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Thank You
Amicus Brief - MD Department of Mental Health & Hygiene v. CMS

NAELA members Ron Landsman, Esq. and Rene Reixach, Esq., and their clients, have benefited greatly from litigation expertise and assistance provided on several important cases in Maryland and the District of Columbia by Cy Smith, Carlos Angulo and Bill Meyer of the Baltimore and Washington offices of Zuckerman Spaeder, LLP. Ron recruited Rene and the Zuckerman Spaeder lawyers to assist him on a case challenging Maryland Medicaid’s failure to permit outstanding nursing home bills to be applied to reduce the amount of income payable to a nursing home for current costs of care. Cy, Carlos and Bill subsequently joined Ron and Rene on a case challenging the estate recovery program of the District of Columbia Medicaid program and another case against the District’s program for failing to apply prior bills (similar to Maryland). Cy, Carlos, Bill and their colleagues at Zuckerman Spaeder did what some would consider impossible: mastering the complexities of Medicaid in short order and conveying it to the courts clearly and concisely. NAELA thanks them for their invaluable co-counsel on these cases.
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Articles appearing in the *NAELA News* may not be regarded as legal advice. The nature of Elder Law practice makes it imperative that local law and practice be consulted before advising clients. Statements of fact and opinion are the responsibility of the author and do not imply an opinion or endorsement on the part of the officers or directors of NAELA unless otherwise specifically stated as such.
Aloha Colleagues

As NAELA is about to begin its next twenty years, I reflected on what have been the hallmarks of its value during the first twenty. Then I recalled I already stated it in my President’s Message in the last article of the NAELA News.

I said our unofficial motto is our organizational compass: “Doing Well by Doing Good.” If this indeed concisely states the essence of NAELA’s value, NAELA must continue to provide innovative programs and services that ensure we achieve success in this mission.

Innovation is necessary for effective advocacy (doing good) and for practice management and development (doing well). How, then, do we innovate? What do we need to do to make innovation an organizational function?

We start by creating a sustainable NAELA habitat where we invite diverse industries to join us to serve a common customer market (the elderly and those with disabilities). We commit to a collaborative problem-solving focus. We appreciate the need to persevere if our initial approach is not successful.

To think “outside the box” we must expand our NAELA coalition to include industries such as housing, lending and investments where we have not historically collaborated programatically. Surely assisted living facilities, life care communities, reverse mortgages and annuities have each shaped the long-term care landscape as profoundly as Medicaid. NAELA must sit at the table with the leaders of those business sectors and others to brainstorm. Practically speaking, we must therefore build within NAELA an administrative framework that facilitates innovation.

To this end, we have created the Communication & Information Committee (CIC). The CIC nourishes innovation by functioning as a dynamic on-line library. It also performs a clearinghouse function; a virtual information superhighway between and among the Chapters and NAELA as well as within NAELA’s SIGs, committees and task forces; and newly important, our coalition partners and underwriters (identified and recruited under the leadership of Tim Takacs, CELA).

The CIC, chaired by Robert Fleming, CELA, and vice-chaired by Ed Zetlin, Esq., has two discreet functions designed to drive the support we need to innovate our practices and for NAELA.

First, the dynamic knowledge-base component (urged by Howie Krooks, CELA for several years) is to collect and organize materials and resources in the areas of law and regulation, public policy, public relations, member relations, practice-management/development and Chapter affairs. Imagine our current website fully integrated “on steroids.”

Members would be able to log onto an interactive chat forum by topic, or create one. We would stream audio/video educational materials for your support staff on the top ten word processing tips or an ethics lecture for your iPod. Find and download a form or clause with notes on use contributed by one of our SIGs.

These tools can help you position yourself as the premier provider of legal services and advocacy in your community. Look up a public policy position of NAELA, and find its related grass roots template letter. The software auto-fills in your legislative delegation and reports your efforts or those of your state Chapter into a productivity report for your Chapter and NAELA. Download a press release or an Op-Ed article for you to adapt. Use it along with professionally prepared talking points for a local media pitch and interview.

This also gives members an opportunity to give back to NAELA. Contribute to the CIC a SNT clause or an advocacy strategy successfully used on new state regulation over some aspect of the DRA. The CIC can then upload your materials. NAELA members and the Chapters can now instantly retrieve and use this resource.

Maybe you need to quick-start a seminar-based marketing program and want to use an already prepared Power Point presentation on the topic of your speech. You may want to find out how other states treat annuities for Medicaid.

The possibilities are enormous. Hopefully, you get the idea that with this platform we are limited only by what we can imagine.

The second function of the CIC is the clearinghouse component. NAELA currently approaches 5,000 members across the country and 40 plus committees, task forces and SIGs. It is hard to know all that is going on in NAELA World. This was not always the case.

As a result of our growth, we need a robust

continued on page 6
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communications network to keep the activities of one committee known to the other committees, SIGs and task forces. By so doing, we can leverage the work-product of a single committee, SIG or task force. Also, this process identifies otherwise unforeseen concerns triggered by the project, enabling us to fix problems before they arise.

