

MSBA ELDER LAW SECTION E-NEWSLETTER

December 13, 2011

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E-Newsletter Editorial Staff:

Communications Committee Chair: Laurie Hanson, Esq.

Editor in Chief: Allison Burke, Esq.

Contributors: Joel Smith, Esq., Peter Hendricks, Esq., Andrea M. Palumbo, Esq.,
Megan K. Stowers _____

[Editor's Note: In last week's newsletter, submissions submitted by Cathy Thacher were attributed instead to Carol Thacher. I apologize for the error. –Allison Burke]

LINK OF THE WEEK

The Office of Health Facility Complaint investigates complaints of abuse, neglect, and other wrongdoing in Minnesota Nursing Homes. The Minnesota Department of Health offers an online tool for researching completed investigations into such complaints against Minnesota nursing homes. To access the tool, click [here](#).

Submitted by Megan K. Stowers
stow5755@stthomas.edu

ELDER LAW NEWS

Minn. health care ratings group plans to examine newly available Medicare data | [MPR](#)

Older Minnesotans need a new way to afford care | [Star Tribune](#)

Lawmakers seek passenger advocate at airports following elderly women's claims of strip search | [Star Tribune](#)

Elderly complain about lowering pants for NY airport search, highlighting concerns of aging | [Star Tribune](#)

Humphrey hopes his office protects vulnerable seniors | [Star Tribune](#)

Submitted by Joel Smith, Esq.

joel@koslawfirm.com

ELDER LAW CASES

There are no Minnesota cases to report this week.

STATUTES, REGULATIONS, BULLETINS

#11-21-08 Coordinating Medical Assistance and MinnesotaCare for Adults Without Children The purpose of this bulletin is to provide policy and instructions for coordinating Medical Assistance and MinnesotaCare for adults without children.

The bulletin, dated December 8, 2011, is available [here](#).

November 28, 2011 State Register:

Department of Human Services (DHS)

Health Care Administration

Request for Comments on Long-Term Care Realignment Section 1115 Medicaid

Waiver

The Minnesota State Legislature has directed the Minnesota Department of Human Services (DHS) to apply for any necessary federal authority to implement a more restrictive nursing facility level of care (NF LOC) standard. The NF LOC standard is used to determine eligibility for:

- Medical Assistance (MA) payment for nursing home services
- Medical Assistance payment for home and community-based service programs that provide alternatives to nursing home services. These programs include the Elderly Waiver (EW), the Community Alternatives for Disabled Individuals (CADI) waiver and the Traumatic Brain Injury-NF (TBI-NF) waiver programs

- The NF LOC criteria also applies to the state-funded Alternative Care (AC) program for people age 65 and older who do not meet Medical Assistance income and asset limits.

The “maintenance of effort” (MOE) provisions in the Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152 (together known as the Affordable Care Act) require states to maintain eligibility standards, methodologies, and procedures for Medicaid pending implementation of coverage changes that become effective in January 2014. The Medicaid MOE provisions relating to adults expire when an exchange established by the state under section 1311 of the Affordable Care Act is fully operational. The MOE provisions for children under age 19, in both Medicaid and CHIP are effective through September 30, 2019. Based on the Centers for Medicare & Medicaid Services’ guidance on its interpretation of the MOE requirement in section 2001(b)(a) of the Affordable Care Act, modifications making the NF LOC standard more stringent may require a waiver of the MOE requirement.

In accordance with state law, DHS intends to submit a request to waive the MOE provisions in order to adopt a modified NF LOC standard for adults for the period preceding January 2014 and for children for the period preceding October 1, 2019. Failure to secure federal waiver authority to adopt a modified NF LOC standard in Minnesota will result in an additional 1.67 percent rate reduction for all long-term care providers, excluding nursing facilities, from July 1, 2012 to December 31, 2013. Through the waiver DHS, will also request federal matching funds for the Alternative Care and the Essential Community Supports programs, two programs that provide home and community-based services for seniors whose incomes are too high to qualify for Medical Assistance but who have inadequate income and assets to pay for 135 days of nursing facility care. Both programs are designed to help seniors with needs for long-term care services stay in the community longer.

