committee to distribute a request for proposal to all chapters for the remaining chapter grant.

- The board directed the NAELA Program Committee to offer an advanced pre-session at NAELA symposia or institutes to meet the needs of more advanced practitioners. I am pleased to announce that NAELA’s first advanced pre-session program will be offered on May 14, 2003 in conjunction with the symposium in Miami, FL. The advanced program will take place one day prior to the beginning of the symposium. The format of this program will be different from other NAELA substantive programs. We will have several round-table discussions facilitated by NAELA members who are recognized as leaders in their field. The topics will include practice management, practice development, marketing, estate planning, supplemental needs trusts, serving as fiduciary, elder law litigation, long-term care insurance, Medicaid, Medicare, guardianships, nursing home issues, among others. Becky Morgan is the chair of this program and at press time the following people have agreed to serve as facilitators: Allan Bogutz, Tom Begley, Roger Bernstein, Frank Johns, Harry Margolis, Stuart Morris, Rene Reixach, Charlie Robinson, Vincent Russo, and Steve Silverberg. Stay tuned for more details. This is a program that advanced practitioners will not want to miss.

The retreat portion focused on two main issues:

1. A study of NAELA’s leadership ladders and policies including:
   A. Nominations for board members and officers – A careful look at the procedures used by the nominating committee revealed that they seek the most qualified candidates to represent every aspect of the NAELA membership. The committee evaluates the strengths and weaknesses of the existing board, seeks candidates who are well rounded in elder law and tries to mirror the demographics of the membership.
   B. Selections of Fellows – It was noted that being selected as a Fellow of the Academy is awarded to members who have reached a specified pinnacle in their careers on both the local and national levels and have demonstrated behaviors to be emulated by others.

   The board agreed that the policy of offering a flexible number of awards each year, as driven by the number of qualified applicants, is still valid. The NAELA Fellows Committee was directed to study the criteria for selection and recommend changes, if any, to the Board in November.

2. NAELA’s relationship to NAELA Chapters.

   A full history of the development of NAELA chapters was distributed along with a list of demographics and needs of each chapter. It was agreed that NAELA chapters are a very valuable component of the Academy and that the board of directors would like to be more responsive to the needs of the chapters and their members. Growth (or lack of growth) has become a major issue with some chapters and the chapters committee was directed to develop alternatives for assisting our chapters in an equitable way in their efforts to serve their members.

   The board directed the NAELA Public Policy Committee to seek comments submitted by the Wingspan recommendations with emphasis on two main areas: leadership and demographics.

   During my term, I look forward to hearing your thoughts and comments. Please don’t hesitate to call me at (212) 490-2020 to discuss issues of importance to you.
NAELA News • September 2002

Practice Development
Practice Management
SIG Corner

By David Dorfman, Esq.

Getting Things Done - The Art of Stress-Free Productivity, by David Allen was recommended on the NAELA listserv a short time ago. The timing of the recommendation could not have been better. I was in the midst of establishing the new “Book Exchange” program for the Practice Development/Practice Management Special Interest Group at the time. Since the “Book Exchange,” naturally requires books and the recommendation came on the listserv, I double clicked and the book was on its way.

Now that I’ve finished with it (even though the author suggests re-reading the book again in a few months), I’ll bring my copy to the NAELA Institute in Albuquerque, NM for the “Book Exchange.” However, since the book exchange will only provide one NAELA member with the book in New Mexico and it will probably be several months until it is passed to the next person a review of some of the key points may be useful at this time.

Business books of all sorts are constructive to the elder law attorney. We as elder law attorneys, find ourselves as CEOs of small businesses engaged in the practice of law without having had the advantage of going to business school. Getting Things Done - The Art of Stress-Free Productivity, is particularly useful in that its focus is productivity and its message tailored to the modern business setting.

Even with my unabashed enthusiasm for business books, Woody Allen would be quick to point out that the author must be from California. Examples of to do lists and goals include hot tub issues, not the most pressing concerns in Manhattan, but perhaps in California? Interestingly, it turns out David Allen really is from California.