Let me describe the design of the clearinghouse function. First, NAELA staff is directed to prepare meeting agendas for all committees so that they allow time to evaluate if any projects or issues ought to be placed on a CIC clearinghouse docket.

Second, the NAELA News, Web, Public Relations, Member Relations, Grass Roots, Public Policy and Chapters committees will have a designee regularly review the docket to identify and coordinate opportunities and concerns unforeseen by the submitting committee.

Also, any SIG or other entities reasonably affected will be called to join the docket review on a case by case basis. Results of the review will then be acted upon appropriately.

Take for example a recent request that NAELA participate in a National Advance Directives Day. Before the CIC, this project might have been referred to the Health Care SIG for follow-through; and that would be the end of it.

Now with the CIC serving as a clearinghouse, the Health Care SIG will evaluate the project for referral to the CIC clearinghouse docket as one of its standards meeting agenda items. The Health Care SIG would continue its work on the event.

However, the committees for the NAELA News & the Website could post an article about the event; Public Relations may prepare a press release, talking points, a sample letter to the Editor for NAELA members, and post this on the Web and out to Chapters for grass roots participation.

Development/Coalitions might obtain a grant or underwriter for the Health Care SIG to co-produce an educational video with AARP. Member Relations might put together a packet for attorneys to speak at local Senior Centers. Any concerns regarding this project complying with our public policy positions could be submitted for feedback to that committee.

This is what is meant by a strong communication network that opens opportunities and minimizes missteps.

Please let me know of any ideas to make NAELA even more valuable. Together with our talents, skills and dedication, we can insure NAELA is even more relevant and beneficial over the next twenty years than it was during the first twenty!

Warmest wishes,

G. Mark Shalloway
NAELA President

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I n the spring of 2005, the NAELA Quarterly became the NAELA Journal. The Journal, which is published twice a year, is provided to all NAELA members as a benefit of membership. In addition, we currently have subscriptions from 219 accredited law schools. We also have subscriptions from Newsweek, Lexis-Nexis and West Group. We should all be very proud of this publication that has spread the word about NAELA to professors and students across the nation. The 2007 Issue 2 should be in your mailbox soon!

The NAELA Journal Committee, chaired by Larry Frolik, Esq. includes Edwin M. Boyer, Esq., William J. Brisk, CELA, Bridget O’Brien Swartz, CELA, A. Frank Johns, CELA, Ron M. Landsman, Esq., Rebecca C. Morgan, Esq., Wendy H. Sheinberg, CELA, and Emily S. Starr, CELA. The Committee solicits and coordinates the articles for each issue. Once the articles have been accepted, reviewed by a committee member, and the text finalized, they are then reviewed by a citation editor and a copy editor. The author then has final review of recommended changes and the issue is set to go to print.

The committee is always looking for articles to include in the Journal. The articles should be between 4,000 and 10,000 words including the footnotes. Please conform text and citations to The Association of Legal Writing Directors (ALWD) Citation Manual: A Professional System of Citation or The Bluebook: A Uniform System of Citation. Citations submitted in Bluebook will be converted to ALWD. If you have an article you would like to have included in the Journal please send a quick synopsis of the article and a cover letter containing the title of your manuscript, your professional affiliation or school, address, telephone, and e-mail address to editor@naela.com.

The Second Annual NAELA Writing Competition has been completed. The competition is publicized to Law Schools across the country each winter and has a spring deadline. This year we received 24 submissions to the competition, which more than doubled last year’s submissions. Each of the papers was scored by volunteer NAELA members. The volunteer judges were Donna Bashaw, CELA, Doris Hawks, Esq., Franchelle Millender, CELA, Judith Grimaldi, CELA, Jean Ball, CELA, Fay Blix, CELA, Mary Wanderpolo, CELA, and Stu Zimring, Esq. Three papers were received from the University of Virginia School of Law and they secured first, second and third place in the competition, with Michelle Harris taking first place. NAELA presents the annual Student Writing Competition Award to the author of the top article during the Institute each fall in conjunction with the Law Student Day. The culmination of the Writing Contest is the NAELA Student Journal. The Student Journal includes the top eight articles received from students in response to the NAELA Writing Competition. The Student Journal is available for download on the NAELA Website or can be purchased through the NAELA store.

The Second Annual NAELA Writing Competition has been completed. This year we received 24 submissions to the competition, which more than doubled last year’s submissions.
Commentators have raised concerns that the UTC removes certain common law protections that are available to non-UTC jurisdictions. In particular, they claim that the UTC changes the common law to allow: (i) Government entities to reach or attach trust assets; (ii) assets in SNTs to be countable resources and cause beneficiaries to lose benefits; and (iii) general creditors of the beneficiary increased access to SNT assets. This article addresses those concerns and shows them to be without merit.

There is no “Uniform” Trust Code.

The UTC is not monolithic. Despite a strong desire for uniformity among the states, every adopting jurisdiction has enacted modifications to their version, creating 20 different “Uniform” trust codes. Many of these modifications affect a beneficiary’s and creditor’s rights to trusts. For example, Utah, Missouri, Wyoming and Tennessee now allow a self-settled spendthrift trust. Ohio, in addition to “support” and “discretionary” trusts, adds its own newly-created “wholly discretionary” trust.

