



Elder Law Newsletter

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Fall 2003

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Recent legislation affects elder law and estate law

By Ruth Simonis, Co-chair of Section Legislative Subcommittee

The Elder Law Section of the Oregon State Bar proposed six new bills this legislative session. The governor signed five of the six, which become effective January 1, 2004, unless otherwise noted. A summary of these bills follows.

SB 32: Court visitor requirements

SB 32 amends ORS 125 to expand statewide the role and responsibilities of court visitors enacted under the Multnomah County Pilot Project that became effective July 1, 2000, and would otherwise sunset at the end of this year. Since the project's court visitor requirements strengthened protections for vulnerable persons in the protective proceeding, ORS 125 was amended to adopt

the applicable court visitor provisions, effective June 6, 2003, while all other aspects of the Multnomah County Pilot Project are repealed December 31, 2003.

SB 33: Death of joint owner

SB 33 creates a rebuttable presumption that sums remaining on deposit in a joint account at the death of one party belong to the surviving party or parties. The presumption may be overcome by evidence that the deceased owner intended a different result or lacked capacity when the joint account was established. This replaces a stricter standard, in the current ORS 708A.470(a) and ORS 723.480(1), that required clear and convincing evidence of a different intention than survivorship on the financial institution's own records. The older standard exposed elderly account owners to undue influence or to a heightened risk of unintentionally leaving an entire account to a person added to the account solely for convenience.

SB 34: Power of attorney

SB 34 was drafted by the Oregon Real Estate Agency, the Oregon Banker's Association, and the Elder Law Section to broaden the real estate licensing exceptions and to cure the adverse unintended impact of SB 446 passed during the 2001 Legislative Session. (See 2001 Oregon Legislative Highlights, page 10-11).

The real estate licensing exceptions will cover:
(1) The typical family scenario where the authorized agent is a spouse, child, grandchild, parent, grandparent, sibling,

In this issue..

Recent legislation

Changes in elder and estate law . . .	1
Elder abuse legislation	3
Filing fees increased	3

Plus...

Declaration for mental health	4
Elder law CLE	6
Agency committee report	7
Elder law numbers	8
NEW: Resource corner	9
Resources for attorneys	10
Index to Volume 6	11
Annual meeting	12

Recent legislation *Continued from Page 1*

- niece, nephew, aunt, or uncle of the principal or the spouse of the principal, and the power of attorney need only be recorded in the appropriate county. ORS 696.030(1)(c)
- (2) A paid fiduciary who hires a licensed real estate professional to help with the sale or lease of the principal's real property. ORS 696.030(1)(x)
 - (3) A fiduciary acting under a court order, whether or not the order specifically authorizes the real estate activity. ORS 696.030(1)(y)
 - (4) A financial institution or trust company (as defined in ORS 706.008) acting under a power of attorney that is recorded in the county where the real estate is located. ORS 696.030(1)(z)
 - (5) Any agent acting under a valid power of attorney executed before July 1, 2002. ORS 696.030(1)(b)
 - (6) A person acting as a personal representative, trustee, or regular salaried employee of a trustee. ORS 696.030(1)(e)

SB 35: Fiduciary prior approval

In addition to the existing fiduciary requirements of ORS 124.221, the passage of SB 35 requires prior court approval for payment of compensation to the following persons employed by the fiduciary to provide services that directly affect the protected person: a spouse, parent, or child of the fiduciary, or a business entity in which the spouse, parent, or child has an ownership interest. In order to obtain court approval, the fiduciary must provide the court with the information set forth in ORS 124.221(4). With one exception, ORS 124.221(10) exempts fiduciaries that are financial institutions or trust companies as those terms are defined in ORS 706.008.

SB 37: New role of guardian ad litem in EAPA

SB 37 amends ORS 124 to make the Elderly and Disabled Persons Abuse Prevention Act (EAPA) more effective by allowing a petition for restraining order to be filed by a guardian or guardian ad litem on behalf of the elderly or disabled person. If a petition is so filed, the elderly or disabled person will receive notice and has a right to counsel and access to personal records. He or she may file

an objection to the petition, request a hearing, and present evidence and cross-examine witnesses at any hearing.

In addition, the statutory form petition was amended to include a "none of the above" box, because it is not necessary for the respondent to have lived with or cared for the elderly or disabled person in order to obtain an abuse prevention restraining order. The elderly or disabled person is able to obtain protection against abuse by anyone, regardless of the nature of his or her relationship with the abuser.

OTHER BILLS OF INTEREST

A few other bills are of interest to elder law attorneys. A more comprehensive list of the significant legislative changes associated with general estate planning is found in Chapter 10 of the 2003 *Legislative Highlights* handbook that will be available in September.

SB 118: Expand definition of abuse in EAPA

SB 118 amends ORS 124.005(e), The Elderly and Disabled Persons Abuse Prevention Act, to include sexual comments "or conduct of such a nature as to threaten significant physical or emotional harm to the elderly person or person with disabilities."

