

**MSBA ELDER LAW SECTION E-NEWSLETTER
DECEMBER 9, 2008**

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Editor's Note: Guest Editor for this issue of the E-Newsletter is Suzy Scheller, Esq.

ALERT – THE HEALTH CARE PROGRAMS MANUAL MAY NOT REFLECT CURRENT LAW

Cathryn D. Reher, Chair of the Medical Assistance Committee, sends the following alert to section members:

Since the new Health Care Programs Manual went on line in December 2006, there has been an exponential increase in revisions to the Manual. Many definitions continue to change and language has been moved and deleted. For example, recently I went looking for the Manual language stating that interspousal transfers are permissible at any time. This concept is a fundamental principal of both federal and state Medicaid law and has not been changed in recent years. In the old manual, the pertinent language could be found at 0909.27.05. After a diligent search, I could not find the language in the new manual under the transfer exceptions set forth at 19.40.05 or through a word search. Other recent changes to the Manual would adversely impact eligibility for benefits without any corresponding change in law. I consider the situation to be important enough to issue this alert to Section members. My first caution is to double check that the Manual provisions that you are relying upon in giving legal advice still exist. If not, go back to the state and federal laws and rules for your authority. Second, please e-mail me any other instances of Manual changes that do not correlate with a change in federal or state law. Third, bring the change to the attention of the Minnesota Department of Human Services. It may be an error or oversight on their part which could easily be fixed. If not, you can use the opportunity to find out what legal authority they are relying upon for the change.

ELDER CARE GUIDE – NURSING HOME QUALITY OF CARE INDICATORS NOW AVAILABLE

The Elder Care Guide, which is still under development, contains resources that are helpful quality of care indicators for consumers when looking for a nursing home. The resource listing includes links to results of periodic facility surveys; findings of complaint

investigations that have been conducted; and characteristics of nursing homes. Limited information is also available about Assisted Living facilities and Home Health Agencies. The resource listing is posted on the Elder Law Section Website under the “What’s New” page, and is available at <http://www.mnbar.org/sections/elder-law/WhatsNew.asp>.

If you are interested in assisting with the Elder Care Guide, please contact Ken LaBore at klabore@prslegal.com.

ELDER LAW NEWS

St. Paul Pioneer Press Examines Antipsychotic Drug Use Among Minnesota Nursing Home Residents.

<http://www.medicalnewstoday.com/articles/131578.php>

Drugs are often a shortcut for care.

http://www.twincities.com/ci_11101344

Albert Lea teens charged in elder abuse case.

http://www.twincities.com/crime/ci_11114766

Home appliances to soothe the aches of aging boomers.

<http://online.wsj.com/article/SB122826077605073813.html#printMode>

Minnesota woman celebrates 114th birthday.

<http://erstarnews.com/content/view/4963/26/>

Governor Pawlenty criticizes federal aid to states.

http://www.bemidjipioneer.com/politics/index.cfm?page=article_bureau&id=47878&legislative_tag=1

AARP’s stealth fees often sting seniors with costlier insurance.

<http://www.bloomberg.com/apps/news?pid=20601213&sid=a4OkPQIPF6Kg&refer=home>

UPCOMING EVENTS AND CLE PROGRAMS

Incentive Trusts: Encouraging Good Behavior in Beneficiaries

HCBA Teleseminar

December 9, 2008 at 12:00 p.m.

For more information and online registration, go to:

<http://www.hcba.org/CLE-Events/CLE-tele-seminars.htm> or call 612-752-6600

Health Care Issues in Estate Planning: Proxies, Organ Donors, Living Wills, and Directives

HCBA Teleseminar

December 16, 2008 at 12:00 pm

For more information and online registration, go to:

<https://www.hcba.org/CLE-Events/CLE-tele-seminars.htm> or call 612-752-6600.

Settlers, Beneficiaries & Trustees: Conflict Management in Trusts

HCBA Teleseminar

December 18, 2008 at 12:00 p.m.

For more information and online registration, go to:

<https://www.hcba.org/CLE-Events/CLE-tele-seminars.htm> or call 612-752-6600.

The New Transfer on Death Deed (TODD) Legislation

Video Replays

January 15, 2009 - Mankato

January 23, 2009 - Duluth

For more information and online registration, go to:

<http://www.minncle.org/SeminarsSearch.asp> or call 800-759-8840.

Pooled, Special, and Supplemental Needs Trusts From Start To Finish

RCBA Seminar

January 21, 2009 from 3:00 – 5:00 p.m.

For more information and online registration, go to:

<http://www.ramseybar.org/calendar.html#january> or call 651-222-0846.

ELDER LAW SECTION ACTIVITIES

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, December 12, 2008, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Karla Nelson with Schmitz & Schmidt. P.A., at 651-291-2405.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, December 16, 2008, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at creher@mnelderlaw.com, or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

MINNESOTA CASES

No cases to report this week.

STATUTES, REGULATIONS, BULLETINS

DHS DISABILITY SERVICES DIVISION: REQUEST FOR PROPOSAL SEEKING A QUALIFIED GRANTEE(S) TO PROVIDE HOUSING ACCESS SUPPORTS TO MINNESOTANS ELIGIBLE FOR LONG TERM CARE OR STATE PLAN HOME CARE SERVICES WHO WANT TO RELOCATE TO HOMES OF THEIR OWN. DHS is seeking proposals from public and private organizations to provide housing access services to disabled Minnesotans who wish to move into their own homes and who are eligible for long term care or state plan home care services. The desired housing access services would include locating affordable housing, completing rental applications, meeting with landlords, and developing a household budget. More information is available on page 979 of the December 1, 2008, *State Register* at:
http://www.comm.media.state.mn.us/bookstore/stateregister/33_22.pdf

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE. Here's what you can find on the Website: Links under "What's New" to the DHS Health Care Programs Manual, the updated Income and Asset Eligibility Figures for Minnesota Health Care Programs, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, and a legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Minnesota Senior Federation; Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

To access the ELDER LAW SECTION WEBSITE

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>

Please send eNewsletter contributions by noon on Saturday of each week to Vicki McIntyre at ymcintyre2@yahoo.com.

If you do not wish to receive this eNewsletter, send your request to be removed from the mailing list to Kim Basting at kbasting@statebar.gen.mn.us.