Medicare Advocacy Corner
The Medicare+Choice Program (Medicare Part C) — Look Carefully Before You Leap

by Judith A. Stein, Esq.
CENTER FOR MEDICARE ADVOCACY

Since its inception in 1965, Medicare has provided a set of coverage and due process protections so that all beneficiaries could expect the same basic level of health insurance. As a consequence, all beneficiaries—rich and poor, well or sick, articulate or silent—had a common interest in making the program work. This system resulted in the evolution of an imperfect, but functional, basic health insurance program for all.

The Balanced Budget Act of 1997 (BBA), signed into law on August 5, 1997, divided the Medicare program into multiple financing and delivery systems. The BBA accomplished this by creating a new Medicare Part C, also called the Medicare+Choice program. Medicare+Choice expands options for receiving Medicare coverage through a variety of managed care plans, including health maintenance organizations (HMOs) and preferred provider organizations (PPOs), and through new mechanisms such as medical savings accounts (MSAs).

While the government will soon issue a great deal of information about making new Medicare choices, the traditional fee-for-service program will continue. It is important to remember that beneficiaries do not have to choose to move out of their current Medicare system—whether they are in traditional Medicare or a Medicare managed care plan.

We urge extreme caution. The Medicare+Choice program is new and untested. Wait to see what experience tells us about these new options.

“We urge extreme caution. The Medicare+Choice program is new and untested. Wait to see what experience tells us about these new options.”

What coverage will actually be available under each plan?
What problems will develop with the new appeal systems?
What will beneficiaries as a group lose if they are divided into the many subcategories of interests represented by the new plans?

Wait, listen and think carefully before making any changes.

(continued on page 2)
NAELA News ● November/December 1998

**The Medicare+Choice Program (Medicare Part C) — Look Carefully Before You Leap**

*Continued from page 1*

**Medicare+Choice Program Options**

Under Medicare+Choice, a Medicare beneficiary may choose to receive Medicare covered services through any of the following types of health insurance plans:

- **Coordinated Care Plans.** These are managed care plans that include health maintenance organizations (HMOs), provider sponsored organizations (PSOs), and preferred provider organizations (PPOs). These plans will be the most similar to current Medicare HMOs. They will provide coverage for health care services, with or without a point-of-service option (the ability to use plan or out-of-plan health care providers). Some plans will limit the enrollee’s choice of providers. Some plans may offer benefits, such as prescription drug coverage, in addition to those in the traditional Medicare program for which no extra premium will be charged. Some plans may offer other benefits as “supplemental coverage” for which a further premium may be charged. Some plans will offer a combination of a limit on the choice of providers and new benefits. The coverage details of each plan will need to be considered carefully.

- **Private Fee-for-Service Plans.** A private fee-for-service plan is defined as a Medicare+Choice plan that:
  - Reimburses providers, on a fee-for-service basis, at a rate determined by the plan;
  - does not put the provider at financial risk;
  - does not vary rates for the providers based upon their particular utilization; and
  - does not restrict the selection of providers among those who are lawfully authorized to provide the covered services, and who agree to accept the terms and conditions of payment established by the plan.

The Medicare program will pay a fixed amount per person (a “capitated payment”) to private fee-for-service plans just as it does to HMOs. These plans will not have to follow the usual Medicare fee limitations. They will establish their own rates, without reference to the Medicare Part B reasonable charge or limiting charge restrictions. The rates set by these plans may be substantially higher than those in the traditional Medicare program.

Providers under contract with a private fee-for-service plan will be required to accept an amount not to exceed 115 percent of its contracted rate as payment in full for covered services (including any permitted deductibles, co-insurance, co-payments, or balance billing). The plan is to establish procedures to enforce its billing limits. If the plan fails to adhere to its billing limits, the plan may be subject to sanctions.

Private fee-for-service plans are to provide beneficiaries with an appropriate explanation of their benefits and liabilities. The plans will also be required to provide Medicare beneficiaries with advanced balance billing information before they incur expenses for in-patient hospital services (and for certain other...
services for which balance billing amounts could be substantial.)

Religious and Fraternal Society Plans. Medicare+Choice plans may be offered by religious and fraternal organizations. These organizations will be able to restrict enrollment in their plans to their members. The plans are to meet Medicare financial solvency requirements and Medicare may adjust payment amounts to the plans to meet the characteristics of the individuals enrolled.

Combination of Medical Savings Account (MSA) and Medicare+Choice High Deductible Plan. Commonly referred to as the “MSA” or “medical savings account” option, this complex, experimental project combines a health insurance plan carrying a high deductible ($6,000 in 1999, the first year MSAs will be operational) with a special kind of savings account, called a medical savings account.

Each MSA participant will be required to purchase a high deductible health insurance plan. The plan will pay either all medical expenses or all Medicare-covered services after the deductible is met. Medicare will designate a sum of money for each MSA participant according to a statutory formula. Medicare will take some of this money to pay for care covered services in that practice area.

(continued on page 4)
The Medicare+Choice Program (Medicare Part C) — Look Carefully Before You Leap
(continued from page 3)

the premium for the high deductible insurance plan. After the premium is paid, any money left over will be deposited by Medicare into the participants’ MSA accounts. These plans will not provide coverage until the deductible has been met by the participant.

The money in the MSA may be used for any medical expenses, either before or after the high deductible has been satisfied. However, the law does require that enough money be in the MSA to meet a portion of the deductible until it has been met each year. If there is extra money in the account, it may be used for non-medical purposes, however, a tax-penalty will be imposed on non-medical withdrawals from an MSA.

This complex arrangement will be limited to the participation of only 390,000 Medicare beneficiaries nationwide. The pilot project will extend from 1999 through 2002, unless Congress renews it.

Required Information

The BBA requires the Health Care Financing Administration (HCFA) to conduct a special educational and publicity campaign to inform beneficiaries about Medicare+Choice. As part of this effort HCFA is substantially revising its Medicare Handbook. In addition, HCFA has created an internet website to describe Medicare+Choice (http://www.medicare.com) and to provide comparative plan information. It will also activate toll-free telephone lines in many areas of the country.

Scope of Coverage

Medicare+Choice plans (except for MSAs) must provide coverage for the services currently available under Medicare Parts A and B. Plans must inform their enrollees about the availability of hospice care, including whether a Medicare participating hospice program is located within their service area or whether it is common to refer outside the area. Plans must pass on to beneficiaries any cost-savings achieved through efficient plan administration, in the form of additional benefits.

Medicare+Choice plans may offer supplemental benefits for which a separate premium is charged, but the separate premium may not vary among individuals within the plan and must not exceed certain actuarial and community rating requirements.

Medicare+Choice Plan Eligibility

To be eligible to enroll in a Medicare+Choice plan the individual must be entitled to benefits under Part A and enrolled under Part B of the Medicare program. Persons with end-stage renal disease must be entitled to benefits under Part A and enrolled under Part B of the Medicare program. Persons with end-stage renal disease are excluded; however, an individual who develops end-stage renal disease while enrolled in a Medicare+Choice plan may continue to be enrolled in that plan and may not be required to disenroll.

An individual is eligible to elect a Medicare+Choice Plan if the plan services the geographic area in which the individual resides. If, after enrolling in a plan, the individual leaves the geographic area, the plan can offer the individual the option of staying in the plan so long as the plan provides the individual with reasonable geographic access to all basic plan benefits.

Certain Medicare beneficiaries are prohibited from enrolling in Medical Savings Accounts. Federal Employee Health Benefit Plan members (FEHBP) are not eligible to enroll in an MSA until the director of the Office of Management and Budget (OMB) certifies to the Secretary that the Office of Personnel Management (OPM) has adopted policies that will ensure that the enrollment of FEHBP individuals in such plans will not result in increased expenditures for the federal government for health benefits under FEHBP.

Similar rules may be applied to the Veterans Administration and the Department of Defense.

Process for Exercising Choice

The Secretary is to establish a process through which Medicare beneficiaries can elect how they wish to obtain their Medicare covered services. Elections are to be made or changed only during coverage election periods as follows:

- If there are one or more Medicare+Choice Plans offered in an individual’s service area at the time the individual first becomes entitled to benefits under Part A and enrolled under Part B, the individual shall make the election during a defined election period. Coverage under the Plan becomes effective as the first date on which the individual may receive coverage.

- Beneficiaries will be able to enroll or disenroll continuously from a Medicare+Choice Plan through the end of 2001. Beginning in 2002, such continuous enrollment and disenrollment will end and several different enrollment and disenrollment periods will take effect. Which of the periods is applicable depends largely upon whether the beneficiary will first become eligible for Medicare Parts A and B in 2002 (or any year thereafter), or whether the beneficiary was eligible for Medicare Parts A and B prior to 2002.

- Beneficiaries who first become eligible for Medicare Parts A and B in 2002 (or any year thereafter) will be entitled to an “initial enrollment period.”

(continued on page 5)
Beneficiaries who were eligible for Medicare Parts A and B prior to 2002 will be entitled to change their election only one time during the first six months of 2002. Such a change could be from Medicare fee-for-service to a Medicare+Choice plan; from a Medicare+Choice plan to Medicare fee-for-service; or from one Medicare+Choice plan to another Medicare+Choice plan.

Beginning in 2002 (and thereafter), beneficiaries who were eligible for Medicare Parts A and B prior to 2002 will be entitled to make an election during an annual, coordinated open enrollment period. This annual election will permit such a beneficiary to enroll or disenroll from the various offerings during a three-month enrollment period that would begin each October. Elections will become effective January 1 of the following year.

Beneficiaries will be able to enroll in Medical Savings Accounts (MSAs) only during (a) an initial enrollment period; (b) an annual, coordinated open enrollment period; or (c) a one-time special election in November, 1998. However, if an MSA is elected during an annual, coordinated open enrollment period (which commences in October of each year and lasts for three months), a beneficiary who has second thoughts may disenroll from the MSA by December 15th of that period.

Certain “special election periods” will commence on January 1, 2002. These special election periods would apply only if (a) a Medicare+Choice plan was terminated; (b) the beneficiary ceased to be eligible for enrollment in his/her plan; (c) the beneficiary demonstrated that the plan violated its contract with Medicare; or (d) some other exceptional circumstance.

Beneficiaries who fail to make an election will remain in original Medicare; those who fail to elect, but are already in an HMO or other Medicare+Choice plan, will remain in that plan or HMO.

Conclusion

With the advent of Medicare+Choice, the Medicare program and its beneficiaries will be divided. Before beneficiaries move into the various Medicare+Choice options they will need to be certain that these individual programs meet their particular needs. This will take more work from all concerned.

Beneficiaries should approach the new plans cautiously. They, and their advocates, will need to be vigilant in order to ensure that the basic goals of the Medicare program are met for all beneficiaries.

How to Develop and Manage a Successful Trusts & Estates/Elder Law Practice

Thomas D. Begley, Jr., Esq.

A successful practitioner gives practical tips on topics from client services, referral sources and advertising to practice management, delegation, computerization, and risk management.

10397  Paperback book ........................................... $39
CP408  Handbook/cassettes (Building a “Successful” Elder Law/Estate Planning Practice - 6/97) .......................... $129
M498D  Forms diskette ............................................. $25

NEW

PAID ADVERTISEMENT

How to Develop and Manage a Successful Trusts & Estates/Elder Law Practice

Thomas D. Begley, Jr., Esq.

A successful practitioner gives practical tips on topics from client services, referral sources and advertising to practice management, delegation, computerization, and risk management.

10397  Paperback book ........................................... $39
CP408  Handbook/cassettes (Building a “Successful” Elder Law/Estate Planning Practice - 6/97) .......................... $129
M498D  Forms diskette ............................................. $25

New Jersey ICLE ● One Constitution Square ● New Brunswick, NJ 08901  (732) 214-8500
The NAELA Board of Directors took a very bold step in July by agreeing that NAELA would contract with the Corporation for Long-Term Care Certification (CLTCC) to develop an education and certification program for long-term care insurance agents. NAELA, working hand-in-hand with the National Elder Law Foundation, has entered into an agreement to provide input into the program and to have exclusive control over the creation, development, and administration of the examination. NAELA members will be asked to lend their expertise in developing the program and will be employed to provide a review course and to proctor the exam.

The idea of being involved with an insurance certification program seemed quite foreign to the NAELA Board Members at first. The idea was first raised to me, as NAELA’s Executive Director, by several insurance company executives who were brought together by former NAELA Board Member Harley Gordon at the Long-Term Care Insurance Conference in San Diego last November. Having just attended the ABA’s Law Practice Management Section’s Futurists Program in Phoenix, and realizing that even the American Bar Association was beginning to recognize that interdisciplinary teams would be the wave of the future, it all began to make sense.

If elder law attorneys are to be our responsibility to build strong

If elder law attorneys are to take the lead in coordinating the interdisciplinary team for a client, then it will be our responsibility to build strong

who will be working with our clients. It will also allow us an entrée into the insurance industry—to have input into the products that do and don’t work for our clients. If NAELA is to be a leader in advocating for quality legal services for the elderly, then we need to build our alliances to propose appropriate solutions. Contrary to what is advocated by one very vocal member of the insurance industry, elder law attorneys would like to work with the insurance industry to create possible solutions for the financing of long-term care. This should put us at that table.

The board appointed a Task Force on Insurance Certification, chaired by Charlie Sabatino. The Task Force looked at the proposed program, looked at the pros and cons of NAELA’s involvement, spoke to all the possible participants and hammered out a proposed contract with the Corporation for Long-Term Care Certification. NAELA is actually serving as a subcontractor to the Corporation for Long-Term Care Certification.

NAELA Board Member Jay Kearns and I will be serving on CLTCC’s Advisory Board as well as former NAELA Board Member Alfred Chipin, Jr. who will represent a consumer advocacy group. We will be working with the CLTCC Advisory Board to approve the study materials and to oversee the additional requirements for the certification program.

If you have questions or concerns about NAELA’s involvement in this program, please feel free to contact me at (520) 881-4005, ext. 113 or by e-mail at ladsit@naela.com. We are looking forward to a very positive and fruitful year for all of us!
A good friend of mine and a member of NAELA recently told me about a friend of his named Jonathan. Jonathan has been an attorney for a number of years and is still a young man in his 50’s. He has recently been diagnosed with a terminal illness without much hope for survival, although there is treatment available, and miracles do happen. While my friend was in college, Jonathan hired him to work in his law firm, doing odds and ends jobs, etc. My friend worked at Jonathan’s firm for about three years, before leaving to go to law school himself. While my friend was in law school, Jonathan kept him on the payroll, giving him a monthly salary, although my friend was sure that, at least during that first year of law school, Jonathan got the worst of the deal. One day my friend talked to Jonathan about this. My friend was concerned that Jonathan wasn’t getting his money’s worth, and although needing the money (law school can be an expensive proposition), felt it wasn’t fair to Jonathan to continue to pay a young law student who couldn’t use many legal skills yet. Jonathan dismissed my friend’s protests by telling my friend that Jonathan considered this an investment in the profession, a contribution, if you will, to better the profession, knowing that some day my friend would be a good lawyer, and by becoming a lawyer, would make the profession better by virtue of his practicing that profession.