HB 2101: Venue for restraining orders

HB 2101 amends ORS 107.700 and 124.010 to provide that contempt proceedings for violations of Family Abuse Prevention Act restraining orders and for violation of EAPA restraining orders (ORS 124) may be conducted by the court that issued the order or by the circuit court in the county where the violation of a restraining order occurred.

HB 2150: Small estate affidavits

Section One amends ORS 114.525 to clarify that small estate affidavits are to be addressed to the Estate Administration Unit of the Oregon Department of Human Services (DHS). Section Three changes the expiration of the limitation period for an unpaid claiming successor to request a court hearing from two years after the date of death to two years after the filing of the small estate affidavit.

HB 2156: Request for notice on real property

HB 2156 amends ORS 205.246 to include the ability of the Department of Human Services to record a request for notice of transfer or encumbrance against real property for any individual who receives public assistance as defined by ORS 411.010 and is the holder of record title to real property or the purchaser under a land sale contract.

HB 2342: Elimination of two-year limitation period for claims in probate procedure

Under current ORS 115.005(4), a creditor must submit claims against a decedent's estate no later than two years after the date of death. Section 1 of HB 2342 eliminates this two-year limit. However, a claim may still be barred if the particular limitation period has expired, the claimant received actual notice of the claim deadline under 115.003 and 30 days have passed, the personal representative has already filed the final account, or there are not sufficient funds to satisfy all higher-priority claims and all previously presented claims.

Continued on page 3

New legislation increases penalties for abuse of elderly, disabled

House Bill 2449, which was signed into law this summer and goes into effect January 1, 2004, increases civil penalties for abuse of an elderly or incapacitated person to three times the actual economic and noneconomic damages. ORS 124.100 is amended to read:

124.100. (1) An elderly or incapacitated person who suffers injury, damage or death by reason of physical abuse or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse. The court shall award the following to a plaintiff who prevails in an action under this section:

- (a) An amount equal to three times all economic damages, as defined in ORS 18.560, resulting from the physical or financial abuse, or \$500, whichever amount is greater.
- (b) An amount equal to three times all noneconomic damages, as defined by ORS 18.560, resulting from the physical or financial abuse.
- (c) Reasonable attorney fees incurred by the plaintiff.
- (d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

Recent legislation

Continued from page 2

Section Two permits the Department of Human Services to prove its claims for recovery of public assistance using microfilm, microfiche, or computer records.

The author wishes to thank Jonathan Levy for his editing suggestions and contribution to the bills pertaining to probate law that were included in this article. Jonathan co-authored and coordinated the chapter of 2003 Oregon Legislative Highlights that pertains to estate planning and elder law, and includes a thorough discussion of the significant changes to relevant Oregon law.



Filing fees increased

Oregon court filing fees increased effective September 1, 2003, as a result of House Bill 2759. The changes are effective throughout the state. Some of the new filing fees relevant to elder law practice are listed below:

Petition for Guardianship (not including court visitor fees)	\$75
Petition for Probate or Conservatorship (based on value of estate)	
\$10,000 or less	\$75
\$10,001 to 25,000	\$156
\$25,001 to 50,000	\$270
\$50,001 to 100,000	\$384
\$100,001 to 500,000	\$498
\$500,001 to 1,000,000	\$612
\$1,000,001 or more	\$726
Motion, Objection, First Appearance . . .	\$69
Request for Notice	\$22
Small Estate/Affidavit of Claiming Successor	\$75
Petition or Agreement Regarding Trust	\$128
Trustee Petition to Determine Creditor Claims	\$200

The new fees are in effect throughout the state. Some local judicial districts have posted lists of filing fees and other court fees on their Web sites, which can be accessed through the state court system's main Web site at www.ojd.state.or.us. Additional changes are planned for July 1, 2004, and July 1, 2005.

Oregon's Declaration for Mental Health Treatment: a psychiatric advance directive

By Judith Woo Poutasse

The Declaration for Mental Health Treatment offers distinct advantages as an anticipatory planning tool for a mentally ill individual and as an alternative to guardianship.

ORS chapter 127 authorizes both the Advance Directive for Health Care (an advance directive for end-of-life decisions at ORS 127.505 to 127.660) and the Declaration for Mental Health Treatment ("Declaration" or a psychiatric advance directive at ORS 127.700 to 127.737), which is far less familiar.¹ This article focuses on the circumstances in which an elder law practitioner might recommend completing and signing a Declaration form found at ORS 127.756 as part of the estate planning process or as an alternative to guardianship.

