

MassNAELA.com News



Judith Flynn, President

PRESIDENT'S MESSAGE

*Focus on the Golf Balls.
The Rest is Just Sand. . .*

In 2013, as President-Elect of the Chapter, I set forth my priorities for the coming year at the annual Board Retreat. Using a theme based on Aristotle's famous quote,

"The whole is greater than the sum of its parts," I set forth the importance of succession planning and clear systems for all of the important roles and functions of the Chapter. The Board agreed that we need to take care of each important "part" of the Chapter in order to maintain the integrity and strength of the "whole."

We have built a strong foundation for succession planning that will be even stronger in 2015, with co-chairs for all committees, written policies and procedures for all important Board functions, and procedures to encourage more member participation on Chapter committees and initiatives. Our initial efforts have netted great results for the Chapter, and you will hear about new opportunities from Dan Surprenant after he takes the helm on January 1st.

The importance of succession planning was confirmed in October when we learned that Deb Thomson, our longtime lobbyist, would be retiring at the end of the year. We are excited to welcome Nomita Ganguly as Deb's successor, as she has worked with Deb on some of our bills and will provide a seamless transition for our ongoing advocacy efforts.

We've had litigation successes (more approvals of appeals) and legislative victories (the UAGPPJA); attendance at dinner programs has been on a steady incline; nearly two years of work has culminated with important amendments to our ByLaws; and we have finalized a new Chapter logo - unified with NAELA, but personalized

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for Massachusetts. These are just a few examples of our accomplishments in 2014, but much remains to be done. There is never enough time to do all we would like. This past year has been a particularly challenging year for me, with a number of family issues that also demanded my time. Despite the balancing act, I would do it all again. I get so much more out of MassNAELA than I could ever contribute. I am grateful for the many true friends I have made, and I am humbled by the level of intelligence and dedication of those around me. It is a truly special group that I am honored to be a part of, so I thank you for that opportunity.

In closing, I go back to the Board Retreat of 2013. I concluded by reading a short story you may be familiar with, and providing each Board member with a golf ball to keep in their work area. This golf ball has served as an important reminder to me over this year of competing demands -- because the rest is just sand.

THE MAYONNAISE JAR & TWO BEERS

-- Judy Flynn

MASSNAELA ANNUAL MEETING HIGHLIGHTS

December 11th was MassNAELA's annual meeting, including our 4th annual vendor fair (with giveaways!), awards to individuals for excellent service to elders and the MassNAELA community (with two new awards this year!), and voting in the new bylaws. The annual meeting was followed by an informative Year In Review dinner meeting, featuring incoming NAELA president Shirley Whitenack. [Read more about the Annual Meeting.](#)

**Additions to www.MassNAELA.com
New Cases and Board of Hearing Decisions**

PURCHASE OF REAL ESTATE - SPEND DOWN

**2014 12 01 *Mendonca v. Dr. Harris, Medicaid*
Bristol Superior Court, Docket No.1473CV00379
November 26, 2014
*Moses, J.***

Appellant transferred her home and roughly \$35,000 cash in exchange for joint ownership in her daughter's (larger) home which she had never lived in. MassHealth denied benefits, designating the purchase a disqualifying transfer of assets. Appellant sought judicial review and filed a motion on the pleadings to vacate the denial of benefits. The Court found that the transfer was not disqualifying because it was for fair market value. The Court notes that MassHealth regulations do not require an applicant to live in a new residence prior to purchase. Further, the Court determines that the appellant's expressed intent to reside in the new home (if she were ever released from the nursing facility) is sufficient to qualify the home as a non-countable asset under the MassHealth primary residence exception. ****Note - This case is still open. MassHealth just filed a motion for reconsideration. Stay tuned for updates!****

Motion Allowed
Contributor: Daniel M. Suprenant, Esq.

MASSHEALTH ELIGIBILITY - IIOT

**2014 12 02 Hearing Decision – Chelsea,
November 21, 2014
Hearing Officer – Stanley Kallianidis
*MassHealth Rep – Helene Marcum***

MassHealth denied long-term care benefits based on excess assets held in an Irrevocable Income Only Trust (IIOT). The question at issue was whether or not the principal of the trust was available to the appellant.

MassHealth argued that the trust principal was countable based on trust provisions allowing the appellant to remove and replace trustees; allowing the trustee to deal with trust assets without notice to beneficiaries or leave of a court; and allowing the trustee to purchase life insurance and annuities. The appellant argued that none of those trust provisions negate or override the trust provision stating that "The Trustee shall have no power to make any distributions of principal to or for the benefit of the Donor."

The Hearing Officer ruled for the appellant, finding that even broad trustee powers do not give the trustee permission to distribute principal to the donor,

and noting that it would be a clear breach of fiduciary duty if the Trustee DID make principal distributions to the donor.

As such, the Hearing Officer found that there were no circumstances under which principal could be distributed to the donor and thus that the principal of the trust was non-countable.

