

ELDER LAW: A GUIDE TO KEY RESOURCES

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This research guide identifies and describes 163 books, periodicals, reference tools, databases, electronic discussion groups, organizations, and U.S. government agencies useful to the elder law practitioner and the legal researcher. Appendices include a state-by-state list of state aging agencies, bar association committees and sections, law school courses and clinics, and publications; acronyms; and subject headings and index terms used in library catalogs, periodical indexes, and related sources.

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Introduction

Alzheimer's. Continuing care retirement communities. Estate planning. Fraud. Guardianship. Health-care power of attorney. Living wills. Medicare/Medicaid. Nursing homes. Older Americans Act. Reverse mortgages. Social Security.

Although the issues and terms of elder law are familiar, *elder law* as a separate study or practice is a relatively new concept. This research guide is meant to provide a starting point for those investigating this rapidly expanding field. It offers an overview from the perspectives of both the practitioner and the scholar. It also contains material that addresses the legal rights of the elderly, for the elderly themselves and for their nonlawyer advocates as well.

The research guide's purpose is twofold:

1. to enable readers to begin their research with existing sources, and
2. to facilitate the updating of that research by providing information about organizations, government agencies, databases, and other resources with continuing involvement in the field.

This guide expands on existing elder law bibliographies by providing tools and strategies for conducting research in the future. It identifies more than 160 key resources—print, electronic, and organizational—and suggests subject and indexing terms used in widely available catalogs and indexes.

We define the field of elder law to include both the *practice* of a legal specialty directed at the needs and problems of the elderly (generally, those age sixty-five and older) and the academic *study* of elder law, including the legal, ethical, and societal issues it raises. Such a definition necessarily encompasses the topics listed at the beginning of this article as well as others traditionally associated with the elderly. However, this guide would grow far too long if it included the many sources that deal exclusively with those discrete topics. Instead, the guide emphasizes sources that treat elder law in the broader sense.

Other than data-rich sources in the statistics and encyclopedias category and some broad-based associations and on-line sources

targeted at the elderly, this guide does not cover retirement and aging in its general, nonlegal sense. Material that addresses the issue of legal services for the elderly (especially the indigent elderly) also is omitted, although some of the sources under Advocacy and Self-Help Materials contain lists of legal aid offices throughout the country.

Because the field of elder law is so new, much useful material is now beginning to appear in electronic databases. Most of the print sources, however, date from the mid-1980s. This guide does not include booklets or individual journal articles, unless the article is a bibliography. Symposia and special law review issues dealing with elder law are included, however.

The main part of this guide contains those print, electronic, and organization sources that deal with federal law and national agencies which have general applicability throughout the country. Appendix A, State-Specific Resources, does however give basic elder law resources in and for each state. Although references to print sources generally include full bibliographic information, most titles in Appendix A are unannotated and contain less than complete bibliographic information.

To assist readers in connecting entities with their publications and electronic information services, the entries in Parts I and II are numbered. The number indicates the part, section, and serial entry number. These entry numbers appear in brackets [] as cross-references in other entries and in many of the acronyms in Appendix B. Because of the relative brevity of the information presented in Appendix A, State-Specific Resources, those items are not numbered. The general organizational scheme is alphabetical within each section. However, sources that became available just as this research guide was being prepared for publication appear out of order at the end of their respective sections. These items, like the others, have entry numbers for cross-reference.

The research guide appears in a year featuring several milestones in the area of elder law and social legislation involving older Americans. It is the 60th anniversary of Social Security and the 30th anniversary of Medicare, Medicaid, and the Older Americans Act. Additionally, a White House Conference on Aging took place in 1995. As the graying of America advances, the ranks of elder law practitioners, scholars, and educators will swell. For those new entrants to the field and for others with a passing interest in this new specialty, this

guide offers an introduction to many of the field's essential information sources.

I. Print Sources

Published materials that address the many aspects of elder law are arranged in seven sections, generally in order of usefulness to the practicing attorney. The first section contains guides and treatises for practitioners. The next section includes advocacy and self-help materials, which are designed to aid nonlawyer advocates, the elderly themselves, and scholars—but these also may prove helpful for attorneys. Journals and newsletters, which follow, are indispensable to practitioners and scholars alike due to their currency and scope. The division concludes with reference sources: bibliographies, directories, and statistics and encyclopedias. Within each section, the entries are arranged by title.

The entries include full bibliographic information: author(s), title, subtitle, place of publication, publisher, pagination or collation, editor(s), and series. International Standard Book Numbers (ISBN) and International Standard Serial Numbers (ISSN) also are given. These numbers represent publishers' inventory figures which facilitate ordering, price confirmation, and availability. Reports and projects often are funded by government agencies, which then may issue the resulting publication. For this reason, Superintendent of Documents (SuDoc) classification numbers appear in some entries.

Because the greatest expansion of elder law literature has occurred recently, many sources older than ten years or so are outdated. Most of the items listed here were published within the last five years. Elder law practitioners and researchers can keep current by using the sources in this section and in Part II, Electronic Information Sources. Announcements and evaluations of new publications and on-line information resources frequently appear in the journals and newsletters described in Section C.

A. Practitioners' Guides and Treatises

This section contains materials designed to aid the attorney who represents elderly clients. Included are form books, practice guides that cover a variety of issues affecting elderly clients, and publications that discuss establishing, organizing, and marketing an elder law practice. Also included are works of an academic nature, such as

casebooks and books on elder law policies. The latter are appropriate for both scholars and practitioners.

Some publications target both lawyers and nonlawyer advocates for the elderly (mainly social workers and health-care professionals). These materials are generally included in Section B, Advocacy and Self-Help Materials, so readers should consult both sections. Printed sources that are transcripts of workshops or conferences held for practicing attorneys and other professionals are included under Section D, Symposia, Conferences, and Special Issues.

- IA1 **ADVISING THE ELDERLY CLIENT.** (Louis A. Mezzullo & Mark Woolpert eds.) Deerfield, IL: Clark Boardman Callaghan, 1992. 3 vols. Looseleaf; updated semiannually. Subject index. ISBN: 0685598586. \$325.

Contains thirty-six analytical and practice-oriented chapters written by different authors. Covers general aspects of elder law practice and the needs of elderly clients; financial, estate, and tax planning; Social Security and Supplemental Security Income; pensions; health-care facilities and paying for health care; planning for incapacity; and discrimination against the elderly. Includes tables of statutes, regulations, agency manuals, agency rulings, and cases; forms; checklists; and charts. Refers to other titles published by Clark Boardman Callaghan and Lawyers Cooperative Publishing.

- IA2 Lawrence A. Frolik & Melissa C. Brown. **ADVISING THE ELDERLY OR DISABLED CLIENT.** Englewood Cliffs, NJ: Rosenfeld Launer Publications, 1992. 1 vol. Pagination varies. Updated annually with a soft-cover supplement. Subject index. ISBN: 0781100283. \$135.

Designed to be a desktop reference for lawyers and other professionals and to give background information on issues affecting the elderly and disabled. Covers the initial client interview; overview of common impairments; Social Security, SSI, and other benefits; Medicare/Medicaid; alternate housing; planning concerns for disabled clients or beneficiaries; medical treatment decision making; guardianship; right-to-die issues; taxation; and estate planning. Includes

practice aids such as completed forms, questionnaires, checklists, and government forms. Text cross-referenced to aids in appendices. Includes a glossary of terms and tables of cases, statutes, regulations, and IRS Revenue Rulings.

- IA3 Peter J. Strauss et al. *AGING AND THE LAW*. 2d ed. Chicago: Commerce Clearing House, 1992. 318 pp. Subject index. ISBN: 068567526. \$135.

Provides the practicing elder law attorney with a collection and analysis of relevant federal and state statutes, regulations, and cases; background on various aspects of elder law; and a consideration of how the elder law attorney's work relates to that of other professionals like social workers and geriatric care managers. Includes list of resources, techniques for helping older clients, and a discussion of ethical issues. Covers retirement issues and benefits; government programs such as Social Security, Medicare, and Medicaid; nursing homes and home care; death and dying; and estate and tax planning. Gives shortened citations to state and federal laws. Includes a glossary of abbreviations.

- IA4 *DECISION-MAKING, INCAPACITY, AND THE ELDERLY*. Washington: Legal Counsel for the Elderly [IIIA6], 1987. 186 pp. 1990 supplement. ISBN: 0933945000. SuDoc: HE23.3008:P94/3. \$29.95 for nonprofit groups; \$34.95 for others.

Provides practice materials on all aspects of protective services law. Describes the law of powers of attorney, living wills, financial planning and Medicaid eligibility, multiple-party accounts, representative payees, guardians and conservators, adult protective services, civil commitment, health-care decision making, and nursing home admissions contracts. Includes charts and tables on state law, case summaries, sample forms, a glossary of terms, and a bibliography. Federal depository libraries received microfiche copies.

- IA5 Cheryl C. Mitchell & F.H. Mitchell, Jr. *DEVELOPING AND MANAGING AN EFFECTIVE ELDER LAW PRACTICE*. Spokane: Mitchell Publications, 1991. 238 pp. ISBN: 1879909014.

Not available for annotation.

- IA6 Joan M. Krauskopf et al. *ELDERLAW: ADVOCACY FOR THE AGING*. 2d ed. St. Paul: West Publishing, 1993. 2 vols. Subject index. ISBN: 0314022767. \$190.

Aims "to enable more attorneys to more quickly represent older persons on issues of extended living." Intended for scholars, experienced practitioners, and new lawyers. Covers elder law, age discrimination, vulnerability and autonomy, health, federal income support, private resources, and managing resources. Contains tables of cases, statutes, rules and regulations, and West key numbers; appendices on state and federal agencies, associations for the aging, and hot lines; Medicare carriers and intermediaries; Medicaid agencies and fiscal agents; and sample forms and documents. Updates and expands Krauskopf's 1983 edition.

- IA7 Lawrence A. Frolik & Alison P. Barnes. *ELDERLAW: CASES AND MATERIALS*. Charlottesville: Michie, 1992. 1247 pp. Subject index. ISBN: 0874739527. \$50; statutes and regulations supplement, \$15.

Referred to by the authors as "the first edition of the first casebook" in the emerging field of elder law, meant to offer a "broad overview of the legal and policy questions relating to aging individuals and an older society." Covers ethical issues and legal assistance; age discrimination in employment; income maintenance; health care; long-term care; housing; guardianship; health-care decision making; elder abuse, neglect, and crime; and estate planning. Includes summaries of cases, article summaries, and a table of cases.

- IA8 Harry S. Margolis. *ELDERLAW FORMS MANUAL: ESSENTIAL DOCUMENTS FOR REPRESENTING THE OLDER CLIENT*. Boston: Little, Brown, 1992-date. Looseleaf. ISBN: 0316547514. \$99.

Contains forms commonly used in an elder law practice. Covers managing the elder law practice, basic estate and Medicaid planning, powers of attorney, wills, and trusts. Introductory narrative followed by basic forms and variations in each section. Individual requirements for all states not included. Diskettes with texts of documents and forms available in WordPerfect 4.2 format from the publisher.

- IA9 Martin L. Levine. *ELDERLAW: LEGAL, ETHICAL AND POLICY ISSUES OF OLDER INDIVIDUALS AND AN AGING SOCIETY*. Washington: Legal Services Corporation, 1988. 1 vol. Out of print.

Contains cases, articles, statutes, and excerpts from documents compiled for use in law school classes, although the work "may nevertheless be of interest to some continuing education programs for attorneys." Intended to be used along with recommended texts. Addresses both the problems of representing elderly clients and the policy issues of aging in society. Arranged by general elder law topics, including access to justice, housing, death and dying, and protection against victimization.

- IA10 *ELDERLAW PORTFOLIO SERIES*. (Harry S. Margolis ed.) Boston: Little, Brown, 1993-date. Looseleaf. Subject index. ISBN: 0316547425. \$95 for portfolios 1-5.

Directed toward new and experienced practitioners in elder law. Separate "portfolios" written by different authors; updates and additions planned. First five portfolios cover the practical aspects of managing an elder law practice, Medicaid eligibility, Medicaid trusts, the tax implications of asset transfers, and housing options. Portfolios 6 and 7 will cover Medicare and guardianship. Portfolio 1 also includes appendices on elder law resources and a summary of common legal problems of the elderly. Includes tables of acronyms and cases. Three to six new portfolios planned annually; existing ones updated "as appropriate." Also updated by *THE ELDERLAW REPORT* [IC8].

- IA11 Marshall B. Kapp. *GERIATRICS AND THE LAW: PATIENT RIGHTS AND PROFESSIONAL RESPONSIBILITIES*. 2d ed. New York: Springer Publishing, 1992. 335 pp. Subject index. ISBN: 0826145310. \$42.95.

Updates the 1985 edition to reflect developing law, including passage of nursing home provisions of the Omnibus Budget Reconciliation Acts of 1987 and 1990. Provides practical guidance to health-care professionals about the legal issues and duties involved in providing clinical services to the elderly. Covers informed consent, medical record keep-

ing, financing health care, determining disability, elder abuse, involuntary commitment and guardianship, medicolegal problems in caring for nursing home residents, legal considerations in home health care, medicolegal issues at the end of life, research with elderly subjects, and physician/attorney cooperation. Includes a glossary of terms, a bibliography, lists of organizations, other information sources, and references.

- IA12 **LEGAL AND ETHICAL ASPECTS OF HEALTH CARE FOR THE ELDERLY.** (Marshall B. Kapp et al. eds.) Ann Arbor: Health Administration Press, 1986. 322 pp. Subject index. ISBN: 0910701040. \$35.

Addresses legal and ethical questions involved with hospital stays, long-term care, and financing; legal issues facing long-term care providers (quality control, nursing home liability, and nursing homes as teaching institutions); the rights of long-term care residents; and decision making by the elderly, including informed consent, withholding treatment, and determining competency. Written by lawyers, law professors, and health professionals. Includes a selective bibliography and appendices on a task-force-developed Supportive Care Plan (supportive care is defined as "providing care and medical treatment to preserve comfort, hygiene and dignity, but not to prolong life.").

- IA13 **Wesley J. Smith. LEGAL RIGHTS FOR SENIORS.** Washington: HALT, 1993. 215 pp. Subject index. ISBN: 0910073171. \$10.

Addresses legal and financial problems of the elderly, specifically medical care; income benefits (Social Security, pensions, and real estate equity); and services and issues (nursing homes, age discrimination, estate planning, and funeral arrangements). Includes Medicare benefit summaries, a glossary, a bibliography, and directories of Medicare organizations and agencies on aging.

- IA14 **Sanford J. Schlesinger & Barbara J. Scheiner. PLANNING FOR THE ELDERLY OR INCAPACITATED CLIENT.** Chicago: Commerce Clearing House, 1993. 537 pp. Subject index. ISBN: 0685671607. \$45.

Provides advisers, including attorneys, with information and recommendations for helping elderly or incapacitated clients. Analyzes relevant federal and selected state laws. Covers Social Security, Medicare, Medicaid, and Medigap policies; long-term and other health-care issues; financial and estate planning; trusts; guardianship and conservatorship; living wills; income tax benefits for the elderly; and ethical considerations. Includes forms and charts. Supplements planned.

- IA15 John J. Regan. *TAX, ESTATE & FINANCIAL PLANNING FOR THE ELDERLY*. New York: Matthew Bender, 1985-date. Looseleaf; updated semiannually. Subject index. ISBN: 0820512893. \$215.

Aims to provide practitioners with techniques for handling the elderly client's financial and legal problems. Emphasizes the practical approach and gives examples. Covers counseling the elderly client; financial planning; private and public pensions; Social Security and Supplemental Security Income; income and estate/gift tax savings; health insurance, including Medicare and Medicaid; food and nutrition programs; housing; health care; guardianship and conservatorship; lifetime giving; estate planning; and wills. Includes forms and a glossary of abbreviations and acronyms.

- IA16 John J. Regan & Michael Gilfix. *TAX, ESTATE & FINANCIAL PLANNING FOR THE ELDERLY: FORMS & PRACTICE*. New York: Matthew Bender, 1991-date. Looseleaf. Subject index to sections and forms. ISBN: 0802517743. \$100.

Accompanies *TAX, ESTATE & FINANCIAL PLANNING FOR THE ELDERLY* [IA15]. Includes forms, checklists, charts, letters, and legal documents to supplement that text, with cross-references throughout. Contains much state-specific material. Loosely follows the arrangement of first volume; each section has an overview and explanatory material along with forms.

- IA17 Alan D. Lieberman. *WEST'S LEGAL FORMS: VOLUME 18A: ELDERLAW*. St. Paul: West Publishing, 1994. 934 pp. Subject index. ISBN: 0314040730.

A specialized volume from a standard legal forms set. Includes explanatory material and forms covering issues such as powers of attorney, living wills, age discrimination, elder abuse, Social Security, Medicare, and nursing homes. Focuses on administrative procedure forms. Includes checklists and resources for additional information. Does not include forms contained elsewhere in the set, such as estate planning and taxes generally. Provides tables of statutes and regulations, as well as guidance in using related West and Westlaw research tools.

- IA18 Lawrence A. Frolik & Richard L. Kaplan. *ELDER LAW IN A NUTSHELL*. St. Paul: West Publishing, 1995. 429 pp. Subject index. ISBN: 0314064141. \$18.50.

One of the West “nutshell” series of brief treatises. Aimed at social workers, gerontologists, and others working with the elderly as well as lawyers and law students. Covers ethical considerations, health-care decision making, Medicare/Medicaid, long-term care insurance, nursing homes and housing options, guardianship, Social Security, SSI, benefits and pensions, age discrimination in employment, and elder abuse and neglect. Includes a table of cases.

B. Advocacy and Self-Help

Two types of material are included in this section: books written for the elderly and the aging who want advice about legal issues (as well as related financial and health issues) and books aimed toward nonlawyer advocates for the elderly, such as social workers and health-care professionals. Many of these items are produced by the organizations listed in Part II in fulfillment of the organizations’ missions to provide information to the elderly and to those who speak on their behalf.

Practice guides directed toward attorneys are included in Section A, Practitioners’ Guides and Treatises. However, the nonlawyer advocate familiar with legal terminology might find the sources in that section useful as well.

- IB1 John J. Regan. *THE AGED CLIENT AND THE LAW*. New York: Columbia University Press, 1990. 143 pp. Subject index. ISBN: 0231069782. \$35.

Addresses legal problems faced by the elderly and is directed toward them. Omits footnotes, case references, and larger public policy issues. Covers the aged client and the legal system; Social Security, SSI, and private pensions; Medicare and Medicaid; long-term care; planning for incapacity in later life; and intervention for the frail elderly. Includes a bibliography.

- IB2 Teresa S. Myers. *HOW TO KEEP CONTROL OF YOUR LIFE AFTER 60: A GUIDE FOR YOUR LEGAL, MEDICAL, AND FINANCIAL WELL-BEING*. Lexington, MA: Lexington Books, 1989. 428 pp. Subject index. ISBN: 0669194565. Out of print.

Designed to help elderly people get the type of medical treatment they want and maintain finances and financial control. Experts in the field were consulted for each chapter. Chapter titles include "Planning Ahead" (wills, trusts, long-term care policies, nursing homes, living wills, and powers of attorney); "Staying in Charge in a Hospital or Nursing Home" (medical care, patients' rights, early discharge, problems or complaints, and Medicare/Medicaid); "When Someone Can No Longer Make Decisions" (competence, guardians and conservators, Social Security payees, and limits on surrogate decision making); and the conclusion (getting involved and affecting programs). Appendices include sample forms, lists of organizations, summaries of state law, a glossary of terms, and a bibliography.

- IB3 Linda J. Millman. *LEGAL ISSUES AND OLDER ADULTS*. Santa Barbara: ABC-CLIO, 1992. 273 pp. Subject index. ISBN: 0874365945. \$45.

Attempts to identify common legal issues—both those that the elderly share with other Americans and those unique to them—and provide background information to allow the elderly and their advocates to resolve those issues, with or without the help of a lawyer. Written in a simplified style. Consists of two parts: first, a narrative section covering legal services, personal autonomy, income security, health care, housing, consumer issues, family law, and estate planning, and second, an annotated resource section, following the top-

ical organization of the first section, including a directory of organizations, and a bibliography of reference materials, books, articles, looseleaf services, audiovisual resources, and databases. Includes a glossary of terms.

- IB4** Center for Governmental Responsibility. *LEGAL ISSUES, GOVERNMENT PROGRAMS, AND THE ELDERLY: A HANDBOOK FOR ADVOCATES*. 4th ed. Clearwater, FL: D & S Publishers, 1987-date. Looseleaf. Out of print.

Intended for the elderly and their advocates, including attorneys. Designed to give readers the ability to recognize problems requiring legal assistance, the types of government services or benefits that are available, and where to get further help. Twenty-five chapters deal with most of the major issues facing the elderly. Contains practical advice for the elderly as well as citations to statutes, regulations, and cases to serve as a legal research guide for the legal professional. Lists relevant addresses and telephone numbers in many chapters.

- IB5** *ON YOUR RETIREMENT: TAX AND BENEFIT CONSIDERATIONS: SOCIAL SECURITY, MEDICARE, INCOME TAX, PENSION INCOME*. Chicago: Commerce Clearing House, 1993. 192 pp. Index. ISBN: 0808000020. \$12.50.

Not available for annotation.

- IB6** *ORGANIZING YOUR FUTURE: A GUIDE TO DECISIONMAKING IN YOUR LATER YEARS*. Washington: Legal Counsel for the Elderly [IIIA6], 1990. 102 pp. SuDoc: HE23.3008:D35. ISBN: 0933945043. \$13.95.

Intended to guide persons of all ages in planning their futures. Gives general information about several common legal arrangements including joint ownership of property, powers of attorney, trusts, wills, living wills, naming a representative payee, guardianship, and conservatorship. Discusses elder abuse and financing long-term care. Presented in a question-and-answer format. Includes sample forms and summary charts of state Medicaid and guardianship statutes.

Lists resource organizations. Provides a glossary of terms. Federal depository libraries received microfiche copies.

- IB7 REPRESENTING OLDER PERSONS: AN ADVOCATE'S MANUAL. 3d ed. Washington: National Senior Citizens Law Center [IIIA30], 1993. 364 pp.

Contains a compilation of material that reflects the advocacy efforts of the National Senior Citizens Law Center. Includes summaries and memos, articles, court documents, and sections from administrative manuals. Covers age discrimination, housing, pension and health benefits, home health care, Medicaid/Medicare, nursing facilities, the Americans with Disabilities and Older Americans acts, protective services, Social Security, and SSI.

- IB8 Irving J. Sloan. RIGHTS AND REMEDIES FOR SENIOR CITIZENS. Dobbs Ferry, NY: Oceana Publications, 1992. 149 pp. (Law for the Layperson) ISBN: 0379111780. \$17.50.

Deals with age discrimination, Social Security, Medicare, Medicaid, nursing home law, incapacity, protective services, wills, hiring a lawyer, and elder-abuse protection. Lists committees, agencies, and organizations for the aging, as well as reduced-fee lawyer referral services.

- IB9 Robert N. Brown & Legal Counsel for the Elderly [IIIA6]. THE RIGHTS OF OLDER PERSONS: THE BASIC ACLU GUIDE TO AN OLDER PERSON'S RIGHTS. 2d ed. Carbondale, IL: Southern Illinois University Press, 1989. 413 pp. (An American Civil Liberties Union Handbook) ISBN: 0809314320. \$7.95.

Directed toward the elderly and their families, nonlawyer professionals (such as social workers and nurses), as well as lawyers. Focuses on the rights of the elderly to receive entitlement benefits and to be protected against illegal behavior, such as job discrimination. Also covers nursing homes, guardianship, civil commitment, and the right to refuse medical treatment. Discusses major statutes, cases, and administrative regulations in a question-and-answer format. Lists organizations and agencies. Provides work sheets for computing Social Security and SSI benefits.

- IB10** Carl W. Battle. **SENIOR COUNSEL: LEGAL AND FINANCIAL STRATEGIES FOR AGE 50 AND BEYOND.** New York: Allworth Press, 1993. 254 pp. Subject index. ISBN: 1880559064. \$16.95.

Intended to provide answers to many of the legal, financial, and social issues facing the elderly. Also, attempts to aid the elderly in attaining independence and fulfillment. Covers health-care alternatives, Social Security, pension plans, financial and estate planning, managing credit, crime protection, planning for disability, wills, age discrimination, and tax guidance. Lists resources, such as Better Business Bureaus, consumer protection offices, federal agencies, state agencies, and organizations.

- IB11** John J. Regan & Legal Counsel for the Elderly [IIIA6]. **YOUR LEGAL RIGHTS IN LATER LIFE.** Glenview, IL: Scott, Foresman and American Association of Retired Persons, 1989. 321 pp. Subject index. ISBN: 0673248844. \$13.95.

Written to help the elderly understand their legal rights and assert them. Based largely on questions directed to the Legal Counsel for the Elderly's Legal Hotline for Older Americans, operated in Pennsylvania (although addressing concerns of the elderly throughout the country). Covers elder law topics including Social Security, retirement benefits, tax planning, health care, incapacity, wills, and trusts. Also includes information on buying or selling a home, landlord/tenant issues, liability for injuries, consumer protection, buying automobiles, family law, and other areas in which older persons need assistance. Includes a question-and-answer section in each chapter. Contains some checklists, sample forms, and a glossary of terms.

C. Journals and Newsletters

Academic and other journals that focus exclusively or largely on elder law topics or that have published special issues devoted to elder law are described in this section. Newsletters directed toward legal practitioners and advocates for the elderly also appear. Because of their currency, journals and newsletters are among the best print tools for staying up-to-date in the field of elder law. Many journals are indexed. Because newsletters are not usually indexed, the researcher or

practitioner should subscribe to one or two newsletters to maintain current awareness.

Each entry includes the title of the periodical, the place of publication, the publisher, the beginning year of publication, frequency of publication, approximate length of each issue, and annual or per volume subscription prices. International Standard Serial Numbers (ISSN) are also included to facilitate ordering. The annotation indicates whether the title is a journal or newsletter and describes the general content based on an examination of several recent issues. Sources that index an individual title are referred to in the entry. *The Older Americans Information Directory* [IG5] also lists dozens of related journals, magazines, and newsletters.

IC1 AGING NEWS ALERT: THE SENIOR SERVICES & FUNDING REPORT. Silver Spring, MD: CD Publications, 1992-date. Biweekly. Approximately 8-18 pp. ISSN: 10503188. \$218.

Newsletter. Provides summaries and informational articles on developments in the executive branch (including the U.S. Administration on Aging [IIIB1]), Congress, the courts, and the aging network.

IC2 BEST PRACTICE NOTES ON DELIVERY OF LEGAL ASSISTANCE TO OLDER PERSONS. Ann Arbor: Center for Social Gerontology [IIIA4], 1986-date. Quarterly. Free.

Newsletter. Contains articles of interest to elder law attorneys.

IC3 BIFOCAL (BAR ASSOCIATIONS IN FOCUS ON AGING AND THE LAW). Washington: American Bar Association, Commission on Legal Problems of the Elderly [IIIA5], 1978-date. Quarterly. Approximately 8 pp. ISSN: 08881537. \$15.

Newsletter. Contains articles of interest to elder law attorneys dealing with legislative and practice issues. Includes notices of conferences and grants; profiles of persons prominent in the field, Commission members, and state bar elder law sections; and book reviews.

IC4 CLEARINGHOUSE REVIEW. Chicago: National Clearinghouse for Legal Services, 1967-date. Monthly. Approximately 150-200 pp. ISSN: 0009868X. Free to attorneys and paralegals

practicing in LSC- and AoA-funded programs; \$95 for individuals; \$125 for organizations.

Journal. October issue devoted to elder law topics [ID5], as well as annual issue on poverty law [ID4] that includes an article on law of the elderly poor. Aimed toward attorneys and other advocates. Indexed in the INDEX TO LEGAL PERIODICALS and LEGALTRAC.

- IC5 ELDER LAW ADVISORY. Rochester, NY: Clark Boardman Callaghan, 1991-date. Monthly. Approximately 10 pp. ISSN: 10704825. \$130.

Newsletter. Offers substantive articles dealing with recent federal and state cases and laws. Sample articles include an update on spousal impoverishment, the California elder abuse statute, and New York's assisted suicide law. Supplements ADVISING THE ELDERLY CLIENT [IA1]; includes notices of new publications by Clark Boardman Callaghan.

- IC6 ELDER LAW FORUM. Washington: Legal Counsel for the Elderly [IIIA6], 1989-date. Bimonthly. Approximately 8 pp. ISSN: 10523715. Free.

Newsletter. Includes a legislative update and sections on legal services, advocacy, and protective services. Contains information about past and upcoming conferences, as well as effective office management.

- IC7 ELDER LAW JOURNAL. Champaign, IL: University of Illinois College of Law, 1993-date. Semiannual. Approximately 150-200 pp. ISSN: 10701478. \$25.

Journal. Offers substantive analysis of legal issues affecting the elderly and practical guidance for attorneys with an elder law clientele. Includes articles written by law professors, lawyers, and other legal professionals; student-written notes; and recent development items. Coverage includes, but is not limited to, representation of the elderly, guardianship reform, spending down for Medicaid eligibility, reverse mortgages, and federal sentencing guidelines and the elderly. Indexed in the INDEX TO LEGAL PERIODICALS, LEGALTRAC, LEXIS, and Westlaw.

- IC8 THE ELDERLAW REPORT. (Harry S. Margolis ed.) Boston: Little, Brown, 1989-date. Eleven per year. Approximately 8-12 pp. Subject index and contents list for volumes I through V (July 1989-June 1994) issued in September 1994. ISSN: 10477055. \$109.

Newsletter. Presents substantive articles on elder law issues, a calendar of national elder law events, practice tips, case notes, updates on federal and state legislation, regulatory updates, and book reviews. Supplements the ELDERLAW PORTFOLIO SERIES [IA10].

- IC9 JOURNAL OF ELDER ABUSE AND NEGLECT. Binghamton, NY: Haworth Press, 1989-date. Quarterly. Pagination varies. ISSN: 08946566. \$32 for individuals; \$90 for institutions; \$125 for libraries.

Journal. A publication of the National Committee for the Prevention of Elder Abuse. Covers the causes, treatment, and prevention of elder abuse. Includes information about legislative developments and policies, personal commentaries, and book reviews. Indexed in the CRIMINAL JUSTICE PERIODICAL INDEX, the INDEX TO PERIODICAL ARTICLES RELATED TO LAW, and SOCIAL WORK RESEARCH & ABSTRACTS.

- IC10 NAELA NEWS. Tucson: National Academy of Elder Law Attorneys [IIIA7], 1989-date. Eight per year. Approximately 8-18 pp. \$75.

Newsletter. Contains substantive articles; practice tips in areas of trusts, Medicare advocacy, and general elder law practice; notices of upcoming meetings and seminars; chapter news; and book reviews.

- IC11 NAELA QUARTERLY. Tucson: National Academy of Elder Law Attorneys [IIIA7], 1989-date. Quarterly. Approximately 15-40 pp. Title indices in Summer 1994 and Fall 1994 issues. ISSN: 10703063. \$75.

Journal. Includes substantive articles, practice tips, and case notes. Later issues larger than first. Fall 1994 issue includes articles on the interplay between spousal planning and trusts under OBRA '93; addressing quality issues in nurs-

ing homes through counseling, advocacy, and lawsuits; a defense of Medicaid planning; and an overview of OBRA '93.

- IC12 NSCLC WASHINGTON WEEKLY. Washington: National Senior Citizens Law Center [IIIA30], 1974-date. Fifty per year. Approximately 4 pp. Semiannual index. ISSN: 02777460. \$150.

Newsletter. Contains updates on legislative and regulatory developments as well as recent case law in the area of elder law. Provides a checklist of FEDERAL REGISTER items of interest to the elderly.

- IC13 NEWSLETTER. Washington: Association of American Law Schools, Section on Aging and the Law [IIIA3], 1985-date. Irregular. Approximately 12 pp.

Newsletter. Contains articles on elder law, news about the section, and information about its members.

- IC14 SHEPARD'S ELDERCARE/LAW NEWSLETTER. Colorado Springs, CO: Shepard's/McGraw-Hill, 1991-date. Monthly. Approximately 16-25 pp. Annual index. ISSN: 10561218. \$136.

Newsletter. Includes articles for elder law attorneys and advocates; updates on federal cases and legislation; notices of upcoming seminars, conferences, and publications; book reviews; and sample forms.

- IC15 SHEPARD'S THE COMPLETE ELDER LAW ATTORNEY: EFFECTIVELY MANAGING & MARKETING AN ELDER LAW AND ESTATE PLANNING PRACTICE. (Baird B. Brown ed.) Colorado Springs, CO: Shepard's/McGraw-Hill, 1995-date. Monthly. Approximately 8 pp. ISSN: 10796843. \$95.

Newsletter. Contains articles on billing alternatives, office organization, business development, and using computers in the elder law practice. First issue (January 1995) includes a sample fee schedule for typical elder law transactions.

- IC16 ELDERLAW EXPRESS. Washington: Legal Counsel for the Elderly [IIIA6], 1994-date. Six per year. Approximately 8 pp. Free.

Newsletter. An expanded version of the literature review section that formerly appeared in ELDER LAW FORUM [IC6]; now a companion piece to ELDER LAW FORUM. Contains abridged versions of articles and reviews related to elder law taken from newsletters, newspapers, and journals. Divided into case law and statutory sections.

D. Symposia, Conferences, and Special Issues

This section includes transcripts of, or print guides to, conferences, symposia, institutes, and workshops, including continuing legal education (CLE) programs that focus generally on elder law. Those CLE publications and state bar journal issues that deal primarily with the law and resources of a single state are listed by state in Appendix A, State-Specific Resources. The frequency of the conference or institute is noted and an annotation for one recent conference is given. To find out about upcoming conferences, review one or several of the newsletters listed in Section C, Journals and Newsletters.

Also included in this section are special journal issues devoted exclusively or largely to elder law. Full bibliographic information is provided. Beginning and ending page numbers of special journal issues are given to indicate the size and depth of treatment of the issue.

- ID1 *Addressing the Problems of Elder Care*, TRUSTS & ESTATES, July 1991, at 8-44.

Includes articles on planning for Medicaid qualification, ethical considerations of representing the elderly, rights of nursing home patients, and abusive guardians.

- ID2 AGING AND THE LAW. Vienna, VA: Cambridge Institute, 1990. 1 vol.

Course book for seminars held in Washington, DC, and New York in September 1990. Includes forms. Not available for annotation.

- ID3 AGING AND THE LAW: LOOKING INTO THE NEXT CENTURY. (Patricia R. Powers & Karen Klingensmith eds.) Washington:

American Association of Retired Persons, Public Policy Institute, 1990. 239 pp.

Based on a conference on the future of legal services for the elderly sponsored by the AARP in 1989. Commissioned papers deal with trends in poverty law and elder law and an analysis of the present and future delivery of legal services to the elderly. Includes a transcript of sample conference discussions, charts, and lists of references.

- ID4 *Annual Review of Poverty Law*, CLEARINGHOUSE REVIEW [IC4], 1981-date, January issue.

Examines cases and legislative developments during the preceding year that have an impact upon the impoverished elderly. Also may cover legislative, executive, and judicial developments in Social Security, pensions, age discrimination, protective services, housing, long-term care, Medicare, and Medicaid.

- ID5 *Elder Law*, CLEARINGHOUSE REVIEW [IC4], 1989-date, October issue.

Annual issue devoted to elder law topics such as arbitration, mediation, durable powers of attorney, ERISA, guardianship, housing, living wills, Medicare, Medicaid, Medigap, long-term care insurance, the Older Americans Act, and reverse mortgages. Title varies: *Elder Law in the 90s*.

- ID6 ELDER LAW INSTITUTE 1994: REPRESENTING THE ELDERLY CLIENT OF MODEST MEANS. New York: Practising Law Institute, 1994. 408 pp. (Tax Law and Estate Planning Series; Estate Planning and Administration Course Handbook Series No. D-235) ISSN: 10558691. \$99.

Supplements the institute held June 29, 1994, in New York City. Includes articles on Supplemental Security Income, Medicaid, a Medicare guide for practitioners, OBRA 1987, nursing homes, and protective services. Protective-services section has a bibliography, glossary, forms, and tables of state laws on living wills, durable powers of attorney, and health-care powers of attorney. Earlier institutes also available.

- ID7 *An Elder Law Symposium: Contemporary Issues for a Golden-Aged Society*, 19 *NOVA LAW REVIEW* 459-872 (1995).

Contains articles on elderly criminals, taxes and the elderly, rights of nursing home residents, Medicaid, long-term care, and developing an elder law practice. Includes an appendix of state and federal organizations for the elderly and a bibliography [IE3].

- ID8 *ESTATE AND FINANCIAL PLANNING FOR THE AGING OR INCAPACITATED CLIENT*. New York: Practising Law Institute. Annual. (Tax Law and Estate Planning Series; Estate Planning and Administration Course Handbook Series No. 178) \$70 for 1992 volume.

Supplements programs held annually. Contains outlines, sample forms, and state law summaries. Also includes reprints of articles on topics such as property management, powers of attorney, trusts, Medicare/Medicaid issues, private health insurance, and living wills.

- ID9 *THE FUTURE OF ELDER LAW: MOVING THE PRACTICE INTO THE NEXT CENTURY*. [Tucson]: National Academy of Elder Law Attorneys [IIIA7], 1993. 1 vol.

From the fifth annual symposium on elder law, held April 15-18, 1993, in Atlanta. Includes presentations based on the personal diary of an Alzheimer's patient care giver, managing the elder law office, and Medicare/Medicaid practice. One of the semiannual programs sponsored by NAELA.

- ID10 *HEALTH CARE AND FINANCIAL PLANNING ISSUES FOR THE ELDERLY: AN ABA SATELLITE SEMINAR*. Chicago: American Bar Association, 1991. 261 pp.

Materials accompanying seminar held on February 28, 1991, and sponsored by the ABA, the National Academy of Elder Law Attorneys [IIIA7], Legal Counsel for the Elderly [IIIA6], and the National Senior Citizens Law Center [IIIA7]. Includes bibliographic references. Not available for annotation.

- ID11** JOINT CONFERENCE ON LAW & AGING. Chicago: National Clearinghouse for Legal Services, 1988. 237 pp.