David Allen’s theories can be useful when brought down to earth or the east coast. He starts with the premise that we have too much to do and that this causes stress. With less stress we can often be more productive in, “Getting Things Done.” To do this he advocates a mental approach grounded in martial arts training. He tells us that we must maintain a “…mind like water.” Confusing as it may sound, the idea is that we operate in constantly changing circumstance and must be ready to adjust and adjust an endless number of times at a moment’s notice. This system rotates around defining intended outcomes, determining the next action required, backed up by a very strong organized follow up system.

As we have all learned, tracking the handoff is one of the more difficult challenges. As an office grows in terms of staff and responsibilities and more delegation is required, effective follow up must necessarily replace the “do it yourself” attitude with which we all grew up. The next understood challenge is what to do when the ball is in someone else’s court. As attorneys we are constantly waiting. Getting Things Done promises “stress-free” production. Not stressing out when there’s nothing to do but wait may be where the mind like water comes in to play.

As with the works of Michael Gerber, David Allen’s book in part is an advertisement for his consulting business. However, the lessons taught are valuable and useful. His consulting services presumably follow the suggestions of the book. In keeping with modern management training Mr. Allen advocates using a business coach. Just knowing what to do is not enough. Lawyers need encouragement and the margins of the text are filled with utilitarian quotations. As we learned at the 2000 NAELA Symposium, coaching does produce enormous changes in productivity and satisfaction in an elder law office.

The author candidly states, “…people aren’t any smarter,” after they work with him or read the book, than they were before - “…they just direct and utilize their intelligence more productively.” He teaches “…common sense, not commonly practiced.” Lawyers aren’t smarter for participating, just more productive and that’s enough for me.

As a student of Peter Drucker, the secrets to getting things done are in the processes. Process does not mean “…spending time on.” It is the method of Stress-Free Productivity

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Guardianship/Capacity Special Interest Group Corner

Restoration

By K.T. Whitehead, Esq.

Sam is who we fondly call a “high functioning” ward—he is someone who is extremely articulate but who has no underlying judgment or memory skills. In a general conversation, he is quite convincing because of his strong verbal skills. However, when one looks behind the facts related by Sam or into the values he expresses, it becomes immediately apparent that there is something wrong. Sam’s incapacity does not prevent him from telephoning and requesting assistance. The assistance he has requested includes fighting the guardianship, which he believes was wrongfully created by his “crazy” daughter. Sam, because he was “high functioning,” was able to convince an attorney that they should help him be restored. While the restoration code in general requires that there be medical evidence for restoration, there is no prerequisite that medical evidence be filed with the application for restoration. The trend in guardianships, rightly, has been to push for autonomy of the ward and limited guardianships (i.e., allowing the ward to maintain as much autonomy and independence as possible.) The process of restoration and limitation is one that accommodates such autonomy. If someone is placed under guardianship because of a severe stroke, and after a period of rehabilitation has regained a portion of his or her capacity, a restoration or a proceeding to limit the guardianship might be appropriate.

Texas law, changed in 1999, provides two methods for restoring a ward or limiting a guardianship. First, an incapacitated person has the right to hire an attorney to assist them with restoration or limiting a guardianship. Texas Probate Code 694A. Second, the Court itself may initiate the restoration or limitation process by appointing a Guardian Ad Litem who first obtains medical records and then proceeds only if medically warranted.

When limiting guardianships or (continued on page 7)

Practice Development Practice Management SIG Corner

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or system that will be used to accomplish the task. Mr. Allen has essentially updated Drucker’s seminal work from the 1950’s, The Effective Executive and its lesson that every item should cross the executive’s desk only once. Mr. Allen is a fan of the organizational staples—outlines and to do lists.

Allen suggests that you do not use supporting materials as a reminder. Files shouldn’t sit on your desk to remind you to do the work. Files should be in the cabinet and the list of what files to work on should be on the desk. Files are no longer on the cutting edge of organizational technology. To bring this point home the author notes that a “…decide not to decide” system will reduce stress and increase productivity.

