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Advocacy/Litigation Section
- Litigating Filial Responsibility Claims

Health Care Section
- The Missing Piece in End-of-Life Decision Making

Practice Development/Practice Management Section
- Business Tips

CAPsules
- Long-Term Managed Care: A Medicaid Solution for Cost Containment

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PRESIDENT’S MESSAGE

Looking Back and Looking Ahead

When I began the journey as President, I thought, “there is so much to be done and so little time to do it.” Prior to becoming President, I developed my Presidential goals, and when I was sworn in, I charged forward. After the first few months, I began to realize it’s not so much about reaching any particular goal. Presidential goals have changed. It’s no longer really about a President’s goals; it’s more about NAELA’s goals. These goals are developed and usually implemented over more than one President’s term. These are goals that are developed cooperatively and collaboratively by the Board, the officers, the staff, the Committees, and the members.

Yes, the members. Our goals have become more and more focused on member value. We have begun to regularly collect data from members on everything NAELA offers and plan our future based upon that data.

Organizational Goals

So, what are some of these organizational goals that we have been working on over the last year?

The Member Value Task Force and the Trends Committee are now part of NAELA’s organizational structure. The Member Value Task Force regularly assesses and revises our member value proposition. The Trends Committee identifies issues and trends relevant to Elder and Special Needs Law and submits issues to the Board for consideration. The Member Value Task Force is working on branding NAELA and its members, strengthening Chapters, and promoting NAELA as the Elder and Special Needs Law hub of the legal marketplace. The Trends Committee is focusing on the unauthorized practice of law and the “do-it-yourself” approach to legal matters.

Board training has become a regular part of every Board meeting and Executive Committee meeting. The goal of the Board and our Executive Director, Pete Wacht, who is instrumental in this training, is to develop a clear understanding of the roles of the Board, Executive Director, and Executive Committee.

NAELA has developed new alliances and strengthened existing alliances over the past year, including working cooperatively with the National Aging and Law Conference (NALC), the National Association of Legal Services Developers (NALSD), the National Guardianship Network (NGN), the National Association of Professional Geriatric Care Managers (NAPGCM), the National Senior Citizens Law Center (NSCLC), and AARP.

Over the last year, NAELA has also been working on new options in programming and membership, including bundling of services, a programming matrix, and new methods of education.

So, looking back, the work on implementing and achieving these goals isn’t really about the President. It is about the hard work of a lot of talented volunteers throughout the NAELA organization and our Executive Director and staff.

Looking ahead, it’s that same dedication and hard work by those volunteers and staff that will help NAELA achieve these organizational goals.

NAELA’s Board of Directors is tops. Some believe that lawyers do not deal well with consensus. However, with the NAELA Board of Directors, there is a climate of trust, candor, and mutual respect. The Board is a cohesive group dedicated to making NAELA the premier group for all things Elder Law and Special Needs Law. I urge you to visit any Board meeting and observe the respectful exchange of divergent ideas, and the humor.

Our Executive Director and staff are priceless. Experts in the field of association management say that a measure of a successful organization is an Executive Director who is a broker of ideas. That is Pete Wacht. Not only is Pete our broker of ideas, he keeps us focused and helps the Board, the Executive Committee, and staff operate as a team. He really sees the NAELA big picture.

When I was sworn in as NAELA President in Las Vegas, I asked the question “Why NAELA, why now?” Almost a year later, I ask the same question and the answer is the same. We have the vision, the focus, and the plan to be the go-to organization for all things Elder Law and Special Needs Law. Our members are about heart; our members are about solutions; our members are about relationships; and, our members are about knowledge.

I have enjoyed my time as NAELA President and I look forward to seeing many more years of good and important work as NAELA proceeds forward.
EXECUTIVE DIRECTOR’S MESSAGE

Peter G. Wacht, CAE

As I write this, the Supreme Court is hearing oral arguments regarding the legality of certain provisions contained within the Affordable Care Act, an important law for many NAELA member clients. I won’t go into the details of the arguments, as that’s covered in another article in this issue. But it brings to light a role that every Elder and Special Needs Law attorney assumes on a regular basis, that of advocate.

By representing two of the most vulnerable populations in the United States — older Americans and people with special needs — it’s inevitable that more often than not NAELA members are not just practicing the law, but trying to ensure that their clients obtain the assistance and support they need and deserve. In the current fiscal environment, meeting that objective is becoming more and more challenging. Yet rather than dissuading NAELA members from taking on the task, it seems to give them additional energy and focus.

Moreover, I would suggest that with this being an election year, such energy and focus is absolutely essential. Therefore, NAELA has developed a few tools that members can use to help with their advocacy activities:

1. For the most current information on NAELA public policy priorities and the status of key pieces of legislation and initiatives, visit the Advocacy tab on the NAELA home page (www.NAELA.org). In the Advocacy Action Center, you can find talking points and direct links for communicating with your national legislators. Moreover, pay close attention to the OurGov section of the weekly eBulletin, which provides updates on happenings in Washington, D.C., and the states.

2. From April 30 to May 5, NAELA will be hosting the inaugural District Days. Your Senators and Representatives will be in their state and district offices during this week. Take advantage of this opportunity to meet with them and discuss NAELA’s policy priorities, ranging from Medicaid to long-term services and supports to supporting access to pooled trusts. NAELA will provide you with talking points and background information and can offer additional assistance through our public policy consultants as needed. A couple hours of your time could go a long way in establishing an important political relationship to the benefit of your clients. And if you can’t do it this week, make a commitment to schedule appointments for later in the spring.

3. NAELA has introduced the new quarterly Eye on Elder and Special Needs Issues newsletter. This one-topic-per-issue newsletter — the first newsletter focused on the reauthorization of the Older Americans Act — is distributed to Capitol Hill, federal agencies, and the press, coalitions, and other organizations interested in issues important to older adults, people with disabilities, and their families. This newsletter is also sent to all NAELA members. Feel free to distribute it or use the content contained in the newsletter and share it with your clients, state and local legislators, or others to spread the word about key issues within the Elder and Special Needs community.

But keep in mind that a state focus is required as well. Many State Chapters have public policy committees and are regularly tracking key pieces of legislation or proposals. So think as well about becoming more involved with your State Chapter or on the state level with your fellow NAELA members so that you can play a more direct role in crafting the legislative and regulatory environment that can have a direct impact on your clients.

When I first began working for the Academy, NAELA Past President Ruth Phelps explained that Elder and Special Needs Law attorneys were part attorney, part social worker, and part advocate. In 2012, your role as advocate will take center stage as the national elections approach. In addition to following what’s going on politically, get involved both nationally and on the state level. Advocate for your clients not only individually, but also collectively, adding your voice to the many other NAELA members who have taken up the call. We have a say in those matters affecting older Americans and people with special needs, we just need to make sure that our voice is heard.

Congratulations to the Newest Certified Elder Law Attorneys (CELA)

Letha Sgritta McDowell, CELA, Elizabeth City, N.C.
Kelley Bentley, CELA, Bellaire, Texas
Lucy J. Budman, CELA, Wakefield, Mass.
Jennifer Rose, CELA, Moon Township, Pa.
Sharing strategies, learning from colleagues around the country, Section webinars, access to the Section’s Listserv and Online Library — these are a few of the things Steering Committee Chairs spoke of when we asked them about the benefits of Section membership. NAELA Sections offer members information and substantive networking opportunities in specific areas of interest. Sections offer opportunities to experienced attorneys as well as those attorneys who are new to Elder and Special Needs Law. The nine NAELA sections are:

- Advocacy/Litigation
- Government Assistance Programs
- Guardianship/Conservatorship
- Health Care
- Practice Development/Practice Management
- Tax
- Special Needs Law
- Trusts and Special Needs Trusts
- Young/New Attorneys

Annual dues are $60 per year for each Section, except the Young/New Attorneys Section (membership dues for this Section are waived for the first two years).

Section Highlights

In this issue, NAELA News highlights the Sections with interviews with Section Steering Committee Chairs; and over the next few issues, we’ll showcase each Section with an article from one of their recent newsletters. In this issue you’ll find articles from:

- Advocacy/Litigation Section: “Litigating Filial Responsibility Claims,” by Section Chair Sharon Rivenson Mark, CELA, CAP.
- Practice Development/Practice Management Section: “Business Tips” from Section members.

Advocacy/Litigation Section

This Section addresses the interests of members who are involved in all types of advocacy and litigation efforts as part of their practice. Chair: Sharon Rivenson Mark, CELA, CAP

Why Sharon joined this Section: To interact with other members interested in this field, share strategies and litigation ideas, and collaborate on forms.