Forty-one workshops held October 13-15, 1988, in Arlington, Virginia. Co-sponsored by the ABA Commission on Legal Problems of the Elderly [IIIA5], the Center for Social Gerontology [IIIA4], Legal Counsel for the Elderly [IIIA6], and the National Senior Citizens Law Center [IIIA30]. Geared toward attorneys and advocates. Covers a wide range of topics including legislation, nursing home advocacy, legal hot lines for the elderly, spousal impoverishment, and mediation for the elderly. Includes charts and a checklist of state guardianship and conservatorship provisions.

- ID12** LEGAL AND ETHICAL ASPECTS OF HEALTH CARE FOR THE ELDERLY. Boston: American Society of Law and Medicine, 1983. 375 pp.

From a program held June 2-4, 1983, in Washington. Sponsored by the American Society of Law and Medicine. Includes presentations by lawyers, doctors, and other professionals on long-term health-care financing, health-care decision making, rights of the institutionalized elderly, guardianship and protective services, paternalism in dealing with the elderly, and life care communities. Includes bibliographies and summaries of state laws.

- ID13** PLANNING FOR AGING OR INCAPACITY: LEGAL AND FINANCIAL ISSUES. New York: Practising Law Institute. Annual. (Tax Law and Estate Planning Series; Estate Planning and Administration Course Handbook Series No. D-219) ISSN: 10672257. \$99 for 1994 volume.

Supplements programs held annually. Contains outlines, reprints, and sample forms on trusts, durable powers of attorney, guardianship, conservatorship, Medicare/Medicaid, long-term care, and health-care decision making. Includes summaries of statutes and cases.

- ID14** PLANNING FOR THE SENIOR CITIZEN: ALI-ABA COURSE OF STUDY MATERIALS. Philadelphia: American Law Institute-

American Bar Association Committee on Continuing Professional Education, 1991. 553 pp.

Contains materials to accompany a program held in 1991. Includes forms. Not available for annotation.

- ID15 *Project: Legal Ethics and the Elderly*, 4 *GEORGETOWN JOURNAL OF LEGAL ETHICS* 855-940 (1991).

Covers the role of counsel in guardianship proceedings, the right to die, the impact of ethical decision making on incompetent clients, making competency determinations, and disciplining the senile attorney.

- ID16 *Randolph W. Thrower Symposium: Elder Law*, 41 *EMORY LAW JOURNAL* 633-871 (1992).

Contains articles on guardianship and guardianship reform, the family's impact on autonomy of the elderly, and improving the delivery of legal services for the elderly.

- ID17 *Special Issue: Elder Law*, 14 *JOURNAL OF CONTEMPORARY LAW* 1-163 (1988).

Contains articles on Utah's Medicaid program, living wills, physician evaluation of geriatric guardianship cases, and the question of competence in representing elderly clients. Includes a comparison of state living will statutes and treatment of elderly offenders.

- ID18 *Special Issue: Ethical Issues in Representing Older Clients*, 62 *FORDHAM LAW REVIEW* 961-1583 (1994).

Includes proceedings of a conference on ethical issues in representing older clients held December 3-5, 1993, at the Fordham University School of Law. Contains conference recommendations, reports, and articles on questions of an older client's capacity, confidentiality issues, fiduciary issues, conflicts in representing spouses, and ethical management of an elderly client's assets.

- ID19 *Special Issue on: Elder Law*, *FAMILY ADVOCATE*, Summer 1993, at 17-71.

Includes articles on divorce, the challenge of changing demographics, grandparent visitation rights, Social Security appeals, health care, disability, advance health-care directives, geriatric care management, and viatical settlements (“the discounted, predeath sale of an existing life insurance policy to a third-party private company for the purpose of providing the policy-holder with a percentage of the policy’s face value in cash”). Contains a short bibliography.

- ID20 *Symposium, Legal Issues Relating to the Elderly*, 42 HASTINGS LAW JOURNAL 683-937 (1991).

Contains essays on the legal challenges posed by the aging population, long-term care financing, health-care advance directives, the Cruzan case, and elder abuse, including the states’ response to the problem (with a California focus).

- ID21 Allan D. Bogutz et al. *WHAT EVERY LAWYER SHOULD KNOW ABOUT ELDER LAW*. Washington: Continuing Legal Education Satellite Network, 1991. 155 pp.; audiocassette album and videotapes also available. \$295 for videocassettes and course handbook; \$185 for audiocassette album and course handbook.

Presents material from a June 19, 1991, conference held in Washington, DC, and simultaneously broadcast to fifty-eight locations via the Continuing Legal Education Satellite Network. Covers how to prepare for the elderly client (physical accessibility of the office, home visits, dealing with diminished mental or physical capacity, and ethical implications); guardianship, conservatorship, durable power of attorney, and revocable inter vivos trusts; marketing and setting up an elder law practice; health-care decisions (living wills and surrogate decision making); Medicare/Medicaid and long-term care insurance; nursing homes; tax issues; and teamwork between lawyers and geriatric care managers. Includes sample documents.

- ID22 *Elder Law*, 12 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS 1-153 (1994).

Contains articles on health care for the elderly, grandparent visitation rights, ethical considerations of representing older clients, and spousal impoverishment under the Medicare Act. Also contains an annotated bibliography on elder care at 124-53 [IE8].

ID23 *Ageing and the Law*, 13 BEHAVIORAL SCIENCES AND THE LAW 319-423 (1995).

Includes articles on conducting research with elderly subjects; memory capabilities of elderly eyewitnesses; policies on elder abuse and mistreatment; assessing mental capacity; and autonomy of nursing home residents.

E. Bibliographies

The bibliographies included here range from the relatively short to the comprehensive. *Gerontology and the Law*, a series of unannotated bibliographies that appear in the *Southern California Law Review*, is periodically updated. Because the *Gerontology and the Law* bibliography series contains hundreds of entries covering many specific elder law topics not included in this research guide, it is a valuable resource for researchers looking for material on individual subjects. Other works on elder law—such as journal issues and books—often contain short bibliographies.

IE1 Jane Bell & Dana Spade, *Bibliography: Elder Law*, 11 PREVENTIVE LAW REPORTER 18-21 (1992).

Includes journal and law review articles divided into subject areas (civil rights, estate planning, living wills, practitioner notes, and professional liability); books; and videotapes.

IE2 Daniel J. Jacobs, *Elder Law in the 1990s: A Selective Bibliography*, 48 RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 392-401 (1993).

An unannotated bibliography of books and articles.

IE3 *An Elder Law Symposium: Contemporary Issues for a Golden-Aged Society* (Appendix B, Bibliography), 19 NOVA LAW REVIEW 847-72 (1995).

An unannotated bibliography of books, reports, and articles.

- IE4 Edward Stanek. *THE ELDERLY IN MODERN SOCIETY, THEIR LEGAL STATUS AND HUMAN RIGHTS: A SELECT BIBLIOGRAPHY*. Monticello, IL: Vance Bibliographies, 1989. 14 pp. (Public Administration Series P 2610) ISBN: 0792001109. ISSN: 0193970X. \$3.75.

Includes books, government documents, conference proceedings, and reports. Focuses on aging research, policy, legal issues, and health. Covers publications from Canada, the United Kingdom, and the United States. Unannotated.

- IE5 *Gerontology and the Law: A Selected Bibliography*.

A series of unannotated bibliographies. Contains citations from indices and other sources available from November 1979. Lists articles, books, government documents, bibliographies, and conference proceedings. Arranged by subjects, including general works; income maintenance; basic goods and services, including health, housing, social services, legal services; and protection against victimization. Printed at 73 LAW LIBR. J. 255-335 (1980); 56 S. CAL. L. REV. 289-459 (1982); 57 S. CAL. L. REV. 631-66 (1984); 60 S. CAL. L. REV. 897-957 (1987); 64 S. CAL. L. REV. 1675-1860 (1991).

- IE6 Marshall B. Kapp. *LEGAL ASPECTS OF HEALTH CARE FOR THE ELDERLY: AN ANNOTATED BIBLIOGRAPHY*. New York: Greenwood Publishing Group, 1988. 166 pp. (Bibliographies and Indexes in Gerontology, No. 7) Author and subject indices. ISBN: 0313261598. ISSN: 07437560. \$55.

Refers to sources that "explicitly deal with a 'legal' aspect of health care for the elderly," including sources from the fields of forensic medicine and medical jurisprudence. Article, report, and book entries organized by primary legal topic, including informed consent, financing health care, determining disability, elder abuse and neglect, involuntary commitment and guardianship, provider regulations, resuscitation, defining death, research with elderly subjects, and

legal services for the older health-care consumer. Annotations summarize and describe the sources.

- IE7 Tim J. Watts. *LEGAL RIGHTS OF OLDER AMERICANS: A SELECTED BIBLIOGRAPHY*. Monticello, IL: Vance Bibliographies, 1988. 20 pp. (Public Administration Series P 2326) ISBN: 1555906362. ISSN: 0193970X. \$5.

Focuses on legal rights of the elderly and the accompanying public policy issues. Includes monographs, state documents, federal documents, and articles. Unannotated.

- IE8 Nancy Levit, *Eldercare Annotated Bibliography, 1988-1994*, 12 *JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS*. 124-53 (1994).

Annotated entries for articles and some practice materials dealing with elder law and advocacy. Divided into sections on age discrimination; crimes by and against the elderly; economic considerations (estate planning, Social Security, and pensions); ethical representation of the elderly; long-term care; Medicaid/Medicare; nursing homes; right to die; and surrogate decision making. Part of a symposium issue on elder law [ID22].

F. Directories

Individuals new to the elder law field often seek the advice and assistance of more experienced attorneys. Directories like those listed below may be used to identify such practitioners. Other approaches include contacting bar association committees or sections that focus on elder law and using periodical indexes and library catalogs to find authors of law review articles or books on elder law.

- IF1 *EXPERIENCE REGISTRY*. Tucson: National Academy of Elder Law Attorneys [IIIA7], 1991-date. Updated quarterly. Approximately 30 pp. \$25.

A state-by-state directory of practicing attorneys who are members of the Academy. Provides name, address, telephone number, telefacsimile number, and areas of specialization. Includes an index by twenty-two specialties, including

age discrimination, estate planning, long-term care, Medicare, and retirement benefits.

- IF2 THE LAW AND AGING RESOURCE GUIDE. Washington: American Bar Association, Commission on Legal Problems of the Elderly [IIIA5], 1992. 1 vol. Looseleaf. SuDoc: HE1.1008:L41.

A state-by-state directory of legal services developers, long-term care ombudsmen, legal assistance programs, bar committees and sections, pro bono and reduced fee programs of the private bar, educational efforts, and other special projects and activities. Designed to assist the legal and aging communities identify local resources to enhance legal and advocacy efforts for the elderly. Lists publications, brochures, program descriptions, and law school clinics. New editions published periodically. Previous editions published in 1990, 1985, and 1981 by the American Bar Association, Young Lawyers Division, Committee on the Delivery of Legal Services to the Elderly. Federal depository libraries received microfiche copies.

- IF3 MARTINDALE-HUBBELL LAW DIRECTORY: AREAS OF PRACTICE INDEX. New Providence, NJ: Martindale-Hubbell. Annual. ISSN: 01910221.

Arranged by subject, then by state and city, and then by attorneys' names. Aged and Aging heading includes subheadings for Administration and Insurance, Age Discrimination, Elder Abuse, Elder Care, Elder Housing, Elder Incompetency, Elder Rights, Nursing Homes, Retirement, Senior Citizens, and Social Security. Consult corresponding geographic volumes for directory information and practice descriptions.

G. Statistics and Encyclopedias

Although the sources listed in this section are not strictly elder law, they are useful for the researcher who needs background information and statistical data about the elderly. The researcher also could go directly to publications of the U.S. Census Bureau, such as the *Statistical Abstract of the United States* (Washington: U.S. Department of Commerce, Bureau of the Census, annual), which is the

source of much numerical information about all segments of the American population. However, the books listed here take the extra step of selecting and consolidating data relating to older persons, which helps put the status of the elderly in perspective. One source, the *Older Americans Information Directory* [IG5], is a hybrid, including a directory and bibliography as well as statistical information.

- IG1 AGING AMERICA: TRENDS AND PROJECTIONS. Washington: U.S. Government Printing Office, 1991. 273 pp. SuDoc: Y3.F31/15:2AG4/2/991.

Prepared by the U.S. Senate Special Committee on Aging [IIIB7], the American Association of Retired Persons, the Federal Council on the Aging, and the U.S. Administration on Aging [IIIB1]. Provides an overview of health, income, employment, long-term care, housing, federal spending, and social indicators of the country's elderly. Makes extensive use of charts and tables. Updates earlier editions.

- IG2 AMERICA'S ELDERLY: A SOURCEBOOK. (Edward E. Duensing ed.) New Brunswick, NJ: Center for Urban Policy Research, 1988. 190 pp. ISBN: 088285125X. \$25.

Designed to present "the data necessary to create a statistical portrait of America's elderly as they are today and as they will be tomorrow." A selective source. Includes figures and tables, mainly from the U.S. Census Bureau; preface states that the information has been cross-checked for accuracy if possible. Divided into subjects: demographics, income and expenditures, employment and unemployment, health and health care, housing and homeownership, federal programs and expenditures, and social characteristics.

- IG3 THE ENCYCLOPEDIA OF AGING. (George L. Maddox ed.) New York: Springer, 1987. 890 pp. ISBN: 0826148409. \$96.

Offers "comprehensive, authoritative, but concise" coverage of key topics and issues in the field of gerontology. Alphabetic entries are followed by extensive cross-references. Includes history of legislation such as Social Security and Medicare, as well as information about government agencies and organizations that deal with aging. Includes background

information on geriatrics, health, physical well-being, and mental well-being. Includes an extensive index and list of references. Update planned.

- IG4 F. Hampton Roy & Charles Russell. *ENCYCLOPEDIA OF AGING AND THE ELDERLY*. New York: Facts on File, 1992. 308 pp. Subject index. ISBN: 0816018693. \$45.

Written by a doctor and a social gerontologist. Presents "a medical and social/psychological perspective on age" for the general reader. Includes mental health, the physical challenges of age, age in literature, and nursing home selection. Most entries are a few paragraphs long; some a page or more. Includes tables, graphs, a list of national organizations, and a bibliography.

- IG5 *OLDER AMERICANS INFORMATION DIRECTORY: A GUIDE TO ORGANIZATIONS, AGENCIES, INSTITUTIONS, PROGRAMS, PUBLICATIONS, SERVICES, AND OTHER RESOURCES CONCERNED WITH OLDER AMERICANS IN THE UNITED STATES*. (John Krol ed.) Detroit: Gale Research, 1994. 648 pp. ISBN: 0810389940. ISSN: 1072477X. \$79.

A comprehensive source of more than 5000 entries. Covers legal resources from commercial, government, and nonprofit organizations. Sections arranged alphabetically and by state.

- IG6 *STATISTICAL HANDBOOK ON AGING AMERICANS*. 1994 ed. (Frank L. Schick & Renee Schick eds.) Phoenix: Oryx Press, 1994. 335 pp. (Statistical Handbook Series No. 5) Subject index. ISBN: 0897747216. \$54.50.

A compilation of 378 statistical tables and charts; data updated from the 1986 edition and includes information available as of June 1993. Generally, pre-1985 data not included. Tables and charts usually not altered from their original sources, which include the U.S. Census Bureau, the U.S. Administration on Aging [IIIB1], the American Association of Retired Persons, and other organizations. Covers general demographics, social characteristics, health status, employment, economic conditions, and public expenditures

for the elderly. Lists organizations, U.S. Census Bureau telephone contacts for data users, a glossary of terms, and a list of sources. Previous edition published in 1986.

II. Electronic Information Sources

Members of the legal community are well-acquainted with the full-text files of laws, regulations, cases, law review articles, and other material found on LEXIS and Westlaw. Less familiar, but of growing importance, are other electronic resources such as bulletin boards, databases, discussion groups, gophers, and World Wide Web sites found on the Internet.

Construction of the information superhighway has been underway for several years, but the tools and equipment necessary to navigate this relatively chaotic information universe have restricted its utility to the computer literate and the network-connected. However, the recent development of innovative interfaces, such as Mosaic and Netscape, and the rise of numerous network service providers have made it easier for network novices to access and use Internet resources. Attorneys, law faculty, and other legal professionals have eagerly joined the throng. Bar association journals and newsletters are now full of articles that describe the Internet and its legal resources and explain how to get connected.

This section identifies and describes electronic resources suitable for the practicing attorney and legal scholar. The sources are divided into two parts, databases and electronic discussion groups. Many of the databases resemble LEXIS and Westlaw as they contain full-text files that may be viewed, printed, or downloaded to the user's computer. Other databases are bibliographic in nature, providing citations to material, but not the text of the material itself. Electronic discussion groups permit users to engage in conversations, debates, and the exchange of opinions and information among the subscribers or participants. The section concludes with a listing of on-line and print sources that explain various Internet functions and describe legal and government information Internet resources.

In the electronic environment, change is rapid. Files appear and disappear without notice, existing services change addresses, the means of connection are altered, and new databases emerge daily. To stay current read magazines or newsletters, such as *Law Office Com-*

puting (Costa Mesa: James Publishing, 1991-date, bimonthly), or monitor an electronic discussion group or two.

A. Databases

The following bibliographic and full-text databases contain or point to information and material relevant to elder law. The means of access vary. For example, one database, AGE_{LINE} [IIA1], is available on a commercial database service that is accessible through Westlaw. Others, such as AGE-NET [IIA2], may be reached by modem, and still others require an Internet connection. Most of these sources are available at no cost to the user, although modem-based databases will result in long-distance expenses for the majority of users.

IIA1 AGE_{LINE}. Produced by the American Association of Retired Persons. Available via Westlaw.

A bibliographic database of English-language publications, including journal articles, books, chapters in books, reports, and government publications published since 1978. Includes approximately 34,000 citations with 500 new citations added each month.

IIA2 AGE-NET
(800) 989-2243 (modem)
(800) 989-6537 (help)
8-N-1 full duplex (settings)

Operated by the National Association of State Units on Aging [IIIA10] with support from the U.S. Administration on Aging [IIIB1]. Designed for persons who are interested in community services for the elderly. Provides information and materials from the National Aging Dissemination Center, the National Information and Referral Support Center, the National Resource Center on State Long Term Care Ombudsmen, the National Resource Center on Elder Abuse [IIIA14], the National Resource Center on Long Term Care [IIIA26], and the National Association of State Units on Aging. Includes text of FEDERAL REGISTER notices and presidential statements relating to the elderly, notices regarding National Eldercare Institutes, Social Security publications (in English and Spanish), funding information, WordPerfect text

of the AGE-NET manual, and the indigent drug programs of various drug companies. Conferences cover long-term care ombudsman programs, elder abuse, legal services, and home- and community-based long-term care. Provides access to two bibliographic databases, a directory database, and downloading functions.

- IIA3 CHOICE IN DYING BBS (CID-BBS)
(212) 727-8219 (modem)
(800) 989-9455 (help)
8-N-1 (modem settings)

Contains files on advance directives, active and passive euthanasia, legal and legislative highlights, and fact sheets.

- IIA4 CLEARINGHOUSE ON ABUSE AND NEGLECT OF THE ELDERLY
(CANE)
(302) 831-3525
(302) 831-6081 fax

A bibliographic database containing citations to more than 34,000 articles, books, and other material from legal, medical, social work, and related sources. Key words used for searching are printed in each issue of the National Clearinghouse on Elder Abuse's newsletter [IIIA14]. Not available for direct searching by users. Contact the Clearinghouse to request a search. Searches cost approximately \$5-10, with full-text document delivery costs of 20 cents per page, including postage.

- IIA5 DEATHNET
URL: <http://www/islandnet.com/deathnet>

Contains full-text files of articles, information, and legislation on choice-in-dying. Covers developments in Canada, the United States, and around the world.

- IIA6 FEDWORLD
(703) 321-3339 or 8020 (modem)
(703) 487-4608 (help)
8-N-1-ANSI or VT100 (modem settings)
FTP: <ftp.fedworld.gov> (192.239.92.205)

Telnet: fedworld.gov or 192.239.92.201

URL: <http://www.fedworld.gov>

Provides centralized access to more than 100 government-operated bulletin board systems with thousands of full-text files, utilities, and connections to on-line library catalogs and databases. Operated by the National Technical Information Service.

IIA7 GENERAL ACCOUNTING OFFICE

Telnet: capaccess.org. Logon: guest. Password: visitor.

Main menu: go gao.

(202) 994-4245 (help)

info@capaccess.org (help)

Contains full-text publications, lists, recent reports, and testimony.

IIA8 GPO ACCESS

(202) 512-1530 (help)

help@eids05.eids.gpo.gov (help)

Contains full-text files of congressional bills, bill status, the CONGRESSIONAL RECORD, General Accounting Office reports, the UNITED STATES CODE, and the FEDERAL REGISTER from 1993. Available for searching at most federal depository libraries.

IIA9 GRIEFNET

Gopher: <gopher.rivendell.org> 9004

URL: <gopher://gopher.rivendell.org:9004>

A collection of material relating to bereavement and loss.

IIA10 NATIONAL INSTITUTES OF HEALTH [IIB4]

FTP: <ftp.cu.nih.gov> (128.231.64.7). User: anonymous. Password: guest.

Gopher: <gopher.nih.gov>

URL: <http://www.nih.gov>

Contains full-text files, reports, calendars, grant information, and connection to the National Library of Medicine catalog.

IIA11 SOCIAL SECURITY ADMINISTRATION [IIIB5]

FTP: [soaf1.ssa.gov/pub](ftp://soaf1.ssa.gov/pub)

URL: <http://www.ssa.gov>

Contains full-text press releases, grant information, statistics, publications, benefits, publication lists, journal article abstracts, summaries of recent legislation, Spanish language documents, the SOCIAL SECURITY HANDBOOK, the MEDICARE HANDBOOK, and other materials. Includes electronic documents from the Health Care Financing Administration [IIIB2].

IIA12 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES [IIIB6]

Gopher: <gopher.os.dhhs.gov> (158.70.252.2)

URL: <http://www.os.dhhs.gov> (158.70.252.2)

Contains full-text grant information, statistics, cancer information, and citations to agency publications, including abstracts. Includes information and electronic documents from several divisions, including the Administration on Aging [IIIB1].

IIA13 WTH-ELD

A new topical database in Westlaw. Contains summaries of selected federal and state cases, laws, regulations, and administrative developments affecting the elderly. Updated daily. Citations to documents added in the past two weeks are displayed when this database is selected.

IIA14 KANSAS ELDER LAW NETWORK

URL: http://ukanaix.cc.ukans.edu/~webmom/keln_main.html

Affiliated with the Elder Law Clinic at the University of Kansas School of Law. Contains links to sources on the internet related to elder law or the elderly, including web sites of organizations and government agencies; legislation; statistics; and information about consumer fraud. Also contains links to general legal sources.

B. Electronic Discussion Groups

Electronic discussion groups provide a forum for the exchange of information among individuals with similar interests. Generally, any interested party may subscribe. List members receive copies of

messages posted by all other list members. To participate, one must have an Internet-accessible electronic mail address. Some, but not all, electronic discussion groups are archived for some period of time, so that users without electronic mail addresses can review postings.

To subscribe, send an electronic mail message to the subscription address. Leave the subject line blank and in body of the message type "subscribe [name of the discussion group] [your first and last name]." New subscribers usually receive acknowledgement of their addition to the list along with instructions for other list functions, such as temporarily suspending a subscription.

To submit a message to the list, address it to the posting address, include a brief subject phrase, and type your comment in the body of the message. To stop the receipt of messages posted to the list, send an electronic mail message to the subscription address, leave the subject line blank, and in the body of the message type "signoff [name of the discussion group]."

IIB1 ADA-LAW
 Subscribe: listserv@vm1.nodak.edu
 Post: ada-law@vm1.nodak.edu

Covers the Americans with Disabilities Act, related legislative developments, and other disability-related subjects.

IIB2 ALZHEIMER
 Subscribe: majordomo@wubios.wustl.edu
 Post: alzheimer@wubios.wustl.edu

An open discussion group for patients, professional care givers, family care givers, researchers, public policy makers, students, and others.

IIB3 BIOETHICSLAW-L
 Subscribe: listserv@acc.wuacc.edu
 Post: Bioethicslaw-L@acc.wuacc.edu

A forum for bioethics law scholars.

IIB4 CRYONICS
 Subscribe: kqb@whscad1.att.com
 Post: cryonics@whscad1.att.com

A forum for topics related to cryonics, including biochemistry of memory, low temperature biology, legal status of cryonics, cryonically suspended people, philosophy of identity, mass media coverage of cryonics, new research, recent publications, and conferences.

IIB5 FAMILYLAW-L

Subscribe: listserv@lawlib.wuacc.edu

Post: familylaw-l@lawlib.wuacc.edu

Used primarily by law school faculty who teach family law.

IIB6 GERINET

Subscribe: listserv@ubvm.cc.buffalo.edu

Post: gerinet@ubvm.cc.buffalo.edu

Deals with geriatric health care from an interdisciplinary perspective.

IIB7 HEALTHLAW-L

Subscribe: listserv@lawlib.wuacc.edu

Post: healthlaw-l@lawlib.wuacc.edu

Covers legal/medical issues.

IIB8 LTCARE-L

Subscribe: listserv@list.nih.gov

Post: lcare-l@list.nih.gov

Discusses research findings relevant to public policy on mental and physical disability, aging, and long-term care. Covers how changes in public policy would affect programs benefiting the frail elderly, such as Medicare, Medicaid, and the Older Americans Act. Maintained by the office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services.

IIB9 SENIOR

Contact: John B. Harlan, ijbh200@indyvax.iupui.edu

Deals with issues relating to the health and lives of senior citizens. Serves as a networking tool to facilitate enhancement of senior health and life by matching the needs

of the elderly with existing services. Open to those interested in the health and lives of the elderly, including health-care providers, social service providers, gerontologists, and others.

C. Electronic Resources Finding Tools

Readers puzzled by some or all of the connection information provided above may find it instructive to consult several of the titles listed here. This section contains a mix of printed books and Internet-accessible text files that explain the organization and operation of the Internet and/or direct users to specific law-related resources. This is a very selective list. It should be noted that bookstores are virtually overflowing with a wide assortment of materials on the Internet.

IIC1 CLEARINGHOUSE OF SUBJECT-ORIENTED INTERNET RESOURCE GUIDES

FTP: [una.hh.lib.umich.edu](ftp://una.hh.lib.umich.edu). Path: /inetdirs

Gopher: [gopher.lib.umich.edu](gopher://gopher.lib.umich.edu)

URL: <http://www.lib.umich.edu/chhome.html>

Contains dozens of guides to Internet resources in the humanities, the sciences, and the social sciences, including disability, government information, law, and legal research. New titles and new editions posted frequently.

IIC2 Maggie Parhamovich. FEDERAL GOVERNMENT INFORMATION ON THE INTERNET. Release 0.8, July 1994. Available at the Clearinghouse [IIC1].

Lists scores of government-sponsored resources accessible by ftp, gopher, telnet, and the World Wide Web.

IIC3 THE INTERNET CONNECTION: YOUR GUIDE TO GOVERNMENT RESOURCES. (Jeff Steinman ed.) Lanham, MD: Bernan Press, 1995-date. Ten per year. Approximately 8 pp. ISSN: 10808493. \$69.

Describes and evaluates government-sponsored electronic bulletin boards and Internet-accessible sites.

IIC4 Daniel P. Dern. THE INTERNET GUIDE FOR NEW USERS. New York: McGraw-Hill, 1994. 570 pp. ISBN: 0070165106. \$27.95.

- IIC5 Don MacLeod. *THE INTERNET GUIDE FOR THE LEGAL RESEARCHER: A HOW-TO GUIDE TO LOCATING AND RETRIEVING FREE AND FEE-BASED INFORMATION ON THE INTERNET*. Teaneck, NJ: InfoSources Publishing, 1995. 305 pp. ISBN: 0939486342. \$50.
- IIC6 James Milles. *INTERNET HANDBOOK FOR LAW LIBRARIANS*. Dobbs Ferry, NY: Glanville Publishers, 1993. 64 pp. (A Law Library Information Report) ISBN: 0878020934. ISSN: 02688336. \$100.
- IIC7 Blake Gumprecht. *INTERNET SOURCES OF GOVERNMENT INFORMATION*. 2d ed. February 26, 1994. Available at the Clearinghouse [IIC1].
Identifies and describes more than 325 electronic resources accessible by electronic mail, ftp, gopher, telnet, and the World Wide Web.
- IIC8 Lyonette Louis-Jacques. *LAW LISTS*. February 12, 1995. URL: <gopher://lawnext.uchicago.edu:70/11/.internet/.lists>
An alphabetical list of electronic discussion groups related to law. Updated periodically.
- IIC9 Marcus P. Zillman. *LAWLINK: GLOBAL INTERNET RESOURCES AND DATABASES*. [Marco Island, FL]: The author, 1994-date. Annual. ISSN: 10779639. \$89.95.
- IIC10 *LEGAL DOMAIN NETWORK*
URL: <http://www.kentlaw.edu/lawnet/lawnet.html>
Consolidates and coordinates all substantive legal information and discussions on the Internet. Provides access to selected Internet resources for law-related organizations only. Operated and maintained by the Chicago-Kent College of Law and Villanova University School of Law.
- IIC11 Erik J. Heels. *THE LEGAL LIST: LAW-RELATED RESOURCES ON THE INTERNET AND ELSEWHERE*. Eliot, ME: Erik J. Heels. Irregular. \$12.17. Version 5.1 available at the Clearinghouse [IIC1]. FTP: <ftp://midnight.com> Path: [pub/LegalList/legallist.txt](ftp://midnight.com/pub/LegalList/legallist.txt)
Gopher: [gopher.usmacs.maine.edu](gopher://usmacs.maine.edu)

A consolidated list of law-related resources available on the Internet and elsewhere. Includes resources accessible by electronic mail, ftp, gopher, modem, telnet, and the World Wide Web.

- IIC12 Josh Blackman. *THE LEGAL RESEARCHER'S INTERNET DIRECTORY: 1993/1994*. Brooklyn: Legal Research of New York, 1993. 137 pp. \$49.95.
- IIC13 Bruce Maxwell. *WASHINGTON ONLINE: HOW TO ACCESS THE FEDERAL GOVERNMENT ON THE INTERNET*. Washington: Congressional Quarterly, 1995. 402 pp. ISBN: 1568020341. \$19.95.
- IIC14 Bruce Maxwell. *WASHINGTON ONLINE: HOW TO ACCESS THE GOVERNMENT'S ELECTRONIC BULLETIN BOARDS*. Washington: Congressional Quarterly, 1995. 340 pp. Index. ISBN: 1568020007. \$19.95.

Describes and provides connection information for approximately 200 government-sponsored electronic bulletin boards. Arranged by broad topics. Includes a glossary of terms.

- IIC15 Ed Krol. *THE WHOLE INTERNET USER'S GUIDE AND CATALOG*. 2d ed. Sebastopol, CA: O'Reilly & Associates, 1994. 544 pp. (Nutshell Handbook) ISBN: 1565920635. \$24.95.

A basic but thorough guide to accessing and exploring the Internet.

III. Organizations and U.S. Government Agencies

Organizations and government agencies are among the most reliable and timely information resources for the busy researcher. Individuals who work with elder law issues on a daily basis can provide assistance, advice, materials, and referrals to other relevant resources.

For each organization or government agency, the following information is provided: name and acronym, address, telephone and telefacsimile numbers, electronic mail address, description of focus, activities, membership, programs, and selected publications (with references to entry numbers for those publications that are described elsewhere in this research guide).

Organizations and government agencies were contacted in March 1995 to verify the accuracy of the information. As organizations dissolve, combine, relocate, and emerge, the information provided here will become out-of-date. For current information about organizations, consult the *Encyclopedia of Associations* (Detroit: Gale Research, annual), a standard reference title found in most academic and public libraries. For current information about departments of the federal government, consult *The U.S. Government Manual* (Washington: Office of the Federal Register, annual) or *Carroll's Federal Directory: Executive, Legislative, Judicial* (Washington: Carroll Publishing, bimonthly).

A. Organizations

Dozens of associations, institutes, organizations, and resource centers deal with numerous aspects of elder law and other issues affecting aged Americans. This selective list includes organizations that primarily deal with law and the elderly (such as Legal Counsel for the Elderly [IIIA6] and the National Academy of Elder Law Attorneys [IIIA7]), as well as groups that have a narrower focus based on populations served (such as the National Caucus and Center on Black Aged [IIIA12] and the National Hispanic Council on Aging [IIIA19]) or subjects addressed (such as the National Center for Home Equity Conversion [IIIA13] and the National Resource and Policy Center on Rural Long-Term Care [IIIA27]). Several of these organizations receive all or part of their funding from the U.S. Administration on Aging [IIIB1]. Consequently, many of their publications are available directly from the organization and from the funding agency. In addition, hundreds of academic, court, government, law school, and public libraries around the country receive and maintain collections of federal government publications as participants in the Federal Depository Library Program.

- IIIA1 American Association of Homes and Services for the Aging (AAHSA)
901 E Street, NW, Suite 500
Washington, DC 20004-2037
(202) 783-2242
(202) 783-2255 fax

A national organization representing some 5000 not-for-profit homes, housing, health-related facilities, and commu-

nity service organizations for the elderly. Works to identify and solve problems associated with care of the aging. Maintains contact with Congress and federal agencies. Holds two conferences each year, with the first taking place in Washington, DC, in the spring, and the second in the fall. Formerly called the American Association of Homes for the Aging (AAHA). Publications include the AAHSA LEGAL MEMO, quarterly; AAHSA PROVIDER NEWS, monthly; AAHA ASSISTED LIVING STATE CODE WORKBOOK: STATE-BY-STATE PHYSICAL PLANT REQUIREMENTS AND CONTACTS, 1992; THE CONSUMERS' DIRECTORY OF CONTINUING CARE RETIREMENT COMMUNITIES, 1994; THE CONTINUING CARE RETIREMENT COMMUNITY: A GUIDEBOOK FOR CONSUMERS, 1990; WASHINGTON REPORT, biweekly.

- III A2 American Society on Aging (ASA)
 833 Market Street, Suite 511
 San Francisco, CA 94103-1824
 (415) 974-9600
 (415) 974-0300 fax
 73021.2477@compuserve.com

Concerned with the well-being of the elderly. Members include health-care and social services providers, researchers, and the elderly. Conducts continuing education programs for professionals who work with the elderly. Holds an annual meeting in the spring. Produces videotapes and other material, including newsletters on mental health, aging, disability, older adult education, managed care, retirement planning, and marketing to the elderly. Publications include AGING TODAY, bimonthly; CHALLENGES AND INNOVATIONS IN HOMECARE, 1994; FAMILY CAREGIVING: AN AGENDA FOR THE FUTURE, 1994; GENERATIONS, quarterly.

- III A3 Association of American Law Schools (AALS)
 Section on Aging and the Law
 1201 Connecticut Avenue, NW, Suite 800
 Washington, DC 20036-2605
 (202) 296-8851
 (202) 296-8869 fax
 aals@capcon.net

One of seventy-three sections. Conducts programs at the AALS annual meeting, many of which are published in law reviews. Promotes communication among section members, makes recommendations on matters affecting the aging, law relating to the aging, and the development of legal education programs about aging and law. Publications include the NEWSLETTER [IC13].

III A4 The Center for Social Gerontology (TCSG)

2307 Shelby Avenue
Ann Arbor, MI 48103-3803
(313) 665-1126
(313) 665-2071 fax

Strives to influence policymakers and to promote the autonomy and well-being of the elderly. Deals with legal issues such as elder abuse, guardianship and its alternatives, and access to legal services. Encourages and conducts research, disseminates information, and conducts training for professionals and technical workers in the field of aging. Focuses on law and social policy issues, particularly housing, income security, health care, employment, and independent living. Comprised of lawyers, legal educators, other professionals who work with the aging, and older persons and their families. Cosponsors the annual Joint Conference on Law and Aging [ID11]. Supported by the U.S. Administration on Aging [IIB1] and the Retirement Research Foundation. Publications include AGE DISCRIMINATION IN EMPLOYMENT LAW, 1986; BEST PRACTICE NOTES ON DELIVERY OF LEGAL ASSISTANCE TO OLDER PERSONS [IC2]; GUARDIANSHIP AND ALTERNATIVE LEGAL INTERVENTIONS: A COMPENDIUM FOR TRAINING AND PRACTICE, 1986; GUIDE TO THE DEVELOPMENT OF STATEWIDE STANDARDS FOR THE DELIVERY OF LEGAL ASSISTANCE TO OLDER INDIVIDUALS; GUIDELINES FOR PLANNING AND EVALUATING LEGAL ASSISTANCE PROGRAMS FUNDED UNDER THE OLDER AMERICANS ACT; HEADNOTES ON CRITICAL LEGAL ISSUES AFFECTING OLDER PERSONS, quarterly; NATIONAL STUDY ON GUARDIANSHIP SYSTEMS: FINDINGS AND RECOMMENDATIONS, 1992.

- IIIA5** Commission on Legal Problems of the Elderly
American Bar Association
740 15th Street, NW
Washington, DC 20005
(202) 662-8690
(202) 662-1032 fax

Established to examine and respond to the law-related needs of the elderly. Provides training and technical assistance to improve the quality of legal resources for aging Americans. Disseminates legal materials. Training focuses on elder-care, disability, and ethical issues. Cosponsors the annual Joint Conference on Law and Aging [ID11]. Produces booklets, articles, and videotapes. Publications include *ALTERNATIVES TO GUARDIANSHIP: SUBSTANTIVE TRAINING MATERIALS AND MODULE FOR PROFESSIONALS WORKING WITH THE ELDERLY AND PERSONS WITH DISABILITIES, 1992*; *BIFOCAL* [IC3]; *BULLETIN TO BAR COMMITTEES/SECTIONS ON THE ELDERLY*, bimonthly; *COURT-RELATED NEEDS OF THE ELDERLY AND PERSONS WITH DISABILITIES: A BLUEPRINT FOR THE FUTURE, 1991*; *DIRECTORY OF LAW AND AGING COURSES IN U.S. LAW SCHOOLS, 1989*; *ETHICAL ISSUES IN REPRESENTING OLDER CLIENTS, 1994*; *GRANDPARENT VISITATION DISPUTES: A LEGAL RESOURCE MANUAL, 1989*; *GUARDIANSHIP FOR THE ELDERLY: A PRIMER FOR ATTORNEYS, 1990*; *INTO THE JURY BOX: A DISABILITY ACCOMMODATION GUIDE FOR STATE COURTS, 1994*; *THE LAW AND AGING RESOURCE GUIDE* [IF2]; *PATIENT SELF-DETERMINATION ACT STATE LAW GUIDE, 1991*.