DHS is announcing a 30-day comment period on the Long Term Care Realignment Section 1115 Medicaid waiver request. A copy of the waiver request can be found on the DHS website at www.dhs.state.mn.us/healthcare/waivers. To request a paper copy of the waiver request, please contact Quitina Cook at (651) 431-2191. Written comments may be submitted to Jan Kooistra at the address below. Comments must be received by December 28, 2011.

Jan Kooistra

Minnesota Department of Human Services

P.O. Box 64983

St. Paul, MN 55164-0983

December 5, 2011 State Register:

Department of Human Services (DHS)

Health Care Administration

Vacancies on Medicaid Citizens' Advisory Committee

Pursuant to title 42, part 431, section 12 (42 CFR §431.12) of the *Code of Federal Regulations* governing the Medicaid Program, the Minnesota Department of Human Services seeks applications from Medicaid (Medical Assistance) clients, members of consumer groups, concerned health care professionals and others interested in serving on the Medicaid Citizens' Advisory Committee. The purpose of the committee is to ensure that continued high quality health and medical services are provided to low-income persons. The committee, representing Medicaid clients, advises the Department and helps define what the Medicaid Program should be in relationship to future health care and technological needs. Specifically, the committee explores designated problem areas, evaluates Department programs, makes specific recommendations and resolutions, and contributes to the formulations of Department policy and standards.

In the past two years, the committee heard presentations about and advised the Department on many state and federal topics including: federal health care reform; the Department's legislative health care proposals in 2010 and 2011 and final state legislative session outcomes; and proposed federal regulations governing Medicaid.

New members will be appointed for the years 2012-2013. Committee meetings are typically held quarterly at the Department of Human Services, 540 Cedar St., St. Paul, Minnesota. Employees of the State of Minnesota (except for employees of the Department of Health) and private persons or organizations under contract to the

Department of Human Services for administrative services will not be appointed to the committee.

For further information, contact Lisa Knazan, Minnesota Department of Human Services at (651) 431-2298. TTY/TDD users can call the Minnesota Relay Service at 711 or 1-800-627-3529. Letters of interest should be sent to: Lisa Knazan, Federal Relations, Health Care Administration, Minnesota Department of Human Services, P.O. Box 64983, St. Paul, Minnesota 55164-0983. Letters of interest will be accepted until Monday, Monday, January 16, 2012.

Submitted by Peter M. Hendricks, Esq.

phendricks@gblawoffice.com

UPCOMING EVENTS AND CLE PROGRAMS

There are no upcoming events or CLE programs to report this week.

ELDER LAW SECTION ACTIVITIES

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, December 20, 2011. The Medical Assistance Committee is a study group to analyze Elder Law Section member questions and case studies and to discuss administrative policies and procedures in relation to Medical Assistance in

Minnesota. Cathryn D. Reher of Long, Reher & Hanson, P.A., is Committee Chair. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A., at [952-929-0622](tel:952-929-0622) at least 24 hours in advance of the meeting. Topics for the meeting may be submitted to tfenske@mnelaw.com under the subject heading "MA Committee Topic", or faxed to [952-542-9201](tel:952-542-9201). Please be reminded that the meeting location is: Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room.

GOVERNING COUNCIL: The next meeting of the Elder Law Section Governing Council will be on Friday, December 16, 2011 at 3:30 pm at the offices of the Volunteers of America (VOA) at 1900 Central Avenue NE, Suite 106, Minneapolis, MN 55418. For further information, please contact Suzy Scheller, Chair, at: suzy@schellerlegalsolutions.com.

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE. Here's what you can find on the Website: Links to the DHS Health Care Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, 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://www.mnbar.org/sections/elder-law/index.asp>

Please send E-Newsletter contributions by 10 p.m. on Sunday of each week to Allison Burke at allison@twincities-elderlaw.com.

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Tamara Patton at tpatton@statebar.gen.mn.us.

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available at: <http://www2.mnbar.org/sections/elder-law/newsletter.asp>.