The toll of mental illness on individuals and their families is devastating.² One in five families is affected by severe mental illnesses. Five percent of the U.S. population suffers from mental illnesses. More than five million Americans, including over 70,000 Oregonians, are diagnosed with schizophrenia and bipolar disorder, which are biologically based brain disorders. Since psychiatric illnesses typically strike young adults, individuals with serious mental illnesses may face repeated episodes of psychosis or decompensation throughout their lives due to a lack of insight about their illnesses. This lack of insight often leads to refusing or stopping needed mental health treatment.

Why should a mentally ill individual complete and sign a Declaration?

The Declaration offers distinct advantages as an anticipatory planning tool for a mentally ill individual ("principal") and as an alternative to guardianship. According to Professor Patricia Backlar of PSU and OHSU, a psychiatric advance directive at its optimum empowers the principal to exercise informed consent and refusal choices upon his or her incapacity; involves the clinician as listener and information provider for the principal to make these informed choices; designates a trusted surrogate decision maker ("representative" or "attorney-in-fact") to carry out the incapacitated principal's psychiatric advance directive in the future; and informs family members who usually bear the burden of care.³

Moreover, guardianship often is not a solution. Many people who are receiving treatment for mental illness have jobs or are able to care for themselves except during periods of decompensation. Establishing a guardianship, especially in an emergency situation, is expensive and may create conflicts. Attorneys have reported instances where they were able to avoid guardianship or settle contested guardianship cases through the use of a Declaration.

When is the optimal time to enter into the Declaration?

According to ORS 127.702, an individual may sign the Declaration at any time, provided that he or she is an "adult of sound mind," that is, has not been found incapable by a court in an ORS chapter 125 protective proceeding or by two physicians. ORS 127.707 requires two witnesses to affirm that, at the time the principal signs the Declaration, he or she "appears" to be of sound mind and not under duress, fraud, or undue influence.

The Declaration implicitly assumes the following sequence of events has taken place at least once: first, the principal has decompensated; second, the principal has regained capacity; and third, the principal has acquired sufficient insight to want to avoid repeating the cycle, which commonly includes homelessness, victimization, and incarceration.⁴ Practically speaking, recommending a Declaration to a mentally ill individual who does not have the requisite insight may be a frustrating endeavor. Robert Joondeph of the Oregon Advocacy Center notes the Declaration may be best suited for principals diagnosed with a mental illness, such as bipolar disorder or clinical depression, where insight is most likely gained after recovering from decompensation.

Once the Declaration is in place, the named representative is in a position to

Continued on page 5

Oregon's Declaration for Mental Health Treatment

Continued from page 4

implement and to make the necessary treatment decisions if and when the principal decompensates and lacks capacity. Under the HIPAA definition of a "personal representative," the surrogate decision maker has access to the principal's health care records during incapacity without needing a separate written authorization for disclosure.⁵

How should the Declaration be completed?

As with the Advance Directive for Health Care, the principal selects a representative as a trusted surrogate decision maker to carry out the principal's expressed wishes, or where not expressed, to act in the incapacitated principal's best interests. The principal has open-ended choices and may give unlimited directions in the "Directions for Mental Health Treatment." For instance, the principal may prohibit, prefer, consent to, or refuse to consent to specific or whole classes of medications, inpatient and/or outpatient options, treatment regimes, primary care providers and specialists, facilities and transportation modes, person(s) to notify, and caregivers for children and pets.⁶

Why is the Declaration little used?

When compared to the Advance Directive for Health Care, which is supplemented by a hot pink POLST physician-order form, the Declaration is underutilized because few lay people and few lawyers are aware of it as an option. The Declaration has significant legal and practical limitations. First, ORS 127.720 allows a physician or provider to disregard the provisions of the principal's Declaration in an emergency that endangers life or health and also when the mental health commitment process has been initiated. Second, ORS 127.722 allows a principal with capacity to revoke a Declaration in whole or in part at any time during a three-year effectiveness period, yet prohibits revocation during incapacity (and decompensation), precisely the point a principal is most likely to want to revoke (the Odysseus or Ulysses issue).⁷ Third, even though a principal may consent in the Declaration to voluntary inpatient psychiatric hospitalization for up to 17 days, Oregon's acute shortage of psychiatric hospital space makes the treatment option unavailable.⁸ Finally, mental health providers and facilities may simply refuse to

abide by the principal's expressed wishes in the Declaration for fear of liability.

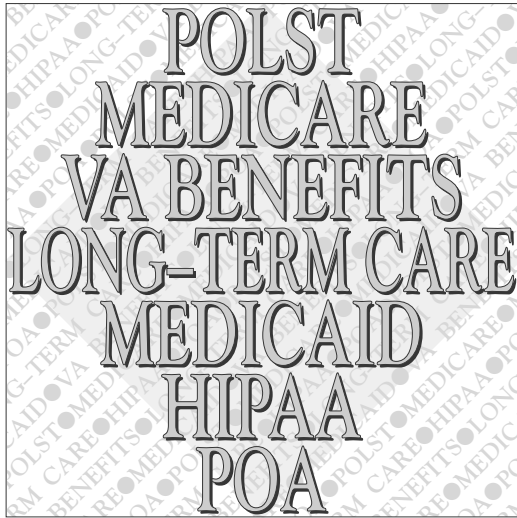
Despite its limitations, Oregon's Declaration for Mental Health Treatment offers an option as an anticipatory planning tool for the elder law practitioner to advise mentally ill individuals and their families because a trusted representative assumes a position in the future to make decisions that will maintain and stabilize an incapacitated principal's treatment and life.