- IIIA6** Legal Counsel for the Elderly (LCE)
American Association of Retired Persons (AARP)
601 E Street, NW
Washington, DC 20049
(202) 434-2120
(202) 434-6464 fax

Provides training and technical assistance on substantive law, advocacy skills, protective services, and the expansion of legal services programs for older persons. Tests and replicates new methods for providing free legal assistance through bar-sponsored lawyer referral programs, volunteer

paralegals, and retired and semi-retired attorneys. Sponsors hot lines in nine states. Cosponsors the annual Joint Conference on Law and Aging [ID11]. Supported by the U.S. Administration on Aging [IIIB1]. Publications include the 1993 ELDERLAW DIRECTORY OF SEMINARS, COURSES, AND CLINICS IN U.S. LAW SCHOOLS, 1993; DECISION-MAKING, INCAPACITY AND THE ELDERLY: A PROTECTIVE SERVICES MANUAL, 1989; DISABILITY PRACTICE MANUAL, 1993; ELDERLAW EXPRESS [IC16]; ELDER LAW FORUM [IC6]; FINDING LEGAL HELP: AN OLDER PERSON'S GUIDE, 1995; MEDICARE PRACTICE MANUAL, 1995; PLANNING FOR INCAPACITY: A SELF-HELP GUIDE, 1992; A PRACTICAL GUIDE TO NURSING HOME ADVOCACY, 1993; TRAINING MODULE ON FOOD STAMPS, SS RETIREMENT, SS DISABILITY, SSI, NURSING HOME, PROTECTIVE SERVICES, MEDICARE, 1994.

- IIIA7 National Academy of Elder Law Attorneys, Inc. (NAELA)
1604 North Country Club Road
Tucson, AZ 85716
(602) 881-4005
(602) 325-7925 fax

Concerned with improving the availability of legal services to older persons. Works to define the emerging field of elder law, establish practice standards, and create an information network among elder law attorneys. Members include attorneys, law professors, judges, students, and others interested in the delivery of legal services to the elderly. Meets twice a year [ID9]. Publications include the EXPERIENCE REGISTER [IF1]; NAELA NEWS [IC10]; NAELA QUARTERLY [IC11].

- IIIA8 National Alliance of Senior Citizens (NASC)
1700 18th Street, NW, Suite 401
Washington, DC 20009
(202) 986-0117
(202) 986-2974 fax

Seeks to inform Congress, state legislatures, and the American public about the needs of the elderly. Conducts educational programs and holds periodic meetings. Publications include the SENIOR GUARDIAN, irregular.

- III A9 National Association of Area Agencies on Aging (NAAAA)
 1112 16th Street, NW, Suite 100
 Washington, DC 20036
 (202) 296-8130
 (202) 296-8134 fax
 (800) 677-1166 Eldercare Locator

Established by the Older Americans Act. Concerned with government policies and programs affecting the elderly. Provides information to the government, businesses, and the public. Holds an annual meeting in the summer. Operates the Eldercare Locator, a telephone referral service to public programs. Publications include the NAAAA NETWORK NEWS, monthly; NATIONAL DIRECTORY OF ELDERCARE INFORMATION AND REFERRAL: DIRECTORY OF STATE AND AREA AGENCIES ON AGING, annual.

- III A10 National Association of State Units on Aging (NASUA)
 1225 I Street, NW, Suite 725
 Washington, DC 20005
 (202) 898-2578
 (202) 898-2583 fax

Provides general and specialized information, technical assistance, and professional development support to state aging units that administer funds and programs under the Older Americans Act. Operates AGE-NET [IIA2], an electronic bulletin board, and the National Aging Dissemination Center. Publishes manuals, reports, policy briefs, and legislative updates. Holds an annual meeting. Cosponsors the National Resource Center on Elder Abuse [IIIA16] and the National Resource Center on State Long Term Care Ombudsman Programs. Many publications produced under grants from the U.S. Administration on Aging [IIIB1]. Distributed to federal depository libraries in microfiche. Publications include the DIRECTORY OF STATE UNITS ON AGING, periodic; NATIONAL SYMPOSIUM ON DELIVERY OF LEGAL ASSISTANCE TO OLDER PERSONS SYMPOSIUM MATERIALS, 1987; AN ORIENTATION TO THE OLDER AMERICANS ACT, 1985; PUTTING KNOWLEDGE TO WORK FOR OLDER AMERICANS, bimonthly; STATE INITIATIVES IN ELDERLY HOUSING: WHAT'S NEW, WHAT'S TRIED AND TRUE, 1987;

TOWARD A NATIONAL STRATEGY TO ENHANCE INFORMATION
AND REFERRAL SYSTEMS FOR OLDER PEOPLE IN THE 1990s, 1990.

- IIIA11 National Bar Association
Black Elderly Legal Assistance Support Project
1225 11th Street, NW
Washington, DC 20001
(202) 842-3900
(202) 842-3900 fax

Stimulates local chapters of the National Bar Association to become involved in establishing and expanding African American and other minority community care coalitions. Supports the coalitions by providing technical and legal assistance. Uses members of the National Bar Association, statewide minority bar programs, minority law students, minority bar group alliances, and private attorneys to form links with community groups recognized by minority citizens as integral members of their communities. Supported by the U.S. Administration on Aging [IIIB1].

- IIIA12 National Caucus and Center on Black Aged, Inc. (NCBA)
1424 K Street, NW, Suite 500
Washington, DC 20005
(202) 637-8400
(202) 347-0895 fax

Focuses on improving the quality of life for African American and low-income elderly. Works to eliminate poverty for all elderly Americans, to improve the health status and quality of health care for African American seniors, and to increase minority participation in programs and services for the aged. Provides training and professional development opportunities for persons working in the field of aging. Acts as an advocate on national policy issues affecting African American elderly before Congress and federal agencies. Supported by the U.S. Administration on Aging [IIIB1]. Publications include the *GOLDEN PAGE*, 1976-date, three per year.

- IIIA13 National Center for Home Equity Conversion (NCHC)
7373 147th Street, West
Apple Valley, MN 55124

(612) 953-4474

(612) 953-4474 fax

A private, nonprofit organization. Provides consumer information and education on reverse mortgages. Publications include *RETIREMENT INCOME ON THE HOUSE: CASHING IN ON YOUR HOME WITH A "REVERSE" MORTGAGE*, 1993; *SALE LEASEBACK GUIDE AND MODEL DOCUMENTS*, 1985; *YOUR NEW RETIREMENT NEST EGG: A CONSUMER GUIDE TO THE NEW REVERSE MORTGAGES*, 1995.

- III A14 National Center on Elder Abuse (NCEA)
 American Public Welfare Association (APWA)
 Research and Demonstration Department
 810 First Street, NE, Suite 500
 Washington, DC 20002-4267
 (202) 682-2470
 (202) 289-6555 fax

Operated jointly by the APWA, the National Association of State Units on Aging [III A10], the National Committee for the Prevention of Elder Abuse, and the University of Delaware College of Human Resources under a grant from the U.S. Administration on Aging [IIIB1]. Serves as a clearinghouse to develop and disseminate information. Provides training and technical assistance to professionals and others concerned about elder abuse. Conducts research and demonstration projects of national significance. Collects statistics on elder abuse and analyzes the data as part of the National Elder Abuse Incidence Study. Monitors state elder abuse laws. Manages the Clearinghouse on Abuse and Neglect of the Elderly (CANE) [IIA4], a literature database. Formerly called the National Aging Resource Center on Elder Abuse (NARCEA). Publications include *ELDER ABUSE: QUESTIONS AND ANSWERS. AN INFORMATION GUIDE FOR PROFESSIONALS AND CONCERNED CITIZENS*, 1994; *FINDINGS OF FIVE ELDER ABUSE STUDIES: FROM THE NARCEA RESEARCH GRANTS PROGRAM*, 1991; *INSTITUTIONAL ELDER ABUSE: A SUMMARY OF DATA GATHERED FROM STATE UNITS ON AGING, STATE APS AGENCIES, AND STATE LONG-TERM CARE OMBUDSMAN PROGRAMS*, 1992; *NCEA EXCHANGE*, 1989-date, quarterly (previ-

ous title was NARCEA EXCHANGE); SUMMARIES OF THE STATISTICAL DATA ON ELDER ABUSE IN DOMESTIC SETTINGS FOR FY90 AND FY91, 1993.

IIIA15 National Citizens' Coalition for Nursing Home Reform
(NCCNHR)

1424 16th Street, NW, Suite 202

Washington, DC 20036-2211

(202) 332-2275

(202) 332-2949 fax

An organization of 300 citizen advocacy, resident, and ombudsman groups. Works to assure the quality of care in nursing homes. Provides consumer-oriented educational materials and information. Operates the National Long Term Care Ombudsman Resource Center, which supports the development and operation of long-term care ombudsman programs across the nation and within each state through technical assistance, consultation, and information dissemination. Communicates with state ombudsman programs to determine timely issues, program needs, resources, training, technical assistance, and materials. Assists states in promoting public awareness of ombudsman programs. Cooperates with the National Center on Elder Abuse [IIIA14], the Long Term Care Resource Centers, and other relevant centers, institutes, and programs funded by the U.S. Administration on Aging [IIIB1]. Publications include *AVOIDING DRUGS USED AS CHEMICAL RESTRAINTS: NEW STANDARDS IN CARE: A GUIDE FOR RESIDENTS, FAMILIES, FRIENDS AND CAREGIVERS, 1994*; *AVOIDING PHYSICAL RESTRAINT USE: NEW STANDARDS IN CARE: A GUIDE FOR RESIDENTS, FAMILIES, AND FRIENDS, 1993*; *NURSING HOME REFORM LAW: THE BASICS, 1991*; *QUALITY CARE ADVOCATE, 1985-date, bimonthly.*

IIIA16 National Clearinghouse on Elder Abuse (NCEA)

College of Human Resources

University of Delaware

Newark, DE 19716

(302) 831-3525

(302) 831-6081 fax

Collects and disseminates information on elder abuse. Operates the Clearinghouse on Abuse and Neglect of the Elderly (CANE) [IIA4], a bibliographic database. Works with the National Center on Elder Abuse [IIIA14].

- IIIA17 National Consumer Law Center, Inc.
 Eldercare Initiative in Consumer Law
 18 Tremont Street, Suite 400
 Boston, MA 02108-2336
 (617) 523-8010
 (617) 523-7398 fax

Provides technical assistance, training, and case assistance to the Administration on Aging [IIIB1] and the Legal Services Corporation in applying consumer law to resolve legal problems facing elderly clients. Prepares model pleadings, model defenses, regional and national workshops, legal practice guides, consumer education materials, and articles. Supported by the U.S. Administration on Aging. Publications include *DEALING WITH UTILITY COMPANIES REGARDING DISPUTED BILLS AND UTILITY DEPOSITS, 1994*; *PREVENTING FORECLOSURES: SPOTTING LOAN SCAMS INVOLVING VULNERABLE HOMEOWNERS, 1993*; "SPENDING" YOUR HOUSE: WHEN ARE REVERSE MORTGAGES A GOOD IDEA?, 1994; *WHEN OLDER AMERICANS FALL VICTIM TO TELEMARKETING SCAMS, 1993*.

- IIIA18 National Council on the Aging (NCOA)
 509 Third Street, SW
 Washington, DC 20024
 (202) 479-1200
 (202) 479-0735 fax

Serves as a national resource for information, training, advocacy, and research on many aspects of aging. Sponsors conferences and workshops. Publications include *CURRENT LITERATURE ON AGING, 1963-1989*; *NCOA NETWORKS, 1989-date, bimonthly*.

- IIIA19 National Hispanic Council on Aging (NHCOA)
 2713 Ontario Road, NW
 Washington, DC 20009

(202) 265-1288

(202) 745-2522 fax

Works to increase the positive life chances of older Latinos by reducing the factors that lead to economic disadvantage. Develops educational and informational materials. Conducts training on empowerment skills. Forges links and collaborative relationships with national organizations, coalitions, and networks focused on issues related to income security, including the Congressional Hispanic Caucus, the National Association of Latino Elected and Appointed Officials, the Hispanic Leadership Agenda, and the Hispanic Leadership Conference. Supported by the U.S. Administration on Aging [IIIB1]. Publications include *ELDERLY LATINOS: ISSUES AND SOLUTIONS FOR THE 21ST CENTURY*, 1993-date, biennial.

IIIA20 National Indian Council on Aging (NICOA)

6400 Uptown Boulevard, NE, Suite 510W

Albuquerque, NM 87110

(505) 888-3302

(505) 888-3276 fax

Works to increase public awareness and to improve home- and community-based long-term care to the minority elderly, especially Indian elders. Develops and disseminates materials, public service announcements, and videos. Supported by the U.S. Administration on Aging [IIIB1]. Publications include *INDIAN VOICES*, quarterly; *A LEGACY LOST: AMERICA'S INDIAN ELDERS*, videotape, 1994; *REPORT FOR THE 1995 WHITE HOUSE CONFERENCE ON AGING*, 1995.

IIIA21 National Institute on Senior Employment and Volunteerism

Center on Aging

University of Maryland at College Park

HHP Building, Room 2367

College Park, MD 20742-2611

(301) 405-2470

(301) 314-9167 fax

Works to increase public awareness of volunteer and job opportunities in the field of elderly care, as well as dissemi-

nating information on a variety of elderly related employment issues. Analyzes policies. Maintains a database of material generated by the Institute. Conducts conferences and workshops. Provides technical assistance and training modules. Supported by the U.S. Administration on Aging [IIIB1]. Publications include THE AMERICANS WITH DISABILITIES ACT: ENSURING BENEFITS FOR OLDER WORKERS WITH DISABILITIES, 1993; ANNOTATED BIBLIOGRAPHY ON VOLUNTEERISM AND AGING; INCOME SECURITY AND RETIREMENT DECISIONS: INFORMING OLDER WOMEN ABOUT PRIVATE PENSION PROGRAMS, 1993; LEGISLATION AGAINST AGE DISCRIMINATION: U.S. EXPERIENCE; VOLUNTEERS AND LIABILITY ISSUES: RESOURCE BRIEF, 1994.

- IIIA22 National Legal Center for the Medically Dependent & Disabled, Inc.
 50 South Meridian, Suite 605
 Indianapolis, IN 46204-3541
 (317) 632-6245
 (317) 632-6542 fax

A nonprofit public interest law office and national support center funded by the Legal Services Corporation. Works to protect the rights of indigent persons with disabilities and serious medical needs and to disseminate relevant legal and medical information to the legal community. Provides legal expertise on issues affecting the civil rights of persons with disabilities. Conducts an annual training conference in April. Participates in selected litigation by filing amicus briefs and consulting with litigants, particularly in right-to-die and assisted suicide cases. Publications include EMERGENCY RESOURCES AND INFORMATION TO PROTECT PERSONS WITH DISABILITIES IN OBTAINING ESSENTIAL MEDICAL CARE AND TREATMENT, 1995 (tentative title); ISSUES IN LAW & MEDICINE, 1985-date, quarterly; STATE STATUTORY AND JUDICIAL AUTHORITY BEARING ON THE DETERMINATION OF COMPETENCY TO EXECUTE AN ADVANCE DIRECTIVE OR MAKE HEALTH CARE DECISIONS, 1992.

- IIIA23 National Legal Support for Elderly People with Mental Disabilities

Judge David L. Bazelon Center for Mental Health Law
1101 15th Street, NW, Suite 1212
Washington, DC 20005-5002
(202) 467-5730
(202) 223-0409 fax

Trains advocates to meet the needs of the elderly with mental disabilities. Produces and disseminates publications on issues facing elderly persons with mental disabilities. Trains attorneys and provides technical assistance and case consultations on laws that protect elderly persons with mental disabilities. Conducts regional training programs and other presentations for advocates of the elderly and people with mental disabilities. Participates in the national Joint Conference on Law and Aging [ID11] and other national conferences. Supported by the U.S. Administration on Aging [IIB1], the William Penn Foundation, and private contributions. Publications include *ELDERS ASSERT THEIR RIGHTS: A GUIDE FOR RESIDENTS, FAMILY MEMBERS AND ADVOCATES TO THE LEGAL RIGHTS OF ELDERLY PEOPLE WITH MENTAL DISABILITIES IN NURSING HOMES*, 1993; *ENFORCING THE RIGHTS OF OLDER PERSONS WITH MENTAL DISABILITIES*, 1992; *FUTURE CARE PLANNING: DEVELOPING A PROGRAM FOR FUTURE CARE PLANNING FOR PERSONS WITH MENTAL DISABILITIES*, 1992; *REPRESENTING NURSING HOME RESIDENTS: A MANUAL FOR ADVOCATES*, 1993.

IIIA24 National Long-Term Care Resource Center
Institute of Health Services Research
School of Public Health
University of Minnesota
420 Delaware Street, SE, Box 197
Minneapolis, MN 55455
(612) 624-5171
(612) 624-5434 fax

A joint program of the University of Minnesota and the National Academy of State Health Policy, with support from the U.S. Administration on Aging [IIB1]. Assists the aging network to develop, administer, monitor, and refine community-based long-term care systems reform. Focuses on ethics

and decision making, links between long-term and acute care, rehabilitation, health-care reform, assessment, and case management. Publications include *DECIDING WHETHER THE CLIENT CAN DECIDE: ASSESSMENT OF DECISION-MAKING CAPABILITY*, 1990; *ETHICS AND LONG-TERM CARE: A CATALOGUE OF ISSUES*, 1993; *PRIVATE SECTOR INITIATIVES IN LONG-TERM CARE: IMPLICATIONS FOR THE AGING NETWORK*, 1991; *WHO OWES WHOM WHAT? PERSONAL, FAMILY, AND PUBLIC RESPONSIBILITY FOR PAYING FOR LONG-TERM CARE*, 1995.

- IIIA25 National Policy and Resource Center on Women and Aging
Heller Graduate School
Brandeis University
Waltham, MA 02254-9110
(617) 736-3866
(617) 736-3881 fax
natwomctr@binah.cc.brandeis.edu

Conducts research and policy analysis on issues relating to older women. Provides training and technical assistance. Working to develop a community education campaign. Supported by the U.S. Administration on Aging [IIIB1].

- IIIA26 National Resource and Policy Center on Housing and Long Term Care
University of Southern California
Andrus Gerontology Center
Los Angeles, CA 90089-0191
(213) 740-1364
(213) 740-8241 fax

Works to make housing a more integral part of long-term care. Conducts research, policy analysis, training, and technical assistance. Disseminates results to key audiences. Produces technical assistance guides, policy briefs, case study briefs, reports, issue papers on the disadvantaged elderly, scenarios for future action, and fact sheets. Analyzes best practices in government-assisted housing, assisted living, home modifications, and naturally occurring retirement communities. Develops blueprints for the future. Cooperates with the National Association of Area Agencies on Aging

[IIIA9], Brandeis University's Policy Center on Aging, and the National Association of Housing and Redevelopment Officials. Supported by the U.S. Administration on Aging [IIIB1]. Publications include ASSISTED LIVING RESOURCE GUIDE, 1994; FEDERAL ANTI-DISCRIMINATION LAWS AND FRAIL OLDER TENANTS; REVERSE MORTGAGE RESOURCE GUIDE.

- IIIA27 National Resource and Policy Center on Rural Long-Term Care
University of Kansas Medical Center
Center on Aging
3901 Rainbow Boulevard
Kansas City, KS 66160-7117
(913) 588-1636
(913) 588-1201 fax

Focuses on improving the availability of and access to community-based long-term care services for the rural elderly. Provides rural communities materials, tools, information, and multidisciplinary expertise to facilitate development of effective, appropriate, and acceptable long-term care service systems. Supported by the U.S. Administration on Aging [IIIB1].

- IIIA28 National Resource Center: Diversity and Long Term Care
Brandeis University
Heller School, Institute for Health Policy
PO Box 9110
Waltham, MA 02254
(617) 736-3930
(617) 736-3928 fax

A joint project of Brandeis University and San Diego State University, with support from the U.S. Administration on Aging [IIIB1]. Conducts research and training and provides technical assistance and information. Concentrates on diversity in resource distribution, infrastructure (systems and services), care strategies, and consumer roles and choices. Assists federal, state, and local policymakers, as well as practitioners concerned with community care, to recognize and respond to the increasing diversity of the frail elderly and

other disabled and chronically ill persons with respect to race/ethnicity, gender, age, community features (urban/suburban/rural), economic status, and type of disability or chronic disease.

- IIIA29 National Resource Center for Older American Indians, Alaska Natives, and Native Hawaiians
Resource Center on Native American Aging
University of North Dakota
PO Box 8274
Grand Forks, ND 58202-7134
(701) 777-4291
(800) 896-7628
(701) 777-3292 fax

Aims to enhance knowledge about older Native Americans in order to increase and improve the development and provision of services to them. Develops and disseminates technical information and expertise to tribal organizations, Native American communities, educational institutions, professionals, and paraprofessionals in the field. Supported by the U.S. Administration on Aging [IIIB1]. Publications include *NATIVE AMERICAN VISIONS*, quarterly.

- IIIA30 National Senior Citizens Law Center (NSCLC)
1818 H Street, NW, Suite 700
Washington, DC 20006
(202) 887-5280
(202) 785-6792 fax

Specializes in legal problems of the elderly. Supports legal services programs and advocates working with low-income elderly clients. Provides litigation assistance, research, consulting services, and training. Covers Social Security, Medicare/Medicaid, nursing home, home care, pension rights, age discrimination, and Americans with Disabilities Act issues. Sponsors conferences and workshops, including the annual Joint Conference on Law and Aging [ID11]. Publishes guides and handbooks. Operates the National Eldercare Legal Assistance Project. Publications include *ACCESS TO FEDERAL PUBLIC BENEFIT PROGRAMS BY THE*

ELDERLY, 1992; NSCLC WASHINGTON WEEKLY [IC12]; NURSING FACILITY TRANSFER AND DISCHARGE: A MANUAL FOR RESIDENTS' ADVOCATES, 1994; NURSING HOME LAW LETTER, monthly; REPRESENTING OLDER PERSONS: AN ADVOCATES MANUAL, 1993; STATE INTERMEDIATE SANCTIONS FOR NURSING HOMES, 1988.

IIIA31 Native Elder Health Care Resource Center (NEHCRC)

University of Colorado at Denver
4455 East 12 Avenue, Campus Box A011-13
Denver, CO 80220
(303) 372-3228
(303) 372-3579 fax

Concentrates on ascertaining health status and conditions, improving practice standards, increasing access to care, and mobilizing community resources. Conducts continuing education workshops and home-based, self-study certificate programs for nursing, social work, physical therapy, exercise physiology, pharmacy, nutrition, dental, psychology, and medical personnel. Offers electronic information and access to an indexed database of program descriptions on the Denver Freenet (telnet: freenet.hsc.colorado.edu or modem: (303) 270-4865). Supported by the U.S. Administration on Aging [IIIB1]. Publications include APPLIED RESEARCH ON HEALTH AND ETHNICITY: AMERICAN INDIAN AND ALASKA NATIVE ELDERLY (an annotated bibliography).

IIIA32 Pension Rights Center

918 16th Street, NW, Suite 704
Washington, DC 20006
(202) 296-3776
(202) 833-2472 fax

A nonprofit public interest group established to educate the public about pension issues, to promote and protect the pension interests of workers and retirees, and to develop solutions to the nation's pension problems. Operates the Eldercare Pension Information Clearinghouse to collect and disseminate pension information to eldercare providers. Supported by the U.S. Administration on Aging [IIIB1]. Publica-

tions include the NATIONAL PENSION ASSISTANCE PROJECT LAWYERS DIRECTORY; PROTECTING YOUR PENSION MONEY, 1990; YOUR PENSION RIGHTS AT DIVORCE: WHAT WOMEN NEED TO KNOW, 1991.

III A33 Project Aliento

Asociacion Nacional Pro Personas Mayores
3325 Wilshire Boulevard, Suite 800
Los Angeles, CA 90010
(213) 487-1922
(213) 385-3014 fax

Works to make the formal aging network accessible to the Hispanic elderly and their families and to broaden the base of agencies and groups involved in providing aging services to the Hispanic elderly. Develops and disseminates a bilingual resource guide for training church-based volunteer care givers. Supported by the U.S. Administration on Aging [IIIB1].

III A34 SeniorNet

399 Arguello Boulevard
San Francisco, CA 94118
(415) 750-5030
(415) 750-5045 fax
seniornet@aol.com

A nonprofit organization of senior citizens that seeks to bring wisdom to the information age by teaching computer skills to older adults. Operates the SeniorNet Online system which offers discussion groups on subjects of interest to seniors. Supported in part by the Markle Foundation, the Gray Panthers, and the Older Women's League. Publications include NEWSLINE, 1989-date, quarterly; SENIORNET SOURCEBOOK.

B. U.S. Government Agencies

The policies and programs of several U.S. agencies profoundly affect the lives of aging Americans. These agencies determine eligibility and disburse funds for programs such as Medicare, Medicaid, and Social Security.

Readers may contact agencies directly to be added to mailing lists to receive announcements, press releases, and selected publications. For older materials or to review collections of publications from these and other federal agencies, consult the nearest federal depository library. Nearly 1400 libraries, including virtually all law school and appellate court libraries, participate in this program, which provides government publications to the libraries free of charge. Most federal depository libraries arrange their documents by the Superintendent of Documents classification number (SuDoc). Because each depository library is allowed to select those categories of documents more suitable for their local users, all documents will not be found in all locations.

III B1 Administration on Aging (AoA)
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201
(202) 401-4634
(202) 401-7741 fax
(800) 677-1116 Eldercare Locator

Administers the Older Americans Act of 1965 (42 U.S.C. §§ 3001-3058ee). Advises federal departments and agencies on the characteristics and needs of older people. Develops policies, plans, and programs to promote the welfare of senior citizens. Administers a program of formula grants to states to establish state and community programs for older persons under Title III of the act (45 C.F.R. § 1321). Coordinates programs and funding with state and regional area agencies on aging to develop community-based services. Supports the work of several resource centers working on long-term care, legal assistance for the elderly, and services for minority populations. Operates the Eldercare Locator, a nationwide directory assistance service designed to help older persons and care givers locate local support resources for aging Americans. Contributes electronic publications to the electronic information site maintained by the U.S. Department of Health and Human Services [IIA12]. SuDoc: HE1.1000. Publications include *AGING*, quarterly; *COMPENDIUM OF PRODUCTS*, 1993.

- IIIB2** Health Care Financing Administration (HCFA)
 200 Independence Avenue, SW
 Washington, DC 20201
 (202) 690-6726
 (202) 690-6262 fax

Administers Medicare and Medicaid programs. Contributes electronic documents to the electronic information site maintained by the Social Security Administration [IIA11]. SuDoc: HE22. Publications include HCFA RULINGS, 1989-date; HEALTH CARE FINANCING REVIEW, 1979-date, quarterly; THE MEDICARE HANDBOOK, 1988-date, annual; MEDICARE/MEDICAID NURSING HOME INFORMATION, annual report for each state.

- IIIB3** National Institute on Aging
 Building 31
 9000 Rockville Pike
 Bethesda, MD 20892
 (301) 496-1752
 (301) 402-2885 fax

Conducts and supports biomedical and behavioral research designed to increase knowledge of the aging process and associated physical, psychological, and social factors resulting from advanced age. Administers the Gerontology Research Center at Johns Hopkins, the Claude D. Pepper Older Americans Independence Center at Yale, and several other centers in the United States. SuDoc: HE20.3850. Publications include ALZHEIMER'S DISEASE: A GUIDE TO FEDERAL PROGRAMS, 1993; SPECIAL REPORT ON AGING, annual.

- IIIB4** National Institutes of Health (NIH)
 Building 1
 9000 Rockville Pike
 Bethesda, MD 20892-0148
 (301) 496-2433
 (301) 402-2700 fax

The biomedical research agency of the federal government. Conducts research to improve human health. Maintains an electronic information site [IIA10]. SuDoc:

HE20.3000. Publications include NIH ALMANAC, 1978-date; NIH GUIDE FOR GRANTS AND CONTRACTS, irregular; NIH RECORD, 1949-date, biweekly.

IIIB5 Social Security Administration (SSA)

Altmeyer Building

6401 Security Boulevard

Baltimore, MD 21235

(410) 965-1234

(800) 772-1213 for benefits, payments, status of claims, and general information

info@ssa.gov

Administers Social Security, supplemental security income, and related programs. Provides public information about its programs, processes claims, and handles appeals. Formerly a division of the U.S. Department of Health and Human Services. Constituted as a separate agency by the Social Security Independence and Program Improvements Act of 1994 (Pub. L. No. 103-296), enacted Aug. 15, 1994. Maintains an electronic information site [IIA11]. Publications include the OHA LAW JOURNAL, quarterly.

IIIB6 U.S. Department of Health and Human Services (HHS)

200 Independence Avenue, SW

Washington, DC 20201

(202) 690-7850

(202) 690-6427 fax

Advises the President on health, welfare, income security plans, policies, and programs. Promotes public understanding of the Department's goals, programs, and objectives. Maintains an electronic information site [IIA12]. SuDoc: HE1.

IIIB7 U.S. House of Representatives, Select Committee on Aging
U.S. Senate, Special Committee on Aging

Abolished in 1995. Held hearings and issued reports on matters affecting older Americans but lacked jurisdiction to report on legislation. Sample hearings and reports dealt with elder abuse, health-care rationing, nursing home safety,

Medicare fraud, and drug pricing. SuDoc: Y4.Ag4/2; Y4.Ag4. Publications include DEVELOPMENTS IN AGING, 1959-94 (Senate committee reports); PROTECTING OLDER AMERICANS AGAINST OVERPAYMENT OF INCOME TAXES, 1975-94 (Senate committee prints).

APPENDIX A, STATE-SPECIFIC RESOURCES

Many of the laws affecting older Americans are derived from state laws. State agencies, bar associations, and continuing legal education programs represent reliable sources of current information on state legal issues and programs. Numerous law schools offer courses in elder law and/or operate legal clinics through which law students obtain hands-on training in elder law issues. This appendix provides selected information about those state agencies, bar associations, law schools, and selected publications dealing with law and the aged.

The content of each state's listing is arranged by:

1. name of state agency;
2. name of bar association committee, division, or section on elder law;
3. law schools with elder law related clinics and/or courses; and
4. books and special journal issues on elder law, with basic bibliographic information.

Some state entries contain fewer than all four categories. These lists are representative, not comprehensive. No annotations are provided for books and serials, except for several titles dealing with Illinois law. Directory information for state agencies, bar associations, and law schools is readily available and is therefore not provided here.

For state agency addresses and phone numbers, consult state government manuals, state legal directories, *State Administrative Officials Classified by Function* (Lexington, KY: Council of State Governments, biennial), or the *State Executive Directory* (Washington: Carroll Publishing, quarterly).

For bar association addresses and phone numbers, consult state legal directories, the *Law and Legal Information Directory* (New York: Gale Research, 1995), or *The Legal Researcher's Desk Reference* (Teaneck, NJ: Infosources Publishing, biennial). For law school addresses and phone numbers, consult state legal directories, *Barron's Guide to Law Schools* (Hauppauge, NY: Barron's Educational Series, annual), *The Legal Researcher's Desk Reference*, or *The Official Guide to U.S. Law Schools* (New York: Bantam Doubleday Dell Publishing Group, annual).

For publisher addresses and phone numbers, consult *Books in Print* (New Providence, NJ: R.R. Bowker, annual), *Law Books in Print* (New Providence, NJ: R.R. Bowker, quarterly), *Legal Looseleafs in Print* (Teaneck, NJ: Infosources Publishing, annual), *Legal Newsletters in*

Print (Teaneck, NJ: Infosources Publishing, annual), or *The Legal Researcher's Desk Reference*.

Alabama

1. Alabama Aging Commission
3. University of Alabama, School of Law: Legal Counsel for the Elderly, a clinic dealing with health, long-term care, Social Security, and administrative practice

Alaska

1. Alaska Administration Department, Older Alaskans Commission

Arizona

1. Arizona Economic Security Department, Aging and Adult Administration
2. Arizona Bar Association, Mental Health and Elder Law Section
4. ELDER LAW: AN OVERVIEW. Phoenix: State Bar of Arizona, 1990. 36 pp. and 2 audiocassettes
 - LAW AND THE ELDERLY: INFORMATION FOR PROTECTION AND ADVOCACY IN ARIZONA. Phoenix: Arizona Department of Economic Security, Aging and Adult Administration, Legal Services Section, 1984. 92 pp.

Arkansas

1. Arkansas Human Services Department, Aging and Adult Services Division
2. Arkansas Bar Association, Young Lawyers Section, Committee on Legal Services for the Elderly
4. ARKANSAS SENIOR CITIZENS HANDBOOK. 5th ed. Little Rock: Arkansas Bar Association, 1990. 44 pp.

California

1. California Health and Welfare Agency, Aging Department
2. California State Bar, Committee on Legal Problems of Aging
3. Santa Clara University, School of Law: Law and aging course
 - University of Southern California Law Center: Law and aging course
 - University of the Pacific, McGeorge School of Law: Clinic dealing with nursing, health care, and Social Security cases

4. CALIFORNIA ELDER LAW: AN ADVOCATE'S GUIDE. Berkeley: Continuing Education of the Bar, 1993-date. 2 vols. Looseleaf
 - Joel M. Bodow. CALIFORNIA ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1992. 149 pp.
 - Paul L. Basile & John R. Parker. CALIFORNIA ELDER LAW: TAKING CONTROL OF THE PLANNING PROCESS. Eau Claire, WI: National Business Institute, 1994. 159 pp.
 - ELDER LAW PRACTICE: ADDRESSING THE NEEDS OF THE OLDER CLIENT. PROGRAM HANDBOOK. Berkeley: Continuing Education of the Bar, 1993. 216 pp.
 - GILFIX ELDER LAW NEWSALERT. San Francisco: Bancroft-Whitney, 1991-date. Bimonthly. Approximately 12-40 pp. \$20
 - David A. Rivette. GUIDEBOOK FOR CALIFORNIA SENIORS: ANSWERS TO LEGAL & FINANCIAL PROBLEMS OF CALIFORNIA SENIOR CITIZENS. Santa Barbara: Darcil Publications, 1988. 1 vol.
 - A LAWYER'S GUIDE TO PLANNING FOR LONG-TERM CARE IN CALIFORNIA. Sacramento: Legal Center for the Elderly and Disabled, 1992. 188 pp.
 - PLANNING FOR AGING AND INCAPACITY. Berkeley: Continuing Education of the Bar, 1990.
 - PLANNING FOR AGING AND INCAPACITY: RESOURCES FOR EFFECTIVE COUNSELING. Berkeley: Continuing Education of the Bar, 1989. Sound recording
 - SENIOR CITIZENS HANDBOOK: LAWS AND PROGRAMS AFFECTING OLDER CALIFORNIANS. 1992

Colorado

1. Colorado Aging Commission
2. Colorado Bar Association, Committee on Legal Problems of the Elderly
4. COLORADO ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1993. 262 pp.
 - ELDER LAW MANUAL FOR ATTORNEYS. 1992
 - M. Kent Olsen et al. REPRESENTING ELDERLY AND DISABLED CLIENTS IN COLORADO. Eau Claire, WI: Professional Education Systems, 1989. 175 pp.
 - HANDBOOK OF ELDER LAW. CLE, 1992. 1 vol. Looseleaf

Connecticut

1. Connecticut Social Services Department, Elderly Services Division
 - Connecticut Aging Commission
2. Connecticut Bar Association, Section on Legal Problems of the Elderly
4. Shirley A. Bysiewicz. ATTORNEY'S ELDERLY LAW DESK MANUAL. 2d ed. Hartford: Connecticut Bar Association, 1987. 1 vol.
 - CONNECTICUT ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1990. Audiocassette
 - Charles C. Hulin & George B. Bickford. CONNECTICUT MEDICARE/MEDICAID LAW AND FINANCIAL PLANNING FOR THE AGED AND DISABLED. Eau Claire, WI: Professional Education Systems, 1993.
 - FEDERAL BENEFITS FOR THE DISABLED AND ELDERLY AND THEIR FAMILIES: SOCIAL SECURITY, MEDICARE, MEDICAID: COURSE OUTLINE. Hartford: Connecticut Bar Association, 1992. 1 vol. and 4 audiocassettes
 - Leslie Brett. THE LEGAL RIGHTS OF OLDER WOMEN. Hartford: Connecticut Women's Educational and Legal Fund, 1986. 42 pp.
 - NINTH ANNUAL ALL-UNIVERSITY CONFERENCE ON LEGAL PROBLEMS OF THE ELDERLY. Hartford: University of Connecticut School of Law, 1986. 107 pp.
 - PLANNING FOR INCAPACITY: A SELF-HELP GUIDE: ADVANCE DIRECTIVE FORMS FOR CONNECTICUT. Washington: Legal Counsel for the Elderly, 1992. 38 pp.

Delaware

1. Delaware Health and Social Services Department, Aging Division
2. Delaware Bar Association, Committee on Law and the Elderly
3. Widener University, School of Law: Course on elder law
4. LEGAL HANDBOOK FOR OLDER DELAWAREANS. Wilmington: Delaware State Bar Association, 1985. 28 pp.

District of Columbia

Hot line: (202) 234-0970

1. District of Columbia Special Services, Aging Office
2. District of Columbia Bar, Individual Rights Section, Subcommittee on the Elderly and Handicapped

3. Catholic University of America, Columbus School of Law: Clinic for institutionalized and home-bound seniors
 - George Washington University, Community Legal Clinic, Advocates for Older People: Seminar on law and aging and clinic
 - Howard University School of Law: Course on law and aging
4. PLANNING FOR INCAPACITY: A SELF-HELP GUIDE: ADVANCE DIRECTIVE FORMS FOR THE DISTRICT OF COLUMBIA. Washington: Legal Counsel for the Elderly, 1992. 38 pp.