Benefits of membership: Sharing information, meeting new people with various experience levels, and having access to the Section newsletters, webinars, and the Online Library.
What did the Section offer its members last year? In 2011, the Section published two newsletters. Article topics included: “Advocacy and Litigation in Response to Attacks on Special Needs Trusts,” by Sharon Rivenson Mark, CELA, CAP; “Avoid Any Conflicts When Preparing an Estate for Specific Clients,” by Steven H. Malach, Esq.; and “Medicaid: Arguing that a Gift was Not a Gift,” by Cheryl B. Strunsky, Esq.

The Section offered members a webinar entitled, “The Elder Lawyer as Litigator,” presented by Christine Alsop. The webinar is available to all Section members for download through the Section’s Online Community Library.

The Section’s Online Library also offers forms, a library of past Section newsletters, and a library of articles related to Advocacy/Litigation.

The bottom line: Sharon says, “It’s great to be able to share information and have other litigators to bounce ideas off of.”

Government Assistance Programs Section
VA, Medicaid, and Medicare
The focus of the Government Assistance Programs Section is to help NAELA membership gain a thorough working knowledge of the Department of Veterans Affairs, Medicaid, and Medicare, and to assist those in need to obtain the benefits to which they are entitled under the law. Chair: Sanford J. Mall, CELA, CAP

The best part of Section membership: Sandy says, “I enjoy speaking to members with similar practices and models. Having the ability to share and learn from colleagues around the country creates a synergy.”

Opportunities for member recognition: As a Section member, Sandy takes advantage of the opportunities to publish resources and provide important educational programming on the VA, Medicare, changes in Medicaid laws, litigation, and changes in benefits for dual eligibles.

What did the Section offer its members last year? Last year, the Section’s two newsletters published articles on topics such as: “Residence Value: Is it Still Exempt for VA Pension Benefits When the Person Moves Out?,” by Victoria L. Collier, Esq., and “Use of Family Agreements in Long-Term Care Planning,” by Teresa K. Bowman, Esq. Past Section newsletters are available to Section members through the Online Library. You’ll also find archived education seminars and a forms library.

Last year, the Section sponsored a series of four webinars regarding VA Benefits, presented by Victoria Collier. Section members can download these webinars from the Online Library.

The bottom line: “One of the best benefits of joining the Section is having the continuous challenge to further develop your expertise,” says Sandy.

Guardianship/Capacity Section
This Section explores issues related to the legal adjudication of capacity, the administration of guardianship estates, and the guardian’s fiduciary liability, as well as the attorney’s fiduciary liability in the guardianship process. Through case law and other related materials, Section members network by sharing information. Chair: Catherine Anne Seal, CELA

National involvement: The Section has been very involved in the National Guardianship Network (NGN), which works on making improvements in guardianship. Section members have served as delegates at national conferences, and reviewed and co-wrote papers for the conferences.

Section benefits: The Section’s two newsletters published last year included topics like: “2011 Update on the Adoption of the Uniform Adult Guardianship and Protective Proceeding Act (UAGPPA),” by Kim F. Trigoboff, and “Use of Collaborative Law in Guardianship/Conservatorship Matters,” by Donna R. Bashaw, CELA, CAP. Past Section newsletters are available in the Section’s Online Library. Also available in the Online Library: a form library, articles relating to Guardianship/Conservatorship, and a
resources and materials library that includes several sessions from past NAELA meetings.

**The bottom line:** “I’m also a NAELA Board member; my involvement with this Section is the reason I’m as involved with NAELA as I am today. Get the full value of your membership by joining a Section.”

**Health Care Section**
The Health Care Section is committed to providing education and support to NAELA attorneys in their efforts to advocate for their clients as well as help their clients obtain increased access to health care, which will lead to improved quality of life. Chair: Benjamin M. Adams, Esq.

**Why Ben joined the Section:** “I have had a long-standing interest in advance care planning and end-of-life decision making.”

**What’s included with Section membership?** Ben says, “We try to provide information that has direct impact and benefits for the attorney in private practice who is dealing with client planning and representation situations.” Last year, the Section’s newsletters covered topics such as: “The Neglected Health Care Proxy,” by Charles P. Sabatino, Esq., and “A 50-State Survey: State Constitutional Right to Refuse Medical Treatment,” by Kia Thrasher. Past Section newsletters are available for Section members to download.

The Section offered its members a webinar entitled, “Medicare Expedited Appeals,” presented by Terry Berthelet. This webinar is available for download through the Section’s Online Library.

**The bottom line:** “Section membership really gives me a chance to communicate with NAELA members who share my interests in health care decision making. It also allows me to get updated quickly on changing law or policy,” says Ben.

**Practice Development/Practice Management Section**
Learn proven marketing tips and strategies from fellow NAELA members and experts in the field. The Practice Development/Practice Management Section provides samples of brochures, publications, and other marketing tools that have proven to be effective to members of the Section. Chair: Timothy P. Crawford, CELA, CAP

**National networking:** Tim says the Section provides opportunities to meet Section members with different experience levels and exchange ideas.

**Member perks:** The twice-yearly Section newsletters covered topics such as: “2011 Technology Trends and Implications for Law Practice Management,” by Tom Caffrey, and “Social Media: You Gotta Have a Plan, Stan,” by Patricia Elrod-Hill, Esq.

Last year, the Section presented a webinar for its members entitled, “Improve Your Profits Using Seminar Marketing,” presented by Section Chair Tim Crawford. This is available for download through the Section’s Online Library. The Section’s Online Library also has a forms library and a resources and materials library with seminars from past NAELA meetings.

**The bottom line:** Tim says, “Section membership is the best bargain that NAELA has to offer. I’m still learning new things.”

**Special Needs Law Section**
The Special Needs Law Section focuses on the many aspects of Special Needs Law. Learn the latest in Special Needs Law from the experts. Chair: Theresa M. Varnet, Esq.

**Why she joined:** “My practice is in Special Needs Law, not Elder Law. Even the elderly clients who I work with are parents of children with disabilities,” says Terrie.

**Top reasons to join:** To sharpen your skills in Special Needs Law, and for access to the newsletter and the Online Community.

**What the Section offered members last year:** The Section’s newsletters covered topics such as: “Remembering the Basics: SSI Reporting Requirements,” by Patricia Tobin, Esq. and Heather Campopiano, Esq., and “Future Planning for Families Supporting Adults with Lifelong Disabilities,” by Theresa M. Varnet, Esq. Past Section newsletters are available for download from the Sections Online Library. Also available to members in the Online Library: a forms library, articles relating to Special Needs Law, and book reviews.

**The bottom line:** “One in 10 families has a child with disabilities. The need is critical; you need to become an expert in your field,” says Terrie.

**Tax Section**
The Tax Section’s goal is to keep members advised on significant tax developments impacting Elder and Special Needs Law, trusts and estates, related practice areas, and to develop a user-friendly forum for NAELA’s active tax practitioners and for those NAELA
members interested in developing their practices to include tax-related matters. Chair: Jennifer L. VanderVeen, CELA

**Why you should join:** It’s a chance to get involved in fun, innovative new projects. This year, the Section is working on Volume 2 of the Section’s *Tax Primer*. And, Jennifer says, “The amount of information on the Community Library and Listserv alone is worth the cost.”

**What the Section offered members last year:** Volume 1 of the *Tax Primer* was published last year. Available in the Section’s Library, Section members can download the *Tax Primer* at no cost.

The two newsletters offered articles such as: “Why a Non-Grantor Trust May Be the Best Bet for VA Aid and Attendance Planning,” by Robert C. Anderson, CELA, and “The Concept of Portability Under the New Tax Law,” by Timothy P. Crawford, CPA, CELA, CAP.

The Section held three webinars for members last year on various tax-related subjects and are available for download through the Section’s Online Library. Also available to Section members are a forms library and tax-related articles.

**The bottom line:** “I can ask a question on the Listserv and get an answer from someone across the country. I also enjoy meeting Section members in person — we’re a fun group of tax geeks,” says Jennifer.

**Trusts and Special Needs Trusts Section**

Keep yourself up-to-date on the latest cases involving trusts and related matters. Section members share cases and analyses of cases they have been involved with, as well as other articles on developments dealing with trusts. Chair: Richard A. Courtney, CELA, CAP

**Long-running Special Needs experience:** Rick has been involved in Special Needs planning for almost 30 years. He has adult twin daughters, one with cerebral palsy. He joined the Trusts and Special Needs Trusts Section because he wanted to network with other lawyers in the field.

**What the Section offered members last year:** The Section presented three webinars for members. Recordings of the webinars and seminar materials are available for Section members to download through the Online Library.