The occasion of telling me this was my friend’s shock at learning of Jonathan’s illness. We were on our way together to a state bar meeting when my friend returned Jonathan’s call, to learn Jonathan was leaving the next day to go north to a hospital that had a specialist who was willing to help Jonathan in his fight for survival. It was important, I think, for me to understand Jonathan as a person, more than just a story of someone my friend knew.

How many of us have ever had the privilege of having a Jonathan in our lives? Someone who, perhaps gave us our first jobs, who took a leap of faith and invested in us? Someone who gave back to make the world a better place? All of us have the ability to be Jonathan to others, in a variety of ways. Every day the opportunity presents itself to help our profession and even our world through using our special talents as lawyers. We can give a law student their first job, we can take a pro bono case, we can reduce our fees for a client of modest means. We can serve on boards of non-profits, help out in our communities, or more. Or, like Jonathan, we can make a long-term commitment to someone.

One of the unique things about NAELA is the number of Johnathans we can count as members. On any given day read the listserv and find examples. On a daily basis, attorneys are asking for advice, guidance, suggestions for handling a specific case, and a number of people step up with the answer or the suggestion. To some, law may be a cutthroat business, but not among NAELA members. I am always thrilled to see the willingness of our members to help each other in assisting elderly clients and their families.

There are other opportunities for NAELA members to give as well. Volunteer to serve as a mentor for an attorney new to the practice of elder law. If you are willing, just send an e-mail to Janice Phillips at jphillips@naela.com and she’ll match you to someone for whom you can make a significant difference. NAELA also has established a scholarship fund to provide a way for NAELA members who might otherwise not be able to do so, to attend a symposium or an institute. And each of us who has ever been to a NAELA program can remember how attending that first one made a significant difference in our lives. Contributions to the NAELA Memorial Fund can be made in memory of friends, colleagues, family members, clients, etc. The purpose of the fund is to create scholarships to NAELA educational programs for elder law attorneys who are in need of financial assistance. It is a wonderful way to honor someone and to help grow the profession of elder law at the same time. For more information on the NAELA Memorial Fund, contact Janice Phillips at (520) 881-4005, ext. 121 or by e-mail at: jphillips@naela.com.

I know my friend’s life has been changed by Jonathan, and I don’t mean just financially. My friend remembers what a difference Jonathan made in his life, and works now, even though he is not long in practice, to help others and make a difference in their lives. A bit (or maybe a lot) of Jonathan can be found in all of us. Elder law attorneys as a group work hard to provide quality legal assistance to their clients, but also to provide more—a good listener, a sympathetic ear, a person knowledgeable about the ins and outs of the choices facing clients at the end of their lives.

It is in vogue to bash lawyers, to make our profession the butt of jokes. Even in popular movies, you will find sly references and jibes at members of our profession. Ah, but if they only knew of Jonathan.

I pause periodically and think of my friend and his friend Jonathan, and how Jonathan is fighting for his life and my friend is coping with the prospect of loss. It is so easy to go on with the status quo. Perhaps there are too many who do—“I’m too tired.” “I don’t have the time.” “Maybe next week.” “Maybe next month.” “Maybe next year.” Who of us haven’t used one of those excuses before? At that critical time in someone’s life when he could make a difference, Jonathan didn’t. There are simply not enough Jonathans. It is not that hard to make a difference. Help us make a difference.

President’s Message
by Rebecca C. Morgan, Esq.

Rebecca C. Morgan

“It was important, I think, for me to understand Jonathan as a person, more than just a story of someone my friend knew.”
NAELA’s Listserve: 600 Colleagues at a Terminal Near You

by Alex Moschella, Esq. and William J. Brisk, CELA

NAELA’s listserve allows subscribers to practice law with 600 colleagues. That is the number of NAELA members who currently use our listserve to post messages, responses, sources, and opinions and to read those of their colleagues. The listserve enables us to keep current on issues concerning clients, practice and the future of elder law, as well as weather and attractions of the host city for the next symposium. Especially useful for solo practitioners, the listserve also serves attorneys in mid-sized and even large firms. Some states (can you name them??) have developed, with NAELA’s assistance, their own listserve.

A recent posting on durable powers of attorney illustrates how a relatively simple issue can generate a variety of viewpoints. The discussion began when A asked whether it is a good idea to name successor agents in a durable power of attorney. Because fiduciaries die or lose their faculties, he usually names successors; he is concerned that many third parties ignore successor agents until they see an original written resignation signed by the original agent or proof that the original agent is dead or incapacitated. He also expressed a concern that, after the principal has lost competence to revoke such instruments, some inappropriate agents refuse to yield their prerogatives to successors, precipitating unwanted litigation.

B responded that if the goal is to avoid court involvement, Powers should always nominate successor Agents. Before that issue was resolved, C raised a different, but related question, whether springing instruments are useful. C recounted vexing situations in which third parties ignored such Powers until the agent presented doctor’s letters or other specific documents. D, on the other hand, steers clients away from granting immediate authorities by warning them that the agent could “clean them out,” a warning, he observed, that almost always persuaded clients to hazard the vagaries of springing Powers. E leapt to the defense of immediate powers, explaining that, after she compares risks and benefits of both springing and immediate powers for most of her clients, they choose immediate Powers. For married couples, she often prepares a combination immediate/springing Durable Power, providing immediate authority to the spouse but postponing successor agents’ authority until absolutely needed.

F summarized the discussion observing that the “solution”–attorneys retaining such instruments under an escrow agreement (which permits distribution only upon request of the principal or proof of the principal’s incapacity)–subjects attorneys to liability for mishandling, losing or discarding such instruments.

Those postings represent only about a fifth of the ones appearing on Durable Powers during a two-week period. Comments dwindled and the issue receded as correspondents moved to other topics, leaving the careful reader with some interesting analyses, opinions and arguments; like so many other “threads,” this one didn’t solve problems, but raised complexities and offered interesting observations. During that period, most of the listserve was devoted to other postings, not only on other substantive issues but also to referrals, legislative developments, management issues, etc.

Regular users of the listserve wade through redundant and unnecessary comments, failed attempts at humor, and particular issues which may not be of great moment for most of us. The dilemma for those interested in reforming the listserve is whether to accept this form of communication or to introduce disciplines which would keep discussions on point. NAELA’s Long-Range Planning Committee recognizes the listserve, with all its warts, as the most effective means we have, as an organization and as practitioners, to discuss significant issues in “real time.” If you are not receiving the listserve, you probably should be. If you are not posting, you might want to begin to do so.

We welcome your opinions about the listserve and how it might be even more useful for you and your practice. We’d also encourage NAELAns to submit their own condensations of significant “threads” encountered on the listserve. Even if we cannot publish your analysis, the simple process of analyzing a thread may be time well spent.

Calendar of Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 21-24, 1999</td>
<td>The National Academy of Elder Law Attorneys’ UnProgram, Dallas, TX. Contact Jennifer Mowery at (520) 881-4005, ext. 114 or by e-mail at <a href="mailto:jmowery@naela.com">jmowery@naela.com</a>.</td>
</tr>
<tr>
<td>May 19-22, 1999</td>
<td>The National Academy of Elder Law Attorneys’ Annual Symposium, Sheraton San Diego, San Diego, CA. Contact Jennifer Mowery at (520) 881-4005, ext. 114 or by e-mail at <a href="mailto:jmowery@naela.com">jmowery@naela.com</a>.</td>
</tr>
<tr>
<td>June 15-19, 1999</td>
<td>Case Management Society of America’s Annual Case Management Conference, “Where Ideas Become Solutions,” Minneapolis, MN. Contact Eileen Karegeannes at (501) 225-2229, or e-mail <a href="mailto:cmsa@cmsa.org">cmsa@cmsa.org</a>.</td>
</tr>
</tbody>
</table>

ENDNOTES

1. The authors acknowledge NAELA member Matthew J. Marcus’ assistance in reviewing the Durable Power of Attorney issue as it appeared on the listserve. Matthew practices in Somerville, MA.
2. To join the listserve, contact Debbie Barnett, NAELA Managing Director, at dbarnett@naela.com.
Members in the News

NAELA was mentioned as a resource in the following publications:

- The Pompano Ledger, on August 13, 1998, in the article “Parenting: When It’s Time For You To Help Mom and Dad.”
- Long Island Business News in the following publications:
  - Plano Star-Courier
  - Army Times
  - Navy Times
  - Daily Camera
  - Sampson Independent
  - Prime Times of Harford County
  - Dow Jones Investment Advisor
  - The Pompano Ledger
  - Daily Republican
  - The Arizona Daily Star
  - The ElderLaw Report
  - Calvin Childress, Alvin D. Hersh
  - Mary Ceridan
  - Richard Habiger, Craig C. Reaves, CELA.

Howard J. Atlas, CELA, was mentioned in the August 17, 1998 issue of the Long Island Business News, in the column “Newsmakers,” and in the August 24, 1998 issue of Newsday, as secretary and a Fellow of NAELA.

Jean Galloway Ball, CELA was quoted in the July 30, 1998 edition of USA Today, in the article “Fighting Over the Care of Aging Parents; More Siblings Clashing Over Money and Control.”

Cynthia Barrett and Tim Nay were interviewed on the “New Hour” on PBS on August 26, 1998.

Cynthia Barrett, David Goldfarb, Sharon Mark, CELA, Steven Perlis, CELA, Charlie Sabatino and Emily Starr were quoted in the August 10, 1998 issue of the New Jersey Law Journal, in the article “Longer Lives, Tougher Issues.”

Thomas D. Begley, Jr., CELA, was mentioned in the August 23, 1998 issue of The Press of Atlantic City, in “Avalon Attorney Honored With Naming as Fellow,” and in the August 24, 1998 issue of the New Jersey Lawyer, in “People of the Bar.” He was also mentioned in the September 6, 1998 issue of The Times, as a Fellow of NAELA. In the October 1, 1998 issue of the Burlington County Times, he was praised in “Moorestown Law Firm Honored for Fast Growth.”

Faye Blix, CELA was quoted in the September 28, 1998 issue of the Detroit Free Press, in the article “Sudden Illness Can Threaten Retirement.”

Alan Bogutz, CELA, was quoted in the November, 1998 issue of the ABA Journal, in the article “Counseling Granny Now OK,” and in the October 1, 1998 issue of The Arizona Daily Star, in the article “Legal Hotline Reopens; Free Advice is Offered to Callers 60 or older.”

Mary Ceridan was quoted in the Q & A section of “Determining Deceased’s Assets Can Be Difficult,” in the September 6, 1998 issue of The Courier-Journal.

Calvin Childress, Alvin D. Hersh and Paul Premack were quoted in the September 21, 1998 issue of the Navy Times, which also mentioned NAELA, in the article “Living Wills Can Help Retirees.”

Dennis J. Christensen was mentioned in the South Carolina Lawyer, on October 15, 1998, as a NAELA board member.

Joyce M. Collins and Craig C. Reaves, CELA, were quoted in the October 29, 1998 issue of the Kansas City Business Journal in the article “Tough Duty; More Lawyers Unravel Enormous Problems Older People Now Confront.”

David A. Dorfman recently became a member of the International Who’s Who of Entrepreneurs.

M. Garey Eakes participated in a debate on end-of-life decision making, on October 23, 1998, as part of the program “Closeup,” for C-SPAN. He was also quoted in the October 2, 1998 issue of The New York Times, in the article “Wife Wins Right-to-Die Case; Then a Governor Challenges It.”

Michael Ettenger was quoted in the October 27, 1998 issue of The Post-Star, in the article “Have A Plan, Elder Law Attorneys Say.”

Donald Freeman, Michael Gilfix, Susan Levin, Alex Moschella and Emily Starr were quoted in the October 8, 1998 issue of The Post-Star, in the article “Specialty Legal Field Helps Boomers, Retirees.”


Richard Habiger was quoted in the October 8, 1998 issue of the Marion Daily Republican, in the article “Planning for the Inevitable.”

Susan G. Haines was noted in the September 1, 1998 issue of The Pueblo Chieftain, in the article “Pueblo Education Association Presentation on Long-Term Care Slated.”

Richard J. Habiger was quoted in the October 8, 1998 issue of the Marion Daily Republican, in the article “Planning for the Inevitable.”

William Hammond wrote “Getting the Best Nursing Home Care for Your Loved One,” for the September, 1998 issue of Ingram’s. NAELA was also mentioned as a resource in the article.

Sally Hart was quoted in The New York Times on August 14, 1998, in the article “Rights Expanded in Medicare Case.”

A. Frank Johns, CELA, wrote (continued on page 14)
He’s now age 92, fully blind in one eye, and has little use of the other, the one he calls “my good eye.” Glaucoma has taken away his sight, and he now moves about in a shadowy, indistinct world. But he doesn’t complain. His spirit is his hopeful and optimistic companion. He continues his writing, and at age 91, published his second volume of poetry. It was the subject of a recent Paul Harvey news broadcast—it’s that good.

Widowed, he’s approaching his third year of separation from his muse to whom he was married for 65 years. She remains his inspiration, and he quietly continues to grieve from this ectomy, recently penning these lines:

He sent me white roses
For happiness fled,
Pure white-petalled roses—
Our young love is dead.
Once red were the roses
He sent, loving me:
Pure red-petalled roses
He sent lovingly.
But now they have faded,
Those beauties in red,
And living is jaded
When true love is bled.

He sent me white roses,
Pale ghosts of the red,
Pure white-petalled roses
For happiness fled.²

His exercise is limited now to slowly walking around the block several times a day. Crossing streets that would introduce new sounds and the shadows of new structures, is too difficult. Even with his white cane he can’t be sure that he’ll be missed by the traffic that whizzes by, too dicey, so he takes the safer route. He walks without having to cross streets, around the block, his block, daily, until he tires. Once safely home he takes out his magnifying glass and his pen that writes tall, thick letters, and prints out the verses that have entered his imaginative mind while he’s been on his walk.

Swirling iridescent clouds
of unborn poems
are about me,
almost reachable
but swift moving,
provocative yet coy,
refusing to show their faces
distinctly
yet now and again reaching toward
me,
seeming to whisper teasingly, expectantly.
Take me! Claim me!

Listening to the faint tones
of many almost-voices,
seeing a jeweled brightness
of an almost-substance,
I set an allure
of such inciting phrases
which might untangle
just one breath
of beauty
and hold it firmly, gently,
until the promise
of something delightful
is captured,
made my own possession
and breathes and lives and grows
into a poem.³

The phone rang. It was the poet.
“Carrie’s at hospice,” he spoke.
“She’s endured enough pain,” he said, “and can’t take the dialysis any more.”
“I’ll be over,” I said, and I left the office. When I arrived, he was waiting at his front door.

Carrie was a neighbor whose home was on the path which the poet took on his daily exercise. She was only 41 but following a car accident several years ago—her vehicle was rear-ended - her kidneys were affected, just stopped their efficient filtering of her body poisons. She was living by using a dialysis machine three times a week, five hours a day, portal to portal, four hours on the mechanical arachnid that sucked the blood from her body and then regurgitated it in purer form.