Footnotes:

1. See Kelly T. Hagan, *Advance directives...do they work?* in Oregon State Bar Association, *Elder Law Section Newsletter*, Spring 2001, at 1-2 and Heather L. Guthrie, *Declaration for Mental Health Treatment: Refresher on a Hidden Treasure*, in Oregon State Bar Association, *Estate Planning and Administration Section Newsletter*, Jan. 2003, at 4-5.
2. Statistics generally found at the National Alliance for the Mentally Ill (NAMI) Web site at www.nami.org.
3. Patricia Backlar, "The Longing for Order: Oregon's Medical Advance Directive for Mental Health Treatment," 31 *Comm. Mental Health J.* 2, Apr. 1995. Patricia Backlar is the Research Associate Professor of Bioethics, Department of Philosophy, Portland State University and Senior Scholar, Center for Ethics in Health Care, and Adjunct Professor, Department of Psychiatry, Oregon Health & Sciences University. I would like to thank Professor Backlar for generously sharing her time for this article.
4. Patricia Backlar, "Anticipatory planning for psychiatric treatment is not quite like planning for end-of-life care," 33 *Comm. Mental Health J.* 4, 261-268, Aug. 1997.
5. 45 C.F.R. 164.502(g). Also see HB 2305 Section 2(10) regarding a health care representative under an Advance Directive for Health Care.
6. Patricia Backlar, *Can I Plan Now for the Mental Health Treatment I Would Want if I Were In Crisis? A Guide to Oregon's Declaration for Mental Health Treatment*. State of Oregon, Office of Mental Health Services, Mental Health and Developmental Disabilities Division, 1994. Robert C. Joondeph, Jan E. Friedman, Bob Nikkel & Jamie Rockwell, updated 2000.
7. Backlar, *supra* note 3, at 103.
8. Backlar, *supra* note 4, at 264.



Judith Woo Poutasse is Of Counsel to Parker, Bush & Lane, P.C. and a native Oregonian. She is licensed to practice in the states of Oregon and Washington. She focuses her practice on business immigration matters and has great interest in mental health legislation, programs and services and related elder law and long term care topics. She serves on the Board of Trustees of the Northwest China Council (OR) and Hanna Perkins Center (OH).



Oregon State Bar Continuing Legal Education
Elder Law Essentials:
Planning Tools and Practice Tips
 Cosponsored by the Elder Law Section

Friday, October 3, 2003

8:30 a.m. to 4:30 p.m.

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5.5 General CLE credits and 1 ethics credit

Gain practical knowledge and learn planning techniques to deal effectively with the complex matters unique to older clients and their families—essential for attorneys new to these issues or an elder law practice. Presented by some of Oregon's most experienced elder law attorneys.

To register, call the OSB Order Desk at 503.684.7412 or 800.452.8260 ext. 413.

Cost: \$155; \$145 for Elder Law Section members. Add \$20 if you register after Sept. 26, 2003.

Topics & Speakers

Basic Tools

- Advance directives for health care and POLST
- Access to medical information after HIPAA
- Powers of attorney and other basic documents
- Quality-of-life issues

Kristianne Cox, Attorney at Law, Portland
Steven A. Heinrich, Attorney at Law, Corvallis

Government Benefits for Long term Care

- Medicare coverage for SNF care, in-home services, and hospice
- VA facilities and aid and attendance benefits
- Oregon Project Independence

Emily J. "Jenny" Kaufman, Senior Law Project, Legal Aid Services of Oregon

Long Term Care Insurance

- Coverage options
- Access to group plans
- Policies for individuals and couples
- Factors to consider in reviewing a policy

Verena Lewandowski, CLU, Northwestern Mutual Financial Network

Medicaid Eligibility: Resources and Income

- Means testing of assets
- Oregon's income cap and income-cap trusts
- Fundamental planning strategies

Geoff Bernhardt, Law Office of Nay & Friedenberg, Portland

Medicaid: Recent Changes to Coverage for Long Term Care

- Service priority levels
- Assessments and challenges

Margaret Murphy Carley, Oregon Health Care Association

Medicaid: Spousal Impoverishment Protection

- Income and resource allowance for the community spouse
- Planning options for the couple

Ryan E. Gibb, Douglas & Conroyd PC, Salem

Legislative Update

- Changes to elder abuse statute
- Revised Uniform Principal and Income Act
- Wills and trusts harmonization statute

Dady K. Blake, Attorney at Law, Portland
Jonathan A. Levy, Cavanaugh Levy Twist LLP, Portland

Everyday Elder Law Ethics

- Counseling multiple generations
- Advising couples
- Representing incapacitated clients

Tim McNeil, Law Office of Mark M. Williams PC, Portland

Update from the Elder Law Section Agency and Professional Relations Subcommittee

By Sam Friedenber, Attorney at Law, Portland

The APR Subcommittee met August 22, 2003 with representatives of the Oregon Department of Human Services (DHS).