To some extent, any discussion of the Uniform Trust Code is a discussion of something that does not exist, and must be tempered by the realization that each adopting jurisdiction has enacted its own, unique version. This article addresses the UTC as promulgated by the National Conference of Commissioners on Uniform State Laws.

Does the UTC change common law to give better trust access to government entities?

The answer is “no.” Federal law will preempt anything to the contrary in state law, including the common law. The UTC does not change this, but the federal government is not generally a creditor in SNT cases. The state may become a creditor for certain Medicaid benefits, but not until after the death of the recipient. This so-called “recovery estate” is controlled by other state statutes, and is not affected by the UTC.

Does the UTC give a beneficiary greater rights to trust assets than the common law?

The UTC is generally silent on the beneficiary’s right to compel distributions from a trust, other than to require that the trustee must act in good faith under UTC Section 814. The distinction between a beneficiary’s rights to trust assets and a creditor’s rights to those assets can be confusing. After all, doesn’t the creditor “stand in the shoes” of the beneficiary? In the UTC, however, the creditor does not wear the beneficiary’s shoes. For example, the UTC eliminates the distinction between support trusts and discretionary trusts with respect to creditor’s rights, but not beneficiary’s rights. Where the UTC is silent, the common law continues to apply. Therefore, the UTC does not change a beneficiary’s rights to assets of a SNT.

Article 8 deals with the duties and powers of the trustee. Of all the powers, duties and liabilities of the trustee, only one, the trustee’s duty of “good faith” found in Section 814, is brought up by the commentators as possibly giving a beneficiary greater rights to trust assets than available under the common law.

A number of commentators have argued that the “good faith” standard of UTC Section 814 has the effect of giving beneficiaries more rights in this context than they would have had under the common law, under which, they contend the standard is to “not act in bad faith.” Those commentators, however, cite no authoritative law or case for their position. Others note that although the standard is sometimes described as to “not act in bad faith,” there is no substantive difference between that and the UTC standard of “good faith.”

Will the UTC Make it Easier for States to Deny Benefits Under Medicaid?

Again, the short answer is “no.” The analysis of this issue boils down to a simple question: When can the beneficiary compel a distribution from an SNT under the UTC? Under the common law, where the beneficiary can compel a distribution, the trust will be counted as a resource. If the beneficiary cannot compel a distribution, the trust will not be an available resource. Unfortunately, the UTC does not address this issue. We are, therefore, left to the common law for the answer.

Under the common law, if the trustee’s duty is expressed in the form of a support standard, then the beneficiary can compel distributions consistent with the standard, and the
assets of the trust will be counted as an available resource. If the trustee’s duty is purely discretionary, the beneficiary cannot compel distributions, and the trust assets will not be counted as a resource.

The UTC does require, in Section 814, that the trustee act in “good faith” and “in the interest of the beneficiary.” However, these requirements are simply restatements of the common law of trusts and arguably, without them there would be no trust. Professor Newman notes in this regard that:

If the “trustee” need not act in good faith, the “beneficiary” arguably will be unable to hold the “trustee” accountable. In such a case, there may be no trust at all. Rather, the holder of property subject to such an arrangement arguably is its outright owner, with the language describing its use for the “beneficiary” being precatory.

The UTC does not change the common law with respect to beneficiary’s rights to compel distributions. It does not, therefore, make it easier for states to deny benefits to Medicaid applicants.

Conclusion

The UTC does little to change the common law with respect to the effectiveness of special needs trusts. Where the common law is changed or clarified, it tends to limit creditor’s rights. Those who decry the UTC’s impact on SNTs would not be happy with a return to the common law. They would instead be advocating for a shift to a new approach more akin to that found in the asset protection states such as Alaska, Nevada and Delaware. The policy implications of such a radical shift, however, are far-reaching, and go well beyond the issues discussed herein.

The UTC also goes well beyond what is discussed herein. There are many important additions to the law of trusts found in the UTC, including: virtual representation of unborn, unascertained, minor, and disabled beneficiaries; the concept of a “qualified beneficiary” entitled to greater oversight as compared to remote, contingent beneficiaries; nonjudicial settlements; how to give effective notice to an organization; trusts for honorary purposes and for pets; rules for modification of irrevocable trusts and charitable trusts; rules for the creation and operation of revocable trusts; trust modification by a power of attorney; a series of default rules dealing with co-trustees, vacancy, removal, and resignation of trusteeship and appointment of successors; and a comprehensive list of the duties, powers and liabilities of trustees.

The UTC’s treatment of SNT issues should not be a general referendum on the UTC as a whole. Regardless of how one feels about the UTC’s approach to SNTs, the Code is a significant step forward in the law of trusts.