Florida

1. Florida Elder Affairs Department
2. Florida Bar, Elder Law Section
3. Stetson University, College of Law: Elder law clinic
4. AS YOUR CLIENTS AGE: SOME ISSUES YOU NEED TO KNOW FOR YOUR AGING CLIENTS. Tallahassee: Florida Bar Continuing Legal Education Committee and Elder Law Section, 1992. 1 vol.
 - ELDER LAW AND CASE UPDATE. Tallahassee: Florida Bar Continuing Legal Education Committee and Elder Law Section, 1994. 1 vol.
 - ELDER LAW SECTION NEWSLETTER. Tallahassee: Florida Bar, Elder Law Section, 1992-date. Semiannual. Approximately 20 pp.
 - ELDER UPDATE. Tallahassee: Florida Elder Affairs Department, 1991-date. Monthly. ISSN: 10604545. Free
 - Elwood Phillips. FLORIDA RETIREES HANDBOOK. 3d ed. Sarasota: Pineapple Press, 1995. 1 vol.
 - HANDLING ELDER CARE ISSUES IN FLORIDA. Eau Claire, WI: Professional Business Systems, 1992. 1 vol.
 - OLDER FLORIDIANS HANDBOOK: LAWS AND PROGRAMS AFFECTING OLDER FLORIDIANS. 3d ed. Miami: Florida Justice Institute, 1992. 101 pp.
 - SENIOR CITIZEN HANDBOOK. Tallahassee: Florida Bar, Elder Law Section, 1992
 - SIGNIFICANT DEVELOPMENTS IN REPRESENTING THE ELDERLY SEMINAR: OCTOBER 21, 1993-JANUARY 5, 1994. Tallahassee: Florida Bar Continuing Legal Education Committee and Real Property, Probate & Trust Law Section, 1993. 1 vol.
 - SOCIAL SECURITY MANUAL FOR FEDERAL COURT LITIGATION. West Palm Beach: Nova University Center for the Study of Law, Elderlaw Project

Georgia

1. Georgia Human Resources Department, Aging Services Office
2. State Bar of Georgia, Young Lawyer Section, Committee on Legal Services to the Elderly
4. LAW FOR THE ELDERLY MANUAL: LEGAL SYNOPSIS FOR ATTORNEYS HANDLING LEGAL PROBLEMS FOR SENIOR CITIZENS. 2d ed. Atlanta: State Bar of Georgia, 1984.
 - LONG-TERM HEALTHCARE LAW IN GEORGIA: PROGRAM MATERIALS 1993. Athens: Institute of Continuing Legal Education in Georgia, 1993. 1 vol.
 - SENIOR CITIZENS HANDBOOK: LAW AND PROGRAMS AFFECTING SENIOR CITIZENS IN GEORGIA. 4th ed. 1992

Hawaii

1. Hawaii Governor's Office, Aging Office
3. University of Hawaii at Manoa, William S. Richardson School of Law: Elder Law Program, clinic and course on legal problems of the elderly
4. James H. Pietsch. AKAMAI KUPUNA: A LEGAL HANDBOOK FOR HAWAII'S OLDER ADULTS. 5th ed. Honolulu: Hawaii Judiciary, 1992. 80 pp.

Idaho

1. Idaho Aging Office
4. James Peart. ELDER LAW MANUAL. Idaho Legal Aid Services, 1992.

Illinois

1. Illinois Aging Department
2. Illinois State Bar Association, Young Lawyers Division, Committee on the Delivery of Legal Services to the Elderly and Disabled
3. Illinois Institute of Technology, Kent School of Law: Course on law, aging, and public policy
 - Loyola University of Chicago, School of Law: Clinic dealing with administrative appeals of Medicare cases
 - Southern Illinois University, School of Law: Clinic, Legal Services to Older Persons
 - University of Illinois, College of Law: Course on elder law
4. ADVISING ELDERLY CLIENTS AND THEIR FAMILIES. Springfield: Illinois Institute for Continuing Legal Education, 1991 with 1994 supplement. 1 vol. Looseleaf. Subject index. \$99.50

Handbook for Illinois practitioners. Replaces *Counseling Senior Citizens and the Handicapped* with the focus directly on needs of elderly clients and their families. Authors include attorneys, a paralegal, and a judge. Explains and summarizes relevant federal and Illinois law. Covers planning for Social Security, pensions, and veterans' benefits; Medicare, Medicaid, and long-term care; planning for incapacity and disability; guardianship; nursing homes; tax planning for the elderly; and consumer fraud. Forms included with most chapters, as well as short bibliographies and lists of resources. Supplemental pages update each chapter.

- Center for Public Representation. *COUNSELING THE ELDERLY CLIENT IN ILLINOIS*. (Janna S. Dutton ed.) Rochester, NY: Lawyers Cooperative Publishing, 1992-date. 2 vols. Looseleaf. Updated annually. Subject indices to text and forms. \$170; annual updates approximately \$85

Includes Social Security, Medicare, Medicaid, SSI, veterans' benefits, health insurance, nursing homes, age discrimination, and consumer fraud. Contains citations to applicable law and reference materials for each subject area. Includes many forms. Provides a detailed treatment of key Illinois statutory provisions and agencies handling elder abuse; general assistance; grants to the aged, blind, or disabled; tax breaks for the elderly; social services; living wills; powers of attorney and health-care surrogates; guardianship; trusts; and proceedings for the mentally ill. Includes a glossary of abbreviations, lists of free or low-cost legal services for the elderly, and tables of federal and Illinois statutes.

- *EFFECTIVELY REPRESENTING AND ADVISING YOUR ELDERLY CLIENTS AND THEIR FAMILIES*. Springfield: Illinois Institute for Continuing Legal Education, 1989. 1 vol.

Contains material to accompany programs held on Oct. 17, 1989, in Chicago, and on Nov. 3, 1989, in Springfield. Not available for annotation.

- *ELDER SERVICES, 1992-1993*. 2d ed. Phoenix: Oryx Press, 1992. 394 pp.
- David L. Cover et al. *ILLINOIS ELDER LAW: THE BASICS AND BEYOND*. Eau Claire, WI: National Business Institute, 1993. 106 pp.
- Richard A. Braun & Steven C. Perlis. *ILLINOIS ELDER LAW: TAKING CONTROL OF THE PLANNING PROCESS*. Eau Claire, WI: National Business Institute, 1994. 99 pp.

Covers estate planning, Medicaid planning, death with dignity, ethical considerations in representing the elderly client, wills, and trusts.

- *The Law and the Elderly*, 79 ILLINOIS BAR JOURNAL 384-401, 410-13 (1991).

Contains articles on durable power of attorney and living wills, an attorney's guide to elder abuse and neglect cases, and jury instructions and verdict forms in guardianship trials. Includes practice tips on practical and ethical aspects of serving elderly clients. Deals with federal and Illinois law.

- PLANNING AND DRAFTING FOR ELDERLY CLIENTS 1994. Springfield: Illinois Institute for Continuing Legal Education, 1994. Not available from IICLE

Course materials from workshops presented in three Illinois cities. Includes the materials used by presenters, reproductions of statutes and reports, and some forms. Covers planning for Medicaid eligibility; the Illinois response to OBRA '93; retirement planning strategies, opportunities, and traps; surrogate decision making; durable power of attorney; health-care decision making; and nursing home law.

- PLANNING FOR INCAPACITY: A SELF-HELP GUIDE: ADVANCE DIRECTIVE FORMS FOR ILLINOIS. Washington: Legal Counsel for the Elderly, 1992. 38 pp.
- SENIOR CITIZENS HANDBOOK: LAWS AND PROGRAMS AFFECTING SENIOR CITIZENS IN ILLINOIS. 3d ed. Peoria: Prairie State Legal Services, 1987. 68 pp.

Indiana

1. Indiana Family and Social Services Administration, Aging and Rehabilitative Services Division
2. Indiana State Bar Association, Special Committee on Legal Aid to Older Adults
3. Indiana University Law School: Course on elder law
4. ELDER LAW. Indianapolis: Indiana Continuing Legal Education Forum, 1993. 1 vol.
 - THE ELDERLY CLIENT: ISSUES AND ANSWERS. Indianapolis: Indiana Continuing Legal Education Forum, 1990. 1 vol. Looseleaf
 - Mary E. Bishop et al. INDIANA ELDER LAW: TAKING CONTROL OF THE PLANNING PROCESS. Eau Claire, WI: National Business Institute, 1993. 205 pp.

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- LEGAL REFERENCE FOR OLDER HOOSIERS. 10th ed. Indianapolis: Indiana Bar Foundation and Indiana State Bar Association, 1994. 212 pp. \$17.95

Iowa

1. Iowa Elder Affairs Department
2. Iowa State Bar, Young Lawyer Section, Committee on Delivery of Legal Services to the Elderly
3. Drake University Law School: Clinic, Drake Senior Citizens Legal Services, and course on law and the elderly

Kansas

1. Kansas Aging Department
2. Kansas Bar Association, Legal Issues Affecting the Elderly Committee
3. University of Kansas School of Law: Elder Law Clinic
4. *Counseling the Elderly*, JOURNAL OF THE KANSAS BAR ASSOCIATION, May 1990, at 9-18.
 - ELDERLAW: WHAT EVERY PRACTITIONER MUST KNOW IN GIVING LEGAL ADVICE. Topeka: Kansas Bar Association, 1992. 1 vol.

Kentucky

1. Kentucky Social Services Department, Aging Services Division
2. Kentucky Bar Association, Committee on Legal Concerns of Elderly Clients
4. LAWS AND PROGRAMS FOR OLDER KENTUCKIANS. 3d ed. Frankfort: Kentucky Bar Association, Committee on Legal Concerns of Elderly Clients, 1993. 160 pp.

Louisiana

1. Louisiana Office of Elderly Affairs
3. Loyola University School of Law: Gillis Long Poverty Law Center
4. LOUISIANA ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1993. 144 pp.

Maine

1. Maine Human Services Department, Elder and Adult Services Bureau
2. Maine State Bar Association, Section on Elder Law
4. ELDER LAW: BUILDING YOUR PRACTICE TO SERVE OLDER CLIENTS. Augusta: Maine State Bar Association, Continuing Legal Education, 1989. 1 vol.
 - Gerard Poissionnier. CONTINUING LEGAL EDUCATION IN ELDER LAW: FINAL REPORT AND ADDENDA. Augusta: Maine Department of Human Services, Bureau of Maine's Elderly, 1988. 50 pp.
 - ELDER LAW 1994: ADVISING ELDERLY CLIENTS FACING LEGAL, FINANCIAL AND HEALTH CARE CHANGES. Augusta: Maine State Bar Association, 1994. 288 pp.

Maryland

1. Maryland Aging Office
2. Maryland Bar Association, Subcommittee on Law and Elderly
3. University of Baltimore, School of Law: Clinic, Civil Practice Clinic/Legal Services to the Elderly, and course on the legal rights of the elderly
 - University of Maryland, School of Law: Course on legal problems of the elderly
4. *Growing Old Today*, MARYLAND BAR JOURNAL, May-June 1993, at 2-48.
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 - INSTITUTE ON ELDER LAW: "HOT ISSUES IN ELDER LAW." Baltimore: MICPEL, 1994. 543 pp.
 - ISSUES IN HOUSING FOR THE ELDERLY 1994. Baltimore: MICPEL, 1994. 1 vol.
 - KNOW YOUR LEGAL RIGHTS: A BASIC GUIDE TO LAWS AFFECTING THE ELDERLY. Baltimore: Bar Association of Baltimore City, Young Lawyers Section, 1989. 127 pp.
 - Luther G. Blackiston & Michael C. Hodes. MARYLAND ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1991. 169 pp.
 - PLANNING FOR THE ELDERLY AND HANDICAPPED. Baltimore: MICPEL, 1992. 1 vol. Looseleaf

Massachusetts

1. Massachusetts Elder Affairs Department
2. Massachusetts Bar Association, Elder Rights Committee
3. Boston College Legal Assistance Bureau, Elder Law Project: Clinic
 - Suffolk University, School of Law: Legal Counseling for the Elderly Clinic/Workshop
 - Western New England College, School of Law: Course on law and the elderly
4. AGE DISCRIMINATION IN EMPLOYMENT. Boston: Massachusetts Bar Association, Labor & Employment Law Section, 1993. 37 pp.
 - HEALTH CARE & ESTATE PLANNING FOR THE ELDERLY CLIENT. Boston: Massachusetts Continuing Legal Education, 1989. 532 pp.
 - HOUSING AND SERVICES FOR THE ELDERLY: ALTERNATIVES AND PITFALLS. Boston: MCLE, 1993. 224 pp.
 - William J. Brisk & William G. Talis. LEGAL PLANNING FOR THE ELDERLY IN MASSACHUSETTS. Salem, NH: Butterworth Legal Publishers, 1991-date. 1 vol. Looseleaf. Subject index. ISBN: 0880637757. \$65
 - THE MASSACHUSETTS BAR ASSOCIATION'S LEGAL HANDBOOK FOR MASSACHUSETTS ELDERS. Boston: Massachusetts Bar Association, 1992. 104 pp.
 - Charles A. Rosebrock et al. PLANNING FOR THE DYING CLIENT: IDENTIFY THE ISSUES AND UNDERSTAND THE TECHNIQUES THAT WORK. Boston: MCLE, 1994. 132 pp.
 - PROTECTING AGAINST ELDER ABUSE: DEALING WITH ABUSE, NEGLECT AND EXPLOITATION. Boston: Massachusetts Continuing Legal Education, 1993. 246 pp.

Michigan

Hot line: (800) 347-5297

1. Michigan Aging Office
2. State Bar of Michigan, Senior Justice Committee
3. University of Detroit-Mercy, School of Law: Course on aging and the law
 - Thomas M. Cooley Law School: Sixty Plus Inc. Elderlaw Clinic
4. ADVISING THE OLDER CLIENT. (Lynn P. Chard ed.) Ann Arbor: Institute of Continuing Legal Education, 1991. Looseleaf. Updated annually. Index. ISBN: 0685390039. \$110

- Bradley Geller. *CHANGES AND CHOICES: LEGAL RIGHTS OF OLDER PEOPLE*. Ann Arbor: Br3 Press, 1986. 84 pp.
- Center for Public Representation. *COUNSELING THE ELDERLY CLIENT IN MICHIGAN*. Rochester, NY: Lawyers Cooperative Publishing, 1991-date. 2 vols. Looseleaf
- *Elder Law*, 72 MICHIGAN BAR JOURNAL 17-58 (1993).
- *Law and Aging*, 69 MICHIGAN BAR JOURNAL 510-50 (1990).
- SENIOR CITIZENS LEGAL HANDBOOK. Saginaw: Legal Services of Eastern Michigan

Minnesota

1. Minnesota Social Services Administration, Aging Programs Division
2. Minnesota State Bar Association, Elder Law Section
3. Hamline University, School of Law: Clinical program
 - University of Minnesota Law School: Legal aid clinic
 - William Mitchell College of Law: Clinic
4. Center for Public Representation. *COUNSELING THE ELDERLY CLIENT IN MINNESOTA*. (Lynn K. Klobuchar ed.) Rochester, NY: Lawyers Cooperative Publishing, 1992. 3 vols. Looseleaf. ISBN: 0317053744. \$150
 - ELDER LAW. St. Paul: Minnesota Continuing Legal Education, 1990-date. Annual
 - HOUSING THE ELDERLY: LEGAL AND DEVELOPMENT ISSUES. St. Paul: Minnesota Continuing Legal Education, 1984. 457 pp.
 - LAW OF THE ELDERLY. Minneapolis: Minnesota Institute of Legal Education, 1994. 1 vol.
 - LAWS AND ISSUES AFFECTING SENIOR CITIZENS. Minneapolis: Minnesota Institute of Legal Education, 1990. 1 vol.

Mississippi

1. Mississippi Human Services Department, Aging and Adult Services Division
2. Mississippi State Bar Association, Young Lawyers Section, Committee on Legal Problems of the Elderly and Handicapped

Missouri

1. Missouri Social Services Department, Aging Division
2. Missouri Bar, Delivery of Legal Services Committee, Subcommittee on the Elderly

3. St. Louis University, School of Law: Clinic
 - University of Missouri-Columbia, School of Law: Course on elder law
4. Legal Services of Eastern Missouri. COUNSELING THE ELDERLY CLIENT IN MISSOURI. Rochester, NY: Lawyers Cooperative Publishing, 1993-date. 2 vols. Looseleaf
 - MISSOURI ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1990. 182 pp.
 - MISSOURI HANDICAPPED, ELDERLY, AND LOW-INCOME PERSONS LAW. Jefferson City: MoBar CLE, 1982. 1 vol. Looseleaf
 - SENIOR CITIZENS HANDBOOK: LAWS AND PROGRAMS AFFECTING SENIOR CITIZENS IN MISSOURI. 8th ed. St. Louis: Legal Services of Eastern Missouri, 1992. 78 pp.

Montana

1. Montana Family Services Department, Aging Council
2. State Bar of Montana, Elderly Assistance Committee
4. SENIOR CITIZENS LEGAL HANDBOOK. Helena: State Bar of Montana, Elderly Assistance Committee, 1992. 104 pp.

Nebraska

1. Nebraska Aging Department
2. Nebraska Bar Association, Elderlaw Committee

Nevada

1. Nevada Human Resources Department, Aging Services Division

New Hampshire

1. New Hampshire Health and Human Services Department, Elderly and Adult Services Division
2. New Hampshire Bar Association, Elder Law Section
3. Franklin Pierce Law Center: Family and Housing Law Clinic
4. SENIOR CITIZENS LEGAL RIGHTS MANUAL. 10th ed. Concord: New Hampshire Division of Elderly and Adult Services, 1988. 130 pp.

New Jersey

1. New Jersey Community Affairs Department, Aging Division
2. New Jersey State Bar Association, Aging and Law Committee
3. Rutgers-Newark Law School: Course on law and aging

4. Marilyn Askin. *THE ABCs OF ELDER LAW*. New Brunswick: New Jersey Institute for Continuing Legal Education, 1991. 446 pp.
 - Marilyn Askin. *ELDER LAW*. New Brunswick: New Jersey Institute for Continuing Legal Education, 1993. 531 pp.
 - *ELDER LAW: IT AIN'T JUST WILLS*. New Brunswick: New Jersey Institute for Continuing Legal Education, 1990.
 - *ELDER LAW PRACTICE FOR THE 1990's*. New Brunswick: New Jersey Institute for Continuing Legal Education, 1992. 266 pp.

New Mexico

Hot line: (800) 876-6657

1. New Mexico State Agency on Aging
2. State Bar of New Mexico, Elder Law Section
4. Merri Rudd. *LIFE PLANNING IN NEW MEXICO: YOUR GUIDE TO STATE LAW ON POWERS OF ATTORNEY, RIGHT TO DIE, NURSING HOME BENEFITS, WILLS, TRUSTS, AND PROBATE*. Albuquerque: Abogada Press, 1992. 237 pp.
 - Merri Rudd. *NEW MEXICO SENIOR CITIZENS HANDBOOK: LAWS AND PROGRAMS AFFECTING OLDER NEW MEXICANS*. State Bar of New Mexico, 1989. 74 pp.

New York

1. New York State Aging Office
2. New York State Bar Association, Elder Law Section
3. Brooklyn Law School: Clinic for the elderly
 - City University of New York, Queens College Law School: Course on law and the elderly
 - Hofstra University, School of Law: Course on aging and the law
 - State University of New York, Buffalo Law School: Course on health care and the elderly. Clinic: Legal Services for the Elderly
 - Yeshiva University, Benjamin N. Cardozo School of Law, Social Welfare Litigation and Cardozo Bet Tzedek Legal Services: Clinic for the elderly and disabled dealing primarily with income and health entitlements
4. *ADVISING ELDERLY CLIENTS AND THEIR FAMILIES*. Albany: New York State Bar Association, 1991. 227 pp.
 - *ELDER LAW ATTORNEY*. Albany: New York State Bar Association, Elder Law Section, 1991-date. Semiannual. Approxi-

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- *Elder Law Comes of Age*, NEW YORK STATE BAR JOURNAL, Sept.-Oct. 1993, at 9-49, 54.
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- Institute on Law and Rights of Older Adults, Brookdale Center on Aging. NEW YORK ELDER LAW HANDBOOK. New York: Practising Law Institute, 1993-date. Annual. ISSN: 10791779
- NEW YORK ELDER LAW: TAKING CONTROL OF THE PLANNING PROCESS. Eau Claire, WI: National Business Institute, 1994. 282 pp.
- NEW YORK ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1993. 216 pp.
- PLANNING FOR THE ELDERLY CLIENT: REVOCABLE TRUSTS, IRREVOCABLE TRUSTS AND MEDICAID TRUSTS. Albany: New York State Bar Association, 1992. 132 pp.
- SENIOR CITIZENS HANDBOOK: A GUIDE TO PROGRAMS AND LAWS AFFECTING OLDER NEW YORKERS. 3d ed. Albany: New York State Bar Association, Young Lawyers Section, 1992. 186 pp.

North Carolina

1. North Carolina Human Resources Department, Aging Division
2. North Carolina Bar Association, Young Lawyers Section, Law and Aging Committee
3. Campbell University, School of Law: Course on law for the elderly
4. Michael J. McCann & Thomas P. Mason, Jr. THE LAW AND THE ELDERLY IN NORTH CAROLINA. 2d ed. Chapel Hill: University of North Carolina, Institute of Government, 1992. ISBN: 1560112026
 - REPRESENTING THE ELDERLY AND THE INCAPACITATED CHILD. Winston-Salem: Wake Forest University School of Law, 1994-date. Annual. ISSN: 10783059
 - SENIOR CITIZENS HANDBOOK: LAWS AND PROGRAMS AFFECTING SENIOR CITIZENS IN NORTH CAROLINA. 3d ed. Raleigh: North Carolina Bar Association, Young Lawyers Division, Law and Aging Committee, 1992. 41 pp.

North Dakota

1. North Dakota Human Services Department, Aging Services Division

Ohio

Hot line: (800) 621-8721

1. Ohio Aging Department
 - Ohio Commission on Aging
2. Ohio Bar Association, Ohio Elderly Bar Committee
3. Ohio Northern University, Pettit College of Law: In-House Legal Clinic
4. Ruth R. Longenecker. FINANCIAL AND HEALTH CARE PLANNING FOR THE ELDERLY IN OHIO. 2d ed. Cincinnati: Anderson Publishing, 1994. 374 pp.

Oklahoma

1. Oklahoma Human Services Department, Aging Services Division
4. FAMILY, FINANCIAL, AND LEGAL ISSUES FOR THE ILL, INCAPACITATED, ELDERLY AND DISABLED. Oklahoma City: Oklahoma City University, School of Law, 1993. 1 vol.
 - OKLAHOMA ELDER LAW: TAKING CONTROL IN THE PLANNING PROCESS. Eau Claire, WI: National Business Institute, 1994. 132 pp.
 - REPRESENTING THE ELDERLY CLIENT. Oklahoma City: Oklahoma City University, School of Law, 1993. 1 vol.
 - Jennifer Parks. SENIOR CITIZENS LEGAL HANDBOOK. Lawton: Legal Aid of Western Oklahoma, 1985. 122 pp.

Oregon

1. Oregon Human Resources Department, Senior and Disabled Services Division
2. Oregon State Bar, Rights of Persons with Disabilities Section
4. ELDER LAW: MEETING YOUR CLIENTS' NEEDS. Lake Oswego: Oregon State Bar, 1991. 1 vol. and 4 audiocassettes
 - ELDER LAW: STEP-BY-STEP PLANNING. Lake Oswego: Oregon State Bar, 1992. 1 vol.
 - SENIOR LAW HANDBOOK: AN OREGON LEGAL INFORMATION & REFERENCE GUIDE FOR OLDER ADULTS. Lake Oswego: Oregon State Bar, 1992. 148 pp.

Pennsylvania

1. Pennsylvania Aging Department
2. Pennsylvania Bar Association, Legal Affairs of Older Persons
3. University of Pittsburgh, School of Law: Course on the elderly and the law
4. ESTATE AND FINANCIAL PLANNING FOR THE ELDERLY. Harrisburg: Pennsylvania Bar Institute, 1994. 253 pp.
 - Stephen Feldman. FELDMAN ON LONG TERM CARE: FINANCING & OTHER PATIENT ISSUES. Harrisburg: Pennsylvania Bar Institute, 1993. 34 pp.
 - LEGAL HANDBOOK FOR SENIOR CITIZENS. 2d ed. Harrisburg: Pennsylvania Bar Association, 1993. 40 pp.
 - Michael S. Ramage. PENNSYLVANIA ELDER LAW HANDBOOK: ALL THE STATE AND FEDERAL LAWS PENNSYLVANIA SENIOR CITIZENS NEED TO KNOW BEFORE SEEING A PROFESSIONAL. Bala Cynwyd, PA: Elder Law Press, 1993. 88 pp. ISBN: 096402067X. \$9.95
 - Lawrence A. Frolik et al. PENNSYLVANIA ELDERLAW MANUAL: A STATUTORY AND REGULATORY COMPENDIUM. Pittsburgh: University of Pittsburgh School of Law, 1987. 418 pp.

Rhode Island

1. Rhode Island Elder Affairs Department

South Carolina

1. South Carolina Governor's Office, Aging Division
2. South Carolina Bar, Young Lawyers Section, Committee on Legal Services to the Elderly
4. SOUTH CAROLINA SENIOR CITIZEN'S HANDBOOK: A GUIDE TO LAWS AND PROGRAMS AFFECTING SENIOR CITIZENS. Rev. ed. Columbia: South Carolina Commission on Aging, 1993. 118 pp.

South Dakota

1. South Dakota Social Services Department, Adult Services and Aging Office
4. FINANCIAL AND HEALTH CARE PLANNING FOR LATER LIFE: THE ESTATE PLANNER MEETS ELDER LAW. Pierre: State Bar of South Dakota, 1992. 1 vol.

Tennessee

1. Tennessee Aging Commission
4. SENIOR CITIZENS GUIDE: LEGAL PROBLEMS, RIGHTS AND BENEFITS. Nashville: Tennessee Commission on Aging, 1981. 63 pp.

Texas

1. Texas Aging Department
2. State Bar of Texas, Texas Young Lawyers Association, Needs of Senior Citizens Committee
3. Baylor University, School of Law: Course on elder law
 - Southern Methodist University, School of Law: Legal clinic
 - Texas Southern University, Thurgood Marshall School of Law: Elderly Law Clinic
 - University of Houston, Law Center: Course on elder law
 - University of Texas-Austin, Law School: Course on elder law
4. THE AGING DIGEST. Austin: Texas Aging Department, 1984-date. Biweekly
 - ELDER LAW INSTITUTE. Austin: State Bar of Texas, 1994. 1 vol.
 - ELDERLAW: THE ESSENTIALS FOR REPRESENTING SENIOR CITIZENS. Houston: Houston Bar Association, 1993. 1 vol.
 - RIGHTS AND NEEDS OF SENIOR CITIZENS IN TEXAS. Austin: Texas Young Lawyers Association, 1987. 46 pp.
 - Paul Premack. THE SENIOR TEXAN LEGAL GUIDE. 2d ed. San Antonio: Longview Pub., 1993. 240 pp. ISBN: 0963873318. \$18.95

Utah

1. Utah Human Services Department, Aging and Adult Services Division
2. Utah State Bar, Needs of the Elderly Committee
4. UTAH ELDER LAW: THE BASICS AND BEYOND. Eau Claire, WI: National Business Institute, 1990. Audiocassette
 - UTAH SENIOR CITIZENS HANDBOOK: A GUIDE TO LAWS AND PROGRAMS AFFECTING SENIOR CITIZENS. 2d ed. Salt Lake City: Utah State Bar, 1988. 48 pp.

Vermont

1. Vermont Council on Aging
2. Vermont Bar Association, Ad Hoc Elder Law Committee

Virginia

1. Virginia Health and Human Resources Department, Aging Department
2. Virginia Bar Association, Committee on Legal Problems of the Aged
 - Virginia State Bar Association, Young Lawyers Conference & Senior Lawyers Section, Committee on Legal Needs of the Elderly
4. Center for Public Representation. COUNSELING THE ELDERLY CLIENT IN VIRGINIA. (Laura L. Wagner & Robert J. Wagner eds.) Rochester, NY: Lawyers Cooperative Publishing, 1992. 2 vols. Looseleaf. ISBN: 031705371X. \$150
 - ELDER LAW. Richmond: Virginia Law Foundation, 1992. 1 vol.
 - ELDER LAW: SERVING THE PLANNING NEEDS OF THE OLDER CLIENT. Richmond: Virginia Law Foundation, 1990. 1 vol.
 - ISSUES, FRUSTRATIONS AND SOLUTIONS: THIRD ANNUAL ELDER LAW SEMINAR. Charlottesville: Virginia Law Foundation, 1994. 1 vol.
 - REPRESENTING AND PLANNING WITH THE ELDERLY. Richmond: Virginia Law Foundation, 1989. 1 vol.
 - SENIOR CITIZEN HANDBOOK: LAWS AND PROGRAMS AFFECTING SENIOR CITIZENS IN VIRGINIA. Richmond: Virginia State Bar, 1994. 57 pp.

Washington

1. Washington Social and Health Services Department, Aging and Adult Services
2. Washington State Bar Association, Elder Law Section
3. Gonzaga University, School of Law: University Legal Assistance Senior Citizens Law Project
4. ELDER LAW. Seattle: Seattle-King County Bar Association, 1991. 1 vol.
 - ELDER LAW AND ELDER CARE. Seattle: Washington Law School Foundation, 1992. 1 vol.
 - Karen M. Thompson et al. ELDER LAW AND MEDICAID PLANNING ISSUES IN WASHINGTON. Eau Claire, WI: Professional Education Systems, 1992. 1 vol.
 - ELDER LAW PRACTICE: ADDRESSING THE NEEDS OF THE AGING. Seattle: Washington State Bar Association, 1992. 1 vol.

- ELDERLAW NEWSLETTER. Seattle: Washington State Bar Association, 1994-date. Quarterly. Approximately 6-8 pp.
- MEETING THE NEEDS OF THE ELDERLY AND THEIR CAREGIVERS. Seattle: Washington State Bar Association, 1993. 1 vol.

West Virginia

1. West Virginia Health and Human Resources Department, Aging Commission

Wisconsin

1. Wisconsin Aging and Long Term Care Board
2. Wisconsin Bar Association, Elder Law Section
4. ADVOCACY FOR SENIOR CITIZENS: PRACTICE MANUAL. 7th ed. Madison: Center for Public Representation, 1991. 2 vols.
 - ANNUAL UPDATE: SPECIAL PROBLEMS OF THE AGING: RECENT LEGAL DEVELOPMENTS AND PRACTICE TIPS. Madison: State Bar of Wisconsin CLE, 1992. 1 vol.
 - *Elder Law, WISCONSIN LAWYER*, Aug. 1991, at 11-39.
 - ELDERLAW NEWS. Madison: State Bar of Wisconsin, 1991-date. Two or three per year. Approximately 4-8 pp.
 - FIFTH ANNUAL LAW AND THE ELDERLY. Madison: State Bar of Wisconsin CLE, 1992. 1 vol.
 - Betsy Abramson. GUARDIANSHIPS AND ADVANCE PLANNING ALTERNATIVES: A PLAIN-LANGUAGE GUIDE TO HELPING THE ELDERLY CLIENT. 2d ed. Madison: Center for Public Representation, 1992. 93 pp.
 - Helen M. Dicks. POWER OF ATTORNEY FOR HEALTH CARE: A MANUAL FOR LEGAL PRACTITIONERS & HEALTH CARE PROVIDERS. Madison: Center for Public Representation, 1990. \$49.95
 - Betsy Abramson & Ellen Rabenhorst. SENIOR CITIZENS & THE LAW: A HANDBOOK FOR WISCONSIN CITIZENS, THEIR FAMILIES AND ADVOCATES. 6th ed. Madison: Center for Public Representation, 1992. 193 pp.

Wyoming

1. Wyoming Health Department, Aging Division
2. Wyoming State Bar, Disability/Elderlaw Section

APPENDIX B, ACRONYMS

These acronyms are representative of those commonly encountered in the elder law literature. Included in the list are organizations and government agencies described in Part II above.

AAHA	American Association of Homes for the Aging [IIIA1]
AAHSA	American Association of Homes and Services for the Aging [IIIA1]
AALS	Association of American Law Schools [IIIA3]
AARP	American Association of Retired Persons [IIIA6]
ABA	American Bar Association [IIIA5]
ACF	Administration for Children and Families
ADA	Americans with Disabilities Act
AoA	Administration on Aging [IIIB1]
APWA	American Public Welfare Association [IIIA14]
ASA	American Society on Aging [IIIA2]
CANE	Clearinghouse on Abuse and Neglect of the Elderly [IIA4]
CBLTC	Community-based long-term care
CCAC	Continuing Care Accreditation Commission
CCRC	continuing care retirement communities
DHHS	U.S. Department of Health and Human Services [IIIB6]
ERISA	Employee Retirement Income Security Act
FDA	Food and Drug Administration
GAO	General Accounting Office [IIA7]
HCFA	Health Care Financing Administration [IIIB2]
HHS	U.S. Department of Health and Human Services [IIIB6]
LCE	Legal Counsel for the Elderly [IIIA6]
LSC	Legal Services Corporation
LTC	long-term care
MSW	master of social work (degree)
NAAAA	National Association of Area Agencies on Aging [IIIA9]
NAD	National Aging Dissemination Center [IIIA10]
NAELA	National Academy of Elder Law Attorneys, Inc. [IIIA7]
NARCEA	National Aging Resource Center on Elder Abuse [IIIA14]
NASC	National Alliance of Senior Citizens [IIIA8]
NASHP	National Academy of State Health Policy
NASUA	National Association of State Units on Aging [IIIA10]

NCBA	National Caucus and Center on Black Aged, Inc. [IIIA12]
NCCNHR	National Citizens' Coalition for Nursing Home Reform [IIIA15]
NCEA	National Center on Elder Abuse [IIIA14]
NCEA	National Clearinghouse on Elder Abuse [IIIA16]
NCHEC	National Center for Home Equity Conversion [IIIA13]
NCOA	National Council on the Aging [IIIA18]
NCPEA	National Committee for the Prevention of Elder Abuse
NEHCRC	Native Elder Health Care Resource Center [IIIA31]
NHCOA	National Hispanic Council on Aging [IIIA19]
NIA	National Institute on Aging [IIIB3]
NICOA	National Indian Council on Aging [IIIA20]
NIH	National Institutes of Health [IIIB4]
NSCLC	National Senior Citizens Law Center [IIIA30]
OBRA	Omnibus Budget Reconciliation Act
SSA	Social Security Administration [IIIB5]
SSI	supplemental security income
TCSG	The Center for Social Gerontology [IIIA4]
WHCoA	White House Conference on Aging

APPENDIX C, SUBJECT AND INDEX TERMS

One of the purposes of this research guide is to enable readers to locate materials and information on elder law that will be published after the guide appears. To identify new books, looseleaf services, government publications, and law review articles, the researcher will need to consult several sources that use standard subject headings and index terms. The lists below provide many of these standardized terms and indicate which sources employ these headings. These lists are merely illustrative, not exhaustive.

Books, Looseleaf Services, and Government Publications

Subject headings established by the Library of Congress are used in most large library catalogs and in the *Monthly Catalog of U.S. Government Publications* (Washington: U.S. Government Printing Office).

- Age discrimination—Law and legislation
- Aged
- Aged—Abuse of
- Aged—Crimes against
- Aged—Education—Law and legislation
- Aged—Legal status, laws, etc.
- Aged—Long-term care
- Aged, Killing of
- Aged offenders
- Ageism
- Euthanasia
- Legal assistance to the aged

Congressional Publications

Congressional committee hearings, reports, and documents and publications of congressional support agencies, including the Congressional Budget Office and the Office of Technology Assessment, are abstracted and indexed in *CIS/Index and Abstracts* (Bethesda, MD: Congressional Information Service, 1970-date, monthly). CIS headings include:

- Age discrimination
- Aged and aging
- Retirement
- Retirement income
- and names of laws, organizations, and government agencies

Law Review Articles

Legal periodicals are indexed in LEGALTRAC, a CD-ROM periodical index which is available on Westlaw (LRI database) and LEXIS (LAWREV library, LGLIND file). LEGALTRAC is superior to the *Index to Legal Periodicals* for law reviews published since 1980 in that it covers more periodical titles, including legal newspapers. However, researchers looking for law review articles published before 1980 must use the *Index to Legal Periodicals*. LEXIS offers an on-line version of the *Index to Legal Periodicals* (LAWREV library, ILP file), as well as the on-line version of LEGALTRAC. In addition, LEXIS and Westlaw subscribers may search the full text of hundreds of law review articles, obviating the need for index terms. LEGALTRAC index terms include:

- Abused aged
- Age and employment
- Age discrimination in employment
- Aged, Killing of
- Aging
- Day care centers
- Elder law
- Frail elderly
- Mentally ill aged
- Old age assistance
- Retirement income

Index to Legal Periodicals index terms include:

- Age discrimination
- Aged
- Employment discrimination—Age

HEALTH CARE REFORM—PAST AND FUTURE†

David Blumenthal

In this article, Dr. Blumenthal explores the federal government's role in passing health care reform legislation. Dr. Blumenthal begins by postulating why health care reform legislation failed to pass Congress in 1994. Next, he reviews how Medicare legislation passed Congress in 1965. Dr. Blumenthal then compares the legislative successes of Medicare with the recent legislative failures of health care reform. Finally, using this comparison, Dr. Blumenthal predicts that federal health care reform will only materialize when there exists a combination of public support for and political skill in marshaling reform.

The demise of federal legislation to reform our health care system has frustrated the hopes (or quieted the fears) of millions of Americans. Nevertheless, the problems of our health care system persist, and efforts to reform it will proceed at several levels.¹ In the aftermath of the Republicans' resounding victory in the 1994 congressional elections, the private marketplace and, to a lesser extent, state governments seem likely to lead such efforts, but their ability to address problems of access to care—and its costs—is limited. The important role of the federal government in health care reform is therefore likely to emerge once again.