Appeal Approved
Contributor: Dagmar Pollex, Esq

**MASSHEALTH ELIGIBILITY – POUROVER WILL/
TRUSTS**

**2014 12 03 Hearing Decision
Chelsea, August 4, 2014
Hearing Officer – Stanley Kallianidis
*MassHealth Rep – Paul Keegan***

MassHealth denied long-term care benefits based on excess assets held in a trust. The Trust was created by appellant's spouse during her lifetime, but only funded after the spouse's death by will. The trust remained unfunded during the spouse's life. The hearing turned on MassHealth regulation 130 CMR §520.023, regarding trusts that are "created or funded other than by will." MassHealth argued that the provisions of 130 CMR § 250.023 applied to the trust because the trust was not created by will, and because the trustee had discretion to distribute income and principal to appellant.

The appellant argued that 130 CMR § 520.023 did not apply because the trust was funded solely through the probate estate of the appellant's spouse. The Hearing officer found that the trust assets are non-countable because the trust was funded solely through the probate estate of the appellant's spouse. Distinguished from Victor (*Victor v. Exec. Office of Health & Human Services, Mass. App. Ct (July 21, 2010)*), because in Victor the trust was partially funded during the Settlor's lifetime.

Appeal Approved
Contributor: Ashley Aubuchon, Esq.

CALL FOR CONTRIBUTIONS!

Our newsletter relies on your contributions. Please submit your fair hearing decisions (adverse or favorable), cases, articles, etc. Thank you!

Send your contributions to Audrey O'Shaughnessy
aoshaughnessy@bowditch.com

MassNAELA PUBLIC POLICY YEAR-END REVIEW
State Legislative and Administrative Advocacy 2013-2014
Deborah Thomson, Esq. and Susan Levin, Esq.

OVERVIEW

The 2013-2014 Massachusetts legislative session has been an active and productive one for elder related issues and the Public Policy Committee has been actively involved in addressing them. The breadth of legislative enactments and administrative initiatives of which practitioners should be aware extends beyond MassHealth issues and includes new laws on adult guardianships, use of antipsychotic drugs in nursing homes, regulations controlling long-term care insurance rates and commissions on elder abuse, LGBT aging issues and elder economic security.

There is a growing understanding in the Legislature and in the Administration that the baby boomer demographic must trigger a greater response in terms of services and programs for seniors. Currently elders 65+ comprise 14% of the Massachusetts population. By 2030 that figure will be 21%. While nursing home care has served as a primary resource for many individuals in the past its daunting cost and unpopularity with consumers has increased interest in community-based care. This, in turn, has resulted in expansion of both federal and state programs to support family caregivers as well as frail elders in the home. It also has increased the need for elder law practitioners to understand the full range of planning options available to clients.

Following is a summary of laws, budget and policy provisions which impact elders and persons with disabilities. Although formal legislative sessions ended on July 31st some legislation remains in play. In addition legislative commissions are beginning or continuing to meet and develop recommendations for improved services. The work of implementing many of these changes is ongoing.

Read the [Full Report](#) for detailed information, including:

Fiscal Year 2015 Budget Issues

Non-Budget Legislation

- Uniform Adult Guardianship and Protected Persons Jurisdiction Act Chapter 225 of the Acts of 2014
- An Act Relative to Assisting Individuals with Autism and Other Intellectual or Developmental Disabilities Chapter 226 of the Acts of 2014
- An Act to Preserve Eligibility for PACE and Certain Waivered Participants S.517
- An Act Relative to the Election of Surviving Spouses S.705
- An Act Relative to Transfers of Assets by MassHealth Members H.1021, S.503
- An Act to Establish Criteria for MassHealth Hardship Waivers H.3705

Policy Initiatives

- Money Follows the Person waiver, 130 CMR 529.007(H), G.L. c.10 s.35TT
- One Care, G.L. c.118E s.9F
- Balancing Incentive Program Affordable Care Act s.10202,
- Long Term Care Insurance Reform, Chapter 312 of the Acts of 2012

Looking Ahead

- What's coming up in 2015 and beyond!

MassNAELA Member Spotlight Joanne Craig

The MassNAELA Member Spotlight promotes MassNAELA members who are making a difference in our community and abroad. This month we are highlighting Joanne Craig for her international community service. If you would like to nominate a MassNAELA member for the Member Spotlight, please e-mail Audrey O'Shaughnessy at aoshaughnessy@bowditch.com.

Joanne Craig and the Sharon Rotary Club are making a difference in Afghanistan!

Joanne Craig is an active MassNAELA member and is the current president of the Sharon Rotary Club. The Club has developed a relationship with a girls' school in Afghanistan, helping to fund a computer room at the school. Now Middle School students in Sharon, Massachusetts skype with students at the Zabuli Education Center in Deh Subz, Afghanistan! The school was founded by a fellow Rotarian in 2008 and looks forward to its first high school graduating class in December, 2015. The Club is now working to build an expansion of the school to include a midwifery training program. This is a special project because Afghanistan has the highest infant mortality rate in the world, and because the related clinic will be the first medical facility in the area.