I. Mark Cohen, Esq., LL.M. (Tax). Mr. Cohen is the Virginia Reporter to the UTC. This article is a condensed version of the outline accompanying the panel discussion on the effect of the Uniform Trust Code on Special/Supplementary Needs Trusts at the April 2007 NAELA Symposium.
NAELA has recently created a federal political action committee, Senior Rights PAC, to increase our recognition and effectiveness in the public policy arena. Please join your fellow NAELA members in this exciting time as NAELA actively advocates for our Country’s seniors and persons with special needs!

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Thank you for your generous support!

The purpose of the SR-PAC is to help elect candidates who will support the goals and objectives of NAELA. SR-PAC funds are used to make contributions to candidates for public office. The contribution amounts listed are only suggestions; more or less may be contributed (subject to a limit of $5,000 per donor per calendar year). The amount given, or the refusal to give, will not benefit or disadvantage a member. You may refuse to contribute without reprisal. Only members of NAELA may be solicited to contribute. We may not accept contributions from corporations, foreign nationals, federal government contractors, or by one person in the name of another person, nor may we accept contributions of more than $5,000 per calendar year from any one contributor. Contributions are not tax deductible. Federal law requires us to obtain and report the name, address, occupation and employer of each contributor who gives more than $200 in any calendar year.
Financial Development

Financial Development is one of the priorities for my administration. You might bristle upon reading that raising money is among my goals. You may ask: Are we not a profession steeped in the tradition of public service? Isn’t this commercial and misguided? How can we be concerned with such a mundane goal?

Consider this: We represent an often invisible and silent home-bound population. Some face extraordinary physical challenges, others face cognitive impairment and, unfortunately, others have both limitations. Our elderly clients and clients with disabilities find themselves in extenuating circumstances that expose them to catastrophic expense and lost or limited self-determinism.

Certainly we are all entitled to the same opportunities for personal dignity and financial security. I write about “Doing Well by Doing Good” in the President’s Message in this issue. The plain truth is that optimal advocacy and innovation take money. Since money is neither inherently good nor bad, we must use it for important and just causes. Our clients and NAELA are both.

Currently we are building a grassroots advocacy program. We are providing scholarships to encourage new attorneys’ interest in our specialty area. Our continuing education programs are expanding into new technologies and media.

We are committed to developing our Chapters that we have worked to grow in numbers so that we can better fulfill our mission both nationally and in our neighborhoods at home. Our SIGs have matured and require more support.

With the institutionalization of Financial Development coordinated with our Coalition program, the opportunity for enhanced financial support has never been greater. I’ve asked Tim Takacs, CELA, along with others to implement this objective. We can take our cue from traditional charitable organizations, and adapt and design a multi-strategic approach led by NAELA members and implemented by staff.

We will partner with our generous and loyal exhibitors and advertisers who respect and appreciate NAELA’s professional integrity to develop our effort into a comprehensive fully integrated program of grants, endowments, underwriting, advertising, planned giving and supporter and subscriber-based offerings.

We can execute these arrangements by defining our relationships and policies with particular care that will preserve the essential professional and ethical character of NAELA.

Finally, let me share with you my thanks to our staff members who solicited commitments from exhibitors and sponsors for the Cleveland Symposium this past May, setting record revenue from these sources. NAELA needs to take this example and maximize it for the benefit of the organization and our clients.

G. Mark Shalloway, CELA is the current President of NAELA. He hopes to see all of you at the 2008 NAELA Symposium in Maui!
Introduction

Even elder law attorneys who do not include Medicare in their practices recognize that Medicare plays an important role in the lives of their clients. Over 44 million older people and people with disabilities rely on Medicare as their source of health care coverage. Of that number, 80% receive benefits through the traditional Medicare program, sometimes called fee-for-service Medicare. A growing number are enrolled in private insurance plans that deliver benefits under Medicare Part C, the Medicare Advantage (MA) program. Most people who are in an MA plan are enrolled in an HMO. That number is changing, partly as a result of aggressive marketing by other MA plan types that may be more profitable to the plan sponsor.

Medicare SNPs

In 2003, Congress authorized a new kind of private MA plan called a Special Needs Plan (SNP). SNPs differ from regular private MA plans in that they are intended to enroll, exclusively or disproportionately, only specific high-needs subpopulations of the Medicare population. Such focused enrollment is prohibited for regular MA plans. SNPs operate with few requirements from the law or from the Centers for Medicare & Medicaid Services (CMS). CMS does not define key terms, allowing SNPs to operate without standards. Nor does CMS collect meaningful data on the services SNPs provide, allowing SNPs to operate without oversight of how or whether they deliver what they promise. Although the authorization for SNPs is scheduled to end in December 2008, there is a good likelihood that the authorization will be extended.

The number of SNPs has grown exponentially since 2004, their first year of operation, and 2007, due in part to the revenue they generate for plans. The number is projected to increase in 2008 as well. Thus, there is a good likelihood that some of your clients are enrolled in a SNP or may consider enrolling in one in the near future. This article provides a brief description of SNPs and suggests issues for you and your clients to consider when reviewing a SNP.

What Populations do SNPs Serve?