The Section published two newsletters last year and included articles on topics such as: “When Is a Payback Special Needs Trust Not the Answer?,” by Bailey Liipfert Ill, CELA, and “Living Trust Scams – 12 Red Flags,” by H. Amos Goodall Jr., CELA.

Members will find past Section Newsletters in their Online Library, as well as a forms library, and related articles.

**The bottom line:** “To me, our Section has become a special resource network,” says Rick.

**Young/New Attorneys Section**

The Young/New Attorneys Section focuses on the smooth integration into NAELA of young attorneys and/or those who are new to Elder and Special Needs Law. If you have suggestions for how to make the transition easier for others, or if you are the one who is looking for a smooth transition into Elder and Special Needs Law, this Section is for you. Chair: Kathryn C. Casey, Esq.

**Why she joined the Section:** “It has a great mission, and there weren’t many young/new attorneys in my area (Chicago), so I thought this would be a great opportunity to network.”

**Getting loads of information (for free):** The first two years’ dues are waived for the Young/New Attorney Section.

**Benefits of Section membership:** The Section presented two webinars for its members last year. Both are available for download through its Online Library.


**The bottom line:** “The Section is a wonderful introduction to what NAELA has to offer. Join the Section because it’s for anyone new to NAELA, regardless of your age,” says Kathryn.

**Interested in Joining a Section?**

We hope we’ve piqued your interest in joining a Section or two. For information on joining a Section, log on to www.NAELA.org; then look under Members > Member Resources > Sections.

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“Section membership is the best bargain that NAELA has to offer. I’m still learning new things.”

—Section Chair Timothy P. Crawford, CELA, CAP
Litigating Filial Responsibility Claims

By Sharon Rivenson Mark, CELA, CAP

Filial responsibility statutes establish a duty for adult children to care for their indigent elderly parents. With the worsening financial crisis nationwide, more such claims by nursing homes and county boards of social services can be expected and must be vigorously defended.

The Philadelphia Inquirer on July 12, 2009, published its article, “If Mom Can’t Pay, Adult Child Must,” by Monica Yant Kinne. ABC News published its article, “Pay Your Parents’ Bills or Else — Little-Known State Laws Force Some to Pay Their Parents’ Nursing Home Bills,” by Alice Gomstyn, on July 15, 2009. Both articles reviewed the “filial support” concept and noted how the precarious financial situations of care facilities and the funding problems of the federal systems now lead providers to invoke these laws.

Shoring Up Medicaid

An article published on the National Center for Policy Analysis (NCPA) website suggests that states begin to more systematically enforce filial responsibility laws to help reduce the explosive growth of Medicaid’s long-term care benefit (see Matthew Pakula, “The Legal Responsibility of Adult Children to Care for Indigent Parents,” National Center for Policy Analysis, July 12, 2005: http://www.ncpa.org/pub/ba/ba521/ or http://www.ncpa.org/pub/ba/ba521/ba521.pdf ). This article noted that 30 states then had filial responsibility statutes that were historically rarely enforced. When enforced, the statutes can require the adult child to reimburse state programs or institutions that have cared for the indigent parent with either a one-time contribution or installment payments. Today, there is no uniform federal filial responsibility statute.

Nursing home administrators are blogging on the issue of filial responsibility. A blog posting on February 25, 2009, noted increased interest in filial responsibility laws “as a way of shoring up faltering Medicaid dollars.”

Filial Responsibility Laws

These filial responsibility laws reflect civil responsibility in some statutes and criminal responsibility in other statutes. Filial responsibility claims differ from claims against one spouse for “necessities” furnished to the other spouse. In Jersey Shore Medical Center Fitkin Hosp v. Baum Estate (84 NJ 137; 417 A2d 1003 (1980)), the New Jersey Supreme Court held both spouses liable for each other’s necessaries.

In Manatee Convalescent Center, Inc v. McDonald (392 So 2d 1356, 1357 (Fla App, 1980)), the Court held that a wife is liable for the medical necessaries of her husband.

In North Ottawa Community Hospital v. Kieft (214 Mich App 518; 543 NW2d 37 (1995)), the Court found that the provisions of the Michigan Married Women’s Property Act (MCL 557.21(1); MSA 26.165(1)) and Michigan Constitution precluded a recovery from a surviving wife for health care expenses incurred by the deceased husband. The Court found that, as traditionally formulated, the common law necessaries doctrine violated equal protection principles, and held that neither a husband nor a wife is liable, absent express agreement, for necessaries supplied to the other.

In Pennsylvania, the filial responsibility act was reenacted in 2005 following a Superior Court decision in Presbyterian Medical Center v. Budd (832 A.2d 1066 (Pa. Super. 2003)). Act 43 was reenacted in 2005 into Pennsylvania’s Domestic Relations Code, 23 Pa.C.S.A. § 4603 regarding “Relatives’ liability” (unofficial form) and its supporting Regulations (Actions for Support).
In *Presbyterian Medical Center v. Budd*, the child did not take the actions needed for her mother to qualify for Medicaid. Although the child transferred some of her mother’s funds, that only made the mother ineligible for Medicaid for a limited period of time. The mother could have become eligible after the disqualification period expired. Once the mother qualified for Medicaid, the Medicaid program would have become responsible for the mother’s cost of care. Federal law provides that once a resident qualifies for Medicaid, a nursing home has to accept the Medicaid payments as payment in full for all covered services. They cannot go after the child. Unfortunately, the child never followed up with the County Assistance office, and her mother never became eligible for Medicaid.

Over the years, the Pennsylvania courts have upheld the filial support law. (*See e.g., Verna v. Verna*, 288 Pa. Super. 511 (1981); *Albert Einstein Medical Center*, 212 Pa. Super. 450 (1968); *Commonwealth Home for the Aged v. Katzker*, 179 Pa. Super. 521 (1955); *Mattis*, 148 Pa. Super. 462 (1942).) In Pennsylvania, a child with sufficient financial ability to support a parent can be held liable for the support of their parents, even where there has not been a transfer of assets. In *Savoy v. Savoy* (641 A.2d 596 (Pa. Super. 1994)), the Court held an adult son liable despite proof of his reasonable expenses already exceeded his income.

In *Americana Healthcare Center v. Randall* (513 N.W. 2d 566 (S.D. 1994)), the *South Dakota* Supreme Court, held that: 1) statute [SDCL §25-7-27] providing that adult child, having financial ability to do so, shall provide support for parent who is unable to provide for himself, as applied to son, did not violate equal protection or due process principles, and 2) son was liable under the statute for his parent’s unpaid bills.

*New Jersey* still has a filial responsibility act on the books that, on its face, applied to county welfare board relief. The relatives chargeable for such support are identified in N.J.S.A. 44:4-101, and included the father and mother of a person under 18 years of age who applies for and is eligible to receive public assistance, and the children, and husband or wife, of a person who applies for and is eligible to receive public assistance. The support has to be court ordered, after a showing of financial ability, and with due notice and an opportunity to be heard. These provisions do not apply to any person 55 years of age or over except with regard to his or her spouse, or his or her natural or adopted child under the age of 18 years. N.J.S.A. 44:4-102 provides the basis and procedure for compelling support by relatives.

In *Morris County Welfare Bd. v. Gilligan* (130 N.J.L. 83, 31 A.2d 805 (1943)), the Court held that a daughter was not obligated to contribute to support of her mother without notice and opportunity to be heard. In the absence of such notice, there was no “process of law.” Upon the daughter’s death, her estate was not liable for old age assistance furnished to her mother.

*Tennessee* has a filial responsibility statute (T.C.A. §71-5-115) which only requires filial responsibility if such support is permitted by federal law.

*Virginia* statute (VA Code Ann. § 20-88) provides for the joint and several duty of all persons age 18 or over, of sufficient earning capacity/income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father, he or she being then and there in necessitous circumstances. Any person violating the provisions of an order entered pursuant to this section is guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $500 or imprisonment in jail for a period not exceeding 12 months, or both.

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The Need for Monitoring

This discussion of a few of some 30 state filial responsibility laws highlights the need for vigilant monitoring of filial responsibility laws and their application. AARP’s website has a current map of state filial responsibility laws (http://assets.aarp.org/www.aarp.org_/articles/bulletin/interactive/filialpiety/index.html).

While these filial responsibility laws exist, it must be emphasized that since the 1960s, federal law (United States Code Title 42, §1396a(a)(17)(D)) has prevented the states from considering the financial responsibility of any individual (except a spouse) in determining the eligibility of an applicant or recipient of Medicaid or other poverty programs.