If you see Joanne at one of our dinner meetings be sure to ask her about this amazing project. Kudos to Joanne for her good works across the globe! If you want to support Joanne's project, contact her directly at craig@tenant-ewer.com

GOOD TO KNOW CORNER

TRUST MASSHEALTH REGULATION UPDATE - LONG-TERM CARE INSURANCE

[130 CMR 515.014 has been updated.](#) Long-term care insurance now need only meet the estate recovery exception criteria at the time of purchase. This brings the regulations in compliance with the amendments to M.G.L.c. 118E §33 and resolves a problematic MassHealth policy. MassHealth had been requiring that sufficient long-term-care insurance coverage be available at the time of admission to a nursing facility, which meant that individuals who used their long-term care insurance prior to entering a nursing facility were at risk of losing estate recovery protection. This new regulation encourages individuals to use their long-term care insurance policy prior to entering a nursing facility.

MASSHEALTH NURSING HOME REIMBURSEMENT RATES - DEMYSTIFIED

Contributor: Spencer Ghazey-Bates, Esq.

[Click here for MassHealth nursing home reimbursement rates through June, 2016](#)

[Click here for MassHealth nursing home reimbursement rate regulations](#)

FAIR HEARING RESOURCE BLOG

Brian Barreira, Esq. has established a fair hearing blog focused on MassHealth Board of Hearing decisions concerning irrevocable trusts. For more information, check out irrevocabletrust.info



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REVERSE MORTGAGE UPDATE – IMPORTANT HECM RULE CHANGE

On November 10, 2014, HUD published [Mortgagee Letter 2004-21](#). The Letter made a significant rule change to FHA's Home Equity Conversion Mortgage (HECM) program that will impact clients who wish to extinguish existing mortgage debt with a HECM.

HUD Mortgagee letter 2014-21, bottom of page 4, states in relevant part:

Mortgagees may only permit the payoff of existing non-HECM liens using HECM proceeds if the liens have been in place longer for 12 months or resulted in less than \$500 cash to the mortgagor, whether at closing or through cumulative draws (e.g., as with a Home Equity Line of Credit (HELOC)) prior to the date of the initial HECM loan application. Mortgagees must review the HUD-1 from the transaction that resulted in a lien that is to be paid off using HECM proceeds, the payoff statement and, if applicable, the most

recent HELOC statement or its equivalent, to ensure that the lien had either been in place for more than 12 months or that it resulted in less than \$500 to the mortgagor, whether at closing or through cumulative draws. The HUD-1, payoff statement, and if applicable, most recent HELOC statement or its equivalent, must be included in the case binder.

This new rule takes effect for all new HECM applications on or after December 15, 2014. If an applicant having existing mortgage debt does not meet one of the above criteria, he or she will not be eligible for a HECM. The application will be denied. You must remember that the only acceptable proof of a mortgage's age that HUD will accept is the HUD-1 settlement statement from the existing mortgage's closing. In other words, a copy of the recorded mortgage document is not acceptable proof of a mortgage's age. The National Reverse Mortgage Lenders Association is presently engaging in talks with HUD to try to change this part of the rule.

When advising clients who are contemplating using a HECM to extinguish existing mortgage debt, encourage them to begin searching for their old mortgage closing documents as early as possible. That way, they can present their old HUD-1 settlement statement to their HECM lender. If your clients cannot find their HUD-1 settlement statement, they should call their mortgage servicer to request a copy. It is easy for older homeowners to forget where they placed their old closing documents if they even kept them at all.

MassNAELA Publications Committee Announcements

Paula Nedder, Chair

The Publications Committee looks forward to the New Year, as we make improvements to the website and the newsletter.

NEWSLETTER UPDATE

The Newsletter will be managed by committee member, Audrey O'Shaughnessy, Esq., aoushaughnessy@bowditch.com. In the eblasts and the newsletter, Audrey's contact information will be provided for your submissions, comments, suggestions, etc. In the new year, Audrey will look for opportunities to improve the newsletter format and workflow between the newsletter and website.

WEBSITE UPDATE

Early in 2015, the Website will be updated to improve the format of the navigation panel (located on the left side of the website). This improvement will unclutter the left side panel of the website and improve chapter members' experience with the website. During the year, the Committee will investigate redesigning the website and upgrading software.



JANUARY 22, 2015 DINNER MEETING
PLANNING TO PROTECT THE HOUSE - WITHOUT AN IRREVOCABLE TRUST

Not crazy about irrevocable trusts? Wish there were alternative strategies? Well there are and our presenters will lay them out for you during this program. It is always good to have many arrows in your quiver and this program will provide you with the various other ways to protect your client's home. Be sure to sign up for the rest of the story...

Keep a lookout for the January program notice and registration in your email and snail mail.

2015 MEETING SCHEDULE - SAVE THE DATES!

DINNER MEETINGS

January 22
April 30
June 11
September 17
October 29
December 10

SCATTERED SITE BREAKFAST

March 5

SEND YOUR SUBMISSIONS TO:

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