Three groups are identified in law and regulation as special needs populations:

- Individuals dually eligible for Medicare and Medicaid,
- Individuals residing in specified institutions for extended periods, and
- Individuals with a specific severe or disabling chronic condition identified by the SNP.

As we know well, the three populations identified are the frailest, sickest, and most disabled Medicare beneficiaries.
They are also the highest users of health care services. Dually eligible people, for example, use 24% of all Medicare dollars, but represent only 16% of the Medicare population. While dual eligibles are a separate population for purposes of designing a SNP, the other two populations include many dual eligibles as well.

What is, and is Not, Required of an MA Plan to be a SNP?

A SNP must be a “coordinated care” plan, either a Health Maintenance Organization (HMO) or Preferred Provider Organization (PPO), not a Private Fee-for-Service or Medicare Savings Account plan. Unlike other MA HMOs and PPOs, a SNP must provide coverage for Part D, the prescription drug benefit, as well as for Parts A and B. Beginning in 2008, SNPs must also state what their “model of care” is; however CMS imposes no requirements for either the content or the performance of the models of care. CMS imposes no other requirements on SNPs. Since SNPs began operating in 2004, CMS has taken no action to enforce any obligations that SNPs meet the special care needs of their members.

Plans serving dual eligibles (regardless of whether they are considered Dual Eligible SNPs) are not required to coordinate care and payments between their members’ Medicare and Medicaid coverage, even though the lack of both care coordination and integration of payment systems are the structural “gaps” that promote fragmentation in care for dual eligibles. Plans are also not required to include Medicaid providers in their plan networks, or to inform enrollees of their Medicaid coverage and how to access it.

How are SNPs paid?

SNPs are paid just like other private MA plans: through a monthly amount per beneficiary that is “risk adjusted” to reflect the likely utilization of services of each enrollee. All MA plans receive “bonus” payments for their enrollees who are dual eligibles or institutionalized. As a result, because nearly all SNP members, by definition, fit these categories, SNPs receive a higher average payment than regular MA plans.

What factors should elder law attorneys consider when asked about SNPs?

Attorneys whose clients are already enrolled in SNPs have identified a number of problems with these new Medicare Advantage plans. Some of the problems are endemic among all MA plans: adequacy of networks, more restrictive medical necessity determinations resulting in denials of coverage, cost-sharing provisions that are more onerous than under traditional Medicare.

Attorneys whose clients are already enrolled in SNPs have identified a number of problems with these new Medicare Advantage plans. Some of the problems are endemic among all MA plans: adequacy of networks, more restrictive medical necessity determinations resulting in denials of coverage, cost-sharing provisions that are more onerous than under traditional Medicare. Other problems are specific to the SNPs and their expressed role in serving designated special populations.

- SNPs should be offering care and services that are better at meeting their members’ medically complex “special needs.”
- How are the services and the care coordination offered by the SNP different from traditional Medicare or from a regular MA plan?
- Are the extra or supplemental benefits offered by the plan relevant to the special population in general and to your client, in particular?
- How does the plan’s drug formulary compare to prescription drug plans in your area? Are your client’s drugs included? At what cost-sharing? With what utilization management requirements?
- Many of the needs of dually eligible beneficiaries that are not included in Medicare are covered by their state Medicaid program.
- What additional services are Medicare SNPs providing that are not already covered by traditional Medicare and by Medicaid?
• Do some of the extra or supplemental benefits (ex. travel, dental, vision) duplicate benefits already available under your state Medicaid program?
• How does the SNP coordinate with Medicaid?
  • Does the SNP have a contract with the state or local Medicaid program?
  • Are all of the providers in its network Medicaid providers?
  • How does the SNP ensure that Medicaid wraps around the Medicare benefit so that enrollees do not pay greater cost sharing than would be allowed under your Medicaid program?
  • How does the SNP ensure that your client will receive the Medicaid for services that are not covered by Medicare, included access to prescription drugs that Medicaid covers but Medicare does not?
• Individuals eligible for an institutionalized SNP may reside in institutions that are not subject to Medicare payments, such as Intermediate Care Facilities for people with Mental Retardation, nursing facilities, or in home or community-based settings where they receive primarily Medicaid services.
  • How can an institutionalized SNP add value for these populations, especially when Medicaid is paying for the nursing facility, ICF/MR or HCBS care?
  • How does the SNP coordinate with existing requirements places on institutions by, for example, state licensing laws, the nursing home reform law, and other authorizing federal statutes?
• SNPs should be improving beneficiaries’ access to primary care and services and to other providers they need, including specialists and social services.
  • How do SNPs guarantee that care coordination services already in place will continue after enrollment?
  • How do SNPs guarantee that members continue to receive services from trusted providers?
• Adequate information should be communicated to potential SNP enrollees and members about all that is or is not covered by the SNP and about how accessing services through the SNP differs from accessing services through traditional Medicare or through other Medicare Advantage plans.
  • Do SNPs accurately explain the interaction between Medicare coverage available through the SNP and Medicaid?
  • Do plan materials discuss appeal rights for Medicaid, as well as for Medicare, denials?