It is worthwhile for this reason to answer certain questions to help inform federal policy making when the shortcomings of private-

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1. Gregg Easterbrook, *Looking to 1995*, BOSTON GLOBE, Oct. 9, 1994, at 74.

sector and state-based health care reform become clear. Among these questions are the following: Why did federal health care reform legislation fail to pass in the U.S. Congress in 1994? What conditions or actions would be likely to lead to a different result in the future?

Given the many proposals that came to be called health care reform during the recent legislative debate, a definition is required at the outset. For this discussion, health care reform is taken to mean any federal legislative initiative that provides all Americans financial protection against the cost of illness and that also contains a coherent approach to reducing the rate of growth in health care expenditures.

I. Why Did Health Care Reform Fail?

The press, politicians, and health care experts have advanced several explanations for the failure of health care reform. They are by no means mutually exclusive, and can be summarized as follows.

First, it is argued that the Clinton administration failed to provide the necessary political leadership and managerial competence to take advantage of public support for health care reform.² This thesis is buttressed with a number of specific observations. The process of drafting the administration's bill, the Health Security Act, took much too long—nearly a year—with the result that it fell victim to time pressures at the end of the congressional session. The bill itself was technically sound but politically disastrous, since its length and complexity tended to support charges that it would create a bureaucratic nightmare. The managers of the health care reform process were academically talented but politically naive and inexperienced in the ways of Washington.

Second, special-interest groups manipulated Congress and important elements of the electorate, turning both against health care reform. This manipulation included the Health Insurance Association of America's successful "Harry and Louise" advertisements, in which a beguiling, articulate couple shared their fears that health care reform would insert government into their daily lives and deprive them of their right to choose their own physicians in the future. A number of news reports have also cited the large contributions to members of Congress by major interest groups that opposed meaningful health

2. Adam Clymer, *Hillary Clinton Says Administration Was Misunderstood*, N.Y. TIMES, Oct. 3, 1994, at A12.

care reform, including the National Federation of Independent Businesses and the Health Insurance Association of America.³

A third explanation for the failure of health care reform argues that our political leaders and institutions are corrupt, ineffective, and incapable of resolving vital, complex, and bitterly contested issues such as health care reform. The data to support this conclusion consist of the apparent success of special-interest groups in manipulating Congress, the inability of Congress even to bring the health care issue to a vote after four of its committees had reported out legislation, and the behavior of key congressional figures, such as Congressman Daniel Rostenkowski, chairman of the House Ways and Means Committee, and Senator Daniel Patrick Moynihan, chairman of the Senate Finance Committee. Just when his political skills were most needed, Rostenkowski, a proponent of health care reform, was indicted for corruption and forced to surrender his chairmanship. Moynihan displayed a combination of quirkiness and evasiveness on health care reform that communicated lack of interest, lack of commitment, lack of clout, or all three.

A fourth thesis suggests that federal health care reform failed to pass in Congress because in the end the American people did not support it. Opponents have argued a version of this position, contending that the American people looked at the various proposals and walked away.⁴ Some supporters have bitterly concluded that many Americans came to view the universal-access provisions of health care reform as benefiting only a small underclass, and selfishly rejected sacrifices needed to help this less fortunate minority.⁵

II. The Perspective of History

To assess the validity and importance of these various explanations for the failure of health care reform in 1994, it is useful to examine the contrasting example of the most successful effort in history to revamp the American health care system—the passage of Medicare legislation in 1965. Although much has changed since the 1960s, and

3. CITIZEN ACTION, UNHEALTHY MONEY XII: THE SPECIAL INTERESTS KILL HEALTH CARE REFORM (1994).

4. Robert J. Dole, *Who Killed Health Care Reform*, BOSTON GLOBE, Oct. 2, 1994, at 74.

5. Uwe E. Reinhardt, *The Health System as a Mosaic of Cost Centers*, Address to the Montgomery Dorsey Symposium (July 14-16, 1994).

lessons must be drawn cautiously, there are interesting parallels between the Medicare case and our recent experience.

Certain factors now cited to explain the failure of health care reform legislation in 1994 were clearly present during the debate over Medicare as well. One is the existence of powerful special-interest groups opposing the new health care program under consideration. The dominant interest group in health care policy during the 1950s and 1960s was the American Medical Association (AMA). Before the Medicare debate, the AMA had acquired an aura of invincibility as a result of its successful effort to kill national health insurance legislation during the late 1940s and early 1950s and its subsequent success in defeating Medicare legislation repeatedly during the 1950s.⁶ The AMA hired public-relations firms for lobbying efforts that at the time were unprecedented in scope and expense. During the 1960, 1962, and 1964 congressional elections, it made opposition to Medicare a key condition of financial support for candidates.⁷ As a lobbying group, the AMA of the 1960s would seem every bit the equal of the Health Insurance Association of America in 1994.

Second, American politicians and political institutions were not qualitatively different in 1994 from what they were in 1965. "Gridlock," questionable ethics, and eccentricity were at least as typical of our national legislature and legislators in the 1960s as they are today. In what seems a preview of recent events, the Medicare legislation passed in the Senate in 1964, then failed to pass in the House of Representatives and died in a deadlocked conference committee when Congress adjourned so that its members could return to their districts to campaign for the 1964 congressional elections. It has been argued that the repeated use of the filibuster to frustrate the passage of health care reform and other initiatives during the last Congress constituted a qualitative departure from previous congressional practice and elevated gridlock to a new level. However, the filibuster has been used repeatedly to block controversial legislation in the past, including civil-rights legislation throughout much of the 1950s. Furthermore, the record of the last Congress clearly illustrates that our national legislature remains capable of decisive action when the political consensus supports it. Congress did, after all, enact major new measures in the

6. RICHARD O. HARRIS, *A SACRED TRUST* (1969).

7. Robert G. Pear, *The Way It Used to Be*, N.Y. TIMES, Oct. 9, 1994, at 4.

areas of crime and foreign trade (the North American Free Trade Agreement and the General Agreement on Tariffs and Trade).

Though Chairman Rostenkowski may have been unavailable at a critical time during the recent health care debate, at least both he and his replacement as chairman of the House Ways and Means Committee, Congressman Sam Gibbons, were firm supporters of health care reform. In contrast, Wilbur Mills, chairman of Ways and Means during the critical years of the Medicare debate, was either opposed to or ambivalent about Medicare and blocked it repeatedly up until its final passage in 1965. His political career ended ignominiously in 1972 when he took a drunken midnight swim with a belly dancer in the reflecting pool of the Washington Monument. Russell Long, chairman of the Senate Finance Committee and heir to a Louisiana political dynasty with a shady past,⁸ was a firm opponent of Medicare and tried to prevent its passage at every turn.⁹

Nevertheless, despite the apparent similarities, there were also two important differences between the conditions prevailing during the Medicare debate of the 1960s and those of the health care reform debate of the mid-1990s. The first had to do with the talent and experience of the political team that championed the Medicare program. President Lyndon Johnson, a former Senate majority leader and legendary congressional tactician, has had few peers before or since as a master of the congressional process. Wilbur Cohen, assistant secretary for legislation in what was then the Department of Health, Education, and Welfare (now the Department of Health and Human Services), was responsible for drafting the Medicare legislation. He had worked for decades in the Social Security Administration, had drafted a number of national health insurance proposals and many other pieces of health care legislation, and was known and trusted by both Democrats and Republicans in the U.S. Congress. In other words, the effort to enact Medicare was led by a team of gifted professionals who knew from personal experience both the politics and the substance of the issues they were dealing with.

A second and even more important difference between the struggles to enact Medicare in 1965 and health care reform in 1994 concerns the strength and commitment of the political constituencies

8. See generally Curtis Wilkie, *Huey Long's Legend Lives on in Exhibit*, BOSTON GLOBE, Oct. 3, 1994, at 3.

9. David Blumenthal, *Medicare: The Beginnings*, in RENEWING THE PROMISE: MEDICARE AND ITS REFORM, 3, 19 (David Blumenthal et al. eds., 1988).

supporting the two initiatives. Medicare was supported, of course, by elderly Americans, who constituted then, as they do now, a very powerful voting bloc. Comprising members of every racial, ethnic, and socioeconomic class, the elderly were a group with whom many non-elderly people could identify. Many Americans had aging parents, and most expected to be old someday themselves. Elderly people's need for assistance was also clear and incontrovertible. In 1962, 50 percent of Americans over the age of 65 were completely uninsured against the cost of illness, and only half of those with health insurance had good coverage for hospitalization expenses.¹⁰ Furthermore, the potential strength of elderly voters had been fully mobilized by 1965. Elderly groups, Democrats, and organized labor had spent at least five years generating grass-roots support for the Medicare legislation.¹¹

The strong political support for Medicare was brought home to elected officials through data much more convincing than opinion polls. In the congressional elections of both 1962 and 1964, the American people ignored the AMA's opposition and elected majorities that favored the passage of Medicare legislation.

The political fundamentals of the Medicare situation contrast markedly with those of health care reform in 1994. The uninsured of 1994 constituted a much less cohesive and powerful potential voting bloc than did the elderly in 1965. Furthermore, today's insured Americans seem to have much more trouble identifying with the needs of the uninsured than did younger Americans with the needs of the elderly 30 years ago. Though advocates of health care reform correctly argue that any American could become uninsured, that risk seems much more hypothetical today than the prospect 30 years ago that parents would become ill or that young voters would be old someday themselves.

Most important, the apparent sacrifice required of insured Americans in 1994 on behalf of the uninsured was substantially greater than that demanded of the non-elderly on behalf of the aged in 1965. The enactment of Medicare required an increase in Social Security taxes. Meaningful health care reform today requires not only higher taxes but also changes in the organization and financing of health care that potentially affect the personal health care arrange-

10. PETER A. CORNING, U.S. DEP'T OF HEALTH, EDUC., AND WELFARE, *THE EVOLUTION OF MEDICARE . . . FROM IDEA TO LAW* (1969).

11. SHERI I. DAVID, *WITH DIGNITY: THE SEARCH FOR MEDICARE AND MEDICAID* (1985).

ments of all Americans. Since the great majority of Americans are currently insured and satisfied with their health care, this prospect is worrisome even for those who might otherwise support health care reform. The resulting anxiety provides an opening for special interests and political opponents of health care reform to create suspicion and uncertainty in the electorate.

In fact, the apparent success of interest groups in blocking health care reform during 1994 says more about the weakness of the political support for reform legislation than about the strength of the opposing groups. Complex social legislation such as Medicare or health care reform will always meet strong opposition from interest groups, who will work hard to sow seeds of doubt among the electorate at large. The critical question is whether those seeds fall on fertile ground. In 1965 the strong political support for Medicare rendered that soil hard and unreceptive. In 1994, however, the ground was soft and ready.

III. Lessons for Health Care Reform

The contrasting experiences of Medicare in the 1960s and health care reform in the 1990s suggest a number of lessons concerning the necessary conditions for health care reform and the strategies likely to create those conditions in the future.

The most important condition necessary for the enactment of federal health care reform legislation is the existence of a political constituency so strong and committed that neither special interests nor the inevitable bumps and detours of the congressional process will be able to block reform legislation. The generation of this constituency will require that middle-class Americans in large numbers become firmly convinced that health care reform, with all its attendant risks and uncertainties, is preferable to maintaining the status quo.

What will cause middle-class Americans to reach this conclusion? One requirement seems to be that the problems of our health care system will have to affect the personal lives of many voters who have not yet been touched by its deterioration. Millions of additional Americans will have to lose their health insurance, believe strongly that such loss is possible at any time, experience major erosion of their existing insurance benefits, or become dissatisfied with the health care they are receiving. Even if the spread of managed-care organizations in many markets were to accelerate this result, it would not occur overnight. It seems unlikely that the constituency needed for health

care reform will materialize for at least the next three to five years. When it does, Congress may not recognize its presence until health care has been a central issue in a congressional election and the public has elected majorities in the Senate and House that are committed unequivocally to health care reform. Given the results of recent congressional elections, the earliest this seems remotely possible is the election of 1998, but 2000 or 2002 seems more likely.

Though changes in the underlying realities of our health care system will be decisive in creating a constituency for health care reform, political leaders can affect the process in several ways. One way is by keeping the issue of health care reform before the public. Continued public debate will have the effect of familiarizing the electorate with the issue and, perhaps, reducing the public's fears of the changes health care reform entails. Medicare legislation had been the subject of electoral debate during three elections before it passed. In retrospect, it seems unrealistic to have expected the American people to embrace health care reform during the first congressional session that treated the issue seriously.

Public leaders should also stay alert to opportunities to build novel alliances in support of health care reform. The current market-driven upheaval in the health care system seems likely to create growing discontent among physicians; many already find the changes in private markets increasingly distressing. Such changes seem likely not only to reduce their incomes (notably for specialists) but also to require that physicians affiliate with large managed-care organizations in order to preserve access to patients. If physicians perceive such organizations to be limiting their clinical autonomy, they may turn to the public sector to provide protection against the real or imagined predations of these managed-care organizations, and federal health care reform may come to seem relatively more appealing. A decision by physicians' organizations, and especially the AMA, to support meaningful health care reform (as I defined it earlier) would go a long way toward defusing the public's concern that change will jeopardize access to and quality of care. The AMA's flirtation with so-called any-willing-provider legislation may represent the first of many attempts by physicians over the next decade to enlist the help of government in protecting themselves from hostile changes in the private health care system.

Finally, the president—whoever he or she may be at the time—must assemble the best possible team of health policy experts and

political tacticians to manage the process of enacting health care reform. This team should include people who have direct personal experience with every aspect of the policy process in health care: the politics of the issue, its interest groups, the drafting of health care reform legislation, the shepherding of it through Congress, and its implementation once enacted. Ideally, the team should include members of both parties or at least policy makers known and respected by congressional leaders of both parties.

There is an unfortunate tendency among some new presidential administrations to assume that all the work done before they arrive in Washington is flawed or inferior and that the people involved in that work have little to contribute to whatever new era seems to be dawning. The business of passing health care reform is too difficult, complicated, and precarious to permit indulgence in such a simplistic and naive approach to policy development and management.

Health care reform is not for the faint-hearted. The 1994 congressional session made that clear. An examination of the Medicare experience also suggests, however, that the American people will accept major changes in their health care system when the conditions are right. To achieve those conditions in the modern era, advocates will have to persist in educating the public about options for reform while waiting for Americans to conclude from personal experience that health care reform is worth its undeniable risks.

THE ELDER LAW ATTORNEY: WORKING WITH GRIEF[†]

Clifton B. Kruse, Jr.

In this article, Mr. Kruse confronts the difficult issue of dealing with a client's grief. The author provides a synopsis of the role of the elder law attorney, a cogent discussion of the various types of grief and how to identify them, and some techniques that the elder law attorney can incorporate into his or her practice to help clients deal with their grief. More specifically, Mr. Kruse suggests that if elder law practitioners ask the right questions, avoid forcing the grieving client into making any irreversible decisions, and listen and remain attentive, they can assist their clients and their clients' families in their time of great need while still performing their vital legal services.

Readers and contributors to this publication are lawyers who typically limit their practices to estate planning, estate administration and elder law issues. "Elder law" is a term coined by practitioners whose focus is on a population group, persons 65 years of age and older, and the myriad of legal problems individuals within

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The author gratefully acknowledges the ACTEC presentation for increasing his own intellectual understating of bereavement; emotional appreciation of the grieving process comes, of course, only in personal experience and by working with grieving clients.

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that group face, including health care, Medicare and Medicaid planning, elder abuse, and problems involving dementia and capacity.¹ This article focuses on the practitioner who serves this population, and the sensitivity to clients' feelings that such a practice demands.

Estate planning and estate administration are commonly involved in the elder law attorney's menu of interests because such subjects are important to the community of older persons. Estate planning deals with preparing planning documents, primarily wills and trusts. Estate administration involves working with family members who have lost somebody—with survivors who are grieving. The estate administration lawyer concludes the client's estate plan by putting into effect what has been arranged by the deceased family member.

Elder Law

Elder law is focused on multiple legal issues that older persons face. In addition to estate planning and the administration of decedents' estates, it deals with preparing powers of attorney in anticipation of disability and health care advance directives. It includes helping people who are frail and who are chronically disabled. The elder law practitioner's clients are those who often require assistance with the requisites of daily living (e.g. getting out of bed, toileting, walking, dressing, preparing food and eating). Lawyers practicing elder law consider legal issues relating to assisted living and life in nursing homes, and the legal consequences that follow institutionalization.

Working with older clients involves lawyers being present in a milieu where personal grief is sometimes intense. It requires a relationship with clients and their families in pre-mortem contexts, and

American College of Trust and Estate Counsel, and the National Academy of Elder Law Attorneys, and is currently serving as President of the National Academy. Mr. Kruse is a frequent lecturer on the subjects of elder law and estate planning for various professional legal educational associations, including the ABA, the National College of Probate Judges, the American Association of Law School Professors, the American College of Trust and Estate Counsel, and the National Academy of Elder Law Attorneys.

1. Such lawyers seek specialized help for their clients when that is indicated. Generally, such lawyers are knowledgeable in matters relating to capacity. They work with clients whose competence is often, at best, diminished, and at worst, lost altogether. See LAWRENCE A. FROLIK & MELISSA C. BROWN, *ADVISING THE ELDERLY OR DISABLED CLIENT* ch. 15 (1992).

with clients who are anticipating their own deaths. Lawyers who practice elder law are involved in arranging their clients' affairs as their clients near their end-life. Elder law attorneys assist families who are losing somebody and families who have a member who is now demented and nearing life's end. Such lawyers also deal with clients who are confused, angry, frightened and frustrated.²

In the practice of estate planning, estate administration and elder law, lawyers often become quite close to their clients and their family members. The lawyer, in this family-oriented practice, frequently become friends with his or her clients, and as confidantes and advisors over the years, form strong lawyer-client relationships. The lawyer and client like each other. Practitioners in this arena are fortunate in this regard . . . and so are their clients. The clients that such legal counselors help often return to them, and they refer their friends and families to them as well. Such lawyers may not need to promote their services.³

Witnessing Grief

In this lawyer-client milieu, attorneys witness and become part of family loss and grieving. In estate planning, clients talk about death and the deaths of their family members; and in estate administration, handling the legal consequences following the death of a family member, lawyers witness grief, the often emotional and ultimate consequence of the estate planning process.

In these areas of practice, attorneys work with clients when they are receiving home health care or when they are in hospitals, nursing homes and hospices. Clients are sometimes terminal, aware of their eminent death, and so are their family members and friends. In antici-

2. See Peter Margulies, *Access, Connection and Voice: A Contextual Approach to Representing Senior Citizens of Questionable Capacity*, 62 *FORDHAM L. REV.* 1073 (1994).

3. Contrary to the attitude of some members of the Bar, evidenced in the Preface in the June issue of *The Colorado Lawyer*, 23 *COLO. LAW.* 1245 (1993), elder law attorneys do not think of their practices as "a business [that] provides legal services to clients in exchange for payment," or as expressed in SOL M. LINOWITZ, *THE BETRAYED PROFESSION* 2 (1994), "Law is a Business Like Other Business." Since anyone who receives income for what they do now refers to themselves as "professionals," lawyers who are privileged to practice in these areas and who provide more than self-interested services, evidence a vocation, a commitment to prudent statesmanship, something beyond a "professional business" that looks to personal profit and measures its success on the satisfaction of traditional business goals. See also ANTHONY T. KRONMAN, *THE LOST LAWYER* 11 (1993).

pation of the unwanted death, the process of personal grief, and the grief of those who share in this person's life and death, begins, and the family lawyer is a part of this process.

In other situations, grief that lawyers who practice in these areas witness is reactive and acute. Clients die from unexpected events, such as accidents, suicide, or sudden and unexpected medical problems.

Acute and Pathological Grief

In the administration of estates, lawyers helping families sometimes confront survivors who are experiencing pathological grief. Family members may be stuck in shock, denial, regret or anger and need professional help to escape this trauma although such despondence is seen less by lawyers than the grief that may be described as acute.

Where a spouse survives the death of his or her husband or wife, for example, except in large and taxable estates, the lawyer's typical involvement with the family is abbreviated. Properly planned, except for large and taxable estates, there is not a great deal to do legally when the first spouse dies. Lawyers see the survivors following the death, during the acute phase of grief, but often not again for awhile, unless the surviving spouse's will is rewritten or unless a family member or friend calls indicating the need for help.

Daily visits to the gravesite still a year or more following the loss of a loved one, for example, suggest pathological grief. When a grieving widower calls out a daily command to the family dog, "Come on, boy, let's go see mommy," we witness in that client a continuing trauma that suggests pathology, the symptoms of illness and, perhaps the need for psychological intervention and care.

In refusing to do what appears necessary to accept the reality of the death that has occurred, the loss of a spouse or other family member results in the survivor or survivors being vulnerable, sometimes suicidal, depressed, and frequently belligerent in their refusal to allow help.

Help Coming from Listening

Concerned trust and estate and elder law attorneys recognize the types of grief that their clients are experiencing, though perhaps not

by medical name. Grief is anticipatory, acute, chronic, or pathological, and it plays an important role in the client-survivor getting well through the healing process.

Sometimes there is no one else who hears the survivor's sorrow, no one who carefully and empathetically listens to the mourning survivor. A client once told her attorney about her now retired attorney.⁴ "Tell me about him," the attorney asked. "He listens to me; he really listens," the client said. Is there a higher compliment for a lawyer-counselor? Sometimes clients tell their attorneys that their children ought to be lawyers. "My kid ought to be a lawyer," they will say, "Why?" we ask. "Because she loves to argue." Well . . . not a lawyer who works with clients who have lost or are losing someone. In that case, she must learn to listen caringly and quietly.

Lawyers who are experienced in elder law have learned to sit by their older clients who are grieving, to hold their hands while they talk and listen to them if that is comforting to them. This keeps the lawyer close and focused on the client and helps the counselor relate to them. The attorney feels a relationship and can, therefore, be more empathetic with the client. The lawyer's empathy is sometime stimulated by looking at a picture of the client's loved one who is now deceased. The lawyer and client look at the picture together as the client is moved by the memories this encourages.

Asking the Right Questions

In conversing with clients who have lost or are losing someone, attorneys practicing elder law do not ask "How are you doing today?" but rather ask "How did you sleep last night?" "With whom are you eating?" "What are you doing about your own health?" "With whom are you sharing your feelings?"⁵ Who is listening to you?" This will tell us more about our clients' mental health than meaningless phatic⁶ talk will. The lawyer who listens to the client's response to these

4. The attorney is Bernard A. Trott, now retired, a long-time practitioner and much admired counselor who practiced in Colorado Springs, Colorado.

5. Frank S. Berall, Benton E. Gates, Jr., Edward G. Heilman, and Paul W. Robinson, "What Lawyers Should Know in Representing Bereaved Clients," Seminar, American College of Trust and Estate Counsel, March 1990.

6. ANTHONY BURGESS, *A MOUTHFUL OF AIR* (1992). Burgess, in this text on linguistics, defines phatic talks as meaningless social chatter as opposed to communication.

“non-legal” problems, will help both lawyer and client build a strong, trusting relationship.

The Passing of Intense Sorrow

When lawyers are serving a surviving family member in the process of helping to administer the deceased member’s estate, thoughtful attorneys watch for the change when their client begins to respond to his or her new situation and has stopped reacting and denying the unwanted reality. The lawyer-counselor looks for the cessation of anger, free-floating and aimed at random targets . . . sometimes even including the attorney. Focused on the client’s need, the lawyer assures the client that his or her untoward feelings are expected, that it is normal to be in shock, to be numb, to deny reality, to feel regretful and guilty, and to be resentful and angry, knowing that through expression of these feelings, acceptance of the survivor’s new life will come, and self-confidence will resurface. Experienced elder law and estate administration attorneys do this in the context of performing their clients’ legal work.

Avoiding Irreversible Decisions

In this practice, lawyers try to avoid irrevocable and significant long-term decisions that those experiencing grief are inclined to prematurely make; an example may be moving and selling the family home that, for most, represents a foundation, a basis for security and safety; practitioners discourage quickly remarrying, or gifting resources, adding the survivor’s child’s or children’s names as co-owners of the family real estate, investments and accounts. Clients often feel an urgency to do this in the belief that it will simplify administration when the survivor dies. The grieving client ignores and is frequently uninformed about the adverse tax consequences and other effects in simplifying their estate. They do not consider what subsequent lack of control of their assets will mean in their continuing life. In the aftermath of losing one of the clients’ family members, elder law and estate administration lawyers encourage their clients to make only short-term and reversible decisions.

When parents are lost in death, the children move one step closer to mortality; with the loss of a spouse, the survivor realizes that he or she is next. The survivor is now by the Maginot line separating

life from death, and in that realization, the surviving client may feel, in his or her grief, that "I'm next and the sooner the better." The survivors with whom the lawyer is engaged can't often comfortably tolerate the devastating aloneness. Part of their own life has been taken in the death, and the loss is intimately felt. It is sometimes like a loss of part of one's own body, particularly where the survivor is the decedent's spouse and has been significantly dependent upon him or her.

During the six to twelve months that must pass before a survivor begrudgingly accepts the reality of their loss, feeling like their sorrow will never end, the client must endure anger, guilt, depression and a feeling of isolation. Young children traveling with parents on long trips provide an analog. Five minutes after leaving and at regular intervals thereafter the children say: "Are we there yet?" Traveling long distances is hard for young children and for young parents, too. In the voices of children we are reminded of personal history. And in the process of helping with the estate, sensitive lawyers quietly assure clients that one day at a time they will be better; that they will soon arrive. The destination, more peaceful days and nights, will soon be like the increasingly bright lights of the city we long for in our highway travel, as they emerge in the night. Clients sometimes believe that they won't feel better until the estate is closed, perhaps giving ceremonial finality to their loss. As in divorce, the final hearing sometimes brings closure to the hurtful memory and rebirth follows.

Social and Physical Changes Associated with Aging

Lawyers who work with older clients, particularly elder law attorneys, are aware that physical changes sometime affect the survivors. Social patterns change. The elder survivor often doesn't fit in his or her social circle anymore. The survivor's financial condition may worsen. The elder survivor may need protection from aggressive sellers of investments, from realtors who read death notices and imagine that they have buyers for the survivors' homes, and even from well-intended sellers of funeral plans. Elder clients certainly need protection from aggressive marketers who give "free" seminars to attract audiences by parading before for them the imagined horrors of probate.⁷ Sometimes survivors need protection from children and

7. See Gale A. Norton, Attorney General of the State of Colorado, *Consumer Alert, Living Trust Scams*, a news release released July 30, 1992, available from the Colorado Department of Law, Office of the Attorney General, 110 16th Street, 10th

stepchildren, too. Some children are ready to relieve the remaining parent of his or her things at a time when the grieving survivor is vulnerable and before the parent is ready to part with them.

Lawyers who are sensitive to client sorrow know when acceptance of the survivors' loss comes. Clients can look at pictures of the deceased without going to pieces; they can discuss their loss with composure; they can laugh again and be warmed by their good memories.

The analog of grief caused by death is the feelings following other loss; divorce, for example, resulting in the loss of a spouse and sometimes even loss of children;⁸ loss of work; forced retirement; and adverse changes in lifestyle over which one has little or no control.

Pre-mortem Planning

Elder law attorneys and attorneys who plan estates and are involved in crisis planning, work with clients who commonly know that they are critically ill. Pre-mortem estate planning is arranged. For readers who are unfamiliar with the magnitude of the lawyer's responsibility in such contexts, this is what such lawyers do.

The attorney reviews the client's estate plan. When terminally ill, clients may wish to completely or partially revise their historic planning designs. Facing death, they sometimes feel and think differently. In this context, issues dealing with competency, with medications that may be mind-altering that the client is taking, and an awareness of the possibilities of will and trust contests, are concerns. Lawyers often look to physicians for assurance that the client is aware and able to make and communicate responsible decisions. Lawyers need to be satisfied that clients know their family members and are

Floor, Denver, CO 80202. Attorneys General in a number of states are similarly enforcing consumer protection statutes in cases involving sales of "trust kits" to residents, particularly vulnerable older persons. The current attorney general in Massachusetts is particularly aggressive in this regard.

8. Loss of a child forces parents apart. There is an 85 percent divorce rate among couples who lose children. Child suicide magnifies grief. Lawyer Frank S. Berall has said that if we lose our spouse, we lose the making of memories. If we lose our child, we lose our dreams. There is frustration in addition to sorrow when a child is lost. Such unfortunate parents must then decide to whom their accumulated wealth should descend. That decision seems meaningless when our child is gone. Berall et al., *supra* note 5.

aware of their resources and their value, and that they are cognizant of the effect of testamentary acts accomplished at this time.⁹

In pre-mortem planning, lawyers determine if the surviving spouse can responsibly manage assets and whether there is a current investment management account. What is his or her experience with managing assets? What is the state of the survivor's health and interests and vulnerabilities? The lawyer determines whether a professionally managed trust or durable general or limited power of attorney handled by a responsible child or children, or other person in whom the survivor has confidence, should be recommended because management skills in the survivor are lacking. The attorney asks whether there will be significant life insurance proceeds received at the client's death introducing the survivor to wealth that has been previously unknown.

In the death planning context, the lawyer determines whether there are health care decision making arrangements in place: advance directives, durable powers of attorney for health care decisions, or living wills, and the lawyer inquires to ascertain if the client understands them.

The thorough attorney looks for "do not resuscitate" orders and ascertains whether they are desired or in place. In this practice area, the lawyer helps arrange for organ and tissue donations when they are desired, and finds out whether funeral and burial decisions have been made. Are they pre-arranged and have they been prepaid? Has an obituary been prepared? Should there be personal letters addressed to family members to be opened at the client's death? Should attempts at reconciliation with those with whom the lawyer's client is estranged be made?

The lawyer in the environment of pre-mortem planning locates the client's will and other planning documents. He or she discusses with the client what instructions should be given to persons who will be in charge when the client's death occurs. Has a summary of assets and of whom to call with phone numbers and description of benefits, with payers and key account numbers and addresses, been prepared? Are there potential military benefits such as the Survivors Benefit Program? Has the DD-214 form, the key that unlocks retired military benefits, been located? What are the social security numbers of former

9. See *Cunningham v. Stender*, 255 P.2d 977 (Colo. 1953). See also *Hanks v. McNeil*, 168 P.2d 256 (Colo. 1946).

spouses whose benefits may be claimed by the surviving spouse if they result in higher payments to him or her? What are the names, including the maiden name, of the client's parents, their birth dates and place of birth, information that is required on death certificates? Inquiry is made about safe deposit box access. Who can get in it? Where is the box and key? All such issues are on the lawyer's pre-mortem checklist. All of this takes place typically in an environment of acute grief as the dying family member, his or her lawyer, the heirs and friends, mournfully go about the business of pre-planning that which the anticipated death makes necessary.

Post-mortem Practice

When clients die, the wise lawyer acknowledges their family's loss, recognizing that the survivors are grieving and that they have a right to and a need to grieve, and that expressions of sorrow are appropriate, even in the lawyer's office. Working with survivors, the attorney recognizes that they have lost something and are hurting and are in mourning. Lawyer Frank S. Berall wrote that a client had told him that he remembered only two things about his initial conference with his attorney following his wife's death. First, that the lawyer never came around from behind his desk to say that he was sorry about the client's loss, and second, that he didn't remember anything else about the conference.¹⁰ An experienced attorney, one sensitive to the client's feelings, would not be a participant in such an error.

In the post-mortem context, the elder law practitioner is concerned about the survivors. The lawyer is aware that assignments may not be carried out. He or she may need to say on more than one occasion to the grieving spouse, "Bring me your last year's tax return." The lawyer is aware that grieving makes one different for awhile, less efficient, less energetic, less interested, and that this is a normal part of the healing process. The caring lawyer assures the clients that they know that such survivors are not always like this and that their feelings of melancholy are normal and necessary to healing.

At best, in the context of post-mortem legal services, lawyers are aware that clients try to find someone to blame for their loved one's death and that quickly encouraging a lawsuit against someone the client is blaming may bring only more agony and frustration.

10. Berall et al., *supra* note 5.

In post-mortem planning the lawyer may help with the budgeting process, assuring the survivor that he or she will have adequate resources if that is the case, because many clients fear, following loss of a spouse, that they will run out of funds.

Attorneys whose practices focus on elder law have a greater opportunity for counseling than do many of their colleagues who work in other areas of practice. Such lawyers grieve, too, with their clients. They are not unaffected. The elder law attorney faces the clients' depression, denial, bitterness, shock, numbness and feelings of aloneness, making themselves available to quietly and patiently listen so that their clients can recover. The survivors may have few, if any, others who listen to them. Their families, particularly with older survivors, talk about them as though they, too, are dead. Well-wishers come by and inquire about the survivor, "How is she doing?"—and she is there to ask! Furthermore, the well-wishers routinely advise. They use their mouths, rather than soft shoulders and ears, which would be more helpful.

Because of the personal nature of the relationship with clients, lawyers who work with older people involved in pre- and post-mortem planning effortfully perform their service with quiet understanding and compassion. They are, in their professional roles, esteemed by the privilege of humanely helping their clients and their client's families in a time of great need.

FAMILY LIMITED PARTNERSHIPS, TRUSTS, OR LIMITED LIABILITY CORPORATIONS: WHICH SHOULD THE ELDERLY CHOOSE?

Timothy R. Baumann

A variety of planning devices are available for the elderly that allow them to save taxes and protect assets. These devices include trusts, family limited partnerships (FLPs), and limited liability companies (LLCs). However, recent court cases have brought into question the effectiveness of FLPs as planning devices. Moreover, LLCs are relatively recent inventions, and their effectiveness may be uncertain. Mr. Baumann investigates the advantages and disadvantages of these planning tools and concludes that FLPs should be avoided by the elderly in favor of trusts and LLCs.

I. Introduction

Elderly clients can use a variety of financial planning devices to meet their needs. Often, the elderly's needs match those of the general population. For example, they, like others, want to save on taxes. They want to pay the IRS the least amount of federal income tax possible. If they decide to give gifts, they want to minimize the transfer taxes involved. The elderly, like others, want to protect their assets from creditors. If they are involved in a business, they may want to shield themselves from the effects of judgments against the business.

On the other hand, the elderly often have unique concerns. Some elderly individuals may face nursing home care and may worry about how their assets will affect their Medicaid eligibility.¹ The eld-

1. Susan Fox Buchanan & James W. Buchanan, III, *Strategies for Clients Residing in Nursing Homes*, EST. PLAN., Jan.-Feb. 1993, at 27, 30-31.

erly also have concerns over the probate process and may want to minimize the cost and publicity of that process.²

A variety of financial planning techniques is available to the elderly client. Recently, family limited partnerships (FLPs) and limited liability corporations (LLCs) have emerged as techniques that the general public uses to protect assets from creditors, save taxes, and maintain control over their affairs.³ The question arises as to whether the elderly should use these new techniques given recent developments in case law, legislation, and the unique concerns of the elderly.

This note evaluates FLPs and LLCs and compares them to traditional trust arrangements. Part II gives a background of FLPs, trusts, and LLCs. Part III evaluates these devices in terms of the concerns of the elderly. Part IV concludes by recommending that the elderly avoid FLPs and use a combination of trusts and LLCs to meet their needs.

II. Background

A. Family Limited Partnerships

Family wealth planning has changed in recent years.⁴ In the last several years, planners emphasized multigenerational tax savings.⁵ However, as a result of the compressed tax rate schedule and judicial and legislative reduction of income tax planning opportunities, the emphasis of planning has shifted to the creditor protection area.⁶ As a result, planners have given family limited partnerships increased attention.⁷ Some commentators argue FLPs not only offer tax savings but protection from judgment creditors as well.⁸

The Revised Uniform Limited Partnership Act (RULPA) defines family limited partnerships along with other limited partnerships.⁹ To form an FLP, a group of at least two people must file a certificate which meets the requirements of RULPA with the jurisdiction's Secre-

2. SIDNEY KESS & BERTIL WESTLIN, *CCH ESTATE PLANNING GUIDE* 203 (1989).

3. Thomas E. Geu, *Understanding the Limited Liability Company: A Basic Comparative Primer* (pt. 1), 37 S.D. L. REV. 44, 44-45 (1992); Richard A. Oshins, *Family Wealth Protection and Preservation*, TR. & EST., Feb. 1993, at 38, 38.

4. Oshins, *supra* note 3, at 38.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 40.

9. REV. UNIF. LIMITED PARTNERSHIP ACT §§ 701-702 (1985).

tary of State's office.¹⁰ The FLP usually must contain one or more general partners and one or more limited partners.¹¹ This note uses the RULPA adoption of FLPs, not one particular state's adoption of that standard.

In *Commissioner v. Culbertson*,¹² the U.S. Supreme Court tried to clarify what requirements an organization must meet to be classified as a partnership.¹³ The Court held that it would consider an organization a partnership if, by evaluating all relevant facts, it found the parties, acting in good faith and with a business purpose, intended to join together in the present conduct of business.¹⁴ Relevant facts include the partnership agreement, the conduct of the parties in executing the agreement's provisions, the testimony of disinterested persons, the relationship of the parties, the parties' respective abilities, the parties' capital contributions, the actual control of income and the purposes for which it is used, and any other facts that clarify the parties' true intent.¹⁵ After the Court's decision, Congress further clarified the meaning of the Court's language.¹⁶ Congress required that for an organization to be considered a partnership, the partnership must contain some income-producing activity.¹⁷

The family limited partnership has both general and limited partners.¹⁸ A limited partner contributes assets in exchange for interests in the partnership.¹⁹ These assets can include cash or other property or services.²⁰ The limited partners have the right to look at the partnership books kept at the principal place of business and, at all times, to inspect these books.²¹ They also can demand a full and true accounting of the partnership and have the right to receive a share of the profits or other compensation.²²

10. *Id.* § 201.

11. *Id.* § 101(7).

12. 337 U.S. 733 (1949).

13. *Id.* at 741-45.

14. *Id.* at 742.

15. *Id.*

16. I.R.C. § 704(e) (1988).

17. *Id.*; see also *Tower v. Commissioner*, 327 U.S. 280, 287 (1946).

18. REV. UNIF. LIMITED PARTNERSHIP ACT §§ 301-305, 401-405 (1985).

19. Barry S. Engel & Ronald L. Rudman, *Family Limited Partnerships: New Meaning for "Limited,"* TR. & EST., July 1993, at 46.

20. REV. UNIF. LIMITED PARTNERSHIP ACT § 101 (1985).

21. *Id.* § 105.

