

The Month in Review

Watch for updates about the on-going activities of our Advocacy Work Groups as a regular feature of the Newsletter. Interested in finding out how you can be involved in a project? Have a project to suggest? Contact the member listed below for each Group.

Work Group | Annuities

Contact: Emily Starr, estarr@starrvanderlinden.com

Issues being addressed include whether the requirement of naming the Commonwealth as beneficiary of a spousal annuity is consistent with federal law; whether and when HIPAA precludes the Estate Recovery Unit from sharing information with beneficiaries of annuities; what to do when both MassHealth and an individual beneficiary are claiming to be entitled to annuity; what to do when MassHealth requires your client to do something federal law doesn't require.

Work Group | Due Process

Contact: Brian Barreira, 508-747-8282

No information available at the present time.

Work Group | Dementia Friendly Communities

Contact: Arthur Bergeron, 508.860.1470 or Margot Birke, (978) 465- 5407

We are: (1) figuring out the best way to connect into statewide Dementia Friendly Communities effort, possibly having MassNAELA members serve as leaders/ambassadors in the Alzheimer's Association's effort; (2) trying to increase awareness of effort through outreach to MBA for May seminars; (3) preparing and presenting a webinar for MassNAELA members with a Chapter member, a representative of the Alzheimer's Association, and MCOA.

Since the last meeting: (1) some work group members attended recent regional forums sponsored by MCOA; (2) we are reaching out to the Alzheimer's Association rep Maura Moxley to figure out how to coordinate our efforts with them; (3) John Ford is reaching out to MBA rep to discuss possible insertion of info by us re Dementia Friendly Communities in info packet distributed by MBA; and (4) Margot Birke is coordinating with Carole Wagan and the Program Committee to present an informational webinar.

Working toward the above objectives should continue through 2018. This group meets the 3rd Tuesday every month at 8:30 a.m., with people attending the meeting by telephone conference.

If members are interested in joining this group, please contact Brenda Costa, Paralegal for Arthur P. Bergeron, at 508.929.1637

Work Group | Guardianship

Contact: John Ford, 781-244-1410

John Ford has been at work on an issue involving an SJC case of some concern to advocates of disabled and incapacitated adults. The oral argument on the case (*Anonymous Hospital v. Anonymous Patient*, SJC No. 12390) was held on 1-10-18 and was observed by Attorney Tom Carey, who was alarmed by the nature of the proceedings. The case record was completely impounded, including even the questions which were certified up to the Appeals Court by the trial (Probate & Family Court) judge. From the content of the oral argument, Tom discerned that the appellant (a hospital) was seeking a ruling that allows a hospital to discharge a recalcitrant patient, who refuses to leave the facility, to a nursing home or rehab facility, when the court finds no incapacity. It also appeared that a subsequent Probate Court hearing resulted in a finding of incapacity and an order appointing a guardian with authority to admit to a rehab unit. The appellee's counsel, for the most part, was arguing that the case was moot. The appellant (Hospital) was pressing for a ruling.

Tom Carey, who was instrumental in the efforts leading up to the enactment of the MUPC and served on the judicial advisory work group implementing Article V of the MUPC, has asked MassNAELA, among others, to agree to sign onto an effort to persuade the SJC to dismiss the case as moot, rather than make law on a case that was conducted entirely under the radar, with no opportunity for *amicus* input from interested stakeholders. He drafted a motion to offer a makeshift *amicus* brief urging the justices either to find the case moot or open the record so that the issues could be fully vetted and addressed by an *amicus* brief (or more than one) once all the facts are known and the issues clearly delineated.

The MassNAELA Board approved our participation as one of the amici, and the motion and brief were filed on February 20, 2018 by the MBA (Tom is a member of its amicus committee).

John has also been at work on the legislative agenda of the Massachusetts Guardianship Policy Institute, which includes primarily a bill to establish a public guardianship entity (S1177). The bill avoided being scrapped (assigned to study) and must be reported out favorably by March 23, 2018 by the Joint Judiciary Committee as the next step toward enactment.

Work Group | Public Policy | MassHealth HCBS Waiver Issues

Contact: Susan Levin, 617-964-7000

We are working on the following issues: (1) FEW eligibility reviews for pr-2014 cases should have spousal assets excluded. The MEC workers don't understand this and have been denying cases; (2) Advocating with CMS about whether a spouse of an MH member who is receiving HCBS waiver to receive care at home is entitled to a spousal deduction to satisfy MMMNA, like a spouse of NH resident; and (3) continuing efforts to speed up the processing of FEW and PCA cases at MassHealth.

Since our last meeting we have: (1) contacted MH Director of HCBS Waivers and had case resolved with promise of notifying MEC workers of policy to avoid problems in future; and (2) emailed Gene Coffey at CMS for clarification about whether a spouse of MH member receiving FEW services is entitled to a spousal deduction to satisfy MMMNA when calculating a deductible.

Our Future Plans include: (1) to set up meetings with heads of FEW programs to find out how best to maximize hours of coverage; and (2) to try to set up meetings with Director of FEW at MassHealth.

As far as litigation goes, Spencer Ghazy-Bates has appealed a case involving this issue to fair hearing.