Conclusion

Elder Law Attorneys should keep a careful eye on Special Needs Plans to ensure they are truly beneficial to a client with complex care needs, and that enrollment in these plans does not snip off access to established providers and care plans. The Center for Medicare Advocacy would like to hear from NAELA members about their experiences with the SNPs and other coordinated care models in their community. We will be convening a small, by-invitation-only conference in October, funded by the Commonwealth Fund, to discuss these plans from a consumer perspective. Contact Patricia Nemore, pnemore@medicareadvocacy.org, and Vicki Gottlich, vgottlich@medicareadvocacy.org, if you have questions or comments about SNPs.

The NAELA CMS Task Force is committed to providing NAELA members with updated information about CMS policies that affect our clients and with information about how to address varying Medicare problems as they arise in our practices. For information about the CMS Task Force contact Morris Klein, CELA, morrisklein@netzero.net.
Listserv Rules of Conduct

The NAELA Listservs are offered as a tool for NAELA members to communicate with one another on an electronic basis on substantive law issues. They include the Member Listserv and the Chapter Listserv for members to communicate so substantive law issues, and the NAELA Neighborhood Listserv. The NAELA Neighborhood is a new member service that allows members to chat about everything and anything, except “legal matters.” Sign-up for any of the Listservs and network with your colleagues today!

Since the Listserv is not moderated, we ask that all participants abide by a few rules of etiquette.

Messages to the listserv are delivered to all participants. Please remember to...

• Keep paragraphs and messages short and to the point.
• Focus on one subject per message.
• Limit line length and avoid control characters.
• Be sure your message word wraps so the receiver gets the entire message.
• Include your signature at the bottom of your messages. Your signature footer should include your name, firm, and not only your complete e-mail address, but your telephone and fax numbers as well.

**It’s Not Just What You Say...**

• Be professional and careful about what you say about others. E-mail is easily forwarded and cries of libel and slander can result. Comments of a defamatory nature may not be posted to the listserv.
• Refrain from making off color comments or suggestions, they are not professional. Expressions of hostility or ridicule toward a race, ethnicity, religion, or similar group will not be tolerated.
• Be careful when using humor or sarcasm. Without face-to-face communication your joke may not be taken as such.
• When quoting from other sources, please give appropriate attribution.
• To avoid copyright infringement, ensure that you have written permission from publishers prior to posting articles and similar works, including newspaper and magazine articles. Absent permission, you should only provide a link to such works.
• Conversations about pricing and/or fees will not be tolerated. To avoid any implication of anti-trust steer clear of these topics.

**It’s How You Say It...**

• When responding to a message *edit out* whatever is not directly applicable to your reply. Including the entire original message is a waste of space and annoying to those reading it.
• Capitalize words only to add emphasis or highlight an important point. *Asterisks* surrounding a word also can be used to make a stronger point. Also, please remember that all caps is universally perceived in e-mail as SHOUTING, turn off the caps lock.
• Avoid symbols. Since most of the participants on the Listserv are not Internet proficient in the symbolism of e-mail, avoid using even the most commonly used e-mail symbols; let’s stick to text only.
• As we all know, there are a multitude of messages that come across the Listserv daily. To keep the load manageable, please respond privately to requests for referrals, and any other message that asks you to respond privately.

Problems: If you have ANY problems related to the Listserv, *please* do not post them to the list. List managers are at your disposal for this very purpose; please feel free to contact them at any time.
NAELA Members in the News

NAELA was mentioned as a resource and/or elder law was prominently noted in:

- “Create a Trust for Disabled Son,” which was published in the July 22, 2007 issue of Newsday.
- “After the Hospital: Ways to Find Rehab,” which was published in the August 28, 2007 issue of the Courier-Post.
- “How to Help Loved Ones with Mental Disabilities,” which was published in the September 11, 2007 issue of MSNBC.
- “Giving Answers on Medicare Attorneys, Khobar Bombings, Motorcycles,” which was published in the October 1, 2007 issue of The Evening Bulletin.
- “Nursing home Payment Squeeze,” which was published in the October 2007 issue of Consumer Reports.

NAELA Members in the News:

- Lawrence E. Davidow, CELA, was quoted in “The Annual Exclusion Gift to a Person with Disabilities: A Practical Guide,” which was published in the August 1, 2007 issue of Exceptional Parent.
- Ronald A. Fatoullah, Esq., wrote the article “Guardian appointed to access German Reparations Payments,” which was published in the June 7, 2007 issue of The Queens Courier.
- Ronald A. Fatoullah, Esq., wrote the article “Estate Recovery From The Spouse of Medicaid Recipient,” which was published in the August 2007 issue of Healthwise.
- Ronald A. Fatoullah, Esq., was quoted in “Handling Funeral Expenses. Arranging for Prepaid Plan Before Starting Medicaid Helps Ease Burden On Family,” which was published in the September 10, 2007 issue of the New York Daily News.
- Donald S. Hecht, Esq., was quoted in “Financial Advice: Create Trust for Disabled Child,” which was published in the July 22, 2007 issue of Newsday.
- Jeffrey A. Marshall, CELA, was quoted in “Nursing Homes, Medicaid and Your Assets,” which was published in the July 22, 2007 issue of Wall Street Journal.
- Jeffrey A. Marshall, CELA, was quoted in “Solving Medicaid Assets Math,” which was published in the July 24, 2007 issue of Wall Street Journal.
- Kathleen Martin, Esq., wrote the article “Elder Justice Act Would Help Bring Attention to Abuse,” which was published in the July 17, 2007 issue of The Mercury (Pottstown, PA).
- Craig Reaves, CELA, was quoted in “Sibling Agreements: A Planning Tool That Helps Avoid Elder Care Battles,” which was published in the August 13, 2007 issue of Lawyers USA.
• Craig Reaves, CELA, was quoted in “Sibling Agreements: A Planning Tool That Helps Avoid Elder Care Battles,” which was published in the August 20, 2007 issue of Minnesota Lawyer.