She was surrounded by misery, one of many patients in a large room at the D’ Center. Everyone there showed the effects of illness, some without all their limbs, others near-crazed from the burden the treatment imposed; most exhausted, long-suffering, their strength tapped from their body’s poisons, and all affected with the love-hate emotions felt towards the frightening, apathetic machines to which they feel always connected, life-saving for awhile, until they can stand them no longer. Carrie had reached that pinnacle. For her it was time. She would suffer them no more.

Carrie’s body showed the effects of her debilitating treatment, the price of continued life. Her thighs protruding from summer shorts were thin as upper arms; the remnant of a once pretty face was a visage that no longer smiled. But she liked the poet, and he, her, and on his travels around the block Carrie would sometimes call out to him, or phone him first, before he left his nearby home, suggesting that he stop by, come in, rest and visit. Once there he would recite some of his verses to her. Together, they were entertained, considerate friends. Her renal illness, and his minimal vision were not obstacles to their mutual kindness and affection. “Papa,” she called him, like grandfather.

“She might live four or five days at hospice,” he thought, until her body’s venomous poisons consume her. And with hopeful countenance, a dominant wish not just an afterthought, he offered that “She might change her mind.”

I just listened, nodding when appropriate although he may not have detected the motion. We stood at his front door. I wasn’t invited in, so we both stood, talking, listening, on the porch stoop.

An hour passed. “I’d better let you go,” the poet said. He was talked-out by then. He’d told me and repeated the same stories several times—important moments that he and Carrie shared in their friendship. He knew that he was repeating but the moments were important. He was reliving them, memories that would be sus-

(continued on page 11)
“Carrie”  
(continued from page 10)  
taining, and which might be the sub-
stance of new verses to be rhymed in
future days.

The second call from the poet came
the following day, less than 24 hours
since Carrie had laid her weakened body
on the hospice bed. “On line two,” the
receptionist spoke—“the poet.”

“Carrie just died!” This was an an-
nouncement that he expected to make,
but not this soon, and these three words
were difficult for him to voice. He had
just lost one who was like
a loving grandchild to
him, someone who lis-
tened, who encouraged
him, who provided the
 comfort of friendship.

“I’m not going to the
funeral,” he continued.
“That would be too hard.”

“Peering into the
ominous blackness... pondering [this] dark-
ness”4 he wished not to do
- not at least in formal
setting with others who
mourned her passing, too.
He will mourn alone, and
he is mourning now.

...Suddenly he
pauses, listens
intently;
[to] the sound of
something in
the dark
outside,
Something there, is
calling him...
Something is out
there,
Shivering or
slinking in the
blackness, and
calling.
The stillness of the
room begins to
\in  tense
as night sounds beyond the walls
become noisily restless.
The wind and distant thunder
and the clicking sleet are speak-
\ing,
calling to him.
Slowly, wearily the old one drags
himself
\to the rattling door, [and] opens it.
‘If [you’re] out there,’ he
tries to shout,
‘the door [is] open.’5

Grief is revisited with the poet’s loss
of this special friend. She was one who
listened, who cared, who broke the iso-
lation of the summer days for him; who
called to see that he was okay each dawn,
except, of course, those three days every
week when she was renewing her life on
the D’ machine. She encouraged his writ-
ing, his verse, the inscription of his feel-
ings on paper so that these messages will
be saved for others and savored by them,
too. And the loss of her friendship, the
death of someone who cared for him and
gave his life expectancy is not quick in
passing. Her calls
have stopped. There is no
one in her little house
around the bend in his
block. The blinds are
drawn, the
door is
closed. The
stoop is
empty. And
his own life
is made vul-
nerable now;
the ominous
blackness
about which
his poetry
speaks is
more visible
now, louder
now—” ...the
sound of
something in
the dark out-
side.”6

I went
by the poet’s
home again that day, midafternoon.
He was sleeping and the door noise—a rasp-
ning bell—caused him to suddenly awake.
Without his hearing aids I was required
to speak loudly. He never put them on
during this visit and that caused him to talk
loudly, too. That was all right. There was
nothing I could say that he needed to hear.
Shouting by him, loudly enough for him
to hear himself was, I suspect, helpful. When
loss occurs it’s no time to be quiet. And I had
been invited inside this time, removed from
the hot summer air, and with the doors shut
no one could be dis-
turbed by our loud conversation. He
misses Carrie and is grieving, and he can
be as loud and as talkative as he wants to
be.

An hour passes; he seems relieved,
accepting of the unwanted reality. It will
be difficult now for him to walk by the
pretty, white clapboard home on his daily
walks. He’s strapped to a machine him-
self, the constant path around his block,
the only route he can walk with safety be-
cause of the “dark outside”—caused by his
blindness—the death of his sight. But he is
ready, he says, to venture out. He knows
his life is changed. But, hopeful still, there
is tomorrow and it may bring a treasure
not felt today.

They thought it strange,
Seeing the Old One smiling at the
sunset
As though there were something he
could see
That night could not destroy.

‘There are two jewels,’ he said,
‘That warm the heart against all cold.
So long as you have them, keep
them, [and]
Life cannot pass you by.’

Wherever there is Hope, there is
life;
And so long as Expectancy
Empowers and fires the soul,
Just so long do you live.

‘I am searching the sunset,’ he said,
‘For the promise of tomorrow.
It is then that I shall know
The meaning of today.’7

ENDNOTES
2. “He Sent Me White Roses,” Clifton B. Kruse, Sr., Alone Together, Tee-Town Printers, To-
5. Id., p. 194. The poet ends the rather long verse by saying... “Life always goes on,
even though we can never be sure just where
it is going - or why, either.”
6. Id.
The NAELA Board of Directors Working Hard For Our Members and Clients

by Howard J. Atlas, CELA NAELA Secretary

As a member of a national organization that has become a player in the aging network, you may find it difficult to fully understand the dynamics behind our continued growth and success. One vital component is having a company like Management Plus providing us with the essential foundation and structure, which in turn enables us to provide many services and benefits to our members such as quality publications and programs. The other critical component is to have a group of individuals who share a vision to promote ideas that enable our organization to grow successfully and to improve the quality of life for our senior and disabled population. This group of individuals in the NAELA Board of Directors which is currently led by president Rebecca Morgan.

For some reason, there is a perceived myth that the NAELA Board is a clandestine group of individuals who have taken the oath of secrecy as to the on-goings of our meetings. As a member of the board for the past five years, I wish to affirmatively dispel this myth. However, as we all know, actions speak louder than words. In an effort to inform our membership as to all of the developments and actions taken by the NAELA Board, as current secretary, I will be periodically updating you on our meetings.

July Board Meeting

The NAELA Board held its annual retreat in July in Missoula, MT. Although we did have some fun, especially with a wonderful and often exhilarating white water rafting trip, much of our time was spent in a conference room engaging in thoughtful, provocative and often spirited debates about issues affecting our organization and our clients. The following summarizes some of the more salient topics discussed at the July board meeting:

1. Treasurer’s Report

At every board meeting, we have the opportunity and duty to scrutinize the current financial report and determine if we are running close to the approved budget as we should be for the current year. Current treasurer Geraldine Champion, CELA and managing director Debbie Barnett, have done a terrific job explaining all the mathematics and keeping us in the black.

2. Membership Dues Increases

The finance committee had recommended to the NAELA Board of Directors that NAELA membership dues should be increased (effective August 1, 1998) for three important reasons:

A. NAELA has not raised its dues since 1992, while the rate of doing business has increased approximately 2.5 percent per year.

B. NAELA has significantly increased activities related to public policy and has retained a much needed Legal Counsel Hugh Webster, Esq.

C. NAELA has successfully entered into the technology arena and has devoted resources to create a new level of member service that did not exist six years ago; i.e., Special Interest Groups (SIG), listserv, web pages for each SIG, and the Un-Program.

After a lengthy discussion and a very close vote, the board approved a measure to increase NAELA membership dues for private attorneys to $275 per year beginning August 1, 1998, with an added stipulation that one-third of these monies is to be set aside and placed in a reserve account. Furthermore, the board will review whether or not to increase membership dues again in three years.

The board also approved measures to adopt a fee structure for new NAELA members at $175 for the first year and an increase to $275 for the second year. New Bar admittees’ membership will be $175 for the first three years and increase to $275 thereafter. For (continued on page 13)
The NAELA Board of Directors Working Hard For Our Members and Clients  
(continued from page 12)  

LSC and Title III attorneys, the membership dues will be $150 and for student members, $100.

3. Consumer Directories
In response to our membership requesting a vehicle for their names to reach the senior consumer, the board discussed a proposal to create a NAELA Consumer Directory by region. The consumer directory would contain member listings by state and would be sold to the consumer whenever requests are received at the NAELA office for referrals. The board approved the creation of a consumer directory by region with a charge for a hard copy not to exceed $15 and no charge if they were to access the directory on the NAELA website. NAELA President Rebecca Morgan, reported that members will be allowed to opt out of the consumer directory listing as well as label sales on their next dues invoice.

4. Public Policy Outreach
NAELA Public Policy Committee Co-Chair Ronald Fatoullah, and NAELA Public Policy Consultant Brian Lindberg presented the public policy committee’s “Outreach Plan.” Essentially, the plan calls for working and coordinating with NAELA’s Public Relations Committee proposed plan to position NAELA as a key player in the aging network and enable NAELA to implement a strategy of outreach to the Federal Legislative branch with a broad agenda. NAELA’s Public Policy Committee, co-chaired by Ron and Emily Starr, with the assistance of Brian Lindberg, has done an outstanding job alerting our membership as to key public policy issues as well as increasing NAELA’s influence on those important issues affecting our senior clients.

5. Long-Term Care Insurance Certification (“LRCIC”)
During the board meeting held in May 1998 in the Bahamas, the NAELA Board agreed to enter into negotiations to develop a contract between NAELA and the Corporation For Long-Term Care Certification, Inc., (CLTCC). This joint venture was being formed for the purpose of CLTCC to establish and administer a certification program for insurance agents who offer for sale long-term care insurance policies and for NAELA to provide information and education, by being directly involved in writing the review materials for the certification course, as well as, teaching the course to the insurance agents and monitoring the examination. NAELA members will be able to benefit financially with their involvement in the certification process and have the ability to network with long-term care insurance agents. Most importantly, the LTCIC will benefit the elderly consumer since they will be receiving information about options pertaining to long-term care financing from insurance agents who have been properly educated and certified through the certification process.

At the July meeting, LTCIC Task Force Chair Charlie Sabatino and NAELA Legal Counsel Hugh Webster, presented a draft of the final contract proposal. After having the opportunity to scrutinize the contract and make some important changes, the board approved the contract with some modifications.

November Board Meeting
The NAELA Board met at the NAELA Advanced Elder Law Institute in Arlington, VA, on Thursday, November 19th. The following were items on the agenda for the board to discuss at the Washington meeting:

1. 1998 third quarter financial report
2. 1999 proposed budget
3. Proposed meeting sites for 2000 - 2005
4. Update on Legislative issues
5. Report on focus groups
6. Update on Public Relations plan
7. Approval of public policy guidelines
8. Update on CLTC Program
9. Update on Consumer Directories

I will report on the November board meeting in the next issue of the NAELA News. The NAELA Board invites you to attend our meetings which are held during the institute and symposium every year.

If any of our members have any questions about our board meetings or have suggestions on important issues that deserve our attention, please feel free to contact me or any other board member.”
Members in the News
(continued from page 9)

“Preserving Assets With Supplemental Needs Trusts,” for the November, 1998 issue of Trial magazine. He was also mentioned in the October 18, 1998 issue of News & Record as president-elect of NAELA.

Preston L. Johnson was recently voted chair-elect of the Washington State Bar Association’s Elder Law Section. He has also been appointed to the Bar Association’s Committee of Law Examiners.

Dan Kellogg, CELA was mentioned in “People on the Move,” in the August 11, 1998 issue of the Seattle-Post Intelligencer.


Raymond L. Parri, CELA is among the first group of attorneys to be certified in elder law by the Florida Bar Association. He was also quoted in the New Port Richey Suncoast News, on October 24, 1998, in the article “End of Life Decisions.”

Paul Premack wrote “A Wealth of Useful Information for Seniors Can Be Found on the Internet,” for the October 23, 1998 issue of the San Antonio Express-News, which also mentioned NAELA as a resource.

Monika A. Roberts was mentioned in the Waterbury Republican-American on September 28, 1998, as a new NAELA member.


Charles Sabatino and Jan Warner were quoted in “Elder Law Getting More Specialists,” in the September 9, 1998 issue of The Greenville News. Charles Sabatino was also mentioned in the October 15, 1998 issue of the Washington Lawyer, as a NAELA board member and in the October 26, 1998 issue of the Tucson Citizen, in the article “Simplified Living Will Easy to Use.”

Jeffrey R. Saunders was featured in the August 29, 1998 issue of The Oakland Press, in an article called “Jeffrey R. Saunders, Attorney at Law.”

Mark Shalloway was quoted in the October 5, 1998 issue of the Miami Herald, in the article, “Refusing Medical Care: A Matter of Last Rights.” He was also mentioned in the September 15, 1998 issue of The Florida Bar News, as the NAELA Florida chapter president.


Judith A. Stein was quoted in the October 19, 1998 issue of The New York Times, in the article “H.M.O.’s Cut Off Medicare, Leaving Many in Quandary.”