This discussion cannot end without noting the collateral issue of so-called “responsible parties” with respect to nursing home contracts. For example, New Jersey law (N.J.S.A. 30:13-3.1(a)) provides a blanket prohibition against even voluntary third party guarantees. A nursing home cannot, with respect to an applicant for admission or a resident of the facility: 1) require that the applicant or resident waive any rights to benefits to which he may be entitled under the Medicare program established pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. § 1395 et seq, or the Medicaid program established pursuant to N.J.S.A. 30:4D-1 et seq. (the New Jersey Medical Assistance and Health Services Act); or 2) require a third party guarantee of payment to the facility as a condition of admission or expedited admission to, or continued residence in, that facility; except that when an individual has legal access to a resident's income or resources available to pay for facility care pursuant to a durable power of attorney, order of guardianship, or other valid document, the facility may require the individual to sign a contract to provide payment to the facility from the resident's income or resources without incurring personal financial liability.

Proper legal advice from an experienced Elder Law attorney is indispensable to protecting children from improper and overreaching filial responsibility claims as well as from “responsible party” claims. ■
Association Health Programs is the administrator of NAELA’s NEW and EXCLUSIVE health and business insurance program including health insurance, long-term care insurance, life insurance, disability income, professional liability, fiduciary coverage, and more. These offerings are available to all members, their families, and employees. To inquire about the program, please use the link below and/or contact us at 888-450-3040.

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I witness this scenario every week. Perhaps I should be used to it, but despite my 33 years of working in end-of-life care and education, it still pains me to hear the familiar lament, “If I had only known.”

In these situations, no one alerts the patient and family to the signs that death is approaching. No one tells them that it is time to replace a push for treatment with a push for comfort care. No one explains the natural course of the disease and the dying process. No one tells them how to respond to the expected changes to assure comfort and obtain closure.

When facing the end of life, we are naturally scared. Our problem is that too many of our decisions are based on this fear, or on lack of information or misinformation, which often results in devastating physical, emotional, and financial consequences for the patient and family alike. We can and must do a better job.

Understand the Natural Process of Dying

The question is not if we are going to die, but how we are going to die, and therefore compassionate and honest education about the natural process of dying is critical to making difficult end-of-life decisions.

The recognition of the point at which our loved ones are coming to the natural end of life becomes obscured with the flurry of medical interventions. We often hold on to a belief that “more is better,” that technology always holds the promise of saving us from dying, even if for a little while. Quality of life is often sacrificed for the hope of quantity, and actions can inadvertently result in more discomfort or time in an intensive care unit. We have to ask whether we prolong living or prolong dying.

When the body is preparing for its final months, weeks, and even hours, many natural processes kick in to promote comfort. When families understand the wisdom of the body as it works to protect itself, they usually make decisions that honor the process of shutting down to die.

There is ample research about how the body begins to shut down to die. We know that the use of artificial nutrition and hydration at the end of life can actually increase discomfort and even hasten dying through fluid overload, aspiration, or increasing tumor growth. We know that the natural and normal cause of death for a number of diseases is pneumonia, once considered “the old man’s friend.” We

Join the NAELA Health Care Section

This article is contributed by the NAELA Health Care Section. Joining a NAELA Section gives you access to information and networking opportunities specific to your practice or area of interest. Get involved with other NAELA members. Investigate all the Sections by visiting www.NAELA.org.
Important Questions for Yourself and Your Family When Making Treatment Decisions

By Tani Bahti, RN, CT, CHPN

- Do I have the information I need to make this decision?
- Is fear or lack of information pushing me towards a particular decision?
- What am I most afraid of?
- What are my goals at this time in my life and will this treatment help me reach them?
- Am I making a treatment decision based on what I believe someone else wants me to do or what I really want to do? Have I sat down with that person to clarify what each of us wants?
- Who or what is my source of strength and support and have I utilized that?
- If I have a limited life expectancy, how do I want to spend the time I have?
- What does fighting the good fight mean to me? Seeking aggressive treatment until the end or allowing a natural death?
- Have I completed my advance directives (Living Will and Medical Power of Attorney), which declare my wishes for the extent of medical treatment I wish to receive in the event I cannot speak for myself?
- Have I talked with my family and physician about my advance directives?
- Have I asked all my questions, expressed all my fears, and shared what I truly feel with my family and physician?
- Is the goal of this treatment to cure, prolong life, or relieve symptoms?
- What is the best I can hope for with this treatment?
- What is the worst I should prepare for if this doesn’t work?
- Is this a standard treatment or experimental? What are the chances for success in my particular case?
- How and when will I know it’s working?
- How will this impact my daily living, comfort, and/or goals?
- What are the physical changes I may experience and how will you help me manage them?
- If I have side effects, how long might they last? What can be done to prevent or minimize them?
- Are there any potentially permanent side effects?
- Is this covered under my insurance? What will the cost be to me?
- Will I need extra help to manage at home, and if so, for how long?
- If I refuse this treatment, what can I expect to happen?
- If I refuse this treatment, will you still be my doctor?
- Is there a counselor, support group, or someone I can talk to about this?
- Do you have material about this treatment that I can take home and review?
- Are there other ways to manage my disease and would you recommend them? Why or why not?

Although medicine doesn’t have a crystal ball to know how you are going to respond to a particular treatment, it is important that you have enough information to make an informed decision. Consider your lifestyle, your beliefs, your goals, and values. Consider your family, finances, and spiritual beliefs. You always have the right to know and to choose.

know that physical pain is not a part of the dying process, but that if it is a part of the disease, it can be managed. We know that the dying process will usually lead to a coma, which allows the individuals to essentially “die in their sleep.”

Unfortunately, the dying process is rarely taught in medical and nursing schools and is a frightening mystery to the general public. This lack of knowledge contributes to our discomfort with end-of-life discussions.

Sometimes, it’s the discomfort of the health care professionals who believe that death is failure or that telling the truth is “taking away hope.” It becomes easier to offer a treatment, however futile, seeking solace in the illusion that doing anything is better than facing the difficult emotions of patients and families when they are told that reversal or cure is no longer possible.

Sometimes it’s the inability of the patient or family to let go, or their fear of the unknown that drives futile care. Sometimes, it’s the belief that by refusing treatment they are somehow declaring that it’s okay for their loved ones to die.

continued on next page
Talk About Dying

It’s not easy to talk about dying, but there is clear benefit. A study conducted at the Dana Farber Cancer Institute by the National Institute of Health and National Cancer Institute was released in 2009 and revealed that having the conversation about end-of-life issues results in less depression, improved satisfaction with informed decision making, improved use of available resources, and better quality of life and death.

My own experience is that people want to know what to expect. They want the best possible care and comfort for their loved ones. They just don’t know that it’s okay to ask and do not know what questions to ask to determine the best course of care.

Quality of life is often sacrificed for the hope of quantity, and actions can inadvertently result in more discomfort or time in an intensive care unit. We have to ask whether we prolong living or prolong dying.

It will take all of us to improve how we talk about and prepare for the end of life. Health care personnel must improve their knowledge and communication about the dying process. The patient and family must understand the natural progression of a disease and benefit and burden of treatment options. They must ask more questions, matching the answers to their own goals and values. They must keep updating their personal definition of quality of life and document their wishes. We must all face the fact that ultimately, dying is not an option and how we talk about, prepare for, and honor the dying process is our right and our responsibility.

Let’s provide road maps and comfort on the final leg of our journey.

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- Protect clients from financial abuse and identity theft

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Business Tips

Some ideas to bring in new clients and get referrals.

A Free Lunch — There Is Such a Thing

Terry Abrams Berger, Hollywood, Fla., offers these tips to help bring in new clients.

Client Appreciation Brunch. I invited my clients to a brunch at a local deli (I selected a simple, set menu). I also extended the invitation to a friend. All but one of my clients brought someone who was not a client of mine. I also invited various professionals with whom I do business (CPAs, financial advisors, insurance agents) and had them sit interspersed with clients (who might have a question for a financial advisor, etc., but would not feel pressured). I gave a canvas tote bag to each client (with my business information on front) and allowed the others to add a brochure or whatever marketing materials they had to the bag. The client got to take home a gift and the vendors got some exposure. I was hired by 12 new clients and three people who just happened to be in the restaurant that day who were surprised that a lawyer would do something so nice for their clients. The cost for the entire event was about $900.

If anyone is interested in receiving a sample invitation or picture of the canvas bag, I am happy to provide it.

Bring a Lawyer to Lunch. I invited a number of networking associates to lunch and asked each to bring a lawyer along. I find that I receive significant referrals from other attorneys since most don’t do what I do. Not only did I receive a number of referrals, but the attorneys who were there able to network and received a number of referrals from each other. I produced an invitation that looked like a briefcase and each attendee received a briefcase card holder that held a few of my business cards. The total cost for the event, printing and card holders included, was about $1,000.