• Don L. Rosenberg, Esq., was quoted in “State to Recoup Medicaid Costs,” which was published in the September 28, 2007 issue of the Detroit News.

• Charles P. Sabatino, Esq., was quoted in “Nursing-home Payment Squeeze,” which was published in the October 2007 issue of Consumer Reports.

• G. Mark Shalloway, CELA, was quoted in “Lawyer Weaves Safety Net for the Needy,” which was published in the September 16, 2007 issue of South Florida Sun-Sentinel.

• Steve Stern, Esq., was quoted in “Groh Challenges Stern for 16th LD Post,” which was published in the September 17, 2007 issue of Suffolk Life.

• Jan L. Warner, Esq., wrote the article “A Parent Remarrying Can Upset Children,” which was published in the September 4, 2007 issue of Pittsburgh Post-Gazette.

• Jan L. Warner, Esq., wrote the article “Self Determination Could Prevent a Lot of Grief,” which was published in the September 18, 2007 issue of Pittsburgh Post-Gazette.

• Jan L. Warner, Esq., wrote the article “Disabled Veterans May Face Skirmishes for Some VA Benefits,” which was published in the September 25, 2007 issue of St. Petersburg Times.

• Jan L. Warner, Esq., wrote the article “Diet Linked to Macular Degeneration,” which was published in the September 26, 2007 issue of The Republican.

• Jan L. Warner, Esq., wrote the article “Depression, Aging Don’t Go Hand in Hand,” which was published in the October 2, 2007 issue of Pittsburgh Post-Gazette.

• Jan L. Warner, Esq., wrote the article “Get a Lawyer to Sort Out Will’s Changes,” which was published in the October 9, 2007 issue of Pittsburgh Post-Gazette.

NAELA Member Awards

Wendy H. Sheinberg, CELA has recently been named as one of only fifteen New York Metro Super Lawyers in the category of Elder Law. The Super Lawyer moniker is given to no more than 5% of practicing attorneys in each state and suggests a high degree of peer recognition and professional achievement in the attorney’s area of practice. Selection as a Super Lawyer follows a lengthy nomination process followed by a review of the attorney’s professional credentials by both Super Lawyer peers and a panel of experts.

Gregory L. Kenyon, Esq., recently received the John Fisher Alumni Award from Buena Vista University. The award was established in 1970 and named for Buena Vista’s 14th president. This outstanding service award recognizes a former student who possesses a consistent and persevering dedication to the qualities for which the University stands.

NAELA Member Speakers

Susan A. Rooth, Esq., was the guest speaker at the Madeira Beach Seniors Club on Monday, September 10, 1 p.m. at City Hall. An announcement of her speaking engagement was published in the Tampa Bay Beacon on September 4, 2007.
The National Academy of Elder Law Attorneys’ (NAELA) Member Discount Program provides discounts to NAELA members on a variety of products and services.

The program was formed to develop partnerships with companies willing to participate in a group-purchasing program that extends discounts to NAELA members.

You can look forward to receiving information directly from these vendors by contacting them for further information. NAELA will announce new partners as they are approved; meanwhile, we encourage you to take full advantage of this member service and reap the benefits of your NAELA membership!

NAELA does not imply warranties as to the products or services offered by Member Discount Partners. It is recommended that NAELA members should assure themselves as to quality, integrity, suitability, and other relevant attributes.

AMERICAS LIFE STORIES
480-986-1203
www.AmericasLifeStories.com
Product Information: Capturing Life Stories is a simple, inexpensive, easy to use kit that guides anyone through the productive recording of his or her life experiences. Discount to Members: 10% discount, starting at $17.95

DHL
Members can rely on DHL’s commitment to guaranteed on-time delivery and customer service 24 hours a day, 7 days a week. To enroll and start saving, call 1-800-MEMBERS today to speak with a dedicated Member Service Representative, or visit www.1800members.com/NAELA. Please consult www.dhl-usa.com for service availability.

Product Information: DHL Express is an air express and ground shipping company. Discount to Members: up to 25% on all of your express shipping; DHL Next Day, DHL 2nd Day, DHL Ground and International Express Services

STAPLES
Click here for fax form to set up a NAELA account. Nanette-Smith@staples.com www.stapleslink.com
Product Information: Office supply program with access to over 80,000 products. Discount to Members: Up to 98% of manufacturer’s list price, depending on the product.