Jan Warner is the co-author of The Morning Call column “Flying Solo,” which appeared on October 12, 1998 with a Q & A section titled “Be Aware That Mediation Standards, Mediators Vary.”
<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andy L. March</td>
<td>Austin, TX</td>
<td><a href="mailto:almarch@texas.net">almarch@texas.net</a></td>
</tr>
<tr>
<td>John R. Mayer</td>
<td>Highlands, NC</td>
<td><a href="mailto:jmraymer@mayer-riser.com">jmraymer@mayer-riser.com</a></td>
</tr>
<tr>
<td>Sheldon Charles Mazzelis</td>
<td>Belle Mead, MD</td>
<td><a href="mailto:smazzelis@aol.com">smazzelis@aol.com</a></td>
</tr>
<tr>
<td>John A. McDermott</td>
<td>Canon, CO</td>
<td><a href="mailto:mlr@ntl.com">mlr@ntl.com</a></td>
</tr>
<tr>
<td>Julie McKellar</td>
<td>Lakeland, FL</td>
<td><a href="mailto:mepca@gte.net">mepca@gte.net</a></td>
</tr>
<tr>
<td>Chester B. McLaughlin</td>
<td>Phoenix, AZ</td>
<td><a href="mailto:chip@aziederlaw.com">chip@aziederlaw.com</a></td>
</tr>
<tr>
<td>Jack McNicholas</td>
<td>Medfield, MA</td>
<td><a href="mailto:mayoabey@aol.com">mayoabey@aol.com</a></td>
</tr>
<tr>
<td>J. Michael Mead</td>
<td>Ann Arbor, MI</td>
<td><a href="mailto:elderlaw@ameritech.com">elderlaw@ameritech.com</a></td>
</tr>
<tr>
<td>Dorothy Meyer</td>
<td>Bakersfield, CA</td>
<td><a href="mailto:lazym@highspeed.net">lazym@highspeed.net</a></td>
</tr>
<tr>
<td>Joan M. Meliek</td>
<td>Richmond, VA</td>
<td><a href="mailto:jmeliek@uoflaw.edu">jmeliek@uoflaw.edu</a></td>
</tr>
<tr>
<td>Gregory Miller</td>
<td>Colorado Springs, CO</td>
<td><a href="mailto:ols930@juno.com">ols930@juno.com</a></td>
</tr>
<tr>
<td>Michael Millorig</td>
<td>Dayton, OH</td>
<td><a href="mailto:MCDMILLIORG@compuserve.com">MCDMILLIORG@compuserve.com</a></td>
</tr>
<tr>
<td>Fred Mislo</td>
<td>Worcester, MA</td>
<td><a href="mailto:FMISLO@FTLAW.COM">FMISLO@FTLAW.COM</a></td>
</tr>
<tr>
<td>John H. Misera</td>
<td>Irvine, CA</td>
<td><a href="mailto:misera@utk.edu">misera@utk.edu</a></td>
</tr>
<tr>
<td>Nicholas Montalto</td>
<td>Norristown, PA</td>
<td><a href="mailto:montal@aleo.org">montal@aleo.org</a></td>
</tr>
<tr>
<td>Gerald F. Moore</td>
<td>Lowell, MA</td>
<td><a href="mailto:gmoore91@aol.com">gmoore91@aol.com</a></td>
</tr>
<tr>
<td>Richard E. Moot</td>
<td>Boston, MA</td>
<td><a href="mailto:moott@bostonmootom.com">moott@bostonmootom.com</a></td>
</tr>
<tr>
<td>Thomas J. Nance</td>
<td>Phoenix, AZ</td>
<td><a href="mailto:tjnance@primeren.com">tjnance@primeren.com</a></td>
</tr>
<tr>
<td>Theresa Anne Mursik-Meyer</td>
<td>Lexington, MA</td>
<td><a href="mailto:irmusk@aol.com">irmusk@aol.com</a></td>
</tr>
<tr>
<td>Donald Mustico</td>
<td>Elmira, NY</td>
<td><a href="mailto:dmustico@zflaw.com">dmustico@zflaw.com</a></td>
</tr>
<tr>
<td>Charles Ian Nash</td>
<td>Melbourne, FL</td>
<td><a href="mailto:CINashlaw@aol.com">CINashlaw@aol.com</a></td>
</tr>
<tr>
<td>Allen Nacef</td>
<td>Columbia, SC</td>
<td><a href="mailto:nacef@naela.com">nacef@naela.com</a></td>
</tr>
<tr>
<td>Caren Nielsen</td>
<td>Studio City, CA</td>
<td><a href="mailto:gew@iowlaw.com">gew@iowlaw.com</a></td>
</tr>
<tr>
<td>Troy Scisp Keen</td>
<td>Oklahoma City, OK</td>
<td><a href="mailto:ZOEJ316@AOL.COM">ZOEJ316@AOL.COM</a></td>
</tr>
<tr>
<td>Thomas Newcomb</td>
<td>Chalfont, PA</td>
<td><a href="mailto:Newcombeesq@aol.com">Newcombeesq@aol.com</a></td>
</tr>
<tr>
<td>A. Colby Horne</td>
<td>Tacoma, WA</td>
<td><a href="mailto:ACPLAWS@CONCENTRIC.NET">ACPLAWS@CONCENTRIC.NET</a></td>
</tr>
<tr>
<td>Jeffrey R. Patton</td>
<td>Winchester, VA</td>
<td><a href="mailto:fgwco@visualink.com">fgwco@visualink.com</a></td>
</tr>
<tr>
<td>Helen E. Phillips</td>
<td>Chicago Lakes, CA</td>
<td><a href="mailto:hp1144@aol.com">hp1144@aol.com</a></td>
</tr>
<tr>
<td>Mark Powell</td>
<td>Laguna Beach, CA</td>
<td><a href="mailto:powellw@home.com">powellw@home.com</a></td>
</tr>
<tr>
<td>Richard L. Reiers</td>
<td>Westbury, NY</td>
<td><a href="mailto:RLR@LAWYER.net">RLR@LAWYER.net</a></td>
</tr>
<tr>
<td>Julie Reingold</td>
<td>Studio City, CA</td>
<td><a href="mailto:jareingold@aol.com">jareingold@aol.com</a></td>
</tr>
<tr>
<td>Virginia Rice</td>
<td>Clayton, MO</td>
<td><a href="mailto:vrice@i1.net">vrice@i1.net</a></td>
</tr>
<tr>
<td>Jean Reed Roberts</td>
<td>Scottsdale, AZ</td>
<td><a href="mailto:jre@jeanreedroberts.com">jre@jeanreedroberts.com</a></td>
</tr>
<tr>
<td>Monica B. Roberts</td>
<td>Waterbury, CT</td>
<td><a href="mailto:amym@ymac.com">amym@ymac.com</a></td>
</tr>
<tr>
<td>Holly Robinson</td>
<td>Salem, OR</td>
<td>holly@<a href="mailto:robinson@state.or.us">robinson@state.or.us</a></td>
</tr>
<tr>
<td>Linda Robinson</td>
<td>Belle Mead, NJ</td>
<td><a href="mailto:EldLawNJ@aol.com">EldLawNJ@aol.com</a></td>
</tr>
<tr>
<td>Richard Romeo</td>
<td>Boulder, CO</td>
<td><a href="mailto:rickromeo@springsite.com">rickromeo@springsite.com</a></td>
</tr>
<tr>
<td>Gene Ralph</td>
<td>Clark, NJ</td>
<td><a href="mailto:guraph@acs.com">guraph@acs.com</a></td>
</tr>
<tr>
<td>Ed Schoenbaechler</td>
<td>Louisville, KY</td>
<td><a href="mailto:ed@sasqy.com">ed@sasqy.com</a></td>
</tr>
<tr>
<td>James Schuster</td>
<td>Southfield, MI</td>
<td><a href="mailto:jmschuster@medinaonline.com">jmschuster@medinaonline.com</a></td>
</tr>
<tr>
<td>Sean W. Scott</td>
<td>Lago, FL</td>
<td><a href="mailto:soscott@virtuallawoffice.com">soscott@virtuallawoffice.com</a></td>
</tr>
<tr>
<td>Allison N. Sung</td>
<td>Van Nuys, CA</td>
<td><a href="mailto:asung@vanuys.com">asung@vanuys.com</a></td>
</tr>
<tr>
<td>F. Stephen Shefts</td>
<td>Evansville, IN</td>
<td><a href="mailto:ss@mdm2000.com">ss@mdm2000.com</a></td>
</tr>
<tr>
<td>Irving Silver</td>
<td>Mobile, AL</td>
<td><a href="mailto:irslaw@i1.net">irslaw@i1.net</a></td>
</tr>
<tr>
<td>Ronald Silver</td>
<td>Worcester, MA</td>
<td><a href="mailto:stivler@yaho.com">stivler@yaho.com</a></td>
</tr>
<tr>
<td>Ruth Simons</td>
<td>Aloha, OR</td>
<td><a href="mailto:rsimons@tealcorp.com">rsimons@tealcorp.com</a></td>
</tr>
<tr>
<td>Pamela J. Slisson</td>
<td>Lansing, MI</td>
<td><a href="mailto:sisson601@aol.com">sisson601@aol.com</a></td>
</tr>
<tr>
<td>Jane Skelton</td>
<td>Bangor, ME</td>
<td><a href="mailto:jskelton@rudman-winchell.com">jskelton@rudman-winchell.com</a></td>
</tr>
<tr>
<td>Frances A. Small</td>
<td>Milford, MA</td>
<td><a href="mailto:frans@wss.office.com">frans@wss.office.com</a></td>
</tr>
<tr>
<td>Richard Spain</td>
<td>Chicago, IL</td>
<td><a href="mailto:rsspain00@bellsouthwestern.com">rsspain00@bellsouthwestern.com</a></td>
</tr>
<tr>
<td>Martha Spalding</td>
<td>Paso Robles, CA</td>
<td><a href="mailto:jdspalding@bellsouthwestern.com">jdspalding@bellsouthwestern.com</a></td>
</tr>
<tr>
<td>Regina Spielberg</td>
<td>Paramus, NJ</td>
<td><a href="mailto:queens1@aol.com">queens1@aol.com</a></td>
</tr>
<tr>
<td>Frank S. Stapleton</td>
<td>Las Vegas, NV</td>
<td><a href="mailto:blake@livablemodem.com">blake@livablemodem.com</a></td>
</tr>
<tr>
<td>James Strull</td>
<td>Oakland, NJ</td>
<td><a href="mailto:grombo@aol.com">grombo@aol.com</a></td>
</tr>
<tr>
<td>Sidney C. Summey</td>
<td>Birmingham, AL</td>
<td><a href="mailto:SUMMEY@AOL.COM">SUMMEY@AOL.COM</a></td>
</tr>
<tr>
<td>Gregory S. Talus</td>
<td>Canon, CO</td>
<td><a href="mailto:mil@al.com">mil@al.com</a></td>
</tr>
<tr>
<td>Jo Taylor</td>
<td>Tuscaloosa, AL</td>
<td><a href="mailto:jtalley@law.ua.edu">jtalley@law.ua.edu</a></td>
</tr>
<tr>
<td>Robert T. Tischner</td>
<td>Minneapolis, MN</td>
<td><a href="mailto:GRT415@aol.com">GRT415@aol.com</a></td>
</tr>
<tr>
<td>Edn Tener</td>
<td>Seattle, WA</td>
<td><a href="mailto:etener@karthullite.com">etener@karthullite.com</a></td>
</tr>
<tr>
<td>Darlene Treston</td>
<td>Floral Park, NY</td>
<td><a href="mailto:dtreston@marlaw.com">dtreston@marlaw.com</a></td>
</tr>
<tr>
<td>Tom Trpp</td>
<td>Pinellas Park, FL</td>
<td><a href="mailto:TTrrip1@AOL.COM">TTrrip1@AOL.COM</a></td>
</tr>
<tr>
<td>Reginald H. Turnbull</td>
<td>Jefferson City, MO</td>
<td><a href="mailto:RIBULL@AOL.COM">RIBULL@AOL.COM</a></td>
</tr>
<tr>
<td>Theresa Varnet</td>
<td>Norborough, MA</td>
<td><a href="mailto:tvarnet@at.net">tvarnet@at.net</a></td>
</tr>
<tr>
<td>Donna J. Vohra</td>
<td>Baden, PA</td>
<td><a href="mailto:vohres@fororcom.net">vohres@fororcom.net</a></td>
</tr>
<tr>
<td>Sally M. Wagle</td>
<td>Winthrop, ME</td>
<td><a href="mailto:mwa@gmail.com">mwa@gmail.com</a></td>
</tr>
<tr>
<td>James Walker</td>
<td>Wellesley Hills, MA</td>
<td><a href="mailto:JWALKWELLESLEYHILLS@AOL.COM">JWALKWELLESLEYHILLS@AOL.COM</a></td>
</tr>
<tr>
<td>William L. Walker</td>
<td>Fair Oaks, CA</td>
<td><a href="mailto:barneswalker@hotmail.com">barneswalker@hotmail.com</a></td>
</tr>
<tr>
<td>Stephen Warden</td>
<td>Denver, CO</td>
<td><a href="mailto:warden@uswest.net">warden@uswest.net</a></td>
</tr>
<tr>
<td>Nomiku Weitzel</td>
<td>Baltimore, MD</td>
<td><a href="mailto:nomiku@wex.net">nomiku@wex.net</a></td>
</tr>
</tbody>
</table>

Changes and Additions to NAELA Members’ E-Mail Addresses

The following listing includes new e-mail addresses of NAELA members as well as corrections to those listed in past issues of the NAELA News. For a complete listing of NAELA members’ e-mail addresses, please e-mail CarolynSmithAtcsmail.com at naela.com.
Report of the NAELA Litigation Task Force
by A. Frank Johns, CELA, Chair

It was a year ago, at the 1997 NAELA Institute in Nashville—a panel addressed legislative and litigation options available to NAELA in response to §4734 of the Balanced Budget Act of 1997. Section 4734 criminalized the counsel of attorneys in certain situations regarding the transfer of assets. The room was packed; the audience tense. Many had attended the institute primarily to hear the message being delivered by the panel. Although attendees came for answers, they were asked the question, “How many of you would rather be plaintiffs litigating your constitutional rights, rather than defendants alleged to have committed a crime?” Hands went up, bodies stood up and the overwhelming response in support of being plaintiffs was noted for the record.

NAELA’s leadership had been in action for months prior to the institute, responding to the form of the legislation that had surfaced the previous year as the “Granny Goes to Jail” law. The current amended version, “Granny’s Lawyer Goes to Jail,” came to the attention of NAELA President Bill Overman, CELA, in June, 1997. Overman had been informed of the movement of intended legislation to not only maintain the previous §217 on criminalization, but to make professionals the primary target rather than “granny.” Immediately, Overman organized the Legislative Task Force on §4734, with NAELA Past President Vincent Russo, CELA, as chair. With great foresight, Overman also organized the NAELA Litigation Task Force on §4734.

By the time of the institute in Nashville, the NAELA Litigation Task Force had already aligned NAELA with the ACLU, which had approved NAELA as a class action client for the purpose of litigating the constitutionality of §4734. At the same time, NAELA members who were in the New York State Bar elder law section leadership forewarned NAELA of the probability that the New York State Bar would weigh in on its own, not just for elder law attorneys, but for all practicing attorneys in New York, asserting that §4734 was an unconstitutional infringement on attorneys’ rights of free speech. What happened is history:

NEW YORK STATE BAR v. RENO
97-CV-1768 (TJM/DRH) - Summary Judgment and Permanent Injunction. New York weighed in with New York State Bar v. Reno, asserting that §4734 of the Balanced Budget Act of 1997 (which attempts to criminalize certain estate planning and elder law services that are legal) is unconstitutional. The suit, filed with the U.S. Attorney General in federal district court in Albany, NY, moved at the time for preliminary injunctive relief. NAELA leadership discussed at length with the New York Bar leadership whether or not NAELA should intervene. For many good reasons, NAELA deferred intervention. Surprisingly, the Justice Department responded that it would neither defend the constitutionality of §4734, nor would it enforce criminal sanction. The Justice Department further declared in letters to Congress that §4734 could not be saved by severance and that Congress should immediately consider accepting the Justice Department’s assistance in writing law that would be more reflective of contemporary First Amendment jurisprudence.

On September 15, 1998, Chief Judge McAvoy heard the plaintiff’s motion for summary judgment and for permanent injunction. In response, The Justice Department asserted that summary judgment was inappropriate because the case was not justifiable under Article III of the U.S. Constitution, contending that the plaintiff was unable to demonstrate the requisite degree of harm because plaintiff’s members were not being prosecuted under the statute and did not face an imminent threat of prosecution. The Department of Justice supported its position with letters from the Attorney General to Assistant U.S. Attorneys, advising them not to initiate any prosecutions under this statute.