We are actively working to achieve the above goals. Our next meeting will be at the next MassNAELA meeting. If anyone is interested in joining our efforts, just come during the allotted time.

Work Group | Long-Term Residents Rights

Contact: Rebecca Benson, 617-267-9700

Department of Public Health Regulations - Wynn and Brian from GBELS testified at (and Janice attended) the hearing on DPH regulations governing conditions of participation. Among other things, the DPH regulations inexplicably define a resident's "legal representative" only to include a "guardian," which violates both the federal standard and the AG's regulations. It is unclear whether this is a mistake by DPH or an artifact from prior regulations. Wynn will keep us posted on this issue.

CCRC Entrance Fee Issue - Judy Flynn contacted us about a couple who live at Linden Ponds (one of two Erickson CCRCs in Massachusetts), where one spouse is applying for MassHealth. During the application process, Erickson sent a letter to the Office of Medicaid arguing that the entrance fee should be treated as "countable" and the application was denied. We are aware of other cases in which Erickson has done this as well. Update: Judy won at the BOH! This does not mean that Erickson won't try this in other cases. We are bringing this to the attention of the AGO.

Gowen Case - Assisted Living "Community Fees" - The Superior Court found that Benchmark unlawfully collected so-called "community fees" from its assisted living residents. Lora offered to follow up with plaintiffs' counsel in this litigation. Update: Lora spoke with John Yasi, one of the plaintiffs attorneys and confirmed that they are looking for residents (or their families) who paid a "community fee" or other fee not enumerated under the landlord-tenant statute. Lora is forwarding his inquiry to the chapter listserv, and we are bringing this to the attention of the AGO. Please see email from Lora dated February 22, 2018.

Office of the State Auditor (OSA) Investigation of Elder Abuse Systems - At the request of the OSA, Rebecca met with the OSA team to provide information about systems for reporting elder abuse and neglect. Among other things, we reported on our efforts to obtain DPH nursing home complaint information and to find out what happens to those complaints, as well as the lack of transparency in EOEA's system for collecting data on "incidents" in assisted living. The team was very interested to learn about the gaps in the system for reporting elder abuse (e.g., EOEA generally treats nursing home residents as being outside of the EPS system). We have tried to obtain internal EOEA guidelines for how they handle these cases (the last "interagency memo" that we have on this goes back to 1992), but EOEA has stated that we need to file a public records request to obtain this information.

Collaborating with the AG- We provided an update on our efforts to identify "patterns or practices" of consumer violations affecting long-term care residents. Among other issues, we addressed 1) Seaview's contract "addendum" that effectively requires residents to pay privately rather than applying for MassHealth (John has previously encountered this issue and Margot's client has recently agreed to have us send a redacted copy to the AGO); 2) issues that came up in connection with the recently-announced Kindred closures, particularly for the Kindred ALR residents; 3) the Gowen case, challenging Benchmark's practice of collecting a "community fee" from ALR residents; 4) the recent GAO report documenting the need for improved oversight of assisted living residences; 5) a request that the AGO comment on the proposed CMS regulations to improve consumer protections for nursing home residents (for which Wynn and Arlene are scheduling a conference call). Mary and her team seemed interested in these issues and we hope that they will at least consider putting out a press release or consumer advisory on the Gowen case (ALR regulations are still but a gleam in our eye). Update: Following our meeting, Rebecca e-mailed Mary Freeley about the Seaview case, the Erickson CCRC case, the Gowen case and the GAO Report.

Work Group | Special Needs

Contact: Annette Hines, 1-508-401-7571 & Kimberly Kelly, (781) 438-5222

Issues being addressed include a Guidebook on special needs advocacy that is still in process. The goal is to present the Guidebook to the Board in upcoming weeks to seek approval to include it on the MassNAELA website.

The Work Group is also considering bringing an *Olmstead* action on behalf of a client of a MassNAELA member who has been held in an institution for an excessive period. At present, we are conducting research into the issue of how many people are diagnosed with autism but not intellectual disability. This has implications regarding housing availability. Considering legislation to close this gap.

Chair Annette Hines continues to network with other groups involved with special needs concerns in order to establish working relationships.

In an update received March 5, 2018, this Work Group also reported that the Group is working on Guardianship/Conservatorship Uniformity; Finalizing the Advocacy Toolkit; and a Class Action Lawsuit or other advocacy for young adults with autism without ID who are not entitled to residential services.

Annette Hines' office contacted CJ Ordonez to discuss uniformity and then Judge Dunn's secretary.

Kimberly Kelly and Nicole James are working with a volunteer graphic artist to complete the Toolkit.

Sasha Golden is collaborating with Patti Martin on a class action lawsuit with a specific first plaintiff in mind. She has someone in her office doing research regarding adult autism waivers around the country.

If interested in working with this group, we have monthly telephone conference calls 1:00 p.m. to 2:00 p.m., the second Friday of every month, as follows: 3/9, 4/13, 5/11, 6/8, 7/13, 8/10, 9/14, 10/12, 11/9, 12/14. To join the conference call, dial in 267-930-4000, access code 647797 (our dedicated conference line).

Contact Annette Hines and Kimberly Kelly with questions.

Work Group | Trust Advocacy

Contact: Lisa Neeley

No information available at the present time.