DOCBANK
610-667-3524
www.docbank.com
Product Information: Emergency storage and retrieval service for living wills and other advance medical directives. Discount to Members: 33% discount on fees (1yr. = $20, 5yr. = $60) Complimentary memberships to attorneys and all their staff.

HERTZ
1-800-654-2200
Product Information: With 7,000 locations in more than 150 countries, Hertz is able to offer special discounts on car rentals worldwide. Discount to Members: 10% discount on Hertz Standard Daily, Weekend, Weekly and Monthly Rates. Call 1-800-654-2200 and mention Hertz Discount CDP # 1673984

INTERACTIVE LEGAL
LegalSuiteTM (888) 315-0872
www.legalsuite.com
Product Information: LegalSuiteTM is a comprehensive collection of drafting tools: Elder Protection PlanningTM by Tom Begley, Andrew Hook and Stephen Silverberg (basic estate & Medicaid planning), Wealth Transfer PlanningTM by Jonathan Blattmachr & Michael Graham (a tax oriented system for trusts & estates), and Estate Planning EssentialsTM by Jonathan Blattmachr & Michael L. Graham (estate planning for the middle class). Discount to Members: 5%. Please mention code NAE01 when ordering.

KONICA MINOLTA BUSINESS SOLUTIONS
858.348.2207, ask for Gene
www.kmbs.konicanonolta.us
Product Information: Digital Copiers/Printers, Color Copiers, Color Printers and Fax Machines. Konica Minolta is a document imaging specialist helping you achieve the "Paperless Office". Discount to Members: 40% off on equipment. Will extend Fortune 500 pricing on service agreements.

LEGAL RESOURCES, LLC
631-725-4778
www.legalresourcesllc.com
Product Information: Senior Resource Guide Marketing System is an innovative marketing program that guides in creating a useful 22 page informative resource guide for those with long-term illness. Discount to Members: Fifteen (15%) to NAELA members.

PREMIER SOFTWARE
856-429-3010
www.premiersoftware.com
Product Information: Installation and training of Time Matters and Elder Law Feature Package software for elder law practices. Discount to Members: 10% off on products* and services. The 10% discount applies to the Elder Law Feature Package. The Time Matters product discount is still being negotiated.

THE GROWTH COACH
419-503-0294
j.beck@thegrowthcoach.com
75443.28/index.asp
Product Information: Optimize your practice by utilizing quarterly Strategic Retreats. The experienced coach/facilitator will guide participants through a proven set of processes and business content enabling participants to improve their focus, effectiveness, accountability, and Strategic Mindset®. Retreats are held regionally throughout the US and Eastern Canada. A phone/e-mail option is also available. Discount to Members: 20% discount on Strategic Retreats (in-person coaching) and on Coaching Club (phone/e-mail coaching). Please mention product code NAELA-JBA.

VSA, Inc.
856-547-3500
valerie.schlitt@vsaprospecting.com
www.vsaprospecting.com/centers-influence.htm
Product Information: VSA implements programs to build and expand Elder Law Attorneys’ base of professional referral sources. Through list research, targeted mailings and telephone calls, Elder Law Attorneys meet other professionals (assisted living facilities, discharge planners, etc.) who can refer business. Discount to Members: Ten percent (10%) to NAELA members

SUNBRIDGE
407-445-6044
Farnsworth@sunbridgenetwork.com
www.SunBridgeLegacy.com
Product Information: The SunBridge Legacy Builder Retreat is an intensive, hands-on, two-day workshop that teaches elder law attorneys, their staff members, and other advisors how to integrate their planning for the financial legacy with their planning for the “larger legacy of non-financial wealth” and how to elegantly and profitably weave legacy building into their marketing and client services. Discount to Members: $300 discount off the regular $997 price of the Retreat, a 30% savings. Net cost for NAELA members and staff: $697.

Sunbridge: A phone/e-mail option is also available. Discount to Members: 20% discount on Strategic Retreats (in-person coaching) and on Coaching Club (phone/e-mail coaching). Please mention product code NAELA-JBA.

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January 25-27, 2008

The UnProgram is YOUR program. It really is all about you and what you want to get out of it. This is an opportunity to spend a long weekend with NAELA members from across the country. Imagine three days of brainstorming, networking, exchanging ideas/forms, gathering and sharing substantive information, issues of practice management, staffing, time management and more!

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Phone: (808) 661-1234
Guest Fax: (808) 667-4498

Call the Hyatt Regency Maui Hotel (800) 233-1234 and mention that you are with the NAELA Symposium to receive the special rate. Reservations are on a first-come, first-served basis and the group rate cannot be guaranteed after Saturday, March 15, 2008. Be sure to make your reservations early!

National Academy of Elder Law Attorneys
1604 N. Country Club Road
Tucson, AZ 85716-3102
520.881.4005 • 520.325.7925 fax
www.naela.org

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