Address Your Audience in Your Website

James Schuster, CELA, CAP, Southfield, Mich., shares this: I had time to update the office website late in the quiet days of summer. As I was deep into all the little changes that needed to be made, I was struck by the thought that something was missing. I kept updating and tweaking here and there until it came to me, “Who is this message intended for?” The website did not answer the question.

The website was full of who we are and what particular services we offer, but it did not say who would, or should, be interested in the information. I was guilty of violating the first rule of marketing communication: failure to identify the audience.

Most lawyers’ websites do not inform the reader whether they should be interested in the service. Now, one could easily rejoin, “I don’t need to tell my clients they need my service, they are in crisis. They know they need the help of an Elder and/or Special Needs Law attorney.” And that is my point. By only identifying a part of the audience you could serve — those who know they need your service — you are not speaking to those who do not know you could help them. For example, suppose a daughter is frustrated by how much assistance her aging, but still independent, mother needs. She has to help with shopping, medical appointments, and on and on. The daughter may start searching “help with an aging parent.” Would she find your website? If she did, would she learn that you could help by getting her mother’s estate planning in place before it was too late?

For any service, there are those who know they need it and there are those who don’t. If you don’t speak to the latter group, you are ignoring a large pool of potential clients. Speak to the problem your potential clients are dealing with, e.g., aging parents, and then connect your service to the problem solution.
Long-Term Managed Care: A Medicaid Solution for Cost Containment

By Judith D. Grimaldi, CELA, CAP

Twelve states already have Medicaid Managed Long-Term Services and Supports and another 11 states plan to implement managed care for long-term care in 2012 and 2013.

New York State is about to institute a complete conversion of the state’s extensive Medicaid home-care procedure beginning July 2012. All recipients of Medicaid home-care services in the state will be mandatorily enrolled in Managed Long-Term Care programs, to be operated by privately contracted home-care agencies throughout the state. Thus, the delivery and management of home care will no longer be a county or local social service district’s function.

Financial eligibility will still be determined and administered by the state, but the decision on scope and level of service will now be determined by private insurers through their Managed Long-Term Care Programs (MLTCP). This change to managed care will apply to the following services:

- Home care and personal care
- Durable medical equipment
- Prescription drugs
- Adult day care
- Transportation
- Consumer Directed Personal Care

Nursing home and institutional care will also be folded into managed care programs over time. How will this impact the service delivery in New York State? At this time, 31,000 individuals have voluntarily enrolled in MLTCP throughout the state.

Beginning July 1, 2012, in New York City alone, approximately 45,000 existing home-care recipients will need to be enrolled. This is slated to occur over a six-month period, and will be a complex organizational effort doubling the size of the program.

Implementation plans, criteria for home assessment, and other necessary program details have yet to be provided by New York State’s Department of Health, which will administer the program. To complicate the matter, New York City is in the process of enforcing and establishing the “Living Wage Act,” providing home-care workers with standardized hourly wages of $10.50 per hour as well as full benefits. This act, although a welcomed support for valued home-care workers, will substantially increase the cost of home care in New York City. The managed care programs will be asked to provide all of the above services to their clients, based on a fixed monthly capitated rate while paying their workers a fair wage. Hours of service and levels of care may need to be cost contained to adjust to these competing fiscal demands. Advocates for the elderly and people with disabilities predict that there will be a drastic reduction in the home care services provided to those in need. This drive towards managed long-term care encourages community-based services to be preventive instead of using inexpensive home care over nursing home care.

Several other states also have their home-care services delivered through managed home care, but few states have...
the extensive number of home-care recipients as New York. The New York State Managed Care companies are projecting they may not be able to service the complex or extended home cases under their present fixed capitated rate. These managed care agencies, when faced with high-need cases, may find nursing home placement as their only safe solution. This defeats the cost containment reason managed care was implemented to address. High home-care and personal-care costs will shift to nursing home costs.

**California Advocacy**

In California, the disability advocates mounted three Medi-Cal cases in which the Supreme Court heard oral arguments. The cases involved the state of California’s attempt to roll back funding for In-Home Supportive Services (IHSS) worker wages, as well as direct cuts to the delivery of home-care services. These cases have not yet been decided on merits, but their existence highlights the importance of home care in the delivery of Medicaid services nationally. Twelve states already have Medicaid Managed Long-Term Services and Supports and another 11 states plan to implement managed care for long-term care in 2012 and 2013.

**The Need for Careful Planning**

Advocates put forth these cautions in dealing with Managed Long-Term Care:

1. The capitation rate offered under the Medicaid Managed Care may need a new blended rate to consider the community home care and nursing home costs. The rate needs to provide incentives for services at home and in the community.
2. Careful performance requirements must be developed for assessment. Care plans must be implemented in a timely manner.
3. A Quality Assurance review system must be established for these nonpublic entities administering the Managed Care Programs.
4. Appeal rights equivalent to those which have existed under the prior state managed home care system with “aid to continue” during an appeal.
5. Incentives built into the managed care contracts, designed to penalize the managed care if the admissions into institutions are so frequent that the costs exceed the capitation rate.
6. Rewards should be available for provision of community services, especially when the home-care services include self-direction and informal supports provided by relatives.

Managed care could prove a viable solution to contain home and community-based services, but not at the expense of the delivery of quality home-care services or if it in any way infringes on the disabled and elderly community’s right for independence under *Olmstead.*

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**NAELA Launches Newsletter Aimed at Policy Makers, Consumers, Aging and Special Needs Network Professionals, Lawmakers, and Members of the Media**

*Eye on Elder and Special Needs Issues* is a new quarterly newsletter published by NAELA designed to bring the public’s attention to issues concerning our nation’s older adults, people with disabilities, and their families. It will challenge stereotypes, explore issues from all sides, report on relevant topics, and provide timely insight.

The first issue sent in late February was devoted to the reauthorization of the Older Americans Act. Future issues will discuss pooled trusts, Medicaid, veterans issues, fraud against the elderly, special needs trusts, and more.

NAELA members receive a copy of the newsletter by email and are encouraged share the newsletter with clients and state and local legislators. You’ll find *Eye on Elder and Special Needs Issues* archived on the NAELA website. Look under Library > Publications. You’ll also find earlier issues of the *Eye on Elder Issues.*
Confusion and rumors abound in the area of helping wartime veterans qualify for what is commonly referred to as the “Aid & Attendance” benefit. Attorneys across the country have received unexpected denials for VA claims, which they believed should have been approved. What is happening? Without changing laws, the U.S. Department of Veterans Affairs (VA) began interpreting the laws differently than before. Moreover, certain VA policies in the M21 (the claim examiner’s manual) were changed in a way that seemed to be inconsistent with both current law and published precedential opinions of the VA Office of General Counsel.

**Pension and Fiduciary Service**

A 25 percent increase in disability pension claims from 2009 to 2010 prompted the VA to create the new Pension and Fiduciary Service, which was established April 11, 2011. It addresses the unique needs of pension beneficiaries and those beneficiaries who need fiduciary services due to their inability to handle their own financial affairs. The goal of the new Pension and Fiduciary Service is to streamline pension processing through transformation and simplification. In addition, the VA believes that it is important to increase the oversight of the fiduciary program.

David R. McLenachen, who most recently served as Staff Attorney in the Office of General Counsel of the Department of Veterans Affairs, was appointed as Director of the Pension and Fiduciary Service on August 29, 2011. McLenachen appointed Michael Dougherty, another longtime staff attorney in the Office of General Counsel, to serve as Assistant Director.

**Elder Law Ambassadors**

Veterans and their families need true advocates. With all the changes — to both the structure of the VA and to

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**Elder Law Ambassadors Pay a Visit to the VA**

*By Victoria L. Collier, Esq., and Rick L. Law, Esq.*

**NAELA members meet with the new Pension and Fiduciary Service leadership at the U.S. Department of Veterans Affairs.**

*Left to Right: David McLenachen, Director of VA Pension and Fiduciary Services, Mandy French, Pat Beck, Victoria Collier, Zach Hesselbaum, Bill Hammond, Rick Law, and Michael Dougherty, Assistant Director.*

Victoria L. Collier, Esq., is a NAELA member and author of 47 Secret Veterans’ Benefits for Seniors … Benefits You Have Earned but Don’t Know About. Rick L. Law, Esq., is a member of the NAELA Senior Rights PAC Committee.
policies and interpretations of laws — it was time to put rumors aside and go directly to the source of the change.