Income cap trusts

At our May meeting we had asked the DHS representatives to determine whether or not there had been a drop in new income cap trusts. We had some concern that the inability to have attorney fees come from the trust might discourage clients from establishing one. Although statistics were unavailable, the number of income cap trusts was estimated at 1,100, and DHS representatives had noted no drop in numbers.

Service levels

Kathy Labadie, Manager of SPD In-home Support Programs, provided a good deal of information about service priorities, including some statistics on hearings resulting from service priority assessments. 173 requests for hearing were received and 163 hearings were scheduled. Of those, 80 hearings were held. Of the 173 requests, 159 were disposed of in one way or another. The results of 66 cases were adverse to the client. Ten were favorable to the client. Six were "no shows." Two were withdrawn by the client. Six were withdrawn by the division. 69 were dismissed for other reasons. Additional information is available from the hearing panel; contact Cheryl Lien at 503.378.8224.

We asked for the results of the system-wide review being made for quality control on service priority assessments. Apparently the federal waiver requires that a one percent sample be made of clients. The agency is very interested in getting consistency in these assessments because it acknowledges how subjective they can be. To this end they are emphasizing manager training and a field review team which is traveling from county to county to assist staff.

The agency continues to focus on training its staff on assessment of service priorities and therefore has no resources to train non-staff. However, if someone is interested, he or she can contact Ms. Labadie to arrange something short of the full several-day training session.

SPD was asked by the legislature to review service priorities to determine whether all client risk factors are properly addressed in the current rules. Apparently the legislature is concerned that there may be factors other than "activities of daily living" that are important to consider when providing services. One example is regulation of medication.

Ms. Labadie emphasized the difficulties and delays in transitioning clients back into service when the legislature approves additional service priorities. As we know, the new budget has added priority levels 12 and 13. The agency asks that if you have clients that will benefit from this increase in service, please be patient. The agency has to get permission for its federal waiver, has fewer employees, does not want to inflate the hope of clients on the threshold, and is dealing with the possibility of a reverse in funding due to the political threat of a referendum.

New rules

Notice of new rules was given in July for an August 21 hearing date. Three that are worth noting are:

- 461-140-0296. This rule codifies CMS Transmittal 64 from 1994 that addresses overlapping transfers and the period of ineligibility. If two or more transfers occur in the look-back period and overlap, they will be aggregated sequentially, not concurrently, and the penalty period will start with the first transfer. This will preclude practitioners from advising on several overlapping transfers, and calculating the period from each transfer, concluding with a penalty that is shorter than the aggregate of all the transfers. If the transfers do not overlap, then each transfer will have its own penalty period beginning at the date of the transfer.
- 461-145-0330. This extends the rules about loans to include oral as well as written loans.
- 461-160-0620. This rule completely rewrites the calculation of the minimum monthly need allowance for the community spouse. However, it has no adverse effect and in fact is "client friendly."

Spousal support

DHS's Nancy Talbot noted that the budget crunch is causing the agency to focus its resources on spousal support. She is planning to assemble a committee to review how spousal support is handled in Oregon in comparison to other states. She would like our Section's participation and will be contacting us to this end.

Recording liens on real property for estate recovery

The legislature has authorized the Estate Administration Unit to record notices where there is real property of a Medicaid recipient. The law goes into effect on January 1, 2004. The agency will be reviewing the law and noticing rules before that date. It is critical that we review those rules.

Income producing property

Elder law practitioners should be aware

Continued on page 8

Agency and Professional Relations Subcommittee Report

Continued from page 7

that to apply the partial exemption to income producing property, the property must be registered as part of a "trade or business" pursuant to the rule OAR 461-145-0250. In the past, this rule has been applied even if there was no actual business registration.

Spousal pay program

This program, which pays for providing a spouse in-home care, continues to exist with fewer than 200 families participating. There is a cap, and the state cannot use federal funds for this program. There is always a waiting list and spaces are given as they become available. The rules of eligibility are the same as for Medicaid, but the assessment of activities of daily living and the spousal reimbursement formula differ.

Independent Choices program

Under this program—which exists in five counties, including Clackamas—a client receives a cash payment in the amount of the wage which otherwise would be paid to care providers. It also has a cap: 300 participants.