22. *Id.* §§ 305, 503.

The general partner or partners can do anything a partner in a partnership without limited partners can do.²³ The general partners of a limited partnership, however, become personally liable for any debts of the partnership.²⁴ Full liability distinguishes general partners from limited partners and from officers of corporations who are not liable personally for the debts of the partnership or corporation.²⁵ Thus, one reason to prefer a limited partnership, such as an FLP, is that it provides for the limited liability of its members.

The partnership agreement determines the allocation of profits and losses among the partners.²⁶ Distributions of cash and other assets of a limited partnership are determined by the partnership agreement.²⁷ If the partnership agreement does not specify how the distributions will be made, then the distributions are made based upon the value of the principal invested.²⁸ The partnership agreement also determines the timing of the distributions.²⁹ Often, the agreement gives complete discretion to the general partner or partners in making the distributions.³⁰

Both the elderly and nonelderly can create family limited partnerships.³¹ For example, parents may own an interest in a farm or other business that they wish to keep in the family.³² Parents fear that if they find themselves in financial trouble in the future, their creditors or bankruptcy trustees might seize the property.³³ They convey the property into a family limited partnership, with the parents and trusts (for the children) as limited partners, and a friendly family member as the general partner.³⁴

As another example, elderly individuals, in good health, nearing retirement, can create an FLP to protect their home and business. The elderly person conveys the property into a limited partnership with

23. *Id.* § 403.

24. *Id.* One advantage of general partnerships is lack of constraints as to what partners can do.

25. Compare *id.* § 403 with *id.* § 303 (comparing general powers and liabilities of general partners to liabilities of limited partners).

26. *Id.* § 503.

27. *Id.* § 504.

28. *Id.*

29. *Id.*

30. Oshins, *supra* note 3, at 43.

31. See Kathryn G. Henkel, *How Family Limited Partnerships Can Protect Assets*, EST. PLAN., Jan.-Feb. 1993, at 3, 3.

32. *Id.*

33. *Id.*

34. *Id.*

the elderly person as a limited partner and a friendly relative as the general partner. The general partner determines when and if distributions are made.³⁵

B. Trusts

Trusts exist in many forms. This note will discuss certain types of trusts that the elderly might use. The creator or settlor of a trust puts property in a trust for the benefit of a beneficiary or beneficiaries.³⁶ A trustee holds legal title to the property, manages the property, and makes distributions of the trust income and assets as directed by the trust agreement.³⁷ Thus, the trustee manages the trust for the benefit of someone else.³⁸

A trust can have many features. These include revocability, provisions for special needs, and tax and funding features. Moreover, a skilled planner can combine these features to create unique arrangements.

The elderly often debate whether to make the trust arrangement revocable.³⁹ In the revocable trust arrangement, the settlor reserves the power to revoke the trust.⁴⁰ Thus, if settlors become dissatisfied with the performance of the trustee or the beneficiaries, they can “take back” the property by revoking the trust.⁴¹ Upon death of the settlor, the assets remaining in the trust pass to the designated remainder beneficiaries.⁴² On the other hand, in an irrevocable trust, the settlor cannot revoke the trust and thus “loses” the property forever.⁴³ For this steep price, however, the trust offers tax and probate advantages.⁴⁴

Elderly individuals might want to put some cash in a revocable trust for the benefit of their very young grandchildren. The trustee might commence distributions when the beneficiaries reach age eighteen. Elderly individuals might choose this type of trust because they want to reserve the power to revoke. Perhaps the grandchildren will enter into a life of crime or become unworthy in other respects to re-

35. Oshins, *supra* note 3, at 43.

36. KESS & WESTLIN, *supra* note 2, at 173.

37. *Id.*

38. *Id.*

39. *Id.* at 197.

40. *Id.* at 202-03.

41. *Id.*

42. *Id.*

43. *Id.* at 198.

44. *Id.*

ceive the money when they reach age eighteen. However, if the facts are changed, the elderly person might use an irrevocable trust. For example, the grandchildren might be already grown and be model citizens. Thus, some elderly individuals may not be concerned about "losing" their money, so the planner might use an irrevocable trust as the best arrangement.

A planner might want to design a trust to surmount the Medicaid qualifying trust (MQT) limitation.⁴⁵ The government might "deem" the assets of the trust as available to a Medicaid applicant.⁴⁶ As such, Medicaid electability rules require that a Medicaid applicant use these assets before he or she can receive Medicaid.⁴⁷ Thus, if an elderly person has any kind of trust where the assets are deemed available to the elderly person or spouse, the government might disqualify the elderly person from receiving Medicaid.⁴⁸ Recent federal legislation further limits Medicaid eligibility by deeming more assets as available to the applicant.⁴⁹

To surmount the MQT problem, an elderly person contemplating nursing home care might consider a special-needs trust, a discretionary trust, or a nongrantor trust.⁵⁰ A planner specifically tailors each of these arrangements to get around the MQT limitation.⁵¹

In a special-needs trust, the trust agreement provides that the elderly person cannot use the income from the trust or the trust assets

45. Sanford J. Schlesinger et al., *Medicaid Planning Ideas: What Works and What Doesn't*, EST. PLAN., Nov.-Dec. 1993, at 331-39. The term MQT is really a misnomer because such trusts usually *disqualify* an elderly applicant from receiving public support. *Id.* at 332.

46. Michael Gilfix, *Special Trusts for Asset Preservation and Planning*, TR. & EST., Feb. 1993, at 62, 64.

47. Schlesinger et al., *supra* note 45, at 331.

48. *Id.* at 332. Generally, MQT rules do not apply where the trustee has no discretion to make distributions, where there is undue hardship, or with inter vivos trusts created by third persons and testamentary trusts. *Id.* at 332. The note discusses all of the exceptions except undue hardship. For an example of a statutory hardship, see *id.* (citing 10 COLO. CODE REGS. § 8.11054(e) (1992)).

49. 42 U.S.C. § 1396p(c)(1) (1994). This act limits Medicaid eligibility by extending the look-back period from 30 to 36 months, extending the look-back period for transfer of assets from 30 to 60 months, and extending the maximum Medicaid ineligibility period to a potentially unlimited period. *Id.* The Act also offers regulations for defining hardship and provides for states to set up procedures if application of rules causes hardship. *Id.* Finally, the Act extends the definition of resource transfers, applies Medicaid rules to all types of trusts, includes all assets of a trust, and defines *assets* to include all income and resources for the individual and spouse. *Id.* § 1396p(d)-(e).

50. Schlesinger et al., *supra* note 45, at 334-39.

51. *Id.*

for personal medical care.⁵² These terms also specify that the assets and income from the trust cannot be used to pay for anything that normally would be covered by Medicaid or any other public assistance program.⁵³ The trust agreement specifies that trust income and assets can only be used to pay for "special needs."⁵⁴ The trust agreement defines *special needs* as services not provided by public assistance programs.⁵⁵ The beneficiary is not given the authority to revoke the trust.⁵⁶ Further, the beneficiary cannot direct the trustee to distribute trust funds for the beneficiary's food, housing, or clothing.⁵⁷ Thus, the beneficiary will not use the trust assets and Medicaid should not deem the assets available to the Medicaid applicant.⁵⁸

A purely discretionary trust is one in which the trustee has unlimited discretion over distributions to or on behalf of the beneficiary.⁵⁹ Because the beneficiary of a discretionary trust is not entitled to the assets legally, he or she has no property interest in the trust reachable by creditors, and this type of trust surmounts the MQT limitation.⁶⁰ A planner can also use an inter vivos trust set up by a third party as another way to surmount the MQT limitation.⁶¹ "Assets of a third party trust are an available resource only to the extent that [the grantor intended them] to be used for the [Medicaid] applicant's support."⁶²

Other trusts can also be used by the elderly. For example, a standby trust stands in readiness to manage the assets of settlors when they can no longer manage the assets themselves.⁶³ It may provide for a takeover upon the settlor's medical or physical incapacity or when the settlor leaves on a vacation or otherwise becomes unable to

52. Gilfix, *supra* note 46, at 63.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Schlesinger et al., *supra* note 45, at 335. The courts in a few states have held that a beneficiary of a purely discretionary trust *has* some property interest because a trustee has an obligation to exercise discretion consistent with any purpose stated in the trust agreement. *Id.* at 336. See generally *In re Lackmann*, 320 P.2d 186 (Cal. Ct. App. 1958); *In re Dodge*, 281 N.W.2d 447 (Iowa 1979); *Connstaza v. Verona*, 137 A.2d 614 (N.J. Super. Ct. Ch. Div. 1958); *Ohio Bureau of Support v. Kreitzer*, 243 N.E.2d 83 (Ohio 1968).

60. Schlesinger et al., *supra* note 45, at 336.

61. *Id.* at 334.

62. *Id.*

63. KESS & WESTLIN, *supra* note 2, at 207.

manage his or her affairs.⁶⁴ A planner does not use a standby trust to save taxes, although it can be structured to do so.⁶⁵ The settlor usually makes the trust revocable to begin with, but he or she may add the condition that the trust becomes irrevocable upon the settlor's permanent disability.⁶⁶

A settlor also can create a trust by will.⁶⁷ These trusts are known as testamentary trusts.⁶⁸ Commentators describe them as appropriate for individuals who are unable or unwilling to part with certain property while they are alive and who want the control that a trust can give them for what they believe to be the best interests of their beneficiaries in the short or long run.⁶⁹ In contrast to a living trust (created and in operation during the settlor's life), the testamentary trust takes effect on the settlor's death.⁷⁰ Because the trust is in a will, it must meet probate formalities.⁷¹

An elderly person uses a grantor retained income trust (GRIT) to pay a trust income or give use of the trust principal for a term of years, with the remainder passing to family members.⁷² The GRIT trust does not save income taxes but does produce estate tax savings.⁷³

A planner designs a GRIT to take advantage of I.R.C. section 2036(c)(6) and to take advantage of the two types of GRITs.⁷⁴ A settlor funds an enterprise GRIT with assets in which the grantor has a substantial interest.⁷⁵ The other type, exempt GRITs, holds assets in which the grantor does not have a substantial interest.⁷⁶ With a GRIT, if the grantor lives out the terms of the trust, the grantor removes the property from the estate.⁷⁷ Thus, the GRIT trust arrangement can result in substantial estate tax savings.⁷⁸

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 210.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

In a pour-over trust, settlors “pour” assets into the trust from another source or sources.⁷⁹ The other assets may come from settlors’ wills or from a source completely outside their testamentary estates.⁸⁰ These other assets transferred include assets from employee benefit plans, Keogh plans, IRAs, or insurance proceeds.⁸¹ Pour-overs represent a fairly recent development in the law.⁸² Almost all states now allow pour-over trusts, but some statutes may not resolve all of the related issues.⁸³

A settlor can make a pour-over trust either revocable or irrevocable with all the advantages and disadvantages of both.⁸⁴ If they create revocable trusts, settlors can make changes and adjustments as circumstances change.⁸⁵ If they make the trust irrevocable, then change is barred, and a settlor will want to build enough flexibility into the trust so the trustee can make changes.⁸⁶

The pour-over trust is used when there are multiple beneficiaries and multiple assets.⁸⁷ It permits a convenient consolidation of these assets; the coordination makes use of the assets in the manner closest to the way the settlor made use of them.⁸⁸

C. The Limited Liability Corporation

In 1977, a new type of business organization appeared that combines the organizational and tax attributes of corporations and partnerships: the limited liability corporation (LLC).⁸⁹ Wyoming, in 1977, became the first state to adopt LLC legislation.⁹⁰ Five years later, Florida enacted the Florida Limited Liability Corporation Act.⁹¹ Cur-

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* Pour-overs became popular during the past two decades. *Id.*

83. *Id.* at 207. These issues include assets allowed in the trust and formation issues.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Geu, *supra* note 3, at 45. Another type of corporation, the subchapter S corporation, has been available for decades for family-owned businesses. See Gene Meyer, *A Good Defense*, ЧИ. ТРИВ., Jan. 25, 1994, at D1, D11. However, S corporations have restrictions on who can be in them while LLCs do not. *Id.* at D11. This note does not cover S corporations.

90. Geu, *supra* note 3, at 45.

91. *Id.*

rently, twenty-eight states provide for LLC creation by statute.⁹² Some commentators expect all states to adopt LLC statutes by the mid-1990s.⁹³

In the 1980s, the uncertainty over whether the IRS would classify the LLC as a partnership or a corporation for tax purposes stifled further LLC legislation.⁹⁴ But, finally, in 1988, the IRS determined it would classify the LLC as a partnership for income tax purposes.⁹⁵ Although at that time whether states not recognizing LLCs would recognize the limited liability of members of LLCs organized in other states was uncertain, many states in the late 1980s quickly followed the lead of Wyoming and Florida and adopted LLC statutes.⁹⁶

One commentator classifies LLC statutes as either *bulletproof* or *flexible*.⁹⁷ Bulletproof statutes usually have mandatory provisions concerning limited liability, transferability of assets, centralized management, and continuity of life.⁹⁸ These statutes classify LLCs as

92. These statutes include: ARIZ. REV. STAT. ANN. §§ 29-601 to -857 (West Supp. 1994); ARK. CODE ANN. §§ 4-32-101 to -1316 (Michie Supp. 1993); COLO. REV. STAT. ANN. §§ 7-80-101 to -1101 (West Supp. 1994); DEL. CODE ANN. tit. 6, §§ 18-101 to -1107 (Michie 1993 & Supp. 1994); FLA. STAT. ANN. §§ 608.401-.514 (West Supp. 1995); GA. CODE ANN. § 14-9-206 (1993); IDAHO CODE §§ 53-601 to -672 (Michie 1994); 805 ILL. COMP. STAT. § 180/1-1 to 60-1 (Michie Supp. 1994); IND. CODE ANN. §§ 23-18-1-1 to -18-13-1 (West 1994 & Supp. 1994); IOWA CODE ANN. § 490A.100-.1601 (West Supp. 1994); KAN. STAT. ANN. §§ 17-7601 to -7652 (Supp. 1993); LA. REV. STAT. ANN. §§ 12:1301-1369 (West 1994); MD. CORPS. & ASS'NS CODE ANN. §§ 4A-101 to -1103 (Michie 1993 & Supp. 1994); MICH. COMP. LAWS ANN. §§ 450.4101-5200 (West Supp. 1994); MINN. STAT. ANN. §§ 322B.01-.960 (West Supp. 1995); MO. ANN. STAT. §§ 47.010-.735 (West Supp. 1994); MONT. CODE ANN. §§ 35-8-101 to -1307 (1993); NEB. REV. STAT. §§ 67-233 to -296 (1990 & Supp. 1994); NEV. REV. STAT. §§ 86.011-.571 (Michie 1994); N.M. STAT. ANN. §§ 53-19-1 to -74 (Michie 1993); N.D. CENT. CODE §§ 10-32-01 to -155 (Michie Supp. 1993); OKLA. STAT. ANN. tit. 18, §§ 2000-2060 (West Supp. 1995); S.D. CODIFIED LAWS ANN. §§ 47-34-1 to -59 (Michie Supp. 1994); TEX. REV. CIV. STAT. ANN. art. 1528n (West 1992); UTAH CODE ANN. §§ 48-2b-101 to -158 (Michie 1994 & Supp. 1994); VA. CODE ANN. §§ 13.1-1000 to -1073 (Michie 1993 & Supp. 1994); W. VA. CODE §§ 31-1A-1 to -69 (Michie Supp. 1994); WYO. STAT. §§ 17-15-102 to -143 (Michie Supp. 1994).

93. Brian L. Schorr, *Limited Liability Companies: Features and Uses*, in FORMING AND USING LIMITED LIABILITY COMPANIES 1993, at 191, 193 (P.L.I. Corp. Law & Practice Course Handbook Series No. 805, 1993).

94. Geu, *supra* note 3, at 94. A major consideration for planning purposes are the tax consequences of a business organization. A taxpayer usually prefers the IRS to classify an organization as a partnership, rather than a corporation, because a corporation is taxed twice: the government taxes the corporate profits directly and the shareholder also pays taxes on the dividend. On the other hand, partners pay only one tax on their share of the partnership profits.

95. John C. Ale, *An Introduction to Limited Liability Companies*, PRAC. LAW., Dec. 1992, at 35, 37; see Rev. Rul. 88-76, 1988-2 C.B. 360.

96. Ale, *supra* note 95, at 37.

97. Schorr, *supra* note 93, at 191.

98. *Id.*

partnerships for tax purposes.⁹⁹ Thus, the planner has little flexibility concerning some provisions.¹⁰⁰ The commentator classifies the LLC statutes of other states as flexible because they provide for broad flexibility in structuring the LLC concerning the transferability of assets, centralized management, and continuity of life.¹⁰¹ Both flexible and bulletproof statutes often have default provisions.¹⁰²

All LLC statutes provide for the limited liability of the members of the LLC.¹⁰³ However, the duration of the LLC varies among the states.¹⁰⁴ For example, some states that have adopted LLC statutes provide for a term of thirty years.¹⁰⁵ Other states do not establish a maximum period.¹⁰⁶

All LLC statutes require filing articles of organization before any LLC may be formed.¹⁰⁷ The contents of the articles of organization vary among jurisdictions.¹⁰⁸ The statutes require information providing the total amount of investment and the names of the members of the corporation.¹⁰⁹

The basic management structure of LLCs is similar to both limited partnerships and corporations.¹¹⁰ Articles of organization and operating agreements usually govern LLC management activities.¹¹¹ Absent contrary provisions, management power of LLCs vests in the members, similar to that of partnerships.¹¹² However, some states significantly depart from the management structure of the partnership by saying that the power of the members is determined in proportion to their capital investment in the LLC.¹¹³ The LLC statutes of other

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* Default provisions about transferability of interests, centralized management, and continuity of life govern unless the owners change them.

103. Geu, *supra* note 3, at 50.

104. *Id.* at 54. Some states have 30-year limits; others are indefinite.

105. *Id.*; see COLO. REV. STAT. § 7-80-204(1)(b) (1992); FLA. STAT. ANN. § 608.407(1)(b) (West 1993); NEV. REV. STAT. § 86.161 (Michie 1994); TEX. REV. CIV. STAT. ANN. art. 1528n (West 1992); WYO. STAT. § 17-15-107 (Michie Supp. 1994).

106. Geu, *supra* note 3, at 54; see KAN. STAT. ANN. § 17-7607(2) (Supp. 1993); UTAH CODE ANN. § 48-2b-116(1)(b) (Michie 1992); VA. CODE ANN. § 13.1-1011 (Michie 1993).

107. Geu, *supra* note 3, at 56.

108. *Id.*

109. *Id.*

110. *Id.* at 63.

111. *Id.*

112. *Id.*

113. *Id.*; see KAN. STAT. ANN. § 17-7612 (1992).

states do not vest power in the members, but in managers.¹¹⁴ These states provide for a detailed management structure similar to a board of directors.¹¹⁵ The existence of managers often complicates the statutory scheme because it bifurcates the management functions from the ownership functions of the LLC.¹¹⁶ Thus, the most recent LLC statutes which provide for managers often enumerate the duties of the managers.¹¹⁷ For example, these statutes emphasize that the managers of the LLC owe fiduciary duties to the other members of the LLC.¹¹⁸ Several states enumerate these duties in their LLC statutes.¹¹⁹ Like members of partnerships, members of the LLC enjoy "flow through" federal income taxation.¹²⁰ However, unlike a partnership, the members have no liability beyond their contributions.¹²¹ Most LLC statutes require that the LLC have at least two members.¹²²

LLCs appeared on the legal scene recently and some issues remain unsettled.¹²³ For example, no case law exists that speaks to the

114. Geu, *supra* note 3, at 64; see COLO. REV. STAT. § 7-80-403 (West Supp. 1994); TEX. REV. CIV. STAT. ANN. art. 2.13 (West 1992).

115. Geu, *supra* note 3, at 64.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* For example, the Virginia law provides that:

A. A manager shall discharge his or its duties as a manager in accordance with the manager's good faith business judgment of the best interests of the limited liability company.

B. Unless a manager has knowledge or information concerning the matter in question that makes reliance unwarranted, a manager is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more managers or employees of the limited liability company whom the manager believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the manager believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the managers of which the manager is not a member if the manager believes, in good faith, that the committee merits confidence.

C. A person alleging a violation of this section has the burden of proving the violation.

VA. CODE ANN. § 13.1-1024.1 (Michie 1993).

120. Geu, *supra* note 3, at 45.

121. *Id.*

122. *Id.* at 57-58.

123. *Id.* at 53.

issue of whether a state that does not recognize LLCs would recognize the limited liability of members of an LLC.¹²⁴

III. Analysis of How the FLP, Trust, and LLC Serve the Needs of the Elderly

A. Overall Method

This note evaluates FLPs, trusts, and LLCs on the basis of several factors mentioned in the previous section. First, the note evaluates these arrangements on the basis of asset protection. Elderly persons may want to keep their assets away from creditors. They may want to make family residences or businesses as “creditor proof” as possible. Also, elderly persons may operate businesses that subject them to a greater than normal amount of risk of suffering large tort judgments. If someone sues an elderly person because of his or her business relationship, the elderly person will want to reduce his or her liability to the least amount possible.

Next, the elderly, like all others, want to save on taxes, whether federal income, estate, or transfer taxes. In addition to collecting income taxes, the government imposes estate taxes on property transferred at death.¹²⁵ The government levies the estate tax on the grantor’s estate and not on the heir receiving the property.¹²⁶ The government also collects a transfer tax. This is a tax upon the passing of title to property or any other valuable interest out of or from the estate of a decedent by inheritance, devise, or bequest.¹²⁷ Recently, the government broadened the transfer tax at the federal level and included transfers not previously covered. For example, under the 1986 Tax Reform Act, a generation-skipping transfer tax (GSTT) was imposed on transfers under trusts (or similar arrangements) having beneficiaries in more than one generation below that of the transferor.¹²⁸ Before Congress enacted the GSTT, a creator of a trust put money in the trust and the government did not impose a tax on the death of a remote beneficiary.¹²⁹ However, the Tax Reform Act of 1986 imposed a flat rate tax on the beneficiary’s death.¹³⁰

124. *Id.*

125. KESS & WESTLIN, *supra* note 2, at 3-4.

126. *Id.*

127. *Id.* at 81.

128. *Id.* at 631-33.

129. *Id.* at 631.

130. *Id.* at 631-32.

This note also evaluates FLPs, trusts, and LLCs in terms of the control they provide to the creator of the arrangement. Often, the elderly worry about how much control they will have over the management of property they transfer into FLP, trust, or LLC arrangements. Frequently, elderly individuals want to maintain control and reserve the possibility of changing the relationship based on circumstances which occur after the arrangement is created. For example, the elderly person's relationship with family members may change over time. They may view beneficiaries as deserving of their property at one point, but later may want to revoke an arrangement if the beneficiaries become undeserving of their property. The amount of control and the flexibility to change any financial planning device are important factors in the selection of these devices.

Also, the elderly have concerns unique to them. These include Medicaid eligibility questions as well as probate questions. In order to qualify for Medicaid, elderly persons have to use up most of their assets.¹³¹ The question arises as to whether an FLP, trust, or LLC arrangement can circumvent this problem.

Finally, probate often costs a great deal of money and makes the financial secrets of the deceased public knowledge. The probate process often does not move quickly and prolongs the suffering of family members. Thus, the elderly often want to avoid the process.

B. Family Limited Partnerships

1. ASSET PROTECTION

The Revised Uniform Limited Partnership Act discusses the liability of partners to creditors when assets are put into any kind of limited partnership.¹³² Creditors usually obtain a charging order from a court as the remedy.¹³³ Thus, the creditor can theoretically receive only distributions from the partnership and not the partnership interest itself.¹³⁴ Because the elderly person controls the general partner and this general partner determines the amount and timing of the distributions from the partnership, a judgment creditor receives an asset of relatively little value.¹³⁵ The judgment creditor does not substitute for the elderly person as a limited partner and thus has no vote or

131. Buchanan & Buchanan, *supra* note 1, at 31.

132. REV. UNIF. LIMITED PARTNERSHIP ACT § 703 (1985).

133. Oshins, *supra* note 3, at 43.

134. *Id.*

135. *Id.*

management voice in the family limited partnership.¹³⁶ Also, the creditor is not entitled to any information about the limited partnership's transactions and is not entitled to look at the books of the partnership.¹³⁷ Finally, the general partner will continue to control the partnership assets.¹³⁸

Another deterrent for a creditor is that, for income tax purposes, obtaining a charging order results in the IRS treating the creditor as the owner of the interest for tax purposes.¹³⁹ Thus, judgment creditors must pay tax on the income earned on that portion of the partnership even though they do not receive the income earned by that part of the partnership.¹⁴⁰ In many situations, the holder of a charging order on a family limited partnership has an asset of negative value.¹⁴¹ Some commentators describe the effect of creating an FLP, even if created by freely marketable assets, as the conversion of desirable assets into assets that are unattractive and undesirable.¹⁴²

However, these positive asset protection characteristics of FLPs have been jeopardized by two recent decisions by California courts.¹⁴³ In *Centurion Corp. v. Crocker National Bank*,¹⁴⁴ the bank obtained a judgment of \$1,431,688 against Jon Perroton.¹⁴⁵ Perroton had an interest in a limited partnership known as California Self Storage.¹⁴⁶ After the judgment, the bank obtained an order charging Perroton's interest with the unsatisfied judgment plus interest.¹⁴⁷ As of November 1985, the bank had received no money as a result of the charging order.¹⁴⁸ On November 26, 1985, the bank moved for a sale of Perroton's interest in the limited partnership.¹⁴⁹ After a hearing, a court ordered that the interest in the limited partnership be sold.¹⁵⁰ Later, pursuant to California Code of Civil Procedure section 473, Perroton moved to

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 44.

142. *Id.*

143. Engel & Rudman, *supra* note 19, at 48.

144. *Centurion Corp. v. Crocker Nat'l Bank*, 255 Cal. Rptr. 794 (Cal. Ct. App. 1989).

145. *Id.* at 795.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

void the order of sale.¹⁵¹ Perroton filed this motion after he filed for bankruptcy and after the bank had obtained relief from the automatic stay in the bankruptcy proceedings which allowed it to sell the interest in the limited partnership.¹⁵² The trial court denied Perroton's motion to void the sale and Perroton appealed.¹⁵³

The appeals court affirmed the ruling of the lower court.¹⁵⁴ The court said that a creditor with a judgment against a partner, but not the partnership, cannot execute directly on the partner's interest in the partnership.¹⁵⁵ However, the court held that the authorities support the order for sale of the judgment debtor partner's interest as distinct from the property of the limited partnership, where the creditor has shown that it was unable to obtain satisfaction of the debt under the charging order and where the general partner has consented to the sale.¹⁵⁶ The court pointed out that the limited partner does not have any property interest in specific partnership interests as such.¹⁵⁷ Rather, the limited partner is entitled, among other things, to receive a share of the profits.¹⁵⁸

The court supported its decision by citing the California Corporations Code and case law. The interest charged may be redeemed at any time before the foreclosure, or, in the case of a sale being directed by the court, may be purchased without thereby causing dissolution: (a) with separate property, by any one or more of the partners; or (b) with partnership property, by any one or more of the partners with the consent of the partners whose interests are not so charged or sold.¹⁵⁹

Also, the court stated that an authoritative treatise about California partnerships said that the judgment creditor does not own the partnership interest by virtue of the charging order but may become the owner by foreclosing the interest. Any one of the partners may, however, redeem the interest before foreclosure or court-ordered sale.¹⁶⁰

151. *Id.*

152. *Id.* at 796.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.* at 797.

157. *Id.*

158. *Id.*

159. *Id.* at 798 (citing CAL. CORP. CODE § 15028 (West 1991)).

160. *Id.* (citing CONTINUING EDUC. BAR, ADVISING CALIFORNIA PARTNERSHIPS 429 (1988)).

The court also pointed to California cases which, in the court's opinion, indicated that creditors who first obtain a charging order can have the partnership interest sold.¹⁶¹ For example, in *Evans v. Galardi*,¹⁶² the judgment creditor could not get any money by merely getting the charging order.¹⁶³ In *Evans*, the court said it might "permit a deviation from the statutory process."¹⁶⁴

Thus, the *Centurion* court concluded that the California Corporations Code, case law, and relevant authorities allowed it to sanction a sale of the debtor partner's interest if three conditions were met.¹⁶⁵ First, the creditor must obtain a charging order. Second, the judgment nevertheless remains unsatisfied.¹⁶⁶ Finally, all partners other than the debtor partner consent to the sale.¹⁶⁷ The court said that this consent meant that the sale did not violate the partnership agreement.¹⁶⁸

In *Hellman v. Anderson*,¹⁶⁹ Hellman filed lawsuits against Anderson for accounting, breach of fiduciary duty, mandatory injunction, rescission, and fraud.¹⁷⁰ In 1987, Hellman and Anderson settled these suits.¹⁷¹ However, Anderson failed to make any of the payments required by the settlement agreements, and in October 1987, the trial court entered stipulated judgments totaling more than \$440,000 against Anderson.¹⁷² In July 1988, after various unsuccessful attempts to enforce the judgments, Hellman obtained an "Order Charging Debtor John B. Anderson's Partnership Interest" in Rancho Murieta Investors (RMI), a general partnership in which Anderson had an eighty percent ownership interest.¹⁷³ In December 1988, Hellman filed a motion for an order authorizing a foreclosure sale of Anderson's partnership interest in RMI.¹⁷⁴ The trial court granted the motion and both parties appealed.¹⁷⁵

161. *Id.*

162. 546 P.2d 313 (Cal. 1976).

163. *Id.* at 321.

164. *Id.*

165. *Centurion*, 255 Cal. Rptr. at 798.

166. *Id.*

167. *Id.*

168. *Id.*

169. 284 Cal. Rptr. 830 (Cal. Ct. App. 1991).

170. *Id.* at 832.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

The appeals court first held that the relevant California statutes authorized the foreclosure of the partnership interest.¹⁷⁶ The court distinguished a partner's right in specific property of the partnership from their interest in the partnership.¹⁷⁷ The court defined a partner's interest in the partnership as their share of the profits and surplus of the partnership.¹⁷⁸ The court said that prior to California's adoption of the Uniform Partnership Act (UPA), a judgment creditor of a partner whose personal debt (as distinguished from partnership debt) gave rise to the lawsuit could force a sale of the partnership assets.¹⁷⁹

Next, the court noted that California had adopted the UPA and said that a foreclosure would not necessarily violate the underlying policy of the UPA and interfere with partnership business.¹⁸⁰ The court noted that the only thing being sold was the partnership interest, not any of the partnership assets.¹⁸¹

As further evidence of statutory authorization, the court cited the California Code of Civil Procedure, which provides that if a money judgment is rendered against a partner, but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to section 15028 (general partnership) or 15673 (limited partnership) of the Corporations Code.¹⁸²

Section 15028 authorizes the charging order and allows a trial court to "make all other orders . . . which the circumstances may require."¹⁸³ The court cited further language of that section that allowed "judicial authority to order foreclosure and sale of the charged interest because [the statute] further says the interest charged may be redeemed 'at any time *before foreclosure, or in the case of a sale* being directed by the court' may be purchased by nondebtor partners"¹⁸⁴ The court concluded that the plain language of the statute contemplated the possibility of judicial foreclosure and sale.¹⁸⁵

Next, the court held that one of the conditions required in *Centurion* for a foreclosure sale—that the other partners consent—was not

176. *Id.* at 833.

177. *Id.* at 833-35.

178. *Id.* at 834.

179. *Id.*

180. *Id.* at 837.

181. *Id.*

182. *Id.* at 835.

183. *Id.* at 834.

184. *Id.*

185. *Id.* at 834-35.

invariably required.¹⁸⁶ The court reasoned that statutes do not state that nondebtor partner consent is required for foreclosure of the charging order.¹⁸⁷ The court noted that if the legislature wanted to make consent a condition, the legislature could have easily done so.¹⁸⁸

The court concluded that the test is whether the foreclosure would unduly interfere with the business of the partnership.¹⁸⁹ In no case does the creditor gain the assets of the partnership or gain a right to participate in the management of the partnership.¹⁹⁰

Some FLP critics suggest that the effect of the *Centurion* and *Hellman* decisions brings into question whether FLPs can really protect the assets of limited partners of FLPs from creditors.¹⁹¹ They assert that the creditors no longer have the charging order as their sole remedy.¹⁹² Some FLP critics claim that the debtor can no longer reasonably rely on the creditor to await distributions while debtors retain their interest.¹⁹³ Although *Hellman* deals with general partnerships, the court's rationale would likely allow for a foreclosure of an FLP interest because the limited partners have no say in partnership affairs and, therefore, a foreclosure would have little impact on the partnership business.¹⁹⁴

Even without *Centurion* and *Hellman*, critics of the asset-protection features of FLPs suggest that FLP advocates overlook several facts about the use of family limited partnerships for asset-protection purposes.¹⁹⁵ For example, even though a creditor cannot reach the assets of the partnership, neither can the debtor partner.¹⁹⁶ Further, the debtor may not tire of the arrangement, particularly where the debtor requires distributions from the partnership to pay for living arrangements.¹⁹⁷ Finally, these commentators suggest that most courts would disapprove of a device which they may deem is used solely for the avoidance of debt repayment.¹⁹⁸

186. *Id.* at 837.

187. *Id.*

188. *Id.*

189. *Id.* at 838.

190. *Id.*

191. Engel & Rudman, *supra* note 19, at 47.

192. *Id.* at 48.

193. *Id.*

194. *Id.*

195. *Id.* at 47.

196. *Id.*

197. *Id.*

198. *Id.*

In response, other commentators suggest that the general partner can control the timing of distributions and thus the foreclosure really would have no effect.¹⁹⁹ Also, the *Hellman* case involved a general partnership, and, even though the *Centurion* case involved a limited partnership, the court in *Centurion* required that the creditor obtain the consent of the nondebtor partners.²⁰⁰ Finally, the *Hellman* decision makes clear that the foreclosure order does not entitle the creditor to the assets of the partnership or allow the creditor to participate in the management or operation of the partnership.²⁰¹

2. TAX SAVINGS

FLPs save on transfer taxes when a partner transfers assets within the partnership.²⁰² An elderly person, when using an FLP, would transfer assets into the FLP and then reduce the value of these assets, thus reducing the transfer tax.²⁰³

Transfer taxes are generally imposed on the fair market value of the property transferred.²⁰⁴ For transfers where the market value is not readily determinable, federal regulations say that the value "is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having knowledge of the relevant facts."²⁰⁵ Commentators suggest that if this formula is used together with the assumption in the regulation that the parties are unrelated, the value of gifts can be significantly eroded.²⁰⁶ Further, the ability to manipulate the value presents an opportunity to reduce the transfer tax to almost nothing.²⁰⁷ One commentator expressed the situation as an "estate planner's dream."²⁰⁸

An appraiser will calculate a discount that reduces the value of the interest and includes minority-interest discounts, discounts on

199. See, e.g., Oshins, *supra* note 3, at 43.

200. *Hellman v. Anderson*, 284 Cal. Rptr. 830, 831 (Cal. Ct. App. 1991); *Centurion Corp. v. Crocker Nat'l Bank*, 255 Cal. Rptr. 794, 795 (Cal. Ct. App. 1989).

201. *Hellman*, 284 Cal. Rptr. at 838.

202. Oshins, *supra* note 3, at 38. An FLP's primary advantage is that it saves on transfer taxes. *Id.*

203. *Id.* at 46. Through valuation techniques, discussed in the note, the value is reduced.

204. *Id.*

205. 26 C.F.R. § 25.2512-1 (1994).

206. See, e.g., Oshins, *supra* note 3, at 46-48.

207. *Id.*

208. *Id.* at 46.

marketability, and restrictions on disposition.²⁰⁹ Minority interests refer to the fact that interests that are closely held are not valued highly because buyers may not want them.²¹⁰ Lack of marketability refers to the fact that no ready market exists for closely held family limited partnership interests because they are unattractive when compared to publicly traded assets.²¹¹ Restrictions on disposition also reduce the value of the interest because the elderly will often limit how co-owners can transfer the interests and also limit who will be allowed as limited partners.²¹² The combination of these valuation discounts reduces the transfer value of an FLP interest and thus reduces the transfer tax.²¹³

3. CONTROL AND OTHER FACTORS

The elderly often worry about the amount of control they will have over their assets. An elderly person would set up an FLP so that the general partner or partners run the partnership and decide when and whether to make distributions.²¹⁴ Thus, if elderly persons decide to use an FLP, they should choose someone whom they can influence.²¹⁵ Losing control of a general partner results in possible loss of any asset-protection advantages an FLP can provide.

FLPs present problems for Medicaid planning purposes. The assets of the elderly person generally would be counted in determining Medicaid eligibility.²¹⁶ Finally, FLPs do not help in avoiding probate, because unlike a trust, a limited partnership does not rule from beyond the grave.²¹⁷

4. CONCLUSION ON FAMILY LIMITED PARTNERSHIPS

Due to recent California cases, the asset-protection feature of FLPs has been drawn into question. Through valuation techniques, the elderly could reduce the taxable value of an FLP and save taxes. Thus, it is likely that FLP assets would be deemed available for Medicaid qualifying purposes.

209. *Id.* at 46-48.

210. *Id.* at 47.

211. *Id.*

212. *Id.* at 48.

213. *Id.*

214. *Id.* at 41.