On December 19, 2011, a team of Elder Law ambassadors marched into Alexandria, Va., to advocate on behalf of veterans as well as on behalf of the Elder Law bar. NAELA member Victoria Collier, Decatur, Ga., assembled a team of Elder Law practitioners to accompany her on this timely mission: Rick L. Law, Aurora, Ill.; Zachary Hesselbaum, Chicago, Ill.; and William “Bill” Hammond, Kansas City, Mo.

Attending the meeting from the VA were David McLenachen, Director of Pension and Fiduciary Service; Michael Dougherty, Assistant Director; Mari Gregory, Chief Pension Policy and Procedures; Amanda French, Analyst; Patrick Beck, Analyst; Laurine Carson, Chief of Pension Review and Site Visits; and Cynthia Lewis, Chief of Fiduciary Procedures.

Five Core Issues

We outlined the top five core issues during our meeting:
1. The need for clarity regarding the qualifications for the benefits provided by the VA for wartime veterans who need in-home and assisted living care;
2. The public policy reasons for, and personal desire of, individuals being able to age in place in their homes for as long as possible;
3. The need for the VA to adopt regulations that would encourage individuals to be able to stay at home;
4. Qualifications for VA pension benefit concerns regarding: a) the homestead; b) asset transfer issues; and c) treatment of certain estate planning trusts.
5. The necessity of speedy delivery of payment to claimants who need the assistance of the fiduciaries due to the elderly and frail nature of wartime veteran claimants.

During our visit, the VA team acknowledged that they have been discussing changes in the laws related to asset transfers and the treatment of certain types of assets. Director McLenachen assured us that they would not use the M21 as a tool to attempt to change policy. He did emphasize that there is a need for new regulations to protect veterans from being misled by those who encourage asset transfers to qualify. New regulations are being considered and will be published for public comment. The Pension and Fiduciary Service office has a sincere desire to make the right changes to the laws the first time.

A 25 percent increase in disability pension claims from 2009 to 2010 prompted the VA to create the new Pension and Fiduciary Service, which was established April 11, 2011. It addresses the unique needs of pension beneficiaries and those beneficiaries who need fiduciary services due to their inability to handle their own financial affairs.

Overall, the visit was appreciated on both sides of the table. We received this follow-up email from Director McLenachen:

Thank you very much for taking the time to visit with us today. Your presentation helped clarify the issues that require our attention and confirm my belief that open communication with attorneys assisting veterans and their family members is important. —David R. McLenachen

We look forward to working with Director McLenachen and others at the Pension and Fiduciary Service.
On Sunday, January 22, 2012, deep in the heart of Texas, NAELA’s public policy enthusiasts met for the first-ever retreat to establish public policy priorities for the coming year. Recognizing the current environment in Washington and growing state Medicaid crises, members of the NAELA Board of Directors, Public Policy Committee, Grassroots Subcommittee, and Senior Rights PAC decided it was important to hold a day-long retreat to consider NAELA’s public policy approach and NAELA’s policy priorities. Participants met on the Sunday following the UnProgram to answer this question: What tangible, measurable, and achievable public policy goals should NAELA work to accomplish at the federal and state level?

Each Congress, NAELA’s policy committees and Board determine the list of policy priorities for NAELA’s advocacy for the coming year. The goal of the retreat was to reassess those priorities, and determine the two to three main issues where NAELA’s advocacy could contribute to a significant impact for members and our clients.

Each committee member was asked to evaluate NAELA’s policy issues based on the following criteria:
1. Is the issue and NAELA’s work on it tangible, achievable, measurable?
2. Is the issue important to the best interests of our clients (elderly and/or special needs)?
3. Does the issue affect NAELA members’ ability to meet the legal needs of their clients?
4. Does the success of the effort with the issue depend on NAELA’s unique knowledge and skills (i.e., does NAELA’s work on the issue make a difference)?
5. Does the issue affect the practices of NAELA members who practice Special Needs Law and/or Elder Law?
6. Does the issue affect the financial success of NAELA members’ practices?
7. Would the issue help to galvanize the membership?
8. Does NAELA’s association with the issue promote a positive view of NAELA and/or Elder and Special Needs Law?

With this criteria in mind, each member identified the one policy issue for which they felt NAELA’s advocacy was most important. This generated quite a list, which closely mirrored the public policy priorities established by the NAELA Board before the 112th Congress. From this list, the members engaged in a healthy debate on the merits of the various priorities.

Charlie Sabatino, Public Policy Committee Chair, created a diagram to assist members in focusing on priorities and in visualizing how NAELA’s advocacy on a certain priority could advance or harm members’ practices, and how a priority may help or hurt NAELA members’ clients. This helped committee members see the overlap of priorities that both helped clients and helped advance NAELA members’ practices. From this list, committee members agreed to the following two areas of focus for 2012: Medicaid and pooled trusts. From these two umbrella priorities, the members agreed to the following goals:
Medicaid
• Expand Medicaid for long-term services and supports
• Maintain Medicaid services and eligibility requirements
• Ensure that private managed care waivers for Medicaid long-term services and supports work for clients
• Ensure that NAELA members are aware of the status and concerns regarding DRA and managed care implementation
• Identify states with DRA regulations and draft an issue brief on DRA implementation
• Request the Government Accountability Office or think tank to write a white paper on Medicaid managed care

Pooled Trusts
• Supporting access to pooled trusts without penalty for individuals age 65 and older
• Improve communication and relations with special needs advocacy groups

NAELA Continues Its Advocacy
Although these are the two areas of priority, NAELA will continue its work to:
• Support provisions that improve legal services and long-term care ombudsman in the reauthorization of the Older Americans Act;
• Ensure funding for the Elder Justice Act; and
• Promote advance care planning and palliative care initiatives through work with the Coalition to Transform Advanced Care.

Public Policy staff will also reach out to NAELA members involved in advocacy around Veterans and Social Security Administration issues to be supportive of this work.

After the retreat, NAELA’s Public Policy Committee, Senior Rights PAC, and Grassroots Subcommittee reviewed the goals and an advocacy strategy to achieve them. At the time of this writing, the NAELA Board of Directors is reviewing the goals, and NAELA’s Public Policy staff has begun work on the objectives to achieve them.

The in-person retreat served as a valuable way for NAELA members to come together and discuss policy concerns and requests. NAELA will likely engage in a similar retreat for 2013 priority setting at the fall National Aging and Law Institute.

Running a Law Practice with a Partner

NAELA members have asked what it’s like to run a law practice with a partner.

What are things to consider before going into a partnership and what are some possible pitfalls? If you have experiences fellow members could learn from, NAELA News wants to hear from you.

Here are some areas we’d like to hear more about. Pick one or two topics and send us your story:
• How did you decide to go into partnership?
• What are some considerations when choosing a partner?
• What are the special considerations when partnering with a family member?
• What kind of management issues have you faced?
• How do you resolve your differences?
• What is your partnership agreement?
• Do you have a transition plan?
• Have you executed a transition? How well did it work?
  Would you do anything differently?
• Do you have a death plan?

How Many Words?
We’re looking for around 300-500 words.

We Just Have to Have a Photo
You should send a photo of you and your partner to run along with the piece.

Deadline for Submissions
All submissions will be reviewed by the NAELA News Editorial Committee and must be submitted no later than October 1, 2012, to be considered for publication in the December 2012/January 2013 issue. Send your submission to Nancy Sween, Senior Director of Communications and Publications, nsween@naela.org. Articles that are accepted for publication may be published online only.

Articles will be edited for brevity and clarity and will be edited to fit the publication’s editorial style and length requirements at the editor’s sole discretion.

Thanks for your contribution.

Kristi Vetri, Esq., NAELA News Editor in Chief
Let us introduce you to the NAELA staff. You’re just a click or a call away from the information you need.

NAELA staff members can help you with any questions you might have about your NAELA membership, events, publications, public policy, etc. The key responsibilities for each staff member will help you connect with the right person quickly, but know that any staff member can assist you with your questions or get your call or email to the right person for a prompt response.

**Executive**

Peter (Pete) G. Wacht, CAE
Executive Director
pwacht@naela.org
703-942-5711 #227

NAELA’s chief executive officer responsible for strategic planning, oversees day-to-day operations, and implements policies and procedures.

**Key Responsibilities**
- Board of Directors
- Executive Committee
- Council of Advanced Practitioners
- Nominating Committee

Pete is a licensed soccer coach, published author, and avid reader.

**Administrative**

Ann Watkins
Operations Manager
awatkins@naela.org
703-942-5711 #226

**Key Responsibilities**
- Accounts payable and receivable
- Maintaining the NAELA Store and Online Education Center
- Meeting and event registration
- Managing day-to-day operations

Ann enjoys spending time with her family and friends as well as her dogs. Ann’s hobbies include reading about history and exploring the beautiful Virginia countryside.