Medicaid financial eligibility rules are used. The rules can be found at OAR 411-036-0000 and sequential.

Senior prescription drug program

The sad story is that this program, which was intended to have more than 100,000 participants, has drawn only about 150 participants. You will recall that it provides prescriptions for eligible seniors at the same rate that Medicaid pays. Presumably this was going to be a rate that reflected Medicaid's volume purchasing. Unfortunately, there is not much difference between the Medicaid rate and what you pay at a discount pharmacy.

ALF drops Medicaid contract

Someone raised a situation where an assisted living facility dropped a Medicaid contract without giving notice to its residents, some of whom were on private pay but expected to eventually qualify for Medicaid. The agency representatives said that, to their knowledge, there was no requirement to notify these residents. Apparently, if the contract is phased out, the facility has to notify all of its clients. Someone also noted that there may be public disclosure rules which apply to this scenario. Not much more was available on this issue.

Important elder law numbers as of October 1, 2003

Supplemental Security Income (SSI) Benefit Standards	Eligible individual	\$552/month
	Eligible couple	\$829/month
Medicaid (Oregon)	Asset limit for Medicaid recipient	\$2,000
	Burial account limit	\$1,500
	Personal needs allowance in nursing home	\$30/month
	Room & board rate for community-based care facilities	\$449.70/month
	OSIP Maintenance Standard for person receiving in-home services	\$553.70
	Long term care income cap	\$1,656/month
	Community spouse minimum resource standard	\$18,132
	Community spouse maximum resource standard	\$90,660
	Community spouse minimum monthly maintenance needs allowance	\$1,515/month
	Excess shelter allowance	Amount above \$455/month
	Food stamp utility allowance used to figure excess shelter allowance	\$266/month*
		*\$195 without heating and cooling cost
	Average private pay rate for calculating ineligibility for applications made after October 1, 2002	\$4,300/month
Medicare	Hospital deductible per illness spell	\$840
	Skilled nursing facility co-insurance for days 21-100	\$105/day
	Part B premium	\$58.70 /month
	Part B deductible	\$100/year

THE RESOURCE CORNER

An interview with Allyn E. Brown

By Alexis J. Packer, Attorney at Law, Ashland

Lawyers around the state have requested help in acquiring knowledge and practical know-how that will enable them to incorporate more elder law work into their existing practices.

In keeping with two of the newsletter subcommittee's goals—to keep this publication as practically oriented as possible and to be responsive to its readers—this column is the first of what may become a regular series in the Elder Law Newsletter.

The idea is to interview an experienced elder law attorney and ask him or her to name a resource invaluable to elder law practice, and talk about why and how he or she uses that resource.

Although a column in a newsletter is hardly the same as sitting down one-on-one with an experienced practitioner, it is one way to tap into the wealth of knowledge among Elder Law Section members around the state who practice in various settings.

Allyn Brown, licensed to practice in Oregon since 1969, is a shareholder in Brown Tarlow & Bridges, PC in Newberg, Oregon. His practice is a general one, evolving over time from one focused on family law, criminal law, and plaintiff's work to real estate, business, and creditors rights to its present focus on real estate, business, estate planning and administration, representation of fiduciaries (guardians, conservators, personal representatives and trustees), long term care planning including Medicaid, and the litigation associated with those practice areas. He is a member of the Elder Law Section Executive Committee and former member of the Estate Planning and Administration Section Executive Committee of the Oregon State Bar (OSB).

Allyn has a number of books and CLE materials in his elder-law library. He also relies on several Web sites. The resource he selected as invaluable to his elder law practice is *Tax, Estate & Financial Planning for The Elderly: Forms & Practice*, by Regan, Gilfix, Morgan & English, published by Matthew Bender. It is a two-volume work with annual updates, originally published in 1985.

Allyn began our conversation by stating the importance of remembering that federal law is the underlying critical component in long term care planning. He noted that, while it is easy to focus one's attention on state and local interpretation and application of the federal law, it is essential for an elder law attorney to become familiar with the relevant federal statutes and regulations. He finds the Regan, Gilfix, Morgan & English publication a helpful guide to the federal law underpinnings of various state entitlement programs. It provides an overview of the federal programs (for example, Medicare and Social Security) and joint federal-state programs, including Medicaid, and an in-depth analysis of key issues in the programs at a national level. Although the publication does have a national scope, and focuses on federal policy, it also addresses differences in how some states apply the federal law.

When Allyn started practicing law, a more experienced attorney told him to "beware of the lawyer carrying one book!"

Although the advice was offered in a context other than elder law, he finds the need for multiple sources particularly important to an elder law practice, where the laws and the practice are constantly evolving and the areas of law encompassed under the umbrella "elder law" are so diverse. In addition to *Tax, Estate & Financial Planning for The Elderly*, Allyn turns to OSB publications and seminar manuals for information on how federal requirements are being interpreted and applied in Oregon. He also looks to newsletters and Web sites for current developments and trends.