215. *See id.*

216. Gilfix, *supra* note 46, at 64.

217. KESS & WESTLIN, *supra* note 2, at 177.

C. Trusts

1. ASSET PROTECTION

Commentators suggest that the more discretionary the trust, the greater the creditor protection of the trust.²¹⁸ For example, a trust with flexible terms provides more in the way of protection than a trust that has the beneficiary as its sole trustee or a trust that provides for fixed distributions rather than discretionary distributions.²¹⁹ To give the trust maximum asset-protection features, commentators suggest that the trust agreement allow distributions subject to the absolute discretion of an independent trustee.²²⁰ Also, settlors should not make themselves the beneficiaries of the trust. Thus, by eliminating the beneficiary's enforceable rights, the rights of the beneficiary's creditors are also curtailed.²²¹

Creditor protection often varies by jurisdiction.²²² For example, in some jurisdictions, a creditor cannot reach the assets of a revocable trust.²²³ In other jurisdictions, creditors can reach the assets of revocable trusts even though the settlor has *not* reserved a beneficial interest.²²⁴

One commentator describes the MegatrustSM concept as "perhaps the greatest asset protection tool that a client can establish."²²⁵ In a MegatrustSM the trustee has broad powers to make distributions.²²⁶ Usually, the trustee provides that beneficiaries can use the assets of the trust but must pay for their own consumables.²²⁷ If the elderly

218. See, e.g., Oshins, *supra* note 3, at 52.

219. *Id.*

220. *Id.*

221. *Id.*

222. AUSTIN W. SCOTT & WILLIAM F. FRATCHER, *THE LAW OF TRUSTS* § 330.12 (1991).

223. See, e.g., *Hill v. Cornell & Bros.*, 95 Ky. 512 (1894); *Guthrie v. Canty*, 53 N.E.2d 1009 (Mass. 1944); *Abruzzese v. Oestrich*, 47 A.2d 883 (N.J. Ch. 1946); *Murphey v. C.I.T. Corp.*, 33 A.2d 16 (Pa. 1943); *Van Steward v. Townsend*, 28 P.2d 999 (Wash. 1934).

224. See ALA. CODE § 35-4-290 (Michie 1991); CAL. PROB. CODE §§ 19000-19403 (West Supp. 1995); IND. CODE § 30-1-9-14 (West 1994); KAN. STAT. ANN. § 67-414 (1993); MICH. STAT. ANN. § 26.155-188 (Callaghan 1993); MINN. STAT. ANN. § 502.76 (West 1990); N.Y. EST. POWERS & TRUSTS LAW § 10-10.6 (West 1992); N.D. CENT. CODE § 59-05-35 (Michie 1993); OHIO REV. CODE ANN. § 1335.01 (Anderson 1993); OKLA. STAT. ANN. tit. 60, § 299.15 (West 1994); S.D. CODIFIED LAWS ANN. § 43-11-17 (Michie 1993); WIS. STAT. § 701.07 (West 1993).

225. Oshins, *supra* note 3, at 61 n.34. The MegatrustSM is a service mark held by Richard Oshins and Jonathon Blattmachr.

226. Richard A. Oshins & Jonathon Blattmachr, *The Megatrust: An Ideal Family Wealth Preservation Tool*, TR. & EST., Nov. 1991, at 22.

227. *Id.* at 23. Consumables can be food, medicine, etc.

beneficiary wants a house, the trust would purchase the home and allow the elderly person to use it.²²⁸

2. TAX SAVINGS

The tax savings of trusts varies from trust to trust.²²⁹ Some trusts save in estate taxes, others in income taxes.²³⁰ For example, revocable trusts offer little tax savings.²³¹ All income from the trust is attributable to the settlor because the settlor can revoke the trust.²³² No estate tax savings exist either, and these taxes are attributed to the estate.²³³

In contrast, irrevocable trusts are not taxable to the settlor's estate.²³⁴ If settlors want to create a living irrevocable trust, they should not include the power to revoke, nor allow anyone else a reversionary interest. They should not retain a general power of appointment, nor should they retain any interest after death, and, if insurance is part of the trust, the estate should not be named the beneficiary.²³⁵ Because the tax in this trust arrangement is distributed,²³⁶ the settlor may save income tax.²³⁷

Grantor retained interest trusts (GRITs) do not save on income tax because all income is attributable to the settlor.²³⁸ Estate taxes are not taxable to the grantor's estate unless the grantor dies within the reserved income term, subject to special rules of I.R.C. section 2036(c) regarding the term of the trust and the property with which it is funded.²³⁹

The income from standby trusts is taxable to the settlor, and the assets of the trust are includable in the settlor's estate.²⁴⁰ Because the income from pour-over trusts is also attributable to the settlor, no income tax savings exist with this kind of trust.²⁴¹ It is possible to save

228. *Id.*

229. KESS & WESTLIN, *supra* note 2, at 201.

230. *Id.*

231. *Id.* at 202-03.

232. *Id.*

233. *Id.*

234. *Id.* at 198-99.

235. *Id.* at 199.

236. *Id.* at 201.

237. *Id.* at 199.

238. *Id.*

239. I.R.C. § 2036(c) (1987).

240. KESS & WESTLIN, *supra* note 2, at 205.

241. *Id.* at 207.

on estate taxes if the trust is an irrevocable rather than a revocable trust.²⁴²

Finally, income is taxed to the creator of testamentary trusts.²⁴³ The assets of such a trust are included in the settlor's estate.²⁴⁴

3. CONTROL AND OTHER ISSUES

The amount of control available to the creator of a trust varies among the trusts.²⁴⁵ In a revocable trust, the settlor enjoys a great degree of control because he or she can revoke the trust arrangement.²⁴⁶ Creators of revocable pour-over trusts enjoy this feature as well.²⁴⁷ On the other hand, settlors of irrevocable trusts will have little control.²⁴⁸ Special-needs trusts, for example, are often set up to provide little control for the settlor.²⁴⁹ For MegatrustsSM and special-needs trusts, effective control depends upon the selection of a reliable trustee.²⁵⁰ Settlor's need to pick someone upon whom they can depend because they will have little discretion to change the trust after they create it.²⁵¹

Trusts possess an important feature in that they avoid probate.²⁵² Often, settlors do not want to pay for probate.²⁵³ Also, they may not want their private information made public.²⁵⁴ They also may want to save time.²⁵⁵ Thus, a trust "rules from beyond the grave" and provides a great vehicle by which to avoid probate.²⁵⁶

Some trusts might help with the Medicaid qualifying trust (MQT) problem.²⁵⁷ At first glance, purely discretionary trusts might solve the problem.²⁵⁸ However, in some jurisdictions the government deems assets from these trusts as available.²⁵⁹ One commentator sug-

242. *Id.* at 205.

243. *Id.*

244. *Id.*

245. *See id.* at 201 (comparing trusts generally).

246. *Id.*

247. *Id.* at 206.

248. *Id.*

249. *See Gilfix, supra note 46, at 63.*

250. *See Oshins & Blattmachr, supra note 226, at 20; Gilfix, supra note 46, at 63 (discussing the trustee).*

251. *See Oshins & Blattmachr, supra note 226, at 20.*

252. *KESS & WESTLIN, supra note 2, at 201.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.* at 173.

257. *See Buchanan & Buchanan, supra note 1, at 31.*

258. *Id.*

259. *See id.*; see also Schlesinger et al., *supra note 45, for examples of states that do.*

gests that several drafting techniques exist to protect a discretionary trust from being deemed available and thus excluding public support.²⁶⁰ First, the trustee should be provided with absolute discretion to make distributions.²⁶¹ Second, the discretionary trust should convert into a supplemental-needs trust when the beneficiary enters an institution.²⁶² Third, a discretionary trust can provide for beneficiaries in addition to the incapacitated.²⁶³ Fourth, the trust should provide for the distribution of the principal and accumulated income when the beneficiary dies.²⁶⁴ Fifth, the trust instrument should include a spendthrift clause.²⁶⁵ Sixth, the trust should grant a limited power of appointment to a dependable relative.²⁶⁶ Finally, a grantor-beneficiary might retain a special power of appointment exercisable in favor of a class of beneficiaries.²⁶⁷

The elderly also can create a special-needs trust (that explicitly limits a trustee's discretion to nonessential items) to deal with the MQT problem.²⁶⁸ However, some state legislatures have tried to limit the effectiveness of this technique.²⁶⁹

4. CONCLUSION ON TRUSTS

The asset protection features of a trust vary by type of trust. Generally, the less interest a settlor has in a trust, the less a creditor

260. Schlesinger et al., *supra* note 45, at 336. However, individual circumstances must be analyzed carefully before any of these steps are recommended. *Id.*

261. *Id.* To guard against the chance that the trustee may not make any payments to the beneficiary, the trust agreement should contain goals. *Id.*

262. *Id.* at 336-37. This type of trust is known as a convertible trust. *Id.* at 337. Because a "luxuries only" provision limits a trustee's discretion, a court might be persuaded not to invade the trust assets. *Id.*

263. *Id.* This is because if additional beneficiaries are named, a trustee might have sufficient justification to withhold payments from the incapacitated beneficiary. *Id.*

264. *Id.* This gives the trustee further justification to withhold distributions and further reason for a court not to deem the assets available. *See id.*

265. *Id.* A spendthrift clause states that the trust assets are not available to creditors and cannot be alienated by the beneficiaries. Even though this clause might not defeat the interests of all creditors, it should stop the claims of those not supplying necessities to the beneficiary. *Id.*

266. *Id.* at 338. The assets over which the power of appointment is exercised are not available resources. *Id.*

267. *Id.* The trust instrument could be drafted so that the exercise of power over the assets when the grantor becomes eligible for aid terminates income to the grantor. *Id.*

268. Gilfix, *supra* note 46, at 62-64.

269. *Id.* For example, a New Jersey statute states, "Any provision in a . . . trust agreement . . . which reduces or excludes coverage or payment for goods and services to an individual because of that individual's eligibility for or receipt of Medicaid benefits shall be null and void." N.J. STAT. ANN. § 30:4D-6f (West 1981).

can reach. Taxes also vary by trust type. Settlor can save on estate or income taxes depending upon which trust they select. Control also varies among trusts. A settlor can have the complete control a revocable trust offers or have the very little control an irrevocable trust offers. Finally, some trusts can surmount the MQT problem. However, the availability of these trusts often varies by jurisdiction.

D. Limited Liability Corporations

1. ASSET PROTECTION

The limited liability corporation affords limited liability to its members; the members are liable for the amount of their contribution only, and they maintain control and management of the corporation.²⁷⁰ The Wyoming LLC statute features a typical example of how an LLC would limit the liability of its members: neither the members of the limited liability company, nor the managers of a limited liability company managed by a manager or managers, are liable under any judgment, decree, or order of a court, or in any manner, for debt, obligation, or liability of the limited liability company.²⁷¹ Most states that have adopted LLCs have similar provisions.²⁷² Thus, the elderly could make a family business into an LLC. If the business were sued, they would not be personally liable.

2. TAX ISSUES

The main issue for tax purposes regarding LLCs is whether the government classifies LLCs as corporations or partnerships. While they were classified as corporations, they languished as a financial planning vehicle.²⁷³

Commentators refer to limited partnerships and some trusts as *pass-through* entities.²⁷⁴ The government does not tax the entity itself, but rather taxes those who receive the money from the entity.²⁷⁵ On the other hand, the government considers a corporation a taxable entity.²⁷⁶ In fact, the IRS subjects the shareholders of a corporation to double taxation because both the corporation and the shareholder pay

270. Geu, *supra* note 3, at 50.

271. WYO. STAT. § 17-15-113 (Michie Supp. 1994).

272. Geu, *supra* note 3, at 50.

273. See Thomas E. Geu, *Understanding the Limited Liability Company: A Basic Comparative Primer* (pt. 2), 37 S.D. L. REV. 467, 469 (1992).

274. *Id.*

275. *Id.*

276. *Id.* at 470.

tax on the corporation's income.²⁷⁷ Thus, from a tax standpoint, an elderly person would want the LLC classified as a pass-through entity like a trust or partnership rather than as a taxable entity like a corporation.²⁷⁸

In *Morrissey v. Commissioner*,²⁷⁹ the Supreme Court listed five factors to determine whether an organization would be classified as a corporation for tax purposes.²⁸⁰ These factors were: (1) the holding of title by either the organization or its agents; (2) whether "centralized management" was present; (3) the ability to transfer interests in the organization without interruption of the organization during the lifetime of the owner of the interest; (4) continuity of the organization; and (5) the limited liability of the owners.²⁸¹

The court in *Larson v. Commissioner* determined the weight of the *Morrissey* factors.²⁸² In *Larson*, the IRS sought to classify a limited partnership as a corporation.²⁸³ The legal question was the weight to be accorded to the *Morrissey* factors.²⁸⁴ The court concluded that it would use a balancing test and weigh the factors to see if there were more corporate than noncorporate factors.²⁸⁵ The court determined that it would give equal weight to each factor in the determination.²⁸⁶

During the early 1980s, LLCs were classified as partnerships.²⁸⁷ In 1982, the IRS changed the LLC classification to corporation. The LLC lay dormant as a planning tool until 1988. In Revenue Ruling 88-76, the IRS decided that it would classify a Wyoming LLC as a partnership for tax purposes.²⁸⁸ The Service decided that the LLC lacked two of the four requirements for corporations.²⁸⁹ First, they said that the LLC lacked the continuity-of-life requirement because, under the Wyoming Act, the LLC dissolves.²⁹⁰ Second, the members of the LLC could not freely transfer their interest in the LLC because they could

277. *Id.*

278. *See id.* at 471.

279. 296 U.S. 344 (1935).

280. *Id.* at 359-60.

281. *Id.*

282. 66 T.C. 159 (1976).

283. *Id.* at 159.

284. *Id.* at 172.

285. *Id.*

286. *Id.*

287. *Ale, supra* note 95, at 35.

288. Rev. Rul. 88-76, 1988-2 C.B. 361.

289. *Id.*

290. *Id.*

only assign the right to share in the profits.²⁹¹ Although the LLC, in that case, did possess the characteristics of limited liability and centralized management, it lacked a preponderance of corporate characteristics.²⁹² Thus, the Service classified it as a partnership and not as a corporation for tax purposes.²⁹³

3. CONTROL AND OTHER ISSUES

The main disadvantage of the LLC is the restricted transferability of the interest a person holds in an LLC.²⁹⁴ Of course, this is not a problem if elderly persons never want to transfer their interest in the LLC. However, if they do want to transfer it, they can, as in a partnership, only transfer their right to share in the profits and not any of the other rights of membership such as the right to participate in the management of the LLC.

4. CONCLUSION ON LIMITED LIABILITY COMPANIES

The LLC affords its members limited liability; generally, a member is liable only to the extent of his or her contribution for any LLC debt. LLCs are not subject to the double taxation of corporations because several IRS rulings have determined the LLC should be taxed as a partnership. Finally, LLCs seem to offer more control than trusts. However, the interest in an LLC is not readily transferable.

IV. Recommendations: A Proposal for How the Elderly Should Use the FLP, Trust, and LLC

An elderly client, whether contemplating nursing home care or not, should not use FLPs because California court decisions have chipped away at the asset-protection advantages of this financial planning device. Instead, elderly individuals should use a combination of trusts and limited liability companies to maximize asset protection, tax savings, and control. A combination of trusts and LLCs also minimizes probate, and the special-needs trust might solve the MQT problem.

291. *Id.*

292. *Id.*

293. *Id.*

294. *Id.* A person cannot transfer assets in the LLC without the unanimous consent of the other members, but only the right to share in the profits of the LLC.
Id.

The *Centurion* and *Hellman* decisions cast a cloud over the future of asset-protection advantages of the FLP.²⁹⁵ Whereas before the only remedy for a creditor was a charging order, the courts in these cases allowed the creditor to foreclose on the interests and thus reach the interests themselves.²⁹⁶ Furthermore, FLP proponents overlook several other negative facts about FLPs.²⁹⁷ For example, even if a creditor cannot reach the FLP interest, neither can the elderly debtor.²⁹⁸ Also, debtors may not tire of the arrangements as easily as FLP proponents think.²⁹⁹ This may be particularly true when distributions pay the elderly's living expenses, so that the general partner cannot wait to make distributions.³⁰⁰

Trusts can provide more in asset protection if the creator of the trust makes the trust totally discretionary. Trusts are also helpful in saving taxes.³⁰¹ They are flexible enough to provide as much tax savings as the creator wants.³⁰² Trusts can surmount the MQT problem and help elderly clients who are trying to qualify for Medicaid.³⁰³ Trusts also can provide as much control as the grantor wishes. If the grantor wants no control, the planner can use some kind of irrevocable arrangement. On the other hand, a revocable trust can be used if the grantor wants to retain control over his or her property.³⁰⁴

Limited liability companies add a new dimension to financial planning for the elderly. Ideally suited for elderly persons with risky businesses and professional relationships (e.g., lawyers, doctors, accountants), LLCs provide for the same limited liability that a corporation provides.³⁰⁵ Unlike a corporation, the government does not subject LLCs to double taxation, and, therefore, they have a partnership's tax advantages.³⁰⁶

Thus, this note recommends that the elderly client avoid the FLP arrangement and instead use a combination of LLCs and trusts to

295. Engel & Rudman, *supra* note 19, at 47.

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. See KESS & WESTLIN, *supra* note 2, at 201.

302. *Id.* at 173.

303. Buchanan & Buchanan, *supra* note 1, at 31.

304. See KESS & WESTLIN, *supra* note 2, at 202.

305. Geu, *supra* note 3, at 45.

306. Geu, *supra* note 273, at 470.

maximize asset protection, tax savings, control, probate reduction, and Medicaid eligibility.

Several criticisms of this proposal exist. For example, the elderly might still use FLPs because the *Centurion* and *Hellman* decisions could be limited to their specific facts.³⁰⁷ For instance, the *Centurion* case contained a limited partnership, and the court required the other partners' consent to the foreclosure.³⁰⁸ However, the court in *Hellman* explicitly rejected any consent requirement.³⁰⁹

In *Hellman*, the partnership was a general partnership.³¹⁰ In that case, the court worried that the foreclosure would impact the business of the partnership.³¹¹ One commentator has pointed out that the logic in *Hellman* is even more applicable to limited partnerships because limited partners have little say in partnership affairs, so the foreclosure of such interests would have little impact on the business of the partnership.³¹² Thus, a court might be even more willing to apply *Hellman* to a limited partnership which is a family business.³¹³

Another criticism is that trusts are in fact not suited to surmount the MQT problem because of court decisions and legislation.³¹⁴ For example, in *Tutino v. Perales*,³¹⁵ the settlors set up an irrevocable trust which contained substantial assets.³¹⁶ One paragraph of the trust stated that the purpose of the trust was to preserve the trust assets so that the income coming from the trust would pay "all of the ordinary living expenses" of the settlors.³¹⁷ At the death of both the settlors, the corpus of the trust would be distributed to the children of the settlors.³¹⁸

In 1984, one of the settlors died.³¹⁹ The other settlor, apparently unable to handle her own affairs, entered a nursing home.³²⁰ She applied for public assistance but was denied because the state of New York required that she assign her rights in the trust to the state before

307. Engel & Rudman, *supra* note 19, at 48.

308. *Id.*

309. *Hellman v. Anderson*, 284 Cal. Rptr. 830, 837 (Cal. Ct. App. 1991).

310. *Id.* at 832.

311. *Id.* at 834.

312. Engel & Rudman, *supra* note 19, at 48.

313. *Id.*

314. Buchanan & Buchanan, *supra* note 1, at 31.

315. 550 N.Y.S.2d 21 (N.Y. App. Div. 1990).

316. *Id.* at 22.

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

she could receive state assistance.³²¹ The court held that the settlor had to first provide for her own assistance and that the requested assignment was not coercive.³²² The court distinguished between this case and other cases by noting that in other cases where assistance was not denied, the trusts were: (1) testamentary in nature; (2) the testator would ordinarily have no obligation to otherwise support the beneficiary; and (3) the testator would not have consented to the invasion of the principal before the exhaustion of public funds.³²³ The court concluded that these considerations are inapplicable where the settlor herself is the individual whose medical needs prompted the application.³²⁴

Critics of relying on trust arrangements to surmount Medicaid eligibility problems might also point to legislation in different states that tries to limit the effectiveness of special-needs trust techniques.³²⁵ For example, New Jersey's statute states, "Any provision in a . . . trust agreement . . . which reduces or excludes coverage or payment for goods and services to an individual because of that individual's eligibility for or receipt of Medicaid benefits shall be null and void."³²⁶

Despite this decision and legislation, a testator can create a testamentary trust and still receive public funds.³²⁷ A planner might use a trust established for the applicant's benefit by relatives or a court as another solution to this problem.³²⁸

Finally, critics of LLCs might say that LLCs remain untested and really do not offer much advantage over FLPs. However, their main attributes of tax savings and limited liability have been tested and seem secure.³²⁹ The certainty LLCs provide contrasts with the cloud of uncertainty that hangs over FLPs in the wake of the *Centurion* and *Hellman* decisions. Elderly clients are probably the least willing to want to confront uncertainty.

321. *Id.*

322. *Id.* at 24.

323. *Id.* at 25.

324. *Id.*

325. Buchanan & Buchanan, *supra* note 1, at 31.

326. N.J. STAT. ANN. § 30:4D-6f (West 1981).

327. See Schlesinger et al., *supra* note 45, at 332.

328. Buchanan & Buchanan, *supra* note 1, at 31.

329. The limited liability features of an LLC are provided in statutes.

V. Conclusion

This note explored whether elderly persons should use family limited partnerships, trusts, or limited liability companies. It evaluated the effectiveness of these techniques in view of recent court cases and statutes and concluded that FLPs should not be used by elderly clients. This is primarily because of the *Hellman* and *Centurion* decisions, which cast a cloud over the asset-protection features of the FLP.

This note concluded that trusts still offer more asset protection than FLPs. Trusts offer the most in asset protection when a planner designs them to give much discretion to the trustee. Also, an elderly person can use a trust to save on the type of taxes that the elderly person is most interested in saving. For example, many irrevocable trusts save in estate taxes. Finally, one can design trusts to get around the Medicaid qualifying problem. An elderly person can use a special-needs trust to surmount this obstacle to obtaining Medicaid funds.

LLCs provide for limited liability and offer the certainty FLPs lack. The government classifies LLCs as partnerships, thus taxing the LLC only once. Yet, they offer limited liability as well. Shareholders of LLCs will be liable only for the amount of their contribution to the LLC. Thus, the LLC offers the tax advantages of a partnership and the asset-protection advantages of a corporation. Although the LLC is a new device, the elderly would do well to consider it in furthering their financial goals.

**“GRANDMA, GRANDPA, WHERE ARE
YOU?”—PUTTING THE FOCUS OF
GRANDPARENT VISITATION
STATUTES ON THE BEST
INTERESTS OF THE CHILD**

Christine Davik-Galbraith

In her note, author Christine Davik-Galbraith argues that familial problems such as divorce should not end the grandparent-grandchild relationship and that it is the right of both parties to visit with one another. Currently, the United States addresses the issue of grandparent visitation rights through the court system. Because the Supreme Court has yet to address third-party visitation rights, rulings concerning visitation issues among the lower courts have been inconsistent. Ms. Davik-Galbraith recommends that states adopt legislation that specifically handles grandparent visitation rights and balances the interests of the grandparent, parent, and child, with the best interests of the child being the determining factor in granting visitation rights.

I. Introduction

Nobody can do for children what grandparents can. Grandparents sprinkle stardust on the lives of children. Without contact with grandparents, a child loses a vital and natural way to see and understand that he is part of a continuum, that he has roots, that he is the future and the hope of all those who preceded him.¹

Alex Haley (1992)

Grandparents play a special role in the life of a child. If a grandparent is physically, mentally, and morally fit, then a grandchild almost always will benefit from contact with the grandparent.² Grandparents and grandchildren often form a very special bond,

1. CHAIRMAN OF SUBCOMM. ON HUMAN SERVICES, HOUSE SELECT COMM. ON AGING, 102D CONG., 2D SESS., GRANDPARENTS RIGHTS: A RESOURCE MANUAL (Comm. Print 1992) [hereinafter RESOURCE MANUAL].

2. King v. King, 828 S.W.2d 630, 632 (Ky. 1992).

each benefiting from contact with the other.³ From their grandparents, children learn respect, gain a sense of responsibility, and feel genuine love.⁴ Similarly, grandparents are invigorated by the exposure to youth, gain an insight into today's changing society, and avoid the loneliness which is often a part of an aging parent's life.⁵

The benefit a child receives from a relationship with a grandparent has even been documented in psychological studies on the subject. One such study specifically examined the tie between grandparents and grandchildren, finding that children who had a close relationship with their grandparents were more comfortable with the elderly and often more emotionally secure than other children.⁶ In addition, these children are less likely to be abused by their parents or to become drug users or victims of suicide because grandparents form the first line of support when children are experiencing problems with their parents.⁷

Because the relationship between grandparent and grandchild is so important, all fifty states now have statutes addressing grandparent visitation rights.⁸ These statutes, however, are far from uniform

3. *Id.*

4. *Id.*

5. *Id.*

6. Rebecca Brown, *Grandparent Visitation and the Intact Family*, 16 S. ILL. U. L.J. 133 (1991); see also JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* (1979).

7. Brown, *supra* note 6, at 137; see also *Grandparents' Visitation Rights: Hearing on S. Con. Res. 40 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 98th Cong., 1st Sess. 35-36 (1983) (statements of Dr. Arthur Kornhaber, founder and president of the Foundation for Grandparenting) [hereinafter *Senate Resolution*].

8. ALA. CODE § 26-10A-30 (Michie 1992), § 30-3-4 (Michie 1989 & Supp. 1994); ALASKA STAT. § 25.24.150 (Michie 1991); ARIZ. REV. STAT. ANN. § 25-337.01 (West 1991 & Supp. 1994); ARK. CODE ANN. § 9-13-103 (Michie 1993); CAL. FAM. CODE §§ 3100, 3102-3104 (West 1994); COLO. REV. STAT. § 19-1-117 (West 1990); CONN. GEN. STAT. § 46b-59 (West 1986); DEL. CODE ANN. tit. 10, § 1031 (Michie 1993 & Supp. 1994); FLA. STAT. ANN. ch. 752.01 (West Supp. 1995); GA. CODE ANN. § 19-7-3 (Michie Supp. 1994); HAW. REV. STAT. ANN. § 571-46.3 (Michie Supp. 1994); IDAHO CODE § 32-719 (Michie Supp. 1994); 750 ILL. COMP. STAT. § 5/607 (Michie Supp. 1994); IND. CODE ANN. § 31-1-11.7-2 (Michie Supp. 1994); IOWA CODE ANN. § 598.35 (West Supp. 1994); KAN. STAT. ANN. § 38-129 (1993); KY. REV. STAT. ANN. § 405.021 (Michie Supp. 1994); LA. REV. STAT. ANN. § 9:344 (West Supp. 1995); ME. REV. STAT. ANN. tit. 19, §§ 1001-1005 (West Supp. 1994); MD. FAM. LAW CODE ANN. § 9-102 (Michie Supp. 1994); MASS. GEN. LAWS ANN. ch. 119, § 39D (Law. Co-op. 1994); MICH. COMP. LAWS ANN. § 722.27b (West 1993); MINN. STAT. ANN. § 259.622 (West 1992); MISS. CODE ANN. § 93-16-3 (Law. Co-op. 1994); MO. ANN. STAT. § 452.402 (West Supp. 1994); MONT. CODE ANN. § 40-9-102 (1993); NEB. REV. STAT. § 43-1802 (1993); NEV. REV. STAT. ANN. § 125A.330 (Michie 1993); N.H. REV. STAT. ANN. § 458:17-d (Butterworth 1992); N.J. REV. STAT. ANN. § 9:2-7.1 (West Supp. 1994); N.M. STAT. ANN. § 40-9-2 (Michie 1994); N.Y. DOM. REL. LAW § 72 (West

and many of them are poorly drafted. They often require a particular event to occur before grandparents are allowed to even file a petition for visitation rights.

Most statutes allow grandparents to petition for visitation rights when the child's parents divorce,⁹ or separate,¹⁰ or when one of the

1993); N.C. GEN. STAT. §§ 50-13.2 to -13.2A (1987); N.D. CENT. CODE § 14-09.05.1 (Michie 1993); OHIO REV. CODE ANN. §§ 3109.051, 3109.11-.12 (Anderson Supp. 1994); OKLA. STAT. ANN. tit. 10, § 5 (West Supp. 1995); OR. REV. STAT. § 109.121 (1993); 23 PA. CONS. STAT. ANN. §§ 5311-5313 (West 1991); R.I. GEN. LAWS §§ 15-5-24.2 to -24.3 (Michie Supp. 1994); S.C. CODE ANN. § 20-7-420 (Law. Co-op. Supp. 1993); S.D. CODIFIED LAWS ANN. § 25-4-52 (1993); TENN. CODE ANN. § 36-6-301 (Michie 1991); TEX. FAM. CODE ANN. § 14.03 (West 1986 & Supp. 1995); UTAH CODE ANN. § 30-3-5 (Michie Supp. 1994); VT. STAT. ANN. tit. 15, §§ 1011-1012 (Butterworth 1989); VA. CODE ANN. § 20-107.2 (Michie Supp. 1994); WASH. REV. CODE ANN. § 26.09.240 (West Supp. 1995); W. VA. CODE §§ 48-2B-2, -4, -6 (Michie Supp. 1994); WIS. STAT. ANN. §§ 767.245, 880.155 (West 1991); WYO. STAT. § 20-7-101 (Michie 1994).

9. ALA. CODE § 26-10A-30 (Michie 1992), § 30-3-4 (Michie 1989 & Supp. 1994); ALASKA STAT. § 25.24.150 (Michie 1991); ARIZ. REV. STAT. ANN. § 25-337.01 (West 1991 & Supp. 1994); ARK. CODE ANN. § 9-13-103 (Michie 1993); CAL. FAM. CODE § 3100 (West 1994); COLO. REV. STAT. § 19-1-117 (West 1990); DEL. CODE ANN. tit. 10, § 1031 (Michie Supp. 1994); FLA. STAT. ANN. ch. 752.01 (West Supp. 1995); GA. CODE ANN. § 19-7-3 (Michie Supp. 1994); HAW. REV. STAT. ANN. § 571-46.3 (Michie Supp. 1994); 750 ILL. COMP. STAT. § 5/607 (Michie Supp. 1994); IND. CODE ANN. 31-1-11.7-2 (Michie Supp. 1994); IOWA CODE ANN. § 598.35 (West Supp. 1994); LA. REV. STAT. ANN. § 9:344 (West Supp. 1995); ME. REV. STAT. ANN. tit. 19, §§ 1001-1005 (West Supp. 1994); MASS. GEN. LAWS ANN. ch. 119, § 39D (Law. Co-op. 1994); MICH. COMP. LAWS ANN. § 722.27b (West 1993); MISS. CODE ANN. § 93-16-3 (Law. Co-op. 1994); MO. ANN. STAT. § 452.402 (West Supp. 1994); NEB. REV. STAT. § 43-1802 (1993); NEV. REV. STAT. ANN. § 125A.330 (Michie 1993); N.H. REV. STAT. ANN. § 458:17-d (Butterworth 1992); N.J. REV. STAT. ANN. § 9:2-7.1 (West Supp. 1994); N.M. STAT. ANN. § 40-9-2 (Michie 1994); N.C. GEN. STAT. §§ 50-13.2 to -13.2A (1994); OHIO REV. CODE ANN. § 3109.051 (Anderson Supp. 1994); 23 PA. CONS. STAT. ANN. §§ 5312-5313 (West 1991); R.I. GEN. LAWS §§ 15-5-24.2 to -24.3 (Michie Supp. 1994); S.D. CODIFIED LAWS ANN. § 25-4-54 (1993); TEX. FAM. CODE ANN. § 14.03 (West 1986 & Supp. 1995); UTAH CODE ANN. § 30-3-5 (Michie Supp. 1994); VT. STAT. ANN. tit. 15, § 1011 (Butterworth 1989); VA. CODE ANN. § 20-107.2 (Michie Supp. 1994); W. VA. CODE § 48-2B-2 (Michie Supp. 1994); WIS. STAT. ANN. § 767.245 (West 1991); WYO. STAT. § 20-7-101 (Michie 1994).

10. ALASKA STAT. § 25.24.150 (Michie 1991); ARK. CODE ANN. § 9-13-103 (Michie 1993); CAL. FAM. CODE § 3104 (West 1994); COLO. REV. STAT. § 19-1-117 (West 1990); DEL. CODE ANN. tit. 10, § 1031 (Michie Supp. 1994); GA. CODE ANN. § 19-7-3 (Michie Supp. 1994); HAW. REV. STAT. ANN. § 571-46.3 (Michie Supp. 1994); 750 ILL. COMP. STAT. § 5/607 (Michie Supp. 1994); LA. REV. STAT. ANN. § 9:344 (West Supp. 1995); MASS. GEN. LAWS ANN. ch. 119, § 39D (Law. Co-op. 1994); MICH. COMP. LAWS ANN. § 722.27b (West 1993); MISS. CODE ANN. § 93-16-3 (Law. Co-op. 1994); NEV. REV. STAT. ANN. § 125A.330 (Michie 1993); N.H. REV. STAT. ANN. § 458:17-d (Butterworth 1992); N.J. REV. STAT. ANN. § 9:2-7.1 (West Supp. 1994); N.M. STAT. ANN. § 40-9-2 (Michie 1994); OHIO REV. CODE ANN. § 3109.051 (Anderson Supp. 1994); 23 PA. CONS. STAT. ANN. § 5312 (West 1991); S.D. CODIFIED LAWS ANN. 24-5-52 (1993); TEX. FAM. CODE ANN. § 14.03 (West 1986 & Supp. 1995); W. VA. CODE § 48-2B-2 (Michie Supp. 1994).

parents dies.¹¹ Some statutes also grant grandparents standing if the child is adopted by a family member (for example, a stepparent)¹² or if the paternity of a child born out of wedlock is established.¹³ Very few statutes allow grandparents to petition for visitation rights solely on the ground that it is in the child's best interests.¹⁴ As a result, children living in intact families—those where both parents are married and living together—are often denied the protection and benefit of grandparent visitation rights legislation, even if visitation would be in their best interests.

11. ALA. CODE § 30-3-4 (Michie 1989 & Supp. 1994); ALASKA STAT. § 25.24.150 (Michie 1991); ARIZ. REV. STAT. ANN. § 25-337.01 (West Supp. 1994); ARK. CODE ANN. § 9-13-103 (Michie 1993); CAL. FAM. CODE § 3102 (West 1994); COLO. REV. STAT. § 19-1-117 (West 1990); DEL. CODE ANN. tit. 10, § 1031 (Michie Supp. 1994); FLA. STAT. ANN. § 752.01 (West Supp. 1995); GA. CODE ANN. § 19-7-3 (Michie Supp. 1994); HAW. REV. STAT. ANN. § 571-46.3 (Michie Supp. 1994); 750 ILL. COMP. STAT. § 5/607 (Michie Supp. 1994); IND. CODE ANN. § 31-1-11.7-2 (Michie Supp. 1994); IOWA CODE ANN. § 598.35 (West Supp. 1994); LA. REV. STAT. ANN. § 9:344 (West Supp. 1995); ME. REV. STAT. ANN. tit. 19, § 1003 (West Supp. 1994); MASS. GEN. LAWS ANN. ch. 119, § 39D (Law. Co-op. 1994); MICH. COMP. LAWS ANN. § 722.27b (West 1993); MINN. STAT. ANN. § 257.022 (West 1992); MISS. CODE ANN. § 93-16-3 (Law. Co-op. 1994); MO. ANN. STAT. § 452.402 (West Supp. 1994); NEB. REV. STAT. § 43-1802 (1993); NEV. REV. STAT. ANN. § 125A.330 (Michie 1993); N.H. REV. STAT. ANN. § 458:17-d (Butterworth 1992); N.J. REV. STAT. ANN. § 9:2-7.1 (West Supp. 1994); N.M. STAT. ANN. § 40-9-2 (Michie 1994); OHIO REV. CODE ANN. § 3109.051 (Anderson Supp. 1994); 23 PA. CONS. STAT. ANN. § 5311 (West 1991); R.I. GEN. LAWS § 15-5-24.1 (Michie Supp. 1994); S.D. CODIFIED LAWS ANN. 24-5-54 (1993); TEX. FAM. CODE ANN. § 14.03 (West 1986 & Supp. 1995); VT. STAT. ANN. tit. 15, § 1012 (Butterworth 1989); W. VA. CODE § 48-2B-4 (Michie Supp. 1994); WIS. STAT. ANN. § 880.155 (West 1991); WYO. STAT. § 20-7-101 (Michie 1994).

12. ALA. CODE § 26-10A-30 (Michie 1992) (adoption by a stepparent, grandfather, grandmother, brother, half brother, sister, half sister, aunt, uncle); GA. CODE ANN. § 19-7-3 (Michie Supp. 1994) (adoption by a family member); N.H. REV. STAT. ANN. § 458:17-d (Butterworth 1992) (stepparent); N.M. STAT. ANN. § 40-9-2 (Michie 1994) (adoption by a stepparent, relative, individual designated in deceased parent's will to care for child, individual who sponsored the child at a baptism or confirmation of an established religion); N.C. GEN. STAT. § 50-13.2A (1987) (stepparent, relative).

13. ARIZ. REV. STAT. ANN. § 25-337.01 (West Supp. 1994); CAL. FAM. CODE § 3103 (West 1994); IND. CODE ANN. § 31-1-11.7-2 (Michie Supp. 1994); IOWA CODE ANN. § 598.35 (West Supp. 1994); MASS. GEN. LAWS ANN. ch. 119, § 39D (West 1994); MICH. COMP. LAWS ANN. § 722.27b (West 1993); NEB. REV. STAT. § 43-1802 (1993); N.H. REV. STAT. ANN. § 458:17-d (Butterworth 1992); OHIO REV. CODE ANN. § 3109.12 (Anderson Supp. 1994); W. VA. CODE § 48-2B-6 (Michie Supp. 1994).

14. CONN. GEN. STAT. § 46b-59 (West 1986); FLA. STAT. ANN. ch. 752.01 (West Supp. 1995); IDAHO CODE § 32-719 (Michie Supp. 1994); KAN. STAT. ANN. § 38-129 (1993); KY. REV. STAT. ANN. § 405.021 (Michie Supp. 1994); MD. FAM. LAW CODE ANN. § 9-102 (Michie Supp. 1994); MO. ANN. STAT. § 452.402 (West Supp. 1994); MONT. CODE ANN. § 40-9-102 (1993); N.Y. DOM. REL. LAW § 72 (West 1993); N.D. CENT. CODE § 14-09.05.1 (Michie 1993); OKLA. STAT. ANN. tit. 10, § 5 (West Supp. 1995); OR. REV. STAT. § 109.121 (1993); TENN. CODE ANN. § 36-6-301 (Michie 1991); WASH. REV. CODE ANN. § 26.09.240 (West Supp. 1995); WIS. STAT. ANN. § 767.245 (West 1991).