We are of course reminded about how crisis planning differs from organizational planning. Putting out the fires rather than flowing through a system. Throwing people and money into a crisis will not develop a system that will provide crisis avoidance in the future. Elder law attorneys advise clients every day about the importance of planning and the cost of failing to plan. Yet, many of our offices run day to day on a reactive model. We respond to the immediate call, the current crisis rather than a carefully laid out to do list. Finally, the author warns, “Bright people have the capability of freaking out faster and more dramatically than anyone else.”

The author suggests that we should be thinking “about” things rather than thinking “of” things. In this way our thought process can be used to add value rather than just to remind us about what needs to be done.

The greatest epiphany comes with the author’s reminder that unless care is taken to recognize the importance of a systematic approach the “…most verbally aggressive will run the show”. Triage will be required to distinguish which “good ideas” should be perused. Organization, not interruption, is the key to success.

The author asks, “Why do we need business plans?” His answer is that we love to win. Winning is motivational. You must have success criteria to know that you’re winning. It’s how we keep score.

Improvement requires innovation and motivation. One important suggestion is not to stifle opportunities to get things done. The advice concerns being open to new ideas. Don’t shut off critical thinking. Don’t judge, challenge, evaluate or criticize. Consider new ways of doing things.

In conclusion, business books such at David Allen’s Getting Things Done are helpful and full of valuable information and techniques for the elder law attorney. Please, bring some books to New Mexico and we’ll exchange them.
potentially restoring the ward, in the case of a “high functioning” ward like Sam, can have immense emotional, economic and judicial costs. First, most “high functioning” wards, have gone through some sort of contested proceeding prior to the inception of the guardianship. One of the major issues when tailoring a limited guardianship for a high functioning ward is determining what areas of their lives they are still capable of controlling and managing. Oftentimes, the proposed ward lacks the insight to understand his own limitations. Thus, the costs of the expert witnesses, judicial time, and attorney’s fees may skyrocket while limitations are explored. In Sam’s case, there was a three-day trial with doctors, accountants and case managers testifying. It involved many complexities, including family members’ attempts to kidnap the ward and take him out of state. The final cost was over $37,000.00.

The guardian and the ward are emotionally drained from having fought the battle over the guardianship. The ward is usually extremely angry with the guardian and the judicial system as they perceive they have lost. Sam was barely speaking to his guardian daughter.

The restoration process, when initiated by the ward or the Court, often will duplicate the costs of the initial guardianship.

The process is fraught with problems. In Texas there are at least five players: the guardian and his or her attorney; the ward and the attorney which he or she hires; and the mandated Attorney Ad Litem who must follow, to the best of her ability, the ward’s desires. Additionally, there may be a Guardian Ad Litem appointed to review the ward’s best interests. It is unclear if the Texas Constitution guarantees a trial by jury for this procedure.

After six months under the guardianship, Sam had convinced an attorney to take his case and try to have him restored. While there was no medical evidence and ultimately no change in the findings of the need for a full guardianship, the ward, through his attorney, was able to change his living accommodations. The cost for this change stands at well over $50,000.

As he was leaving his old residence for his new, one of his attendants asked where he was going. Sam looked at his daughter and said “I don’t know, where am I going?”

What this case brought forward is the delicate balance between maintaining a ward’s autonomy, and guarding against third party abuse of a ward whose ability is limited. Our legal process has exempted attorneys from the contract provisions that would bar other third parties. Sam, in this case, could not go out and contract to purchase a car but he could go out and contract with an attorney for legal services.

Guardianships are radical legal actions. They require a delicate balance of protecting an individual’s rights, while seeking protection for the individual when they lack the ability to appropriately exercise their rights. As Elder Law attorneys, we need to examine the issue of protecting autonomy and limiting guardianships while carefully balancing the costs to relationships, costs to estates of the proposed ward, and costs to their family. Our guardianship laws must be examined and revised to accommodate a fair process when restoring wards or limiting guardianships. It is time to open a dialogue in NAELA to further develop the restoration and limiting process in guardianships.