Citing generally, New York Public Interest Research Group Inc. v. Village of Roslyn Estates, 498 Fed. Supp. 922, at 928; and Natco Theaters Inc. versus Ratner, 463 Fed. Supp. 1124, 1126, Chief Judge McAvoy found that New York State Bar’s claim was ripe under First Amendment jurisprudence, concluding that plaintiff’s First Amendment Rights were restricted or chilled by the existence of the Act. McAvoy noted that the plaintiff commenced the instant litigation claiming that the statute violated the Constitution. Thereafter, the defendant voluntarily stated that she would not enforce the statute. The statute, however, remained on the books, Congress having taken no action to repeal it. McAvoy agreed that there remained the fear that a future administration or even a wayward U.S. Attorney might attempt to enforce the statute. Additionally, McAvoy noted that previously plaintiff has submitted evidence that the challenged statute was having an immediate and demonstrable effect of deterring plaintiff’s members from advising clients of the legal transfer of assets to become eligible for Medicaid. Since the plaintiff’s members were prospectively subject to proscriptions that the plaintiff was challenging, McAvoy resolved that there was a sufficient chilling effect such that the validity of the statute was properly before the Court.

Having determined that the Court had jurisdiction, McAvoy declared that there was a mid-level scrutiny standard based on commercial speech being at issue. He concluded that the statute could not withstand such scrutiny, and that the statute was overbroad and facially invalid. With that, the Court declared §4734 unconstitutional and that the defendant was permanently enjoined from enforcing it. It is not known at this time whether or not the Justice Department has appealed.

MAGEY AND BARCLAY V. RENO AND WHITEHOUSE, CAT. 98 073T (D.R.I. 1998). Separately, without NAELA leadership’s knowledge, NAELA member Diane McGee, filed a similar suit in Rhode Island. The Justice Department filed the same response as it filed in the New York State Bar suit. Currently the suit is on no motions or trial calendar, awaiting the final resolution of New York State Bar v. Reno.

(continued on page 17)
Report of the NAELA Litigation Task Force
(continued from page 16)

The litigation in New York stayed the litigation that NAELA was to pursue. Even then, however, it was not clear that New York State Bar’s litigation would control the actions of the Justice Department in other federal circuits. Accordingly, in order to be prepared for what might happen, the NAELA Litigation Task Force prepared for single suit litigation in circuits other than the first and second circuits where litigation was pending. Single suit litigation in other circuits would have placed the issue on the front burner if the courts believed that there was more to the litigation than that which had already transpired in the federal court in New York.

After careful assessment, the NAELA Litigation Task Force has determined that the summary judgment and permanent injunction of the New York federal court, coupled with the country-wide position of the Justice Department does not warrant additional time and effort on NAELA’s part to attempt further confirmation of the unconstitutionality of the law in other circuits. Several members have already raised the question “What will happen after the next election in 2000, and the appointment of a new Attorney General?” The NAELA Litigation Task Force believes that NAELA’s leadership should address that and other concerns when they are closer at hand. For the time being, NAELA’s Litigation Task Force advises NAELA’s leadership and its members not to initiate further litigation, taking instated a “wait and see” position.

Meet the NELF Certification Department

Behind every Certified Elder Law Attorney sits Brittany Betz and Debbie Barnett, the NELF Certification Department! They are responsible for sending out short and long forms, locating and securing testing sites, administering and grading tests and informing the participants of their score. In addition, they also coordinate the NAELA study guide distributions and review sessions.

Becoming a CELA is an excellent way to enhance your practice, your reputation and your clientele—it’s only a phone call away!

Debbie Barnett

The executive director of the National Elder Law Foundation is also a full-time mom, who can usually be seen after the office closes trekking around with her gymnast daughter Kayla, 11, and new driver-on-the-road daughter Jillian, 16. An avid camper and dedicated University of Arizona Wildcat fan. Debbie is constantly on the go, but always ready to lend a helping hand, a decisive opinion, and an animated narrative of the last episode of “ER!”

Brittany Betz

A former indoor plantscaper and human resources assistant, the NELF CLE/Certification Coordinator is often referred to as “Martha Stewart” in the NAELA office. She can be sighted at any time lending a sweater to chilly co-workers, saving plants from an unprecedented death, providing and sharing home-baked goodies and snacks with delighted staff. Her cheery “Good Morning” is a welcome delight when sleepy-eyed co-workers arrive in the office each day.

Special Thanks to the 1998 NAELA Institute Exhibitors

Andrews Publications
Center for Medicare Advocacy
National Senior Citizens Law Center
Clearinghouse Review
Guardian Associates
Matthew Bender & Co.
National Association of Professional Geriatric Care Managers
National Citizens Coalition for Nursing Home Reform
National Eldercare Referral Systems, LLC
Paperwork Solutions
ProBATE Software
Professional Education Systems, Inc.
Qualified Annuity Services, Inc.
ReferralNet, Inc.
U.S. Estate Group National, Inc.
United States Trust Company of New York West Group

Special thanks to Matthew Bender for sponsoring the NAELA Past Presidents’ commemorative photo.
Newly Published NAELA Directory Helps Public Locate Elder Law Attorneys

The National Academy of Elder Law Attorneys, Inc. (NAELA) has recently published its new Consumer Directory, to facilitate locating elder law attorneys in the United States.

The directories list more than 3,500 members of the National Academy of Elder Law Attorneys by the following regions of the United States:

- **Northeast:** Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia.
- **Southeast:** Alabama, District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia.
- **Midwest:** Arkansas, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Oklahoma, Ohio, South Dakota, Texas, Wisconsin.
- **West:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Oregon, Montana, Nevada, New Mexico, Utah, Washington, Wyoming.

The directories, available to consumers for $15 each, with additional copies for $10 each, list members alphabetically within the states for easy reference. In addition, Experience Registry codes are included for identification of areas of expertise and elder law attorneys certified by the National Elder Law Foundation are clearly identified.

Consumer directories may be obtained by contacting NAELA at: 1604 N. Country Club Road, Tucson, AZ 85716-3102, (520) 881-4005 or by fax (520) 325-7925.

Special Interest Groups Unveil Website Pages

*Members of NAELA special interest groups can now access web pages designed specifically for them! Accessible to SIG members only each site offers:*

**What’s New**
- Hot news/issues.
- Legislative alerts.
- Announcements/updates.
- Latest issue of the SIG newsletter.

**Articles/Forms Index**
- Abstract format.
- Searchable.
- Linked to a secure order form with e-mail notification to NAELA staff.

**Resources**
- Links to non-commercial sites of interest.

**Member Directory**
- Directory of SIG members only.

**Member-to-Member**
- Discussion area with hosted topic each month.

SIG members will access their SIG pages through the NAELA site (www.naela.org), and with their same username and password authorization. We hope you will find these new SIG sites a valuable tool, and we welcome your comments and input. For more information, or to obtain your username and password, contact **Debbie Barnett** at the NAELA office, at (520) 881-4005, ext. 117 or by e-mail at: dbarnett@naela.com.
Task Force on Ancillary Services - Request for Help!

The NAELA Task Force’s first meeting at the institute established the need for state specific membership information on current practices and activities in your state. The task force is studying the issue of elder law attorneys being involved with ancillary services that generate fees such as serving as investment advisors, financial planners, long-term care insurance agents, or providers of geriatric care management services.

The task force is especially in need of your first-hand experience and knowledge with these issues as we report to the board of directors at the San Diego symposium in May. We need current data on what your state professional and disciplinary rules allow, as well as any industry rules or standards that apply.

The task force will prepare an interim report for the board of directors, with the goal of informing membership on developments in this area.

Alex Moschella is chairing the task force and all responses should be sent to directly to Janice Phillips at NAELA, 1604 N. Country Club Road, Tucson, AZ 85716-3102 or faxed to her at (520) 325-7925.

New Developments in Healey v. Shalala

U.S. Magistrate rules in plaintiffs’ favor on motions for nationwide class action certification and for intervening additional plaintiffs

by Alfred Chiplin, Jr., Esq.

U.S. Magistrate Judge Thomas P. Smith issued a recommended ruling, signed September 24, 1998 in which he stated that plaintiffs’ motions for nationwide class certification and intervention of additional plaintiffs should be granted (Healey v. Shalala, D Ct, Civil No. 3:98CV418 (DJS)).

Plaintiffs seek declaratory and injunctive relief from the Secretary’s failure to establish notice and hearings rights and procedures when Medicare covered home health services are denied, reduced, or terminated.

The Defendant, Secretary Shalala, Department of Health and Human Services, has ten days from the date of service of the ruling in which to file written objections to the Magistrate’s recommended ruling. While the government might file an objection to the class certification and intervention rulings, it is highly unlikely that the presiding District Judge will go against the Magistrate’s recommendations.

The Magistrate is recommending a class to be certified as “persons entitled to Medicare benefits who need and/or have received home health services which have been or will be denied, reduced or terminated. Plaintiffs are asking that the Secretary be required to enforce her regulations requiring HHAs to provide beneficiaries with notice before denying, reducing or terminating benefits, establish and expedited pre-termination hearing process, and provide continuing benefits during the administrative process.

Plaintiffs are preparing to proceed with discovery and are working with counsel for the government on notice issues which may resolve, or at least, further narrow issues for litigation.

A major benefit of the magistrate’s recommended ruling is that the class of persons likely to benefit from any favorable results of the lawsuit has been defined.
As the elder law attorney is aware, a period of ineligibility results when a Medicaid applicant transfers assets within 36 months of submitting an application, or 60 months in the case of certain trusts. The period of ineligibility is determined by dividing the uncompensated value of assets that were transferred by the average cost to a private patient in a nursing facility. To calculate the period of ineligibility, the state must use the actual cost of care to a privately paying patient. States have the option of using in their calculation either the average monthly cost of nursing facility services in the state or that in the community in which the individual is institutionalized.

The rationale for the imposition of a period of ineligibility is that the applicant would have had the assets to pay for nursing home care had he or she not gifted them. Thus, the applicant must pay privately for the time during which he or she had the ability to pay for such care.

Each state’s Medicaid agency determines the rate of institutional care that is to be used in the calculation of the period of ineligibility. The figure typically does not correspond with the actual cost of care to a privately paying nursing home resident because states seem unwilling to recognize the high cost of nursing home care. Furthermore, states differ in their methods of making the determination.

For example, New York regulations provide that the average cost of a nursing home in the region is the rate to be used in calculating the period of ineligibility. Furthermore, the regulations state that the cost of private care in the region will be presumed to be 120 percent of the average Medicaid rate for such nursing care in the region.

It is important that the rate used by state agencies is accurate because the calculation has a significant financial effect on the Medicaid applicant. The “average cost” determines how quickly a period of ineligibility will pass. Thus, an applicant in a state using $6,000/month as the average cost would have a longer period of ineligibility than an applicant in a state using the figure of $7,000/month. Due to the escalating cost of nursing home care in New York, the Department of Social Services’ (currently Department of Health) failure to update the rates yearly to correspond with the increasing cost of care caused dissatisfaction among New York’s elder law attorneys.

In 1995, the Elder Law Section of the New York State Bar Association asked the New York Department of Social Services (DSS) to correct the inaccuracy of regional rates and the revise the presumption that the private rate is only 120 percent of the Medicaid rate. The section asserted that the presumption regarding the cost leaned in favor of Medicaid, because using the lower cost increases penalty periods. Consequently, the government agreed to accept a study by the law firm of Littman, Krooks, Roth & Ball on behalf of the bar association. After the study, which reflected the cost after surveying all (100 percent) of the nursing homes, was completed and presented, the numbers were finally adopted by Medicaid on September 20, 1996, effective retroactively to January 1, 1996. However, the calculations reflected nursing home costs in mid-1995.

At the end of 1996, Littman, Krooks, Roth & Ball conducted a follow up study using 10 percent of the nursing homes previously surveyed, as agreed to by DSS, which was submitted to DSS for approval. The firm wanted the rates updated because the rates in effect reflected mid-1995 cost of a nursing home. DSS rejected the study and asked for a bigger sample. As a result, Mr. Krooks’ firm surveyed an additional 30 percent of nursing homes, bringing the number to 40 percent of all New York nursing homes, but DSS nevertheless rejected the numbers.

In 1997, the study was conducted using 100 percent of the nursing homes, but it was also rejected by DSS. Subsequently, the government conducted their own study and submitted new rates in August of 1998, which took effect on January 1, 1998. In some regions of New York state these new rates are lower than Mr. Krooks’ 1997 rates, confirming that regional rates continue to be inaccurate and do not reflect the actual cost of nursing care.

In 1993, students of the Gerontology Institute of the University of Massachusetts in Boston, and state long-term care Ombudsmen, as requested by the public policy committee of the NAELA Massachusetts Chapter, surveyed nursing home private pay rates. Since 1988, the Division of Medical Assistance (DMA) had been using the rate of $100/day. The survey revealed that the average rate was closer to $150. Initially, the DMA ignored the results of the survey. However, a letter sent to the Region One Office of the Health Care Financing Administration describing the discrepancy (between DMA’s $100/day and the $150/day rate found by the survey) precipitated a letter from HCFA to the DMA in late 1993. Within days, the DMA raised the official rates from $100/day to $150/day.

The rate has remained at the $150/day rate since 1994. Further, action is being contemplated by the Massachusetts chapter, as an informal survey suggests that the average private rate is now $190/day. Unwilling to wait, NAELA member Brian Barerra threatened to challenge at a fair hearing the length of the disqualification period imposed following a transfer. Attorney Barerra issued subpoenas to, among others, the Commissioner. Before the hearing, the Division settled the case, shortening the length of the penalty period by using a figure closer to $170/day. The Division also represented that it would start using a rate of $167 in early 1999, although nursing home charges have continued to rise at rates of at least twice the rate of inflation.

Elder law attorneys who feel that the nursing home rates used by their state Medicaid agencies are inaccurate should challenge the figures. In considering such a challenge, it is important to note that the federal statute provides that the penalty period is to be determined by using the cost of institutional care to a privately paying patient, not Medicaid’s cost. When the lower Medicaid rate is used, the clients suffer because the penalty period, during which they must privately pay, is extended. Attorneys will also want to take notice of when the agency implemented the last increase for the inflationary rise in the cost of care. Finally, the attorney should ask which facilities’ rates were used to arrive at the average rate, to determine if the agency used nursing homes that properly reflect the actual cost of care.
Get Ready for the
Third Annual
NATIONAL ELDER LAW MONTH

MAY 1999

After the success of the past two years, the National Academy of Elder Law Attorneys, Inc. has designated the month of May, 1999 as “National Elder Law Month.” We know that elder law attorneys throughout the United States contribute a great deal to their communities by providing pro bono work and educating seniors about their legal needs. We also know that oftentimes elder law attorneys receive little or no recognition for their efforts.