Thanks to Allyn for graciously agreeing to be interviewed and for reviewing the draft of this article.

Please e-mail me at apacker@mind.net and let me know if you found this column useful and think it should be continued.

Recommended Resource

Tax, Estate and Financial Planning for the Elderly: Forms and Practice

John J. Regan and Michael Gilfix; Updates by Michael Gilfix, Rebecca C. Morgan, and David M. English

Price: \$237.00

Publisher: Matthew Bender

Format: 2 volumes, looseleaf with forms on disk

ISBN: 0820517747

Description

Forms for everything from client intake and retainer agreements to review and appeal of benefit denials, as well as court petitions and clauses you can use in drafting durable powers of attorney, health care proxies, wills, and trusts.

Both volumes contain checklists, practice tips, state specific tables, sample client letters, and intake forms. The forms and checklists are also cross-referenced to legal analysis in the practice guide.

Resources for elder law attorneys

Events

Developments in Family Law

Friday, September 26, 2003

8:30 a.m. to 3:45 p.m.

Oregon Convention Center, Portland

- The new role for fault in the division of the marital estate
- Establishing and modifying support obligations in a difficult economy
- What is the state of the law on third party custody and visitation cases?
- New child support guidelines
- Legislative update

Presented by Oregon Law Institute

5.75 General MCLE credits

Elder Law Essentials

Friday, October 3, 2003

Oregon Convention Center, Portland

The Elder Law Section's annual fall CLE program will cover the essentials that attorneys need in order to practice elder law. For attorneys who are new to the area, there will be presentations and materials that focus on the basics, including planning documents, eligibility requirements for programs that pay for long term care, and everyday ethics advice. More experienced practitioners will be fortified with the latest information on the impact of state budget cuts, administrative rule changes, and new legislation. Video replays will be available from Ashland to Astoria and from Coos Bay to LaGrande.

National Aging and Law Conference 2003

October 15 to 18, 2003

Hilton Crystal City

Arlington, Virginia

Contact: Ada Albright, NALC, AARP Foundation, 202.434.2197 or

aalbright@aarp.org

Conference e-mail address: NALC@aarp.org

Web site: www.aarp.org/ntltrpro/nalc.html

Guardianships and Conservatorships

Friday, October 31, 2003

8:30 a.m. to 4:15 p.m.

Oregon Convention Center, Portland

Presented by Oregon Law Institute

5.5 General or Practical Skills and 1 Ethics MCLE credits

Estate Planning for Retirement Benefits with Natalie B. Choate

Wednesday, November 5, 2003

Oregon Convention Center, Portland

8:00 a.m. to 11:30 a.m.

- 100 Best (and Worst) Planning Ideas for Your Client's Retirement Benefits
- Charitable Giving with Retirement Benefits
- How to Represent Beneficiaries of Inherited Retirement Plans

Web site: www.cccenterprises.org/seminars/estateplanning/cciestateplanning.html

Current Issues in Legal Ethics: Do You Know the Rules?

Friday, November 7, 2003

9 a.m. to 12:00 noon

Oregon Convention Center, Portland

Presented by Oregon Law Institute

3 Ethics MCLE credits

Lawyers in a Diverse World: Building Bridges in the 21st Century

Friday, November 7, 2003

1:15 to 4:15 p.m.

Oregon Convention Center, Portland

Presented by Oregon Law Institute

3 Diversity MCLE credits

First Annual International Conference on Law and Aging

November 6 & 7, 2003

Stetson's campus in the town of

Celebration, near Orlando, Florida

Sponsored by AARP & Stetson University

College of Law

Contact Stetson's CLE staff at 727.562.7830 or visit

www.law.stetson.edu/new/AARP.htm

2003 NAELA Advanced Elder Law Institute

November 13 to 16, 2003

Dallas, Texas

Monthly Elder Law Discussion Group

Meets second Thursday.

Legal Aid Services, 700 SW Taylor, Suite 300

Downtown Portland

Details: Maya Crawford 503.224.4086

Elder Law Internet Discussion List

All Section members who supply an e-mail address to the Oregon State Bar are subscribed to the Elder Law Section's electronic mail distribution list. The purpose of the distribution list is to facilitate communication among members of the Section.

Send a message to all members of the Elder Law Section distribution list by addressing it to: eldlaw@lists.osbar.org.

Replies are directed by default to the sender of the message *only*. If you wish to send a reply to the entire list, you must change the address to: eldlaw@lists.osbar.org.

Advance directives online in Montana

An innovative Web site in Missoula, Montana lets people store online copies of their advance directives for health care, where they are readily available at any time, from anywhere to anyone with appropriate security information.

The Choices Bank (www.choicesbank.org) was created by the Life's End Institute: Missoula Demonstration Project, under a \$461,000 grant from the National Telecommunications and Information Administration, U.S. Department of Commerce. Eight Missoula healthcare and social service organizations contributed matching funds for the project.