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I love practicing law. Even more so, I love being an elder law attorney. My friends, peers, and relatives constantly ask me how I like my job. We all know that when you’re doing what you love to do, it’s not really a “job.” I love the skills that are required to represent our clients. I enjoy the process of mastering a very challenging area of the law. But most of all, I appreciate the opportunity to make a crucial difference in the lives of my clients. Although elder law is mostly associated with the needs of the elderly and disabled and their families, we are often called upon to assist relatively younger clients with similar needs. The case of Mr. and Mrs. Davidow (changed names) is a perfect example.

I first met with Mrs. Davidow two years ago, when she was almost emotionally spent. You could see it in her face—she appeared much older than her 58 years. Her husband had been diagnosed with Lyme’s Disease. He was well beyond the early stages. Mr. Davidow had become totally dependent on his care giver, and even his entire family, as well as the authority necessary to meet those health care decisions. She has since said that just creating that relatively simple estate plan allowed her to sleep better than she had in months. Unfortunately, his diagnosis of Lyme’s Disease came extremely late and his overall capacity was deteriorating rapidly. Only with the near heroic efforts of Mrs. Davidow was the determination ultimately made. She would call, write, and drop in on physicians constantly. On occasion, she was forced to ambush health care professionals to give her husband’s case the time and attention that it deserved. Having seen all she endured, I know that if I were in the same situation, I would want Mrs. Davidow on my side. Her experience, although frustrating and painful, could become a valuable resource for other families.

Mrs. Davidow could not ask the questions fast enough. How would she be able to care for her husband and maintain her own job as a high school teacher? If she couldn’t provide the actual care and assistance, who would? How could she possibly afford the care her husband required? Did she even have the authority to make financial and/or medical decisions for her husband? And, maybe even most importantly, how could she hold it all together without losing her own sanity? It became clear that it would be counterproductive to get it all done at once. Taking the situation apart and planning step by step was the only way to achieve her goals and prevent a breakdown.

We began with Mr. and Mrs. Davidow’s life and estate planning. Mrs. Davidow chose to create a revocable trust, with a pour over Will, to pass her estate in the event she predeceased her husband. She also created a durable power of attorney, appointing her two sons to make financial and medical decisions for her husband. She also created a durable care giver, and even his entire family, as well as the authority necessary to meet those health care decisions. She has since said that just creating that relatively simple estate plan allowed her to sleep better than she had in months.

With her plan in place, the next step was to ensure that Mr. Davidow’s needs could be met, and provide his wife with the authority necessary to meet those

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needs. Representing Mrs. Davidow, we commenced a guardianship proceeding to have her appointed as guardian for Mr. Davidow with the authority to oversee his personal needs and property management. We also requested that as his appointed guardian, Mrs. Davidow be authorized to establish a supplemental needs trust wherein her husband’s income could be placed and used for his benefit instead of becoming part of the spenddown for home care benefits. This approach was appropriate and necessary since Mr. Davidow was under 65. At the time, in my home state of New York, this request was considered cutting-edge planning. I still feel a great sense of pride in having accomplished this for my clients. In fact, as I recall this success, I’m reminded of why practicing this area of law is so gratifying: it allows us as advocates to truly make law and not just implement existing law. Many of our cases have become the precedent in our state, and that’s especially fulfilling.

As Mr. Davidow continued to deteriorate, it became clear that his needs could no longer be met at home. He would need a nursing home. At this point, we turned to Barbara Wolford, our director of elder care services. Barbara is a licensed practical nurse with a broad range of experience in assisting the elderly and their families. She began her career in a nursing home as an Licensed Practical Nurse, and then became an admissions director. She is fully familiar with applicable guidelines and regulations encompassing the nursing home admission process. Barbara also is thoroughly familiar with resident’s rights and is aware of a nursing home’s responsibility to the residents and knows when the facility has violated those rights. Barbara Wolford is our director of elder care services. And she was absolutely invaluable in assisting Mr. and Mrs. Davidow with their nursing home admission needs.