This is about to change! By participating in the 1999 National Elder Law Month activities in your area, you can help spread the word about elder law attorneys who do well by doing good! This is your chance to promote the profession of elder law and all the good things elder law attorneys do for their communities.

Some of the activities you may wish to participate in include:

- Conducting a Living Will Day.
- Organizing a seminar in your local senior center.
- Providing pro-bono work.
- Lecturing about elder law at a local law school.
- Co-sponsoring a program with your local state bar association.
- Appearing on television and radio.
- Writing an article or editorial for your local newspaper.
- and much MORE!

To help you get the most out of your participation in National Elder Law Month, NAELA has prepared a planning guide that includes:

- sample articles and press releases,
- sample letters to your mayor and governor, and much MORE!

Don’t delay! To obtain a free planning guide on how to participate in National Elder Law Month contact Carolyn Smith at the NAELA office at (520) 881-4005, ext. 106; e-mail: csmith@naela.com.
When I was asked to chair the 10th Anniversary NAELA Advanced Elder Law Institute, my first thought was why did we have a conference call scheduled for January, 1998 when the institute was scheduled to be held in the middle of November, 1998? However, as our committee worked through the issues incident to the program it became abundantly clear to me that we were going to need every day and every week of that time period in order to have a successful institute.

A great amount of time went into discussing what topics should be presented, the need to attract quality speakers, and the formulation of an overall “theme” for the program. It was the consensus of the committee that this institute focus on substantive issues of important to our members and their clients, as well as significant policy issues.

I believe that the title “Elder Law Practice & Policy, from Client Affairs to Governmental Affairs” accurately represents the programs offered at the institute.

In response to numerous requests from NAELA members, it was decided that the institute would have a public policy track. This portion of the program was spearheaded by Charles P. Sabatino, Esq., Brian W. Lindberg, MMHS and Alfred J. Chiplin, Jr., Esq. Included in this track was one of the highlights of the institute; the insightful presentation by Nancy-Ann De Parle, Administrator of the Health Care Financing Administration (HCFA). It was quite an honor to have the leader of HCFA, the largest purchaser of Medical services in our country, address us. Ms. De Parle gave an overview of what HCFA is doing at the present time and what their current thinking is on both policy and substantive law issues. Several NAELA members asked pointed questions regarding extremely important and controversial Medicare and Medicaid issues. We agreed that NAELA and HCFA would work together to improve access to, and the quality of, long-term care services in this country.

In addition to Ms. De Parle’s presentation, the public policy track also included debates on many important issues such as Social Security reform, managed care, Medicare+Choice, as well as sessions on legislative advocacy and how government works.

The substantive portion of the program included breakout sessions on a variety of elder law topics, including supplemental needs trusts, income-only trusts, personal care contracts, sole benefit trusts and marital deduction planning, among others. Also included were several litigation topics including ERISA litigation, nursing home (continued on page 23)
NAELA's 10th Anniversary Institute A Success!
(continued from page 22)

litigation and health law litigation. The general sessions focused on guardianship issues and techniques used to avoid estate litigation.

On Saturday night, we were entertained by the Capitol Steps. The Capitol Steps, a political satire musical troupe, provided laughs for all. This truly was a NAELA “event” to be remembered.

I would like to take this opportunity to thank the members of our steering committee: Howard J. Atlas, CELA, Alfred J. Chiplin, Jr., Esq., Lee M. Holmes, CELA, Janet L. Kuhn, CELA, Brian W. Lindberg, MMHS, Stuart R. Morris, CELA, Charles P. Sabatino, Esq., Steven J. Silverberg, Esq. and Mary T. Schmitt Smith, Esq., for their outstanding efforts.

I also would like to give special thanks to the NAELA staff, and, in particular Arlethea Goden. Arlethea was the NAELA staff person responsible for the planning of the Institute and she did everything possible to make my job easier.

Overall, planning for the institute was an extremely rewarding experience for me and I always will have fond memories of NAELA’s 10th Anniversary Advanced Elder Law Institute.
Call for Nominations: Fifth Annual Theresa Award

The Theresa Award is an annual community service award presented by the Theresa Alessandra Russo Foundation to a NAELA member in recognition of his/her advocacy and support of individuals with disabilities. Through the efforts of this NAELA member, individuals with disabilities are able to achieve a better quality of life, protect their rights and preserve their dignity.

The Theresa Foundation will also contribute a cash grant of $1,000 to an organization named by the recipient of the award, that assists and supports children with disabilities.

There are many NAELA members who are worthy of this Community Service Award. It is a wonderful opportunity for a NAELA member to nominate a colleague who is “making a difference” in the lives of those in need. Please let us know who you would like us to consider. We need to hear from you!

The recipient of the award will be announced at the 1999 NAELA Symposium in San Diego, CA and will be honored at the Theresa Foundation’s Fourth Annual Awards Dinner to be held on April 30, 1999 in New York.

Nominations can be made by contacting Laury Adsit, Executive Director, NAELA, 1604 N. Country Club Road, Tucson, AZ 85716-3102; they can also be faxed to her at (520) 325-7925. The deadline for nominations is January 31, 1999.

For more information, call Laury Adsit at (520) 881-4005, ext. 113, or Vincent Russo at (516) 683-1717, ext. 2131. Nominations will be considered by an awards committee comprised of past recipients of the Theresa Award as well as Vincent J. Russo and Laury L. Adsit, who are board members of the Theresa Foundation.

**Theresa Award Recipients**

<table>
<thead>
<tr>
<th>Year</th>
<th>Award Recipient</th>
<th>Grant Recipient</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>IRA S. WIESNER, CELA</td>
<td>Justin Wiesner Early Childhood Learning Center in Sarasota, FL.</td>
</tr>
<tr>
<td>1996</td>
<td>A. FRANK JOHNS, CELA</td>
<td>Holy Angels Home for Special Children in Belmont, NC.</td>
</tr>
<tr>
<td>1997</td>
<td>SCOTT M. SEVERNS, CELA</td>
<td>Camp About Face in Indianapolis, IN.</td>
</tr>
<tr>
<td>1998</td>
<td>DONNA R. BASHAW, CELA</td>
<td>Primary Children's Hospital in Salt Lake City, UT.</td>
</tr>
</tbody>
</table>

See You In Southern California!

**The 1999 NAELA Symposium will be held in sunny San Diego, CA**

1999 SYMPOSIUM

SHERATON SAN DIEGO, SAN DIEGO, CA ● MAY 19-23, 1999

Hotel Rates: $160 for single occupancy; $180 for double occupancy.

Reservations must be made by April 17, 1999 by calling (800) 325-3535--be sure you mention that you are with the National Academy of Elder Law Attorneys to receive the special symposium rate.

For more information, contact Jenifer Mowery at (520) 881-4005, ext. 114 or by e-mail at jmwery@naela.com.
Introducing the Hottest Marketing Tool Available

Weekly Estate, Tax & Elder Law FaxLetter
From the Law Office of Your Firm's Name

Weekly Elder Law FaxLetter
From the Law Office of Your Firm's Name

Weekly Estate Planning FaxLetter
From the Law Office of Your Firm's Name

The Weekly FaxLetter serves as a powerful networking tool preserving valuable contact with your best referral sources.

When you send the FaxLetter to nursing homes, hospitals, senior organizations, financial planners, trust departments, other attorneys or anyone else who might send business your way, these potential referral sources and professional contacts will soon associate your company's name with a current informative, professional bulletin. They will have your refined corporate image in their minds, and in time they will identify your name as an industry leader.

Did we miss you at the 1998 Advanced Elder Law Institute in Washington, DC? Call Amy Carlton at 1-800-457-4369 to find out how you can take advantage of our convention special and send your personalized FaxLetter for six weeks, free of charge!

Visit our web site at http://www.bbiinc.com/faxletter or e-mail us at faxletters@bbi.com for more information.

Call and Ask About Our FREE Trial Offer
Texas Chapter Holds Successful Elder Law Conference

The Texas Chapter of the National Academy of Elder Law Attorneys held a very successful “Texas Elder Law Conference” on September 12, 1998 in Austin, TX.

The conference featured a keynote address by NAELA President Rebecca Morgan, who discussed “Recent NAELA Developments; The New Medicare Part C: What to Tell Your Clients When They Call with Questions about This New Program.”

Other sessions included:

- “Case Law Update: Medicaid and other Elder Law Issues” presented by Paul Premack, Esq.
- “Recent Development in Medicaid Rules and Procedures” presented by Elmo Johnson, DHS Deputy General Counsel, and John Stockton, DHS Medicaid Specialist.
- “Serving Clients Better With Referrals: How Geriatric Care Managers and Psychotherapists Can Help Your Clients and Your Practice” by Bonny Gardner, Ph.D, and Christina T. Pierce, LSW.

1999 NAELA Fellow Nominations Now Being Accepted

DEADLINE FOR SUBMISSION IS JANUARY 15, 1999

Fellows are attorneys who:

- have been members of the National Academy of Elder Law Attorneys for at least three years;
- whose careers concentrate on elder law; and
- who have distinguished themselves both by making exceptional contributions to meeting the needs of older Americans and by demonstrating a substantial commitment to the Academy and its mission.

Selection as a Fellow signifies that the lawyer is recognized by peers as a model for others, and as an exceptional lawyer and leader.

For additional information, please contact Debbie Barnett, NAELA Managing Director, at (520) 881-4005, ext. 117, or by e-mail at: dbarnett@naela.com.
Introducing

Authority

on Elder Law

MATTHEW BENDER

When it comes to Elder Law, there's only one Authority. Comprehensive coverage of elder law from the company that has helped attorneys practice law with complete confidence for more than a century. Contact your Matthew Bender representative, visit us at www.bender.com or call 1-800-223-1940.

MATTHEW BENDER

Partner with the Brightest Minds in Law®
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 8:00am. to 5:00pm., 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:

<table>
<thead>
<tr>
<th>Name/Telephone Extension</th>
<th>E Mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address Changes</td>
<td></td>
</tr>
<tr>
<td>Jenifer Mowery, ext. 114</td>
<td><a href="mailto:jmowery@naela.com">jmowery@naela.com</a></td>
</tr>
<tr>
<td>Advertising</td>
<td></td>
</tr>
<tr>
<td>Carolyn Smith, ext. 106</td>
<td><a href="mailto:cas@naela.com">cas@naela.com</a></td>
</tr>
<tr>
<td>Billing Questions</td>
<td></td>
</tr>
<tr>
<td>Janet Tile, ext. 119</td>
<td><a href="mailto:jtile@naela.com">jtile@naela.com</a></td>
</tr>
<tr>
<td>Board Action</td>
<td></td>
</tr>
<tr>
<td>Laury Adsit, ext. 113</td>
<td><a href="mailto:ladsit@naela.com">ladsit@naela.com</a></td>
</tr>
<tr>
<td>Brochures</td>
<td></td>
</tr>
<tr>
<td>Paula Solomon, ext. 107</td>
<td><a href="mailto:psoolomon@naela.com">psoolomon@naela.com</a></td>
</tr>
<tr>
<td>Certification</td>
<td></td>
</tr>
<tr>
<td>Debbie Barnett, ext. 117</td>
<td><a href="mailto:dbarnett@naela.com">dbarnett@naela.com</a></td>
</tr>
<tr>
<td>Chapters</td>
<td></td>
</tr>
<tr>
<td>Janice Phillips, ext. 121</td>
<td><a href="mailto:ijp@naela.com">ijp@naela.com</a></td>
</tr>
<tr>
<td>Committee Placement</td>
<td></td>
</tr>
<tr>
<td>Jihane Rohrbacker, ext. 115</td>
<td><a href="mailto:jkr@naela.com">jkr@naela.com</a></td>
</tr>
<tr>
<td>Executive Director</td>
<td></td>
</tr>
<tr>
<td>Laury Adsit, ext. 113</td>
<td><a href="mailto:ladsit@naela.com">ladsit@naela.com</a></td>
</tr>
<tr>
<td>Experience Registry</td>
<td></td>
</tr>
<tr>
<td>Jenifer Mowery, ext. 114</td>
<td><a href="mailto:jjm@naela.com">jjm@naela.com</a></td>
</tr>
<tr>
<td>Fellows</td>
<td></td>
</tr>
<tr>
<td>Laury Adsit, ext. 113</td>
<td><a href="mailto:ladsit@naela.com">ladsit@naela.com</a></td>
</tr>
<tr>
<td>Finances</td>
<td></td>
</tr>
<tr>
<td>Debbie Barnett, ext. 117</td>
<td><a href="mailto:dbarnett@naela.com">dbarnett@naela.com</a></td>
</tr>
<tr>
<td>Mailing Questions</td>
<td></td>
</tr>
<tr>
<td>Paula Solomon, ext. 107</td>
<td><a href="mailto:psoolomon@naela.com">psoolomon@naela.com</a></td>
</tr>
<tr>
<td>Media Relations</td>
<td></td>
</tr>
<tr>
<td>Jihane Rohrbacker, ext. 115</td>
<td><a href="mailto:jkr@naela.com">jkr@naela.com</a></td>
</tr>
<tr>
<td>Membership</td>
<td></td>
</tr>
<tr>
<td>Jenifer Mowery, ext. 114</td>
<td><a href="mailto:jjm@naela.com">jjm@naela.com</a></td>
</tr>
<tr>
<td>Membership Directory</td>
<td></td>
</tr>
<tr>
<td>Jenifer Mowery, ext. 114</td>
<td><a href="mailto:jjm@naela.com">jjm@naela.com</a></td>
</tr>
<tr>
<td>NAELA News/Quarterly Articles</td>
<td></td>
</tr>
<tr>
<td>Jihane Rohrbacker, ext. 115</td>
<td><a href="mailto:jkr@naela.com">jkr@naela.com</a></td>
</tr>
<tr>
<td>Public Policy</td>
<td></td>
</tr>
<tr>
<td>Laury Adsit, ext. 113</td>
<td><a href="mailto:ladsit@naela.com">ladsit@naela.com</a></td>
</tr>
<tr>
<td>Special Interest Groups</td>
<td></td>
</tr>
<tr>
<td>Janice Phillips, ext. 121</td>
<td><a href="mailto:ijp@naela.com">ijp@naela.com</a></td>
</tr>
<tr>
<td>State Coordinators</td>
<td></td>
</tr>
<tr>
<td>Jenifer Mowery, ext. 114</td>
<td><a href="mailto:jjm@naela.com">jjm@naela.com</a></td>
</tr>
<tr>
<td>Symposium/Institute Information</td>
<td></td>
</tr>
<tr>
<td>CLE</td>
<td></td>
</tr>
<tr>
<td>Brittany Betz, ext. 116</td>
<td><a href="mailto:bbetz@naela.com">bbetz@naela.com</a></td>
</tr>
<tr>
<td>Exhibitors</td>
<td></td>
</tr>
<tr>
<td>Arlethea Goden, ext. 120</td>
<td><a href="mailto:agoden@naela.com">agoden@naela.com</a></td>
</tr>
<tr>
<td>Publicity</td>
<td></td>
</tr>
<tr>
<td>Jihane Rohrbacker, ext. 115</td>
<td><a href="mailto:jkr@naela.com">jkr@naela.com</a></td>
</tr>
<tr>
<td>Registration</td>
<td></td>
</tr>
<tr>
<td>Jenifer Mowery, ext. 114</td>
<td><a href="mailto:jjm@naela.com">jjm@naela.com</a></td>
</tr>
<tr>
<td>Speakers</td>
<td></td>
</tr>
<tr>
<td>Arlethea Goden, ext. 120</td>
<td><a href="mailto:agoden@naela.com">agoden@naela.com</a></td>
</tr>
<tr>
<td>Tapes/Manuals</td>
<td></td>
</tr>
<tr>
<td>Paula Solomon, ext. 107</td>
<td><a href="mailto:psoolomon@naela.com">psoolomon@naela.com</a></td>
</tr>
</tbody>
</table>
NAELA PUBLIC POLICY
1999 LEGISLATIVE AGENDA

The Public Policy Committee and its subcommittees have advanced the following items to be included on NAELA’s 1999 Legislative Agenda. The topics and agenda items are NOT listed in order of priority, but rather will be prioritized as the year progresses.