**Amelia (Amy) Seaton**
Administrative Specialist
aseaton@naela.org
703-942-5711 #221

**Key Responsibilities**
- Support to Board of Directors and Executive Committee
- Administrative support to Executive Director
- Operations, program, and database support
- Staff liaison to the Council of Advanced Practitioners

Amy loves to travel and is an avid Pittsburgh Steelers fan.

**Membership and Meetings**

Lemma Ibrahim
Member Services Coordinator
librahim@naela.org
703-942-5711 #223

Let us introduce you to the NAELA staff. You’re just a click or a call away from the information you need.
Develop, integrate, and maintain practices that maintain NAELA member satisfaction.

**Key Responsibilities**
- Membership benefits
- Membership inquiries
- Staff liaison to NAELA Sections

**Favorite Book:** *In the Time of the Butterflies*, by Julia Alvarez

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**Laura Munley**  
**Member Services Manager**  
Imunley@naela.org  
703-942-5711 #222  
Review and develop membership program support to increase member value and participation. Oversee NAELA Sections and NAELA Chapters.

**Key Responsibilities**
- Membership management
- Member directory
- Staff liaison to NAELA Chapters

Laura practices Bikram yoga about five times a week. Favorite quote: “The more we sweat in peace, the less we bleed in war.” –Vijaya Lakshmi Pandit

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**Pam Yanni**  
**Meetings and Education Manager**  
pyanni@naela.org  
703-942-5711 #231  
Manages the execution of educational programs and meetings.

**Key Responsibilities**
- NAELA’s educational programming targets  
- Staff liaison to the Program and Education Committee  
- Budgets for educational and leadership programs  
- Site selection and contract negotiations  

Hobbies: Hiking, photography, reading

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**Roger Naoroji**  
**Meetings and Education Coordinator**  
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703-942-5711 #229  
Coordinates NAELA’s meetings and continuing legal education related activities.

**Key Responsibilities**
- Continuing Legal Education  
- Exhibits and sponsorships  
- Meetings and Education web content  

Hobbies: Reading, sports, and volunteer work

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**Kirsten Brown Simpson**  
**Sr. Director, Planning and Education**  
kbrownsimpson@naela.org  
703-942-5711 #224  
Business planning and marketing.

**Key Responsibilities**
- Strategic direction to membership and meetings  
- NAELA messaging and campaigns  
- Member demographics, trending, and analysis  

Favorite movie: *Spinal Tap*

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**Communications**

**Nancy M. Sween**  
**Sr. Director, Communications and Publications**  
sween@naela.org  
703-942-5711 #225  
Directs NAELA’s external communications activities and publications.

**Key Responsibilities**
- NAELA News content, planning, and advertising  
- NAELA Journal content and planning  
- Public relations  

Hobbies: Photography, ceramics, reading

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**Abegail (Abby) Matienzo**  
**Communications Assistant**  
amatienzo@naela.org  
703-942-5711 #230

Integral part of NAELA’s external communications activities.

**Key Responsibilities**
- Media requests for interviews/information  
- NAELA’s speaker/writer bureau  
- Elder Law Month  
- Special Needs Law Month  
- eBulletin production  
- Website traffic and quality control  

Hobbies: Traveling, baking, and rooting for the George Mason University basketball team

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**General Information About NAELA**

NAELA Headquarters is located at:  
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Office hours are: 8:30 am – 5:00 pm ET
March 2012 provided the Affordable Care Act (ACA) with two candles on its cake. Just days later, the ACA faced its most significant survival test yet: oral arguments before the Supreme Court. The highest court’s summer decision on the constitutionality of the law will likely determine whether the law remains on the books, but the court of public opinion remains as a split decision on the ACA.

In a February 2012 USA Today/Gallup Poll of registered voters in 12 “swing” states, 53 percent of voters said the passage of the law was a “bad thing.” While support for the law is split, the answer to the question “has the new law affected you and your family?” is more telling. Seventy-two percent of voters say the law has not made a difference, while 11 percent found it has helped them, and 15 percent say it has hurt them. The public holds a strong opinion on the law, without a clear idea of what the law is doing.

Most of the law’s significant provisions, like the health insurance exchanges and individual mandate, do not go into effect until 2014. Two years after its enactment, however, it is only natural to ask, what has the law done for me, my clients, and my fellow Americans?

Highlights of the ACA’s Impact

Preventive Services: With a nod to the understanding that it costs less to provide preventive services than to treat Medicare beneficiaries when they are very sick, the ACA allows Medicare beneficiaries to receive an Annual Wellness Visit and a personalized prevention assessment and plan. As of August 2011, 17 million Americans took advantage of the new benefit and received free preventive services.

Protections to the Medicare Trust Fund: One of the goals of the ACA is to protect Medicare and strengthen the life of the Medicare Trust Fund. According to the Social Security and Medicare Board of Trustees 2011 Report, projected Medicare costs over 75 years are about 25 percent lower due to provisions in the ACA.

Prescription drug benefit: Discounts: Medicare beneficiaries who fall into the prescription drug coverage gap, or the “doughnut hole,” receive a 50 percent discount when buying brand-name prescription drugs.

Rebate: In the first step to eliminate the Medicare Part D doughnut hole by 2020, 3.7 million Medicare beneficiaries began receiving a one-time $250 rebate when they hit the doughnut hole.

Coverage despite pre-existing conditions: Protections are already in place for certain individuals with pre-existing conditions, with the ACA’s sponsorship of high-risk health insurance plans for individuals with pre-existing conditions. As of November 2011, 450,000 individuals were participating in these plans.

Coverage for young adults: One of the most popular provisions of the ACA is the requirement that individual and group health plans extend dependent coverage to adult children up to age 26. Americans age 18 to 24 continue to struggle, facing the highest unemployment rate since the government began tracking unemployment in 1948. Despite record unemployment, 2.5 million young adults have maintained health care coverage as a result of this provision.

Vincent J. Russo, CELA, CAP, is a member of the NAELA Public Policy Committee, a NAELA Past President, and NAELA Fellow. Brian Lindberg is NAELA’s Public Policy Advisor. Fay Gordon is Senior Associate for Grassroots and Public Policy.
Nursing home quality enforcement: The ACA requires long-term care facilities to follow new requirements for reporting a reasonable suspicion of crimes. In June 2011, the Centers for Medicare and Medicaid Services instructed State Survey Directors on how they must coordinate with law enforcement and develop policies and procedures to comply with the new reporting requirements.

Elder abuse and prevention: The law provides matching grant money to states to establish a background check program on individuals who apply for direct patient access jobs in long-term care facilities that receive funding from Medicare or Medicaid. As of December 2011, 17 states and territories submitted a proposal for a matching grant and received a total of $38 million to establish the background check program.

The Future of ACA

In its short two years, the ACA's initial implementation is directly touching and changing the health care coverage for millions of Americans. The major changes are expected in 2014 when the health insurance exchanges, Medicaid expansion, and the individual mandate must all be implemented.

While much of the law remains, it faced serious hurdles in this Congress. The Administration decided not to implement the Community Living Assistance and Supportive Services (CLASS) Act last fall. This spring, the House of Representatives voted to repeal the CLASS provision, without offering an alternative long-term services and supports program. The House also repealed another provision of the ACA, the Independent Payment Advisory Board (IPAB). The Senate has not voted on CLASS or IPAB. Attempts to repeal the entire law have failed, but the Republican presidential hopefuls have all vowed to repeal the law.

As Congress chips away at portions of the law, the future of the Affordable Care Act will likely be determined by the Supreme Court. The court is expected to issue a decision on these four questions:
1. Can the individual mandate be justified as an exercise of Congress’ power to regulate commerce?
2. If the individual mandate is found unconstitutional, can the ACA survive?
3. Is the ACA’s expansion of the Medicaid program a violation of the Tenth Amendment?
4. Is the individual mandate a tax under the Tax Anti-Injunction Act, and can plaintiffs seeking to challenge the mandate do so before it goes into effect?

The decision could have ramifications on the outcome of the presidential election, and likely, on congressional races. It will certainly have ramifications for those who have and those who may in the future benefit from the ACA.

NAELA continues to support the ACA, and works to influence the implementation of the law. Throughout the law’s development, NAELA worked closely with the Leadership Council of Aging Organizations to advocate for policies that would ensure quality, affordable health care for older Americans. Specifically, NAELA urged Congress to eliminate provisions allowing age rating for insurance premiums and Medicare Advantage overpayments. NAELA recommended health reform include the CLASS Act, broader coverage for Medicaid home and community-based services, nursing home transparency requirements, and the Elder Justice Act. For more on NAELA’s health reform advocacy, please see the Health Care Reform section of the NAELA Advocacy webpage.