Barbara was immediately able to tap into a network of colleagues and services in order to assist the Davidow family expeditiously and efficiently. She was quickly able to identify the appropriate facility. That was the easy part. What is remarkable is her success in having Mr. Davidow actually placed. As we all know, placing a male is difficult enough—but one who is belligerent, and even violent, is nearly impossible. Barbara made it happen.

With her assets protected, government benefits obtained, and appropriate care delivered, one would think that our work was done—not even close. We’re in constant communication with Mrs. Davidow, monitoring her husband’s needs and changes in her life. She participates in our firm’s support groups, and we continue to have periodic meetings to stay in touch. I think this is what elder law is really all about. It can’t just be about drafting a trust or filing a Medicaid application. That may be a part of it. But it’s really about playing an important and ongoing role in the lives of our clients. These are the things that make being an elder law attorney so gratifying.

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NAELA Group Room Rate
$138.00 plus tax - Single/Double Occupancy.

To reserve your room at the group rate, just call the hotel directly at (505) 842-1234 and be sure to mention that you are with the National Academy of Elder Law Attorneys. Room reservations must be made by October 11, 2002. Reservation requests received after this date will be accepted on a space and rate availability basis.

For more information, check out our website at www.naela.org or contact Jenifer Mowery at (520) 881-4005, ext. 114 or by e-mail at jmowery@naela.com.
Maximum Medicaid Transfers

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nursing home rate. It’s a lot of words for an easy equation:

\[ S = \frac{A \times T}{A + P} \]

The six, nine or twelve steps necessary with the “rule”—the hack-and-tinker method—is entirely replaced by the Recipe.4

A Microwave Rendering

Now, in an era of faster food, we have hit upon a microwavable Half-Loaf. It uses the same procedure, but without the oversized numbers generated by including “T.” The result is not the saving in dollars, but instead the saving as a percentage of total assets. So we return to the Classic Recipe, but leave out the T.

Then look at what’s left, and laugh at the simplicity!

\[ S = \frac{A}{A + P} \]

In English, it says:

To determine the percentage of savings:

Divide the average monthly regional nursing home rate by the sum of the average rate and the private rate.

Notice that with this equation, every client with the same private rate will benefit from the same percent of savings. An additional ingredient described below, will enhance even these fine results, but first, get a look at the performance.

Cooking with The Recipe

Watch it function with any numbers you choose. If average rate and private rate are equal (A=P), that’s when the Loaf splits exactly in half. Take a private nursing home rate (P) of $7,000/month in a region where $7,000/month is the average (A) (leaving out all zeros hereafter for ease on the eyes) and, voila:

\[ S = \frac{A}{A + P} = \frac{7}{7 + 7} = .5 \]

The perfect Half-Loaf.

Then, using the same $7,000 average cost, with a private rate of twice that amount (P=$14,000), the saving declines to one-third:

\[ S = \frac{A}{A + P} = \frac{7}{7 + 14} = .25 \]

And, with the same $7,000 average cost, and an unlikely private rate of half that amount (P=$3,500), two-thirds can be saved:

\[ S = \frac{A}{A + P} = \frac{7}{7 + 3.5} = .666 \]

Although these sample institutional rates demonstrate the relationship between rate differentials and savings, they are not our typical figures. To see how a real client will save, we use a commonplace (New York) nursing home rate of $8,000/month

\[ S = \frac{A}{A + P} = \frac{7}{7 + 8} = .4666 \]

Using this percentage with total assets of $100,000, we find that $46,666 can be saved (100,000 x .4666) and $53,334 (100,000 - 46,666) must be spent. If we consider total assets of $250,000, we find that $116,665 can be saved (250,000 x .4666) and $133,335 (250,000 - 116,665) must be spent.

The Higher Half-Loaf

A few months after the Wilcox revelation, a further valuable ingredient was identified.4 The fourth ingredient, adding height to the loaf is the patient’s monthly fixed income (“I”) — usually Social Security benefits.