I. FINANCING LONG-TERM CARE and SYSTEM FOR DELIVERING LONG-TERM CARE

1. As a baseline priority, NAELA should remain vigilant of any possible erosion of long-term care benefits and protections through legislation or regulation and should work vigorously to stop any such efforts.

2. NAELA should support exploration of possible strategies to make LTC Insurance more accessible and more affordable to more people — for example, through strategies such as tax incentives or the adoption of an open-enrollment legislative mandate with minimum standards, analogous to federal law applicable to “medigap” insurance.

3. NAELA should promote additional incentives under Medicare and Medicaid to experiment with flexible, alternative care strategies for persons with long-term care and end-of-life needs — for example, more flexible assisted living waivers, more flexible use of hospice type services in chronic care, and more consumer-directed options for personal assistance services.

II. SOCIAL SECURITY and PENSIONS

1. NAELA supports legislative efforts to secure the financial stability of the Social Security Program which will ensure that the Social Security System remains universal, an earned right, progressive and fair, flexible and portable, and cost effective.

2. NAELA supports protecting the current social insurance approach in the Social Security System which includes: protection for retired workers and their families; protection for disabled workers and their families; protection for survivors of deceased workers.

3. NAELA opposes changes to the Social Security System that will weaken retirement, disability, or survivor protections - leaving individuals at greater risk of impoverishment.

4. NAELA support efforts to broaden the base of support for the Social Security System, particularly among younger Americans.

III. HEALTH CARE DECISION-MAKING

1. Although NAELA does not take a position regarding physician-assisted suicide, NAELA opposes federal legislation that would restrict physicians from prescribing medication, albeit lethal, and/or treating patients consistent with state law;

2. NAELA will work for the enactment of legislation that encourages physicians to prescribe medication for palliative care;

3. NAELA will work for the enactment of legislation that removes burdensome evidentiary requirements to prove the patient had decided to forego life-sustaining treatment;

4. NAELA will work for the enactment of legislation designed to:
   a. promote the use of advance directives;
   b. inform individuals of their health care decision-making options;
   c. ensure the portability of advance directives from one state to another;
   d. improve the uniformity of advance directives;
   e. provide immunity for health care providers that follow the instructions in an individual’s advance directives;
   f. provide for a federal electronic registry of advance directives, to be self-supported and funded by an appropriate registration fee.

(continued)
IV. MANAGED CARE

1. NAELA will work for national standards to provide consumers of public and private managed care with:
   a. the right to prompt, oral and written notice of any decision to deny, limit, reduce, or terminate services;
   b. the right to appeal any decision to deny, limit, reduce, or terminate services to an impartial entity outside the managed care organization and to a prompt decision on such appeal; and,
   c. the right to consumer assistance/ombudsman services to help them navigate through the health care system, choose health plans, and pursue grievances and appeals.

V. MEDICARE PROGRAM

1. NAELA supports the development of legislation that preserves the notion of a defined benefit package for Medicare beneficiaries, with expansions to include such items as prescription drug coverage, preventive care services, and expanded mental health benefits with a focus in 1999 on prescription drug coverage.

2. NAELA supports sufficient staffing and funding of the administrative component of the Medicare program to allow it to be responsive to program and beneficiary needs, to monitor and enforce program standards, quality of care, and to provide timely, effective claim submission and appeal processes.

3. NAELA supports legislative developments to assure the continuation and/or expansion of a comprehensive set of adequately funded home health services, including access to home health aide services, and reliable and uniform grievance and appeal procedures.

4. NAELA supports additional funding for Medicare beneficiary education, particularly in aid of educating Medicare beneficiaries about emerging options for receiving Medicare covered services.

5. NAELA supports the continued development and expansion of a core set of beneficiary appeal rights, including the right to adequate notice about any denial, reduction, or termination of requested services, and clearly defined procedures for review and appeal, with the goal of adequate review provided as quickly as feasible and with a minimum of review steps.

6. NAELA supports the establishment of a program of advocacy assistance for assuring patients’ rights and services, comprised of at least two components: (a) government funded advocates (including lawyers) for low income persons, (b) unrestricted access to private attorneys for those who can afford them, and (c) a re-evaluation of the fee structure in Medicare appeals cases.

VI. OLDER AMERICANS ACT

1. NAELA will continue to support prompt action to reauthorize the Older Americans Act, including retaining civil legal services as a priority service funded under Title IIIIB, and retaining current ombudsman program authorization.

VII. LEGAL SERVICES

1. NAELA supports the funding of the Legal Services Corporation, including funding of national and state centers to support the work of field programs.

2. NAELA supports removal of LSC prohibitions on class actions, legislative advocacy, and other restrictions that diminish the remedies available to older and disabled individuals.

VIII. SUPPLEMENTAL SECURITY INCOME and SOCIAL SECURITY DISABILITY INSURANCE

Legislation was proposed during the last legislative session that would have reinstated an asset transfer penalty in the SSI program, limited the use of trusts by SSI recipients, and imposed additional burdens on SSI recipients. These changes were considered for inclusion in work incentive legislation that was strongly endorsed by disability advocates. NAELA was concerned about these new penalties and limitations but mindful of the fact that disability advocates were in favor of the work incentives included in the legislation. NAELA is committed to working with the disability community to advocate for common goals. Mindful of that commitment NAELA will advocate to

1. prevent reinstatement of any asset transfer penalty in the SSI program;

2. prevent the adoption of any further limitation on the use of trusts by SSI recipients; and

3. review the October, 1998 GAO report entitled “Management of the Supplemental Security Income Program: Today and in the Future” and the attached proposed legislation. If any provisions of that proposal are included in any bill filed in Congress, NAELA will advocate against the adoption of such provisions as are deemed to be detrimental to the interest of low income elderly and disabled persons.

IX. ELDER ABUSE

1. NAELA supports legislative efforts to provide additional resources to the fight against elder abuse, including funds provided under Title VII of the Older Americans Act.
NAELA PUBLIC POLICY GUIDELINES

Resolution Approved by the NAELA Board of Directors May 6, 1998

I. HEALTH CARE DECISION-MAKING

The following proposed guiding principles shall be in addition to, and shall complement, the Health Care Decision Resolutions adopted by NAELA on November 17, 1991, a copy of which is attached hereto.

A. NAELA advocates that health care proxies designed to appoint an agent to make health care decisions in the event of incapacity of the principal be readily available and simple to complete for the average layperson.

B. NAELA supports efforts to enact state and federal statutes and medical board policies that remove the threat of adverse government action for competent pain management.

C. NAELA supports the education of NAELA members regarding health care decision-making issues.

D. NAELA encourages the education of the public regarding health care decision-making issues, and the creation of partnerships with allied organizations in order to accomplish this goal.

E. NAELA supports the right of competent individuals to make their own health care decisions. Health care professionals must observe such right by honoring advance directives with incentives provided for such observance.

F. NAELA encourages the use of truly effective ethics committees by all health care facilities including hospitals and nursing homes. NAELA encourages partnering to develop model materials that would be made available to hospital and nursing home ethics committees. In this regard, NAELA may network with other organizations.

G. NAELA supports the enactment of guidelines on when and how to forego life-sustaining medical treatment, and the evidentiary standards required as set forth in the “Guidelines For State Court Decision Making In Life-Sustaining Medical Treatment Cases” by The Coordinating Council On Life-Sustaining Medical Treatment Decision Making By the Courts, a project of the National Center for State Courts. NAELA supports the enactment of legislation that removes burdensome evidentiary requirements to prove that a patient had decided to forego life-sustaining treatment.

II. SOCIAL SECURITY and PENSIONS

A. NAELA supports a continuing role for Social Security (OASDI) in meeting the income needs of older and disabled individuals.

B. NAELA advocates that Social Security (OASDI) benefits and cost of living increases be maintained at least at their present levels.

C. NAELA supports the maximizing of access, due process rights, and remedies under individual and employer retirement benefit plans.

Comment: SSI and SSD will be addressed by the Public Policy Committee at a later date.

III. FINANCING LONG-TERM CARE

A. NAELA supports effective integration of long-term care policies into our nation’s overall health care policy.

B. NAELA advocates that a person who requires long-term care should not risk impoverishment to any greater degree than a person who requires acute medical care services.

C. NAELA supports the roles of both the public and private sectors in providing for long-term care and in reducing a person’s risk of impoverishment when paying for long-term care.

D. NAELA supports public education about the possible need for long-term care and the availability of financing options.

(continued)
E. NAELA advocates that third-party payers not distort the incentives for a person to choose between home and community-based services and institutional services. An individual’s long term care must reflect his/her actual needs, irrespective of the financial concerns and impediments of third-party payors.

F. NAELA advocates for long-term care services that are as affordable as possible without sacrificing quality of care.

IV. SYSTEM FOR DELIVERING LONG-TERM CARE

NAELA supports the enactment of federal and state legislation and policies providing a coordinated and comprehensive system of care and support for residents of all ages with long-term care needs. Any system of long-term care should be founded on the principle of individual/consumer choice and individualized care and be consistent with the following principles.

A. NAELA supports benefits that include a comprehensive range of facility-based and community-based health, social, and support services.

B. NAELA advocates that the system must support consumer choice and participation with respect to all decisions regarding the nature, timing, and setting for delivery of care.

C. NAELA supports services that are fully accessible to all who need them, regardless of age, illness, or impairment, and are inclusive of persons of all financial means, and are without undue financial hardship to consumers, their spouses and dependents.

D. NAELA encourages the system to maximize the independence and dignity of persons in need of care.

E. NAELA advocates that each person receive the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with a comprehensive plan of care or self-directed care plan.

F. NAELA advocates that the system provide consistently high quality under strong national and state standards that are effectively enforced.

G. NAELA advocates that each person or his/her health care proxy, if applicable, receive meaningful notice of all major decisions affecting his or her care in language that is easily understood, full access to information, and assistance with appeal to an impartial decision maker in a timely manner. NAELA supports impartial decision making accomplished by a system of both internal and external review.

H. NAELA supports a system that effectively meets the needs of persons with dementia or other mental disability, including the need for supervision, standby help, or cueing.

I. NAELA urges that, until comprehensive long-term care financing is in place, Medicaid should be retained as a federal-state program, with a guarantee of coverage to all individuals under state plans, income eligibility rules that recognize out-of-pocket medical expenses including long-term care, protections against impoverishment of spouses of nursing home residents, and adequate funding to accommodate the anticipated growth in the need for assistance.

V. MANAGED CARE

The rapid growth of managed care is a major concern for the elderly, particularly the need for chronic and long term care services. Their participation in managed care is complicated by the involvement of Medicare, Medicare supplement insurance, and Medicaid. NAELA and its membership should take a leadership role, through federal, state and local public policy advocacy, to ensure that managed care organizations provide strong consumer protection and that the elderly have representation to enforce their rights.

A. NAELA supports ready access to managed care without discrimination in coverage, enrollment, disenrollment or costs. Individuals should be able to disenroll promptly, with strict limits on involuntary disenrollment.

B. NAELA advocates that services be provided to ensure that each enrollee achieves and maintains the highest practicable health and functional status and should include a full range of preventative, curative, restorative and palliative care.

C. NAELA advocates that enrollees be: offered a choice of direct care providers; allowed to change providers; afforded ready access to specialty care, where appropriate; and assured of continuity of care from their chosen providers, particularly with regard to long term care.

D. NAELA advocates that health care providers be free from constraints, sanctions or incentives that might limit communication with their patients or the provision of appropriate health care services. NAELA encourages managed care organizations to provide patients with complete unbiased information about their medical condition, potential courses of treatment, therapies, referrals, consultations, and tests.

(continued)
E. NAELA supports mandated federal and state standards, monitoring and oversight relating to marketing practices, access and quality of care, staffing, and fiscal solvency for all managed care organizations. NAELA supports government enforcement of these requirements and provision for private enforcement actions.

F. NAELA advocates that prospective and existing enrollees be provided with written notice of costs; covered and non-covered care and services; a listing of all participating health care providers; limitations on the scope, duration or frequency of services; procedures for requesting approval for services and for obtaining payment for non-managed care organizations which provide emergency care; grievance, appeal and disenrollment rights and procedures; and sources of government oversight and organizations providing consumer assistance or legal representation. NAELA suggests that this information be updated at least annually, and be in language that is easily understood by the layperson.

G. NAELA advocates for enrollees and their health care proxy, if applicable, and their doctors to receive prompt oral and written notice of any decision to deny, limit, reduce or terminate services or to change the provider of services, accompanied with notice of appeal rights and procedures. NAELA encourages that services not be reduced or terminated pending the outcome of an appeal and that enrollees who obtain denied services should be reimbursed following a successful appeal.

H. NAELA supports the existence of a prompt, independent appeal system available to enrollees and to health care providers on behalf of enrollees, to challenge managed care organizations that deny, reduce, or terminate services or that fail to provide care in a timely fashion.

I. NAELA encourages the establishment of an independent and adequately funded advocacy program to assist beneficiaries/enrollees with coverage, appeal, and grievance matters.

VI. MEDICARE PROGRAM

The Medicare program is an important source of health care coverage for older and disabled citizens. It must be comprehensive in its scope of coverage and services, affordable for individuals and for the public fiscal arena, flexible in the array of covered options and designed to maximize the good health and quality of life of all its beneficiaries.

A. NAELA advocates for the Medicare program to continue to offer coverage for a set of comprehensive services that includes, at a minimum, preventive, acute care, rehabilitation, skilled nursing facility, home health care and hospice services. NAELA supports the addition of prescription drugs and long-term and chronic care services to the comprehensive service package.

B. NAELA supports staffing and funding of the administrative component of the Medicare program to be adequate, diverse, and responsive to program and beneficiary needs, including monitoring and enforcement of program standards and quality of care.

C. NAELA advocates that the Medicare program continue to offer well defined options for delivery of covered service options, with easy transition between options, including the flexibility to add new services and options as technology expands and needs arise.

D. NAELA advocates that proposals for privatization in all its forms be studied in light of avoiding fragmentation and assuring the broad public policy objectives of social insurance as recognized in our current Social Security System.