Calendar of Events

Go to www.NAELA.org for up-to-the-minute information.


November 7, 2012. NAELA Board of Directors Meeting held in conjunction with the National Aging & Law Institute, Omni Shoreham Hotel, Washington, D.C.


NAELA Board of Directors Meetings are open to all NAELA members. Meeting announcements and minutes from past Board of Directors meetings are posted on www.NAELA.org.
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For information on NAELA Chapters, go to www.NAELA.org.

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* Information not available at time of printing.
On January 20–22, 2012, NAELA members descended on the Embassy Suites Outdoor World in Grapevine, Texas, for the 2012 UnProgram. During the weekend, there were almost 100 subject matter sessions during which attendees discussed a wide variety of Elder and Special Needs Law topics. The discussions continued during the happy hours following the sessions, the dinners afterwards, and for some, until the sun came up the next day. There was non-stop “shop talk” about how to run a practice, deal with employees and clients, how to do advanced Medicaid and VA planning, and other related topics. These included, among others:

- Social networking
- Client education
- Taxation of special needs trusts
- Medicare in the nursing home
- Practice development
- Managing non-lawyer staff
- Marketing your practice on the web
- Work/life balance
- Client screening
- Retirement accounts and trusts
- Long-term care insurance
- Guardianship and mediation
- Caregiver support

Ben Neiburger, Elmhurst, Ill., is chair of the UnProgram Committee.

Discussions are wide-ranging and informal.
UnProgram participants set the agenda. Everyone has a chance to suggest topics for discussion and act as the discussion moderator.

What Members Like About the UnProgram

NAELA News Editorial Committee member Leonard Mondshein, CELA, CAP, Miami, Fla., attended this year’s UnProgram. He asked first-time attendees as well as members who have attended the UnProgram several times what they liked about the UnProgram.

FIRST-TIME ATTENDEES

Leslie Y. Sugai, CELA, Los Gatos, Calif.
- Tips and ideas on office questions
- Opportunity to connect with other members and CELAs
- California DRA session

Jim Zeigler Jr., Mobile, Ala.
I learned so much. For example:
- Sole practitioners and small firms are experiencing the same difficulties
- How to hire associates
- A good session on VA benefits, with an important discussion on the sale of a home and Aid & Attendance.
- There are many different opinions — attorneys have a chance to hear what other attorneys think about various issues

Arthur Lee (Lance) McLain Jr., Bellaire, Texas
- Getting away from the office and meeting other Elder and Special Needs Law attorneys
- Uses for Irrevocable Trusts
- Making new friends

RETURNING ATTENDEES

Leigh Hilton, Denton, Texas
Learning about:
- Life Care Planning
- Special Needs Trust Manual from The Special Needs Trust Alliance (Trustee Handbook)
- Practical knowledge

Shirley Berger Whitenack, CAP, Florham Park, N.J.
- Meeting new NAELA members
- Learning more about Annuities and VA law from Dale Krause
- Opportunity to facilitate and help other people
- Catching up with old friends

Sharon Rivenson Mark, CELA, CAP, Jersey City, N.J.
- Networking with other NAELA members
- Technology and Apps for lawyers
- Ideas for forms
- Advising administrators and beneficiaries of Special Needs Trusts

Leonard reports that “All participants who were interviewed said that they would return in the future.”

Leonard Mondschein interviews Shirley Berger Whitenack (center) and Sharon Rivenson Mark (right) about their UnProgram experiences.
The National Academy of Elder Law Attorneys’ (NAELA) Member Benefit Program provides special offers to NAELA members on a variety of products and services.

You can receive information directly from these vendors by contacting them. 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 to the products or services offered by Member Benefit Partners.

Aspen Publishers/Wolters Kluwer Law & Business
www.aspenpublishers.com
Product Information: Aspen Publishers/Wolters Kluwer Law & Business. Featuring nationally known authorities, these respected resources keep readers on top of current legal, regulatory, and practice guidelines, as they cover the full range of Elder Law and trust topics.
Benefit to Members: NAELA members receive 20 percent savings on Elder Law purchases. Use coupon code “NAELA20” in step 2 of the checkout process.

Association Health Programs — AHP
www.associationpros.com/assoc-naela
1-888-450-3040
Product Information: Access to national “A” rated carriers in a wide range of coverage areas for both business and health insurance.
Benefit to Members: Harness the volume buying power of all AHP’s association clients. Flexibility to design your own plan.

FedEx
https://advantagemember.visionary.com/4973/
1-800-MEMBERS
(1-800-636-2377, 8 am–6pm EST, M-F)
NAELA passcode 6PVQPW
Product Information: There is no cost to enroll in the FedEx Advantage® Program and there are no minimum shipping requirements.
Benefit to Members: Up to 21 percent off on select FedEx Express® U.S. services. Up to 12 percent on select FedEx Ground® services. Up to 10 percent on select FedEx Home Delivery® services. If you create your shipping labels online using FedEx Ship Manager® at www.fedex.com, you can receive an additional 5 percent discount on eligible FedEx Express shipments.

Hertz
1-800-654-2200
Hertz Discount CDP# 1673984
Product Information: With 7,000 locations in more than 150 countries, Hertz is able to offer special discounts on car rentals worldwide.
Benefit to Members: Ten percent discount on Hertz Standard daily, weekend, weekly, and monthly rates. Five percent or greater discount on Hertz Leisure daily, weekend, weekly, and monthly rates.

Interactive Legal Suite
www.interactivelegal.com
info@interactivelegal.com
321-252-0100
Product Information: A collection of Elder Law, estate, and tax planning software designed to assist lawyers with strategic development and document generation.
Benefit to Members: During 2011, NAELA members receive a 10 percent discount on their first year subscription to Elder Law & Special Needs Planning™ (promo code NAE11).

InterCall®
www.intercall.com/affinity/naela.htm
1-800-514-2818, 8 am–8 pm EST.
Product Information: A world’s largest conferencing services provider, InterCall® is ready to help your business save time and money with world class conferencing solutions from simple audio-conferencing to cutting edge web-conferencing platforms such as WebEx® and Microsoft Live Meeting®.
Benefit to Members: You will receive exclusive member pricing on both audio and web conferencing, with toll-free audio conferencing at $.04 per minute. There are no contracts to sign or minimum spending requirements, so sign up today!

LexisNexis Matthew Bender
http://goo.gl/kC1qy
Promo code for NAELA members: NAELA
Product Information: Discounts on nearly all products available through the LexisNexis online bookstore. That includes not just Elder Law products, but also estate planning, health care, veterans and family law, tax, and state-specific titles too.
Benefit to Members: 20 percent discount on nearly all products.

NAELA CareerCenter
http://careers.naela.org
Product information: Highly specialized career center provides focus to Elder and Special Needs Law firms with free search function for applicants.
Benefit to Members: NAELA members receive 25 percent off a single 30-day job posting and 30 percent off multiple (three, five, and 10) 30-day job postings.

Office Depot
https://odams.officedepot.com/registrations/NAELA.php
Product Information: Save on office supplies.
Benefit to Members: Discounts range from 10-80 percent on 176 frequently purchased items; 20-55 percent at all Copy and Print Centers in every retail store; and 10 percent on most other items. Discounts on Office Depot’s already low prices for copier paper and toner. Discount not valid for technology hardware; wireless, satellite, or Internet services; U.S. postage stamps or UPS services; and Office Depot gift cards or promotional, discounted, or clearance products.

For information about becoming a NAELA Member Benefit Partner, contact Roger Naoroji at 703-942-5711, ext. #229.
Whether you’re a private practitioner, legal services attorney, or other law and aging advocate, the National Aging and Law Institute offers an unparalleled opportunity to learn, network, and engage with leaders within the field.

The Advanced Elder Law Review will position you as an Elder and Special Needs Law expert in your state. Should you wish to apply for national accreditation from the National Elder Law Foundation as a Certified Elder Law Attorney, or simply obtain a higher level of understanding, this is the training you need.

NAELA has partnered with a coalition of national organizations to ensure that you get a unique opportunity to learn and network. This joint conference is hosted by NAELA and co-sponsored by the National Aging and Law Conference (NALC), a coalition formed by:

- NAELA
- The Center for Medicare Advocacy
- The American Bar Association Commission on Law and Aging
- The National Senior Citizens Law Center
- The Center for Social Gerontology
- The National Consumer Law Center
- The AARP Foundation Litigation
- The National Association of States United for Aging and Disabilities

Visit www.NAELA.org for more information.