Every month, the new income increases the pot of assets available for use during a penalty period, and gives an opportunity for additional saving of principal. By subtracting the monthly income from the sum of average and private rates, we lower the equation’s denominator and increase the saving.

\[ S = \frac{A}{A + P - I} \]

See how it works with the above $8,000 private rate and a hypothetical $1,000 monthly income. Deducting $1,000, effectively reduces the private rate to $7,000, and look at what we get:

\[ S = \frac{A}{A + P - I} = \frac{7}{7 + 8 - 1} = .5 \]

Even without equal average and private rates described above, where A=P, here’s another way half can be saved.

Applying the $1,000 monthly income to the equation with total assets of $100,000, we get a saving of $50,000, instead of the $46,666, previously computed—an increase in saving of over $3,000. The greater the monthly income available to deduct, the greater the saving.

Hidden Variables

Those who are thinking closely about this issue may realize that additional variables infuse the final financial outcome. These other variables can’t reasonably be incorporated in advance, but, the Recipe produces a conservative result, because it addresses a worst case scenario:

1. It assumes an immediate need for nursing home Medicaid and, therefore, no time in which the penalty period for transfers could decrease and savings increase;

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2. It assumes no Medicare coverage, although Medicare could delay the need for Medicaid for as long as 100 days, allowing time in which the penalty period could decrease and savings increase;

3. It excludes future annual increases in average monthly regional rates (A) which serve to decrease the penalty period;

4. It excludes annual increases in Social Security benefits; and,

5. It excludes investment income, which enlarges total assets.

On the other side of the equation, it also omits annual increases in private nursing home rates. Admittedly, more lurks below the surface than the few “ingredients” we use. Notwithstanding the interplay of these variables, however, the Recipe is a fast, reliable resource for computing safe transfers for Medicaid planning. The trick then is in the retrieval.

Storage and Retrieval of the Recipe

When all is said and done, where is the best place to store the Recipe for use when needed? Until the procedure becomes reflexive, one solution is to put it onto the front of a Medicaid planning intake sheet. In New York City, the form would read:

\[ S = \frac{7,984}{7,984 + P} \ - \ I \]

No one will need the reminder for long. Soon a narrow range of savings rates will become apparent for most client incomes and local institution rates. Within little time multiplying a client’s total assets by your typical rate of saving will come close to the optimal savings. It gets checked with 20 seconds of arithmetic.

ENDNOTES


2. The simplified equation was extrapolated by the author from the original Recipe.

3. The average monthly regional rate (“A”) is a figure determined by each state, as required by 42 USC §1396p(c)(1)(E)(ii)(II). It is used to compute the Medicaid transfer penalty period (i.e., months of nursing home Medicaid ineligibility) by dividing it into the amount of an uncompensated transfer.

4. “Hack-and-tinker,” the method of the so-called rule of halves, requires the following steps:
   1) Hack total assets in half (T = S) For a preliminary estimate of savings; 2
   2) Divide estimated transfer amount by average regional monthly nursing home rate (A) to conclude months of penalty period for proposed transfer;
   3) Multiply penalty period by private pay rate of nursing home in question, to determine cost of penalty period which is generated by the transfer; and,
   4) Unless A=P (or is less than P), step three above will result in a nursing home cost which is greater than half of total assets. This means the other half can’t be totally saved, because it’s penalty period won’t be covered by the remainder.

   So one repeats the tinkering again, from step 1, sometimes several times.

5. The $2 differential — 46,668 instead of 46,666 from the earlier calculation — is due to the rounding of numbers.


7. The $7,984 figure represents New York City’s average nursing home rate in 2002.
Is that “LEAD” or “LE-AD”?  
by Laury Adsit Gelardi, Executive Director

NAELA is blessed to have a very large cadre of leaders. Leaders are not always abundant in all organizations, but elder law seems to spawn them in a lot of areas.

We have leaders in the national limelight: they give generously of their time to NAELA, as well as serve on committees, sections and boards of the American Bar Association, the American College of Trust and Estate Counsel, the Alzheimers Association, AARP, National Guardianship Association, among others. Many of our members also permeate their local communities, giving of their time and attention to their local NAELA chapters, their local bar associations, churches, and local chapters of national organizations, etc. And, of course, most of our members are leaders in their own firms as well.