E. NAELA encourages that financing for the Medicare program be reasonable and adequate and reflective of the cost of providing coverage for a comprehensive scope of services, including the impact of any beneficiary cost-sharing.

F. NAELA advocates that Medicare beneficiaries and their legal representatives be provided notice and an opportunity to appeal the denial, reduction, or termination of services and benefits in any health care delivery setting, including pre-termination review, and expedited review of requests for urgently needed services.

G. NAELA advocates that the Medicare program provide guidance to its program contractors, service providers, and program administrators about establishing a process for beneficiary complaints about such matters as location of services, provider-beneficiary relations, and courtesy of service. NAELA suggests that procedures include the resolution of complaints about quality of care.

H. NAELA supports the availability of benefit counselors and standardized, clear, and accurate descriptions of the Medicare program, reasonable and fair information about how to make choices among options, including comparative marketing and performance information.

I. NAELA supports the establishment of a program of advocacy assistance for assuring patients’ rights and services, comprised of at least two components: (a) government funded advocates (including lawyers) for low income persons and (b) unrestricted access to private attorneys for those who can afford them.

(continued)
VII. OLDER AMERICANS ACT

NAELA supports the Older Americans Act and its broad service delivery and advocacy mandates, many of which promote independence for older adults and community-based services.

A. NAELA recognizes that Older Americans Act and all its titles as serving a critical role in providing legal services, social services, advocacy, employment, and research for older individuals.

B. NAELA supports continued and expanded funding for the Older Americans Act as the need for legal, social services, and advocacy increases.

C. NAELA advocates to retain civil legal services as a priority for services funded under Title IIIB of the Older Americans Act.

D. NAELA encourages the coordination of entities involved in the aging network to work towards these goals.

VIII. LEGAL SERVICES

NAELA recognizes that one-third of the households that cannot afford private legal services are headed by the elderly or disabled. NAELA’s mission is advocating for quality legal services for the elderly and disabled.

A. NAELA supports the funding of the Legal Services Corporation and other federal efforts, including, but not limited to, retaining civil legal services as a priority for services funded under Title IIIB of the Older Americans Act, to provide quality legal services to the low income elderly and disabled.

B. NAELA supports the funding of national and state centers to support the work of field programs.

C. NAELA calls for the removal of:
   1. prohibitions on class actions, legislative advocacy and other restrictions which diminish the remedies available to elders and disabled persons who are served by the Legal Services Corporation; and
   2. limitations on the representation of any low income elderly or disabled person by Legal Services Corporation grantees.
Institute Manual Order Form

Name ____________________________
Firm Name __________________________
Address ____________________________
City ________________________________
State ________________________________
Zip ________________________________
Phone (_____ ) ______________________ Fax (_____ ) ______________________
☐ Check Enclosed
☐ Please bill my ☐ Mastercard ☐ VISA
Account # __________________________
Exp. ______________________________
Signature ____________________________

☐ 1998 2-Volume Manual @ $195.00 per set _____________________

INSTITUTE MANUAL

1. Update on Estate and Gift Tax Law and Asset Protection Programs
   Jonathan Blattmachr, Esq.

2. Managed Care Debate: What Regulatory Reform Is Needed
   Andy Weisser
   Dr. G. Lawrence Atkins
   Cheryl Matheis, Esq.
   George Strumpf, MA

3. Overview of Veterans' Benefits
   Meg Bartley, Esq.

4. Legislative Advocacy: Learning from the Professionals
   Mark B. Helfner, Esq.
   Kevin J. Ditsco, Esq.
   Cathy L. Hewitt, B.A.

5. Drafting and Administration of Sole Benefit Trusts
   Thomas D. Begley Jr., CELA
   Bruce D. Pinkerton, Esq.

6. Protection of Retirement Accounts
   Victor M. Finerman, Esq.

   Professor Marion Bernstein
   Kevin J. Donnellan, MA
   Kathryn Olson

8. Irrevocable Trusts for Asset Protection
   Vincent J. Russo, CELA

9. Personal Care Contract
   Nicola Jay Boone, Esq.
   Scott M. Soloff, Esq.

10. Death Isn't What It Used To Be - A Proposal for MediCaring
    Professor Anne M. Wilkinson, Ph.D.

    Rebecca C. Morgan, Esq.
    Robert Abrams, Esq.
    Donna R. Beshaw, CELA
    Nancy M. Coleman, MSW, MA
    Professor David M. English, Esq.
    A. Frank Johnson, CELA

12. Drafting and Administration of Marital Trusts and Credit Shelter Trusts
    Robert A. Gorfinkle, Esq.
    Stephen J. Silverberg, Esq.

13. Nursing Home Litigation Issues
    H. Kennard Bennett, Esq.
    Toby S. Edelman, Esq.
    David Hoffman, Esq.

14. Medicare+Choice Program: Implementation and Advocacy Developments
    Alfred J. Chipkin, Jr., Esq.
    Vicki Gottlich, Esq.
    Judith A. Stein, Esq.

15. Drafting Disasters
    Janet L. Kuhn, CELA
    Adrienne T. Braverman, Enrolled Agent
    Elizabeth R. Cheynwy, Esq.

16. Health Law Litigation Issues
    William J. Browning, CELA
    Gill Delford, Esq.
    Sally Hart, Esq.

    Charles R. Robert, Esq.
    Howard S. Krooks, Esq.

18. Effective Pre-Mortem and Post-Mortem Planning to Avoid Headaches, Heartaches and Hassles
    Kathryn A. Balsam, Esq.
    Professor Lawrence A. Frolik, Esq.

19. Solving the Day to Day Problems of Your Supplemental Needs Trusts Clients
    Lawrence A. Friedman, CELA
    Patricia M. Tobin, CELA
    Mary T. Schmidt Smith, Esq.

20. ERISA Litigation
    Victoria Quesada, Esq.
    Gregory F. Moore, Esq.
    Marc Machiz, Esq.
INTRODUCTION: THE WORLD IS CHANGING AND SO MUST OUR PRACTICES

A. Frank Johns; Daniel G. Fish; Allan D. Bogutz; Scott R. Severns ................................................................. (2 Tapes) $ 18.00

GUARDIANSHIP AND CONSERVATORSHIP: FOCUSING ON SERVING AS THE PRIVATE FIDUCIARY

Allan D. Bogutz; Robert Abrams; A. Frank Johns ........................................................................................................... (2 Tapes) $ 18.00

LAUNCHING INTO PROBATE, ESTATE AND TRUST ADMINISTRATION

William H. Overman; William McCormick; Roger M. Bernstein; Mary T. Schmitt Smith .................................................. (2 Tapes) $ 18.00

SHIFTING TO OPPORTUNITIES IN HEALTH CARE Cynthia L. Barrett; Sally Hart .......................................................... (2 Tapes) $ 18.00

CHAMPIONING THE RIGHTS OF THE ELDERLY: NURSING HOME ABUSES AND OTHER LITIGATION

H. Kennard Bennett; Scott R. Steverns; Cynthia L. Barrett; Geraldine E. Champion; A. Frank Johns; Rene Reixach ................. (2 Tapes) $ 18.00

SOLO AND FIRMS: GROWTH AND EXPANSION Dennis J. Toman; Daniel G. Fish; Vincent J. Russo ........................................ (1 Tape ) $ 9.00

THE HOW-TO’s OF MANAGING GROWTH OPPORTUNITIES: INTERNAL MERGERS, ACQUISITIONS, ASSOCIATIONS OUTSOURCING Part I Robert Abrams; Harley Gordon; Vincent J. Russo; Michael C. Hodes .................................................. (1 Tape ) $ 9.00

PANEL DISCUSSION: NEW MODELS OF DELIVERY OF LEGAL SERVICES

Judith A. Stein; Bess M. Brewer; Professor Toby Golick; A. Frank Johns ........................................................................ (1 Tape ) $ 9.00

THE HOW-TO’s OF MANAGING GROWTH OPPORTUNITIES: INTERNAL MERGERS, ACQUISITIONS, ASSOCIATIONS OUTSOURCING Part II Robert Abrams; Harley Gordon; Vincent J. Russo; Michael C. Hodes .................................................. (1 Tape ) $ 9.00

EXPANDING INTO OTHER SERVICES AND PRODUCTS Vincent J. Russo; Robert Abrams .................................................. (2 Tapes) $ 18.00

SPECIAL — THE COMPLETE ReDesign TAPE SERIES - 16 TAPES ONLY $128.00

NAELA 11/98
### CONTINUING LEGAL EDUCATION Cassettes

#### Pre-Conference: Legal Services & Public Interest Law Providers...

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Welcome and Opening Address: Public Policy and Legal Services</td>
<td>Alfred J. Chipkin, Jr.; Vicki Gottlich; William Benson</td>
</tr>
<tr>
<td>2</td>
<td>for the Elderly</td>
<td>James Bergman; Penelope A. Hommel</td>
</tr>
<tr>
<td>3</td>
<td>The American With Disabilities Act, Your Client and Medicaid</td>
<td>Rees M. Brewer; Susan Doehn; Cary LaCheen; Robert Griss</td>
</tr>
<tr>
<td>4</td>
<td>Managed Care Debate: What Regulatory Reform Is Needed</td>
<td>Andy Webber; Dr. Lawrence Adams; George Strumpf; Cheryl Mathews</td>
</tr>
<tr>
<td>5</td>
<td>Medicare &amp; Medicaid Advocacy for Low-Income Elder People</td>
<td>Hillary Stock; Patricia Nemore; Eric F. Wood</td>
</tr>
<tr>
<td>6</td>
<td>Legislative Trends in Guardianship Law</td>
<td>Sally Balch Hurme; Rebecca G. Morgan; Joan L. O'Sullivan</td>
</tr>
<tr>
<td>7</td>
<td>Panel: New Models of Delivery of Legal Assistance</td>
<td>Judith Stein; Rees M. Brewer; Toby Golick; A. F. Johns; Edwin Walker</td>
</tr>
<tr>
<td>8</td>
<td>Retirement Income Security</td>
<td>Burton D. Fred; Vicki Gottlich; Cindy Hounsell</td>
</tr>
<tr>
<td>9</td>
<td>Consumer Law Issues</td>
<td>Deanna Loomis</td>
</tr>
<tr>
<td>10</td>
<td>Current Issues in Assisted Living</td>
<td>Stephanie Edelstein; DaCosta Mason; Bruce Vigney</td>
</tr>
</tbody>
</table>

#### NAELA 1998 Institute Sessions...

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Welcome and Update on Estate and Gift Tax Law and Asset</td>
<td>Rebecca C. Morgan; Bernard A. Krooks; Jonathan Blattmachner</td>
</tr>
<tr>
<td></td>
<td>Protection Programs</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Managed Care Debate: What Regulatory Reform Is Needed</td>
<td>Andy Webber; Dr. Lawrence Adams; George Strumpf; Cheryl Mathews</td>
</tr>
<tr>
<td>13b</td>
<td>Legislative Advocacy: Learning from the Professionals</td>
<td>Mark Heffner; Kevin Driscoll; Kathy Hurwit</td>
</tr>
<tr>
<td>14</td>
<td>Overview of Veterans' Benefits</td>
<td>Victor M. Finner; Maxine Terry</td>
</tr>
<tr>
<td>15</td>
<td>Drafting and Administration of Sole Benefit Trusts</td>
<td>Thomas B. Begley, Jr.; Bruce D. Pinkerton</td>
</tr>
<tr>
<td>16</td>
<td>Protection of Retirement Accounts</td>
<td>Kevin J. Donnell; Kathryn Olson; Merton Barstein</td>
</tr>
<tr>
<td>17</td>
<td>Irrevocable Trusts for Asset Protection</td>
<td>Vincent J. Russo</td>
</tr>
<tr>
<td>18</td>
<td>Personal Care Contract</td>
<td>Nicola Jay Boones; Scott M. Solkoff</td>
</tr>
<tr>
<td>19</td>
<td>Death Isn't What it Used to be - A Proposal for MedCaring</td>
<td>Anne M. Wilkinson</td>
</tr>
<tr>
<td>20</td>
<td>Issues and Trends: The Future of Guardianship/Conservatorship</td>
<td>literary</td>
</tr>
<tr>
<td>21</td>
<td>Nursing Home Litigation Issues</td>
<td>H. Kennard Bennett; Toby S. Edelman; David Hoffman</td>
</tr>
<tr>
<td>22</td>
<td>Medicare-Choice Program: Implementation &amp; Advocacy</td>
<td>Gifford; Sally Hart; William J. Browning</td>
</tr>
<tr>
<td>23</td>
<td>Drafting Disasters</td>
<td>Janet L. Kuhn; Adrienne T. Braverman; Elizabeth R. Cheyney</td>
</tr>
<tr>
<td>24</td>
<td>Health Law Litigation Issues</td>
<td>Charles R. Roberts; Howard S. Krooks</td>
</tr>
<tr>
<td>26</td>
<td>Effective Pre-Mortem and Post-Mortem Planning to Avoid</td>
<td>Patricia A. Friedman; Lawrence A. Frolik</td>
</tr>
<tr>
<td>27</td>
<td>Solving the Day to Day Problems of Your Supplemental Needs</td>
<td>Charlotte K. Schmitt</td>
</tr>
<tr>
<td>28</td>
<td>Trusts Clients</td>
<td>Lawrence A. Friedman; Mary T. Schmitt Smith</td>
</tr>
<tr>
<td>29</td>
<td>Drafting, Administration of Marital Trusts and Credit Shelter</td>
<td>Victoria Quesada; Gregory F. Moore; Marc Machiz</td>
</tr>
<tr>
<td>30</td>
<td>Nursing Home Litigation Issues</td>
<td>F. Moore; Marc Machiz</td>
</tr>
</tbody>
</table>

#### SPECIALS

- **SPECIAL** – THE COMPLETE NAELA 1998 TAPE SERIES - 31 TAPES ONLY $248.00
- **SPECIAL** – THE COMPLETE INSTITUTE TAPE SERIES ( #11 through #30 ) 21 TAPES ONLY $168.00
- **SPECIAL** – ANY 10 TAPES - ONLY $85.00

### ORDER FORM

- **American Express**
- **MasterCharge**
- **Visa**

**Bank Credit Card #** ____________________________________________________________________________

**Expiration Date (Month/Year)** __________________________________________________________________

**Name** _________________________________________________________________________________________

**Firm Name** ___________________________________________________________________________________

**Address** _____________________________________________________________________________________

**City** __________ **State** __________ **Zip** __________________________ **Area Code/Telephone Number** ______________

**Sub Total** .............................................................................................................................. ______________

**POSTAGE**

- **1st TAPE** - INCLUDE $2.50
- **EACH ADDITIONAL TAPE** $1.00
- **MAXIMUM** - $10.50

**Ship by PRIORITY MAIL**

**Amount Due** ............................................................................................................................... ______________

**Make Checks Payable to:**

ADC Services
69013 River Bend Drive
Covington, LA 70433

**TO FAX ORDER**

(504) 892-9979

**U.S. FUNDS**