As any elder law attorney knows, family and healthcare professionals often cannot locate an advance directive quickly when it is needed most. The Web site offers a way to solve the problem. A person takes his or her advance directive to one of the participating organizations, where an electronic copy is made and is posted on the Web site. The document is available to designated health care providers and those to whom the owner has given the proper security information.

Telemarketing fraud greatly underreported

An AARP Foundation study found that the crime of telemarketing fraud is grossly underreported among older victims.

In one portion of the study, AARP found that 73 percent of investment fraud victims did not acknowledge having lost money, and only half of lottery fraud victims reported recent losses.

The study also found that those who are properly counseled by trained peer volunteers are less likely to fall victim to fraudulent pitches.

The study, which was funded by a grant from the Department of Justice, examined telemarketing fraud victimization and tested interventions designed to prevent further losses.

In the news

Elder law practice

<i>Documents for lifelong planning</i>	No. 2, p. 1
<i>Title companies and power of attorney</i>	No. 2, p. 4
<i>Stevens-Ness POA forms</i>	No. 2, p. 5
<i>POA and taxing authorities</i>	No. 2, p. 7
<i>Customizing advance directives</i>	No. 2, p. 9
<i>Declaration for mental health</i>	No. 4, p. 3
<i>Filing fees increased</i>	No. 4, p. 3
<i>Resource corner</i>	No. 4, p. 9
<i>Advance directives online in Montana</i>	No. 4, p. 11

Elder abuse

<i>Financial exploitation</i>	No. 1, p. 7
<i>Signs of neglect</i>	No. 1, p. 9
<i>Elder abuse legislation</i>	No. 4, p. 3
<i>Marketing fraud greatly underreported</i>	No. 4, p. 11

Estate planning

<i>Revocable inter vivos trusts</i>	No. 3, p. 9
-------------------------------------	-------------

Fiduciaries

<i>Choosing a fiduciary</i>	No. 3, p. 1
<i>Court approval of fiduciary acts</i>	No. 3, p. 3
<i>Interstate transfers</i>	No. 3, p. 5
<i>Restricting conservatorship assets</i>	No. 3, p. 7
<i>Responsibilities of SNT trustees</i>	No. 3, p. 8

In-home care

<i>Employment laws</i>	No. 1, p. 1
<i>Employer tax information</i>	No. 1, p. 3
<i>Independent contractor status</i>	No. 1, p. 3
<i>Quest for independence at home</i>	No. 1, p. 4
<i>Hiring an in-home caregiver</i>	No. 1, p. 5
<i>Resources for caregivers</i>	No. 1, p. 6
<i>Medicaid and in-home services</i>	No. 1, p. 8
<i>Homeowner's insurance</i>	No. 1, p. 9

Legislation

<i>Recent legislation affects elder law and estate law</i>	No. 4, p. 1
<i>Elder abuse legislation</i>	No. 4, p. 3
<i>Filing fees increased</i>	No. 4, p. 3

Medicaid

<i>Possible program cuts</i>	No. 1, p. 12
<i>Legal challenges to state cuts</i>	No. 2, p. 13
<i>Update on challenge to cutbacks</i>	No. 3, p. 14
<i>Medicaid and in-home services</i>	No. 1, p. 8
<i>Agency and Professional Relations Subcommittee updates</i>	No. 2, p. 12
	No. 3, p. 12
	No. 4, p. 7

Medical Records

<i>HIPAA privacy rule</i>	No. 3, p. 11
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Index to Volume 6 of the Elder Law Newsletter

**No. 1:
Winter 2003**

**No. 2:
Spring 2003**

**No. 3:
Summer 2003**

**No. 4:
Fall 2003**

Elder Law Section Annual Meeting

The Elder Law Section's annual meeting will be held October 3, 2003 at 12:00 p.m., during the lunch break of the CLE seminar *Elder Law Essentials: Planning Tools and Practice Tips* at the Oregon Convention Center in Portland. It is not necessary to register for the CLE in order to attend the annual meeting. You may purchase lunch for \$20 by calling the OSB Order Desk at 503.684.7413 or 800.452.8260. ext. 413.

At this meeting, the Section will vote on the following proposed slate of officers and members-at-large for its 2004 Executive Committee:

Chair:	Wes Fitzwater
Chair-Elect:	Mark Williams
Past-Chair:	None
Secretary:	Ruth Simonis
Treasurer:	Jane Patterson (returning)
Member-At-Large	Kristianne M. Cox (returning)
Member-At-Large	Penny L. Davis (returning)
Member-At-Large	Leslie Kay (returning)
Member-At-Large	Susan Ford Burns (new)
Member-At-Large	Sam Friedenber

Newsletter Board

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar's Elder Law Section, Wesley Fitzwater, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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