If a grandparent is denied access to his or her grandchild due to problems in the grandparent-parent relationship, does any rational basis exist for distinguishing between different classes of grandparents based on the status of the child's parents' relationship? Is the grandparent-grandchild relationship less important or beneficial to the child when the parents are still married and living together than when the parents are divorced? Or are many of the state statutes ignoring the most important consideration—the best interests of the child?

This note examines whether the decision to grant grandparents standing to petition for visitation rights based on factors such as marital status of the parents or death of a parent makes sense. This note looks at various states' interpretations of statutes addressing intact families, particularly those statutes that appear to allow any grandparent to petition for visitation rights. In addition, this note argues that a uniform state law addressing grandparent visitation rights is necessary and that this law should focus on whether visitation is in the best interests of the child, not on the child's parents' relationship. Finally, this note proposes a model statute that allows all grandparents to petition for visitation, but still strikes a proper balance between the rights of all the parties involved: grandparent, parent, and child.

II. History of Grandparents' Rights

At common law, grandparents had no legal right to visitation. If a parent decided the grandparent would not be allowed to see his or her grandchild, then the parent's decision would stand, regardless of the effect this decision had on the child. This was due to the fact that at common law, "[t]he right to determine the third parties who are to share in the custody and influence of and participate in the visitation privileges with the children should vest primarily with the parent who is charged with the daily responsibility of rearing the children."¹⁵ The right of a grandparent to visit with a grandchild was therefore considered a moral right, rather than a legal right.¹⁶

Consequently, in the absence of a statute granting grandparents visitation rights, courts were reluctant to turn a moral right into a

15. Chodzko v. Chodzko, 360 N.E.2d 60, 63 (Ill. 1976).

16. Edward M. Burns, *Grandparent Visitation Rights: Is It Time for the Pendulum to Fall?*, 25 FAM. L.Q. 59 (1991); see also Bronstein v. Bronstein, 434 So. 2d 780 (Ala. 1983).

legal right, leaving that task up to the legislature. Some courts, however, recognized an equitable exception to the common-law rule when special circumstances existed and a close and meaningful relationship existed between the grandparent and the grandchild.¹⁷ The situations in which courts justified imposing grandparent visitation in the absence of statutory authority included: (1) a grandparent's daily contact with the child following the death of the child's parent;¹⁸ (2) the death of a father in World War II and a provision in the father's will that his parents act as trustees of a fund for the benefit of his child;¹⁹ (3) the inability of a father to exercise visitation because of his military assignment in a distant state;²⁰ and (4) the agreement of the maternal and paternal grandparents to allow the paternal grandparents visitation with their common orphaned grandchild prior to the paternal grandparents consenting to the adoption of the child by the maternal grandparents.²¹

In contrast to grandparents who have no common-law right, absent special circumstances, to visit a grandchild when a parent objects, a parent does have a constitutionally protected right to determine his or her child's companionship, care, custody, and management.²² The case that first explicitly recognized the fundamental right to parent is *Meyer v. Nebraska*.²³ In that case, the U.S. Supreme Court recognized that one of the fundamental rights the Constitution grants is the right to freedom, including the right to bring up a child without unreasonable interference by the government.²⁴

More than four decades after the *Meyer* case, state statutes began to recognize that grandparents do have some rights to visitation of their grandchildren. Part of this was due to the fact that older persons were becoming an increasingly vital political force.²⁵ Grandparents'

17. Burns, *supra* note 16, at 61.

18. Hawkins v. Hawkins, 430 N.E.2d 652 (Ill. App. Ct. 1981); *see also* Burns, *supra* note 16, at 61.

19. Lucchesi v. Lucchesi, 71 N.E.2d 920 (Ill. 1947); *see also* Burns, *supra* note 16, at 62.

20. Solomon v. Solomon, 49 N.E.2d 807 (Ill. 1943); *see also* Burns, *supra* note 16, at 62.

21. Loveless v. Michalak, 522 N.E.2d 873 (Ill. 1988); *see also* Burns, *supra* note 16, at 62.

22. Burns, *supra* note 16, at 61.

23. Meyer v. Nebraska, 262 U.S. 390 (1923).

24. Meyer, 262 U.S. at 399.

25. *Grandparents Rights: Preserving Generational Bonds: Hearing Before the Subcomm. on Human Services of the House Select Comm. on Aging*, 102d Cong., 1st Sess. 14 (1991) [hereinafter *Generational Bonds*].

rights groups began to organize and lobby state legislatures for more comprehensive grandparents' rights statutes. Today, approximately seventy-five percent of all older Americans are grandparents.²⁶ In terms of raw numbers, this translates into fifty-eight million grandparents in the United States, with that number expected to grow to ninety-eight million by the year 2002.²⁷

The earliest statutes addressing grandparents' rights usually dealt only with situations in which a parent had died and the living spouse denied the grandparents visitation. As the divorce rate began to rise in the 1960s and 1970s, more state legislatures formulated statutes that gave grandparents standing to petition for visitation if the child's parents were divorced or separated. However, not all states have reacted as quickly to expand grandparent visitation rights into other situations. Moreover, the statutes differ widely on how to analyze a grandparent's visitation petition if the statute does give the grandparent standing. The majority of the statutes look to whether visitation is "in the best interests of the child," but the statutes never articulate what criteria should be used in determining if it is. Currently, only six states²⁸ have specific guidelines to guide the court in determining whether visitation is in the child's best interests.²⁹ As a result, there is much room for judicial bias in determining whether visitation is appropriate in a given case, because an appropriate standard to determine whether visitation is in the best interests of the child usually is missing.

Even if grandparents are successful in their attempt to win visitation, they still face another major obstacle. Because grandparent visitation statutes vary from state to state, a grant of visitation in one state is not given full faith and credit in any other state. As a result, if a grandparent wins rights to visitation and the child's family moves across state borders, the grandparent's visitation rights will not be honored. Instead, the grandparent will have to try to establish standing to petition for visitation rights in the new state (which may be impossible, depending on the new state's statute and on the status of the child's family). If the grandparent is able to petition the court for

26. *Id.* at 1.

27. *Id.*

28. FLA. STAT. ANN. ch. 752.01 (West Supp. 1995); NEV. REV. STAT. ANN. § 125A.330 (Michie 1993); N.H. REV. STAT. ANN. § 458:17-d (Butterworth 1992); N.J. REV. STAT. § 9:2-7.1 (West Supp. 1994); N.M. STAT. ANN. § 40-9-2 (Michie 1994); OHIO REV. CODE ANN. §§ 3109.051, 3109.11-.12 (Anderson Supp. 1994).

29. *Generational Bonds*, *supra* note 25, at 15.

visitation rights, he or she then will have to attempt to convince another court that visitation is in the child's best interests, expending even more time and money in the process.

It is probably not surprising, then, that the volume of litigation on grandparent visitation is rapidly increasing. As many as 100 or more cases may have reached the state appellate court level since 1980, with many more filed at the trial court level.³⁰ Often these cases focus on whether the grandparent even has standing to petition for visitation rights, never getting to the most important issue: Whether it is in the child's best interests to form a relationship or continue an existing one with his or her grandparent.

III. Analysis

A. The Response of the Courts

The Supreme Court has yet to decide a case involving third-party access to children. The Court, however, has made numerous rulings that have interpreted the rights of a parent to raise his or her child free from state interference. As previously mentioned, the first case that explicitly recognized the fundamental right to parent is *Meyer v. Nebraska*.³¹ In *Meyer*, the Supreme Court found a statute prohibiting the instruction of any subject in any language other than English to be unconstitutional.³² In doing so, the Court examined what rights the Fourteenth Amendment grants to parents:³³

Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.³⁴

The Court went on to say that this liberty could not be interfered with under the guise of protecting the public interest by legislative action that is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.³⁵ Thus, the Court created the right of parents to raise their children free from state interference.

30. *Id.* at 14.

31. *Meyer v. Nebraska*, 262 U.S. 390, 390 (1923).

32. *Id.* at 402.

33. *Id.* at 399.

34. *Id.*

35. *Id.* at 399-400.

This theory was revisited in *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, decided less than one year after *Meyer*.³⁶ In this case, the Court found that a statute requiring attendance at public schools was unconstitutional because it violated the Fourteenth Amendment. In reaching this decision, the Court stated that the legislation “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.”³⁷ The Court grounded its decision on the premise that rights guaranteed by the Constitution could not be abridged by legislation that had no reasonable relation to “some purpose within the competency of the state.”³⁸

Parents have thereby long enjoyed the protection of the Constitution in their freedom to raise their children without undue state interference. This right to parental autonomy is not absolute, however.³⁹ Under the common-law doctrine of *parens patriae*, the state may intervene in order to protect the welfare of minors and others who are deemed incapable of properly caring for themselves.⁴⁰ This doctrine has traditionally given the state the power to protect the interests of the child in a child custody determination, as well as the power to step in and take over parental control in extreme circumstances—for example, when a child has been subjected to abuse or neglect by his or her parents.⁴¹ *Parens patriae*, therefore, is the source of the state’s power to promulgate grandparent visitation legislation.

Grandparent visitation rights, however, have not been recognized by the U.S. Supreme Court. As a result, the states have been left to question whether they actually exist. In attempting to reach a decision, state courts have been far from unanimous. This is especially true in one particular area: granting grandparents visitation rights to grandchildren living in intact families. State courts have dealt with this situation in a variety of ways.

Many state courts refuse to even allow grandparents of grandchildren living in intact families to petition for visitation rights.

36. *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925).

37. *Id.* at 534-35.

38. *Id.* at 535.

39. Brown, *supra* note 6, at 140.

40. *Kujawinski v. Kujawinski*, 376 N.E.2d 1382 (Ill. 1978); *see also* Burns, *supra* note 16, at 61.

41. *See generally* *Thompson v. Oklahoma*, 487 U.S. 815, 825 (1988); *Milen Kovic v. Milen Kovic*, 416 N.E.2d 1140, 1146 (Ill. 1981).

Other courts grant them standing, but find that the circumstances (usually that the parents are still married) do not necessitate state-ordered grandparent visitation. Moreover, even fewer states have actually found that grandparent visitation rights should be granted when the grandchild's family is intact. In order to fully appreciate the disparity in state decisions, a brief survey of the approaches a few state courts have taken is appropriate.

In *Hawk v. Hawk*, the Tennessee Supreme Court ruled on a petition for visitation by paternal grandparents whose grandchild was in an intact family.⁴² Although the state's statute is worded so that any grandparent may be granted reasonable visitation if it is in the child's best interests,⁴³ the court decided that this should not be applied to intact families.⁴⁴ The court ruled that granting visitation to a grandchild whose parents were married and fit violated the state's constitutional right to privacy in parenting decisions.⁴⁵ Although the court did not directly address the issue, in a footnote the court declared that the "state has a stronger argument for court intervention to protect the extended family when the nuclear family has been dissolved."⁴⁶ The court did not state why this was so.

In *Emanuel S. v. Joseph E.*, the New York Court of Appeals examined the limits of the state's grandparent visitation rights statute.⁴⁷ In *Emanuel S.*, the grandparents petitioned for visitation rights with their grandson, whose parents were married and living together as an intact family.⁴⁸ The New York statute addressing grandparents' rights allowed petitions in two situations. First, if either parent of the grandchild had died, grandparents had an absolute right to standing.⁴⁹ Second, a court could grant standing if the court found that circumstances existed in which equity would see fit to intervene.⁵⁰ The question presented in this case was whether the grandparents had fulfilled the conditions of the second method of gaining standing to petition.⁵¹ The New York Court of Appeals held that grandparents were not precluded from seeking visitation with a grandchild merely

42. *Hawk v. Hawk*, 855 S.W.2d 573, 575 (Tenn. 1993).

43. TENN. CODE ANN. § 36-6-301 (Michie 1991).

44. *Hawk*, 855 S.W.2d at 577.

45. *Id.*

46. *Id.* at 580.

47. *Emanuel S. v. Joseph E.*, 577 N.E.2d 27 (N.Y. 1991).

48. *Id.*

49. *Id.*

50. *Id.* at 30.

51. *Id.*

because the nuclear family was intact and the parents were fit.⁵² The court did not grant visitation, however, because it concluded that the facts as presented were not adequate to find standing; the case was remanded to the lower court to make that determination. The case is important because it did not completely rule out the possibility that grandparents of grandchildren in intact families could be granted standing. Whether a grandparent actually will make it into a New York courtroom with standing in such a situation remains to be seen.

In *Lehrer v. Davis*, the plaintiffs sued for the right to visit their grandchildren, who were living in an intact family.⁵³ The Connecticut Supreme Court concluded that the custodial rights of an intact family did not automatically preclude the granting of visitation rights to the grandparents and decided that the validity of the state statute was “not ripe for adjudication on the present record.”⁵⁴ Before setting the issue aside, however, the court commented on whether it was appropriate to base grandparent visitation orders on the status of the child’s parents:⁵⁵

The fact that a family is intact does not guarantee the absence of child abuse. Even absent child abuse, there is no compelling constitutional requirement that the legislature must defer, in every instance, to the child-rearing preferences of the nuclear family. “To assert that, as a matter of law, a widowed, divorced, remarried, or unmarried parent is subject to greater [s]tate interference than a married parent would be to assert that the former is less fit than the latter to raise his or her own child.” . . . [T]he legislature may choose to recognize a public interest in affording a child access to those outside the nuclear family who manifest a deep concern for his or her growth and development.

The Connecticut Supreme Court has not yet revisited the issue of whether grandparents may petition for visitation of a grandchild in an intact family.

The Kentucky Supreme Court, on the other hand, has made a conclusive determination on the issue. In *King v. King*, the plaintiff petitioned for visitation rights to his grandchild, whose parents were married and living together.⁵⁶ The Kentucky grandparent visitation statute provided that reasonable visitation rights could be granted to either the paternal or maternal grandparents of a child if it were in the

52. *Id.*

53. *Lehrer v. Davis*, 571 A.2d 691 (Conn. 1990).

54. *Id.* at 695.

55. *Id.* at 694-95.

56. *King v. King*, 828 S.W.2d 630, 630 (Ky. 1992).

best interests of the child to do so.⁵⁷ The court found that not only was the statute constitutional, but a grant of visitation was appropriate.⁵⁸ In ruling on the statute's constitutionality, the court stated that although the U.S. Constitution recognizes the right to rear children without undue governmental interference, that right is not inviolate.⁵⁹ The court went on to say that it is not unreasonable for the state to say that the development of a loving relationship between family members is desirable, and that the arbitrariness of the statute is obviated by the requirement that visitation be granted by a court only after finding that it is in the best interests of the child.⁶⁰

As the above discussion shows, the methods by which state courts decide grandparent visitation rights cases are far from uniform, and the U.S. Supreme Court has yet to decide a case involving third-party access to children.

B. Congressional Authority to Regulate Grandparent Visitation Rights Legislation

Congress has no direct authority to legislate on family questions. Article 1, Section 8 of the Constitution enumerates the various areas in which Congress is authorized to act, and grandparent visitation rights do not readily fall within any of these categories.⁶¹ Because of this section and the Tenth Amendment, legislation dealing with grandparent visitation rights is generally the responsibility of individual states.⁶² There are a number of indirect approaches, however, to possibly *persuade* states to enact uniform legislation.

1. NONBINDING RESOLUTIONS

Congress has in the past promulgated "sense of the Congress" resolutions on domestic relations topics.⁶³ Although these resolutions have no legally binding effect on the individual states, they are introduced with the hope that they will affect the states' view on the issue in question. The theory behind these resolutions is that if Congress

57. KY. REV. STAT. ANN. § 405.021 (Michie Supp. 1994).

58. *King*, 828 S.W.2d at 632-33.

59. *Id.* at 631.

60. *Id.* at 632.

61. RESOURCE MANUAL, *supra* note 1, at 83; *see also* U.S. CONST. art. I, § 8.

62. RESOURCE MANUAL, *supra* note 1, at 83.

63. *Id.*

goes on the record as favoring a particular policy, the individual state legislatures will adopt laws advancing that policy.⁶⁴

This has been done in the past with grandparent visitation legislation; however, the resolutions have not had the desired result. In 1985, the House of Representatives adopted a resolution that expressed the view that a model state act governing grandparents visitation rights needed to be formulated and then adopted by all of the states.⁶⁵ In 1986, the Senate passed an identical resolution.⁶⁶ Unfortunately, neither formulation of the model act nor adoption of it occurred. The National Conference of Commissioners on State Laws has not developed a uniform law, nor does it have any plans to do so. As discussed above, the states are far from uniform in their grandparent visitation rights legislation.

2. FEDERAL FUNDS

Another approach often used by Congress to achieve a desired result in state legislatures is to precondition the receipt of federal funds on state compliance with federally imposed requirements.⁶⁷ Forcing the states to adopt a model grandparent visitation act proposed by the National Conference of Commissioners on Uniform State Laws, Congress, or another entity, appears constitutionally impossible, however.⁶⁸ This is because a model act would not be federal law or a regulation, nor could a model act set mandatory conditions for the receipt of federal aid.⁶⁹ A model act, therefore, would be just that, merely a model for state legislation. As such, individual state legislatures could choose whether to enact all, part, or none into state law.⁷⁰ It appears that Congress does not have the power to regulate grandparent visitation rights legislation through the preconditioning of federal funds.

Although Congress apparently does not have the power to directly or indirectly promulgate legislation affecting grandparent visitation rights, because this is a matter that must be dealt with at the state level, members of Congress are not prohibited from engaging in related activities. These include working with grandparent rights

64. *Id.*

65. H. Con. Res. 67, 99th Cong., 2d Sess., 100 Stat. 4376 (1986).

66. *Id.*

67. RESOURCE MANUAL, *supra* note 1, at 85.

68. *Id.*

69. *Id.*

70. *Id.*

groups, holding hearings on grandparent visitation rights, and working with individual grandparents who are trying to secure visitation rights in their home states.

C. A Constitutional Amendment Affecting Grandparent Visitation Rights Legislation

Children's advocates across the country currently are pushing for a constitutional amendment to recognize the rights of the child. Members of the general public usually are surprised to learn that the Constitution does not really provide any protective rights for children.⁷¹ The Supreme Court, however, traditionally has viewed the child only in relation to his or her family, and not as an individual having separate constitutional rights.⁷² Therefore, the rights contained in the Constitution appear to be reserved solely for those over the age of majority.

The idea of constitutional protection for the rights of children is not novel. Unlike the United States, the constitutions of seventy-nine nations at least make references to children.⁷³ "These range from comprehensive and detailed provisions, such as those found in the Brazilian Constitution of 1988," to very brief provisions like the one included in the 1946 Constitution of Japan, "which provides that 'children shall not be exploited.'" ⁷⁴ To some degree, these differences may be attributable to "the age of the constitution (the more recent the constitution, the more detailed provisions), and the assumption that children are adequately covered by provisions applicable to all citizens." ⁷⁵

A model amendment to the U.S. Constitution was drafted in 1989 by the National Task Force for Children's Constitutional Rights.⁷⁶ It reads as follows:

Section 1

All citizens of the United States who are fifteen years of age or younger shall enjoy the right to live in a home that is safe and healthy; the right to adequate health care; the right to an adequate

71. Charles D. Gill, *Essay on the Status of the American Child, 2000 A.D.: Chattel or Constitutionally Protected Child-Citizen?*, 17 OHIO N.U. L. REV. 543, 547 (1991).

72. *In re Gault*, 387 U.S. 1 (1967); Gill, *supra* note 71, at 566.

73. Gill, *supra* note 71, at 566.

74. *Id.* at 566 n.82 (quoting P. Alston, Professor and Director for the Center for Advanced Legal Studies at the Australian National University, Canberra, Australia).

75. *Id.*

76. Gill, *supra* note 71, at 566.

education and the right to the care of a loving family or a substitute thereof, which approximates as closely as possible such family.

Section 2

All citizens of the United States who are fifteen years of age or younger shall be allowed to testify in any legal proceeding without having to view any person accused of abusing said citizen, notwithstanding any other provision of this Constitution.

Section 3

All citizens of the United States who are fifteen years of age or younger shall enjoy the right in any legal proceeding to have the trier receive evidence as to such citizen's developmental level as it pertains to that citizen's credibility.

Section 4

All citizens of the United States who are fifteen years of age or younger shall enjoy the right to counsel in any legal proceeding that effects [sic] that citizen's interests.⁷⁷

If passed, this amendment would have a direct impact on the way grandparents' rights cases are handled in a court of law, because the child would have the right to have his or her interests independently represented by counsel. This would ensure that the child's voice would at least be heard in any proceeding dealing with grandparents' rights legislation.

In addition, if passed, this amendment could indirectly affect the way grandparent visitation legislation is formulated. The amendment would require courts to treat children as individuals, rather than merely the property of their parents. Therefore, grandparent visitation rights legislation would have to address more than the parents' constitutional rights to raise a child without state interference. Statutes would have to balance the children's constitutional rights with the rights of their parents. Children's needs would have to be taken into account when drafting legislation.

This amendment possibly could have an even more drastic effect on grandparent visitation rights legislation. Section 1 of the proposed amendment states that "*all* citizens of the United States who are fifteen years of age or younger shall enjoy . . . the *right* to the care of a loving family or a *substitute* thereof."⁷⁸ Does this right include access to grandparent visitation if it is in the child's best interests? If it does, then it could be argued that statutory restrictions on grandparents' standing to petition for visitation rights, based on the status of the

77. *Id.* at 566-67. These sections were proposed by the National Task Force for Constitutional Rights.

78. *Id.* at 566 (emphasis added).

parents, might be unconstitutional. Under this type of statute, children would be treated differently solely based on the relationship of their parents. Because all children have a right to the care of a loving family, it is conceivable that the way many state grandparent visitation rights statutes are drafted could be declared unconstitutional. Visitation statutes stipulating that grandparents of only those children whose parents are divorced, separated, etc. may petition for visitation rights would be denying a substantial group of children potential access to their grandparents. This denial of potential access would be based on a system of classification that only takes into account the parents' relationship, and therefore only the parents' constitutional rights. As a result, these statutes would be discriminating among children, without their best interests being taken into account.

Whether this model amendment is adopted and whether it has the results discussed above remains to be seen. The National Task Force for Children's Constitutional Rights is actively trying to get this amendment passed and hopes to see it ratified by all states by the year 2000.

D. United Nations Convention on the Rights of the Child

Grandparent rights legislation could be affected by international law in the near future. On November 20, 1989, the United Nations unanimously adopted the United Nations Convention on the Rights of the Child. This Convention actually became international law on September 2, 1990, when it was ratified by the twentieth nation.⁷⁹ Approximately seventy nations have now ratified the Convention, making them legally bound by its standards.⁸⁰ The United States, however, is not one of them. In fact, the most notable holdouts are Iran, Iraq, Libya, South Africa, and the United States.⁸¹

Although the Convention has been in effect in many countries for almost four years, the United States is still "considering" it. The United States State Department appointed five experts to serve on a committee to advise whether and under what conditions the United States should become a party to the Convention. The U.S. Ambassador to the United Nations signed the Convention on February 15, 1995. However, ratification by the Senate is required.

79. Cohen, *Relationships Between the Child, the Family, and the State*, in PERSPECTIVES ON THE FAMILY 293, 319-35 (Robert C. Moffat et al. eds., 1990).

80. Gill, *supra* note 71, at 578.

81. *Id.*

If adopted, the United Nations Convention on the Rights of the Child would not only affect the way in which grandparent visitation rights cases are procedurally handled in a court of law, but would also change the focus of the entire civil suit. The relevant portions of the convention are as follows:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rule of national law.⁸²

Procedurally, this Convention would ensure that a child whose grandparent has petitioned for visitation rights would have the right to testify on his or her own behalf. In addition, the child's views and opinions would have to be given weight (in accordance with the age and maturity of the child) in making the final determination. Moreover, the Convention requires that in any legal action, the best interests of the child shall be a primary consideration. This would require that grandparent visitation rights legislation not just consider the best interests of the child among many factors in deciding whether to grant

82. Convention on the Rights of the Child, Nov. 20, 1989, art. 2-4, 12, 28 I.L.M. 1459, 1461 (entered into force Sept. 2, 1990).

visitation, but treat it as one of, if not the, most important factors. This would shift the focus from the parents' interest in freedom from state interference to where the focus more appropriately belongs: the best interests of the child.

IV. Resolution and Recommendation

As the above discussion illustrates, the need for a uniform approach to granting grandparent visitation rights is self-evident. Regardless of whether a U.S. Supreme Court case is decided, an international treaty ratified, or a constitutional amendment passed, the fact remains that formulating a comprehensive approach to grandparent visitation rights legislation is necessary. The paragraphs that follow outline a model statute. This model statute balances the rights of grandparent, parent, and child; however, the focus remains on the child. Consequently, in determining whether visitation is in the child's best interests, the statute enumerates specific criteria to examine, so the court's decision is not only informed, but also unbiased. It grants automatic standing to all grandparents, including those whose grandchild lives in an intact family. It allocates the burden of proof in a way that attempts to respect the rights of all, but pays special attention to the needs of the child.

A. The Best Interests of the Child

As discussed previously, most grandparent visitation rights statutes are seriously deficient because they lack specific criteria for determining whether visitation is in the best interests of the child. Because the best interests of the child is the most important factor in deciding whether to grant visitation, it is crucial that specific inquiries be made by the court. The seven factors listed below are modified versions of a policy resolution statement on grandparent visitation promulgated by the American Bar Association's Commission on Legal Problems of the Elderly.⁸³ It is important to discuss each factor thoroughly, state why this information is crucial to making a proper visitation determination, why it is worded in the following way, and how it is an improvement over many existing statutes.

83. *Generational Bonds*, *supra* note 25, at 18-20.

1. THE NATURE AND QUALITY OF THE RELATIONSHIP BETWEEN THE GRANDPARENT AND THE CHILD

This factor is extremely important because whether visitation is in the child's best interests often depends on whether emotional bonds have been established and whether the grandparent has enhanced or interfered in the parent-child relationship. This is not to say, however, that a previous relationship is necessary before a grandparent is allowed visitation. This model statute intentionally avoids establishing such a prerequisite because many times a grandparent has been denied access to the grandchild since birth, making the establishment of a prior relationship impossible. Future grandparent visitation may still be in the child's best interests, even if the child had no previous contact with the grandparent.

2. WHETHER VISITATION WILL PROMOTE OR DISRUPT THE CHILD'S PSYCHOLOGICAL DEVELOPMENT

Exactly how court-ordered visitation will affect the child's emotional well-being and growth is extremely important in deciding whether visitation is in the best interests of the child. In order to correctly evaluate this factor, an interview with a court-appointed psychologist, psychiatrist, or social worker may be necessary. This factor is not designed to foster a court battle of psychiatric testimony on both sides. In fact, if possible, a situation in which the child is interviewed by numerous psychiatric professionals to obtain favorable testimony for either side should be avoided. A single interview with a competent and neutral court-appointed psychologist, psychiatrist, or social worker, should prove sufficient.

3. WHETHER VISITATION WILL CREATE FRICTION BETWEEN THE CHILD AND HIS OR HER PARENTS

This factor focuses on not only on how the child will react to the time spent visiting his or her grandparent, but also the child's situation between visits. It does not, however, mean that just because a parent is unhappy about visitation, it will be denied. If this were the case, then virtually every grandparent would be denied visitation; litigation over grandparent visitation rights would not occur if parents wanted the child to visit with his or her grandparent. Instead, this factor merely recognizes that an overly stressful parental relationship and home life directly due to the granting of grandparent visitation rights may be too high a price for a child to pay.

4. WHETHER VISITATION WILL PROVIDE SUPPORT AND STABILITY FOR THE CHILD

This factor really gets to the heart of why visitation rights should be granted. Grandparents often contribute to a child's sense of support and stability, which is crucial to the child's mental well-being. As a result, the benefits a particular grandparent-grandchild relationship can provide will often prove to be one of the most important factors in making a determination of whether visitation is in the child's best interests.

5. THE CAPACITY OF THE ADULTS INVOLVED FOR FUTURE COMPROMISE AND COOPERATION IN MATTERS INVOLVING THE CHILD

This factor is somewhat similar to factor three; however, the focus of the inquiry is slightly different. Instead of looking at the parent-child relationship, this factor forces an examination of the grandparent-parent relationship. In doing so, whether the child will constantly be put in the middle of the two parties will be considered. A child who feels like he or she is merely a pawn between two groups of adults may not benefit from visitation.

6. THE CHILD'S WISHES, IF THE CHILD IS ABLE TO FREELY FORM AND EXPRESS A PREFERENCE

If the child is old enough and mature enough to make such a decision concerning visitation, a court should consider very carefully and give great weight to the preferences of the child. Often, a child will know what is best for him or her, or what will make the child happiest. Moreover, if a child's opinion is given credence, the child may be able to better deal with and respect the decision which is made because he or she will have contributed to it in some way. Finally, being able to express his or her wishes may make the courtroom experience more positive for the child.

7. ANY OTHER FACTOR RELEVANT TO A FAIR AND JUST DETERMINATION REGARDING VISITATION

This factor leaves open the possibility that other considerations may be relevant in the particular case at hand when making a visitation determination. Courts should be careful to include only those additional factors that truly ascertain the child's best interests and do not create undue bias.

B. Procedural Aspects of the Model Statute

As discussed above, the proposed model statute grants standing to petition for grandparent visitation rights to all grandparents, regardless of the status of the child's parents. This will ensure that if a grandparent-grandchild relationship is in the child's best interests, the child will be able to take advantage of this opportunity, regardless of the status of the child's parents' relationship. Therefore, all children will be treated equally.

It is important to recognize that a parent will usually act in the child's best interests and not make decisions concerning who will see the child based on some ulterior motive. Therefore, there will be a rebuttable presumption that a parent is acting in the child's best interests. However, as sad as it may be, this is not always the case. As a result, the presumption can be overcome by clear and convincing evidence that visitation is in the child's best interests. This should strike a proper balance among all parties involved, with the end result being a decision concerning visitation which is the most just.

One final comment must be made about this statute and its aims. As discussed above, children in the United States do not currently have a constitutional right to legal representation in legal matters which directly affect their well-being. This model statute envisions that all children will be granted legal counsel, so that their best interests will be most adequately represented. Until then, it is hoped that courts deciding issues such as grandparent visitation rights will make a concerted effort to make determinations that further the best interests of the child.

V. Conclusion

As this note makes clear, current grandparent visitation rights legislation is seriously deficient. Not only do the statutes fail to allow all grandparents to petition for their rights, but they also fail to protect the most important interests involved—those of the child. Whether by U.S. Supreme Court decision, constitutional amendment, or international treaty, grandparent rights legislation needs to be reexamined and reformulated.

MANDATORY REPORTING STATUTES: A NECESSARY YET UNDERUTILIZED RESPONSE TO ELDER ABUSE

Molly Dickinson Velick

The United States is only beginning to recognize that elder abuse is a growing problem within our society. Mandatory reporting statutes have become an important mechanism for fighting elder abuse. In this note, Ms. Velick discusses and dismisses the most common arguments against mandatory elder-abuse reporting statutes. She then examines proposals to increase compliance with mandatory reporting laws in view of budgetary restrictions. Ms. Velick then suggests three low-cost methods to boost compliance, including increasing public awareness, interagency cooperation, and amending state statutes to protect reporters. She concludes that it is time for critics to stop complaining about the lack of adequate funding and take meaningful action now to combat the growing societal problem of elder abuse.

I. Introduction

A. GAO Study Sidesteps Issue of Mandatory Reporting

In 1991, the Subcommittee on Human Services of the House Select Committee on Aging conducted hearings on elder abuse.¹ An associate director of the General Accounting Office (GAO) testified that the GAO had studied the effectiveness of existing mandatory and voluntary state reporting laws for noninstitutional elder abuse.² He asserted that there was not enough data to make a

1. *Elder Abuse: What Can be Done?: Hearings Before the Subcomm. on Human Services of the House Select Comm. on Aging*, 102d Cong., 1st Sess. (1991) [hereinafter *Elder Abuse House Hearings*]. For the purposes of this note, elder abuse is defined as physical conduct that results in bodily harm or mental distress, or withholding of medication, medical treatment, food or personal care necessary for the well-being of the elderly person. CHAIRMAN OF SUBCOMM. ON HEALTH AND LONG-TERM CARE, HOUSE SELECT COMM. ON AGING, 101ST CONG., 2D SESS., *ELDER ABUSE: A DECADE OF SHAME AND INACTION* 1, 2 (Comm. Print 1990) [hereinafter *ELDER ABUSE HOUSE REPORT*]. Only noninstitutional abuse is addressed in this note.

2. *Elder Abuse House Hearings*, *supra* note 1, at 43-44.

"meaningful comparison" of voluntary and mandatory state reporting laws.³ Moreover, experts surveyed by the GAO considered factors other than reporting more effective in the prevention and treatment of elder abuse.⁴ Consequently, the GAO concluded that it was relatively unimportant whether states' reporting laws were mandatory or voluntary.⁵

B. Response to GAO Study

Surprisingly, the hearing participants had little reaction to the GAO's lack of support for mandatory reporting,⁶ even though twenty-seven states have adopted mandatory reporting statutes since 1980.⁷ Forty-three out of the fifty states now have mandatory reporting laws on the books.⁸ Furthermore, since Congress first recommended that

3. *Id.* at 44.

4. *Id.* at 44-45, 51. The other factors included increasing public awareness, developing governmental protocols to handle elder abuse, and increased inter-agency governmental cooperation. *Id.*

5. *Id.* at 44. The GAO found three reasons why voluntary and mandatory reporting laws cannot be meaningfully compared. First, state laws addressing elder abuse vary widely. In particular, definitions of abuse and neglect vary from broad and inclusive to very narrow. Second, data collection practices differ from state to state. As a result, states cannot provide comparable data on the total number of elder-abuse cases identified. Third, experts believe that many factors in addition to reporting laws have an important effect on case identification and these effects must be accounted for to determine the independent impact of mandatory and voluntary reporting laws. *Id.* at 49-50; see also Timothy W. Silva, *Reporting Elder Abuse: Should It Be Mandatory or Voluntary?*, HEALTHSPAN, Apr. 1992, at 13 (reviewing the GAO report which evaluates the effectiveness of reporting laws).

6. *Elder Abuse House Hearings*, *supra* note 1, at 35, 66, 82.

7. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI, 63.

8. *Id.* The subcommittee also included the District of Columbia to bring the total to 43 "states" that had enacted statutes or adult protective-services laws to provide for mandatory reporting of elder abuse at that time. The eight states with voluntary reporting systems at the time of the report in 1990 were Colorado, Illinois, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, and Wisconsin. *Id.* at 44. Since then, Colorado has added a mandatory reporting requirement to its protective services laws. For mandatory reporting statutes, see ALA. CODE § 38-9-8 (Michie 1992 & Supp. 1994); ALASKA STAT. § 47.24.010 (Michie Supp. 1994); ARIZ. REV. STAT. ANN. § 46-454 (West 1988 & Supp. 1994); ARK. CODE ANN. § 5-28-203 (Michie 1993); CAL. WELF. & INST. CODE §§ 15,600-15,755 (West Supp. 1995); COLO. REV. STAT. § 26-3.1-102 (West 1994); CONN. GEN. STAT. § 17a-431 (West 1992 & Supp. 1994); DEL. CODE ANN. tit. 31, § 3910 (Michie Supp. 1994); D.C. CODE ANN. § 6-2503 (Michie 1989); FLA. STAT. ch. 415.103 (West 1993); GA. CODE ANN. § 30-5-4 (Michie 1993); HAW. REV. STAT. § 346-224 (Michie 1994); IDAHO CODE § 39-5303 (Michie 1993); IND. CODE ANN. § 12-10-3-9 (West 1994); IOWA CODE ANN. § 235B.3 (West 1994); KAN. STAT. ANN. § 39-1431 (1993); KY. REV. STAT. ANN. § 209.030 (Michie/Bobbs-Merrill 1991); LA. REV. STAT. ANN. § 14:403.2(C) (West 1986 & Supp. 1994); ME. REV. STAT. ANN. tit. 22, § 3477 (West 1992); MD. FAM. LAW CODE ANN. § 14-302 (Michie 1991); MASS. GEN. LAWS ANN. ch. 19A, § 15 (West 1988 & Supp. 1994); MICH. COMP. LAWS ANN. § 400.11a (West Supp. 1994); MINN. STAT. ANN. § 626.557 (West 1983 & Supp. 1995); MISS. CODE ANN. § 43-47-7 (1993);

states pass mandatory reporting laws in 1980, it has not retreated from its support for the mandatory reporting of elder abuse.⁹

Mary Rose Oakar, a U.S. Representative from Ohio, was one of the few participants in the hearing who disagreed with the GAO's conclusions.¹⁰ She was cosponsoring a bill (House Bill 385) that would provide federal funds for state protective services for the elderly.¹¹ Representative Oakar expressed her fear that if states were not required to have mandatory reporting laws in place before receiving funds under House Bill 385, then "you will not see the decline in elder abuse that I think all of us want."¹²

C. The Necessity of Mandatory Reporting

Although the GAO dismissed the importance of mandatory state reporting laws for elder abuse, this note will discuss why mandatory reporting is an appropriate and necessary response to the problem of elder abuse. First, even a small increase in reporting due to a mandatory reporting requirement helps to decrease underreporting, estimated at ninety percent.¹³ Second, although critics claim that mandatory elder-abuse reporting laws are an invasion of the victims' privacy¹⁴ and an affront to elder self-determination,¹⁵ these concerns

MO. ANN. STAT. § 565.188 (Vernon Supp. 1994); MONT. CODE ANN. § 52-3-811 (1993); NEB. REV. STAT. § 28-372 (1989); NEV. REV. STAT. § 200.5093 (Michie 1992); N.H. REV. STAT. ANN. § 161-F:46 (Butterworth 1994); N.M. STAT. ANN. § 27-7-30 (Michie Supp. 1992); N.C. GEN. STAT. § 108A-102 (Michie 1994); OHIO REV. CODE ANN. § 5101.61 (Anderson 1993); OKLA. STAT. ANN. tit. 43A, § 10-104 (West Supp. 1995); OR. REV. STAT. § 410.620-.990 (Butterworth 1993); R.I. GEN. LAWS § 42-66-8 (Michie 1993); S.C. CODE ANN. §§ 43-35-5 to -90 (Law. Co-op. Supp. 1993); TENN. CODE ANN. § 71-6-103 (Michie Supp. 1994); TEX. HUM. RES. CODE ANN. § 48.036 (West 1990); UTAH CODE ANN. § 62A-3-302