So….what is this “leadership thing” all about? Why would anyone do it? What do they get from it? What do they have to put up with?

Leadership is PASSION. Webster defines “to lead” as “to guide on a way; to direct the operations, activity and performance of; to go at the head of: be first; to begin play with; to tend toward a definite result.” Being a leader, means putting your thoughts out there. Being a leader means taking a chance. Being a leader means speaking up for what you believe in. Being a leader means always taking a chance.

Being a leader is not easy and it is not always fun. A leader often opens himself or herself up to criticism. Especially in a group of lawyers, you don’t have to look far to find someone to disagree with your position….and sometimes they disagree passionately or even violently. Leadership is a calling for some, and a privilege to most. Leaders possess a vision and a mission and an energy unmatched by others. NAELA leaders often drop other things to pursue NAELA issues such as another NAELA member needing assistance, replacing a last minute cancelled speaker, or attending a hastily set up meeting with legislators over a hot elder law issue. They sacrifice family gatherings, spend late nights catching up on their “real” work, and are rarely thanked.

Leaders in NAELA come in all shapes, sizes and forms. Some work visibly and some work exclusively behind the scenes. Some define the specific time that they are able to give, while others seem to give endlessly. All leaders pick their battles and set their priorities. Most want to pursue their passion, whether that’s politics, organizational matters, working on the SIGs, chapters or committees….they find what they are good at and they lend their time, attention and expertise to benefit the entire association.

NAELA leaders are more than resume builders. They are workers. They are visionaries. They are driven. They are generous. They are walking billboards for the profession and for the Academy. Sure, they are viewed as national leaders. They are seen as having the “inside track.” They are seen as movers and shakers and sometimes that leads to very positive press for them and their practices. They often say that they also form life-long relationships that have enriched their lives.

And sometimes they are criticized for being too insular or are referred to as a click. Sometimes they are criticized as being self serving. Sometimes they put themselves out on a limb and are shot down. Sometimes, a great deal of time and energy is expended and no one even says “thanks.” All of these are hard to take, but true leaders get back up and go at it again! Our leaders are always “le-ads.”

The old saying is true: You only get out of an association what you are willing to put into it.
Who’s Who on the NAELA Staff?

There are often questions as to who is who on the NAELA staff. As you know, we have a staff of 15 people working for us, and everyone is responsible for very specific things. Our offices are located at 1604 North Country Club Road, Tucson, Arizona 85716 and are open from 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday, except holidays. The telephone number is (520) 881-4005. The fax number is (520) 325-7925. We also have voice mail and therefore, you may leave messages 24 hours a day, seven days a week! To help you in your endeavor to get through the maze, we are listing who you should contact for what things:

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<th>Name/Telephone Ext.</th>
<th>E Mail Address</th>
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<tr>
<td>Address Changes</td>
<td>Celeste Wilson, ext. 105</td>
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<td>Billing Questions</td>
<td>Janet Tite, ext. 119</td>
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<td>Board Action</td>
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<td>Committee Placement</td>
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<td>NAELA News/Quarterly Articles</td>
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<td>Public Policy</td>
<td>Brian Lindberg (202-789-3606)</td>
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<td>Special Interest Groups</td>
<td>Jane Coppola, ext. 109</td>
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<td>Registration</td>
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<td>Speakers</td>
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<td>Listserv</td>
<td>Jeff Goddard, ext. 122</td>
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TAKE 1 / FRIDAY / JANUARY 31 - FEBRUARY 2, 2003

TAKE 2 / FRIDAY / FEBRUARY 7 - 9, 2003

FOR MORE INFORMATION CONTACT JENIFER MOWERY AT (520) 881-4005, EXT. 114 OR REGISTER ONLINE AT WWW.NAELA.ORG.

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To get all the details, Mr. Hammond has prepared a Special Report entitled How To Enjoy Greater Income, Respect, Prestige And Satisfaction Practicing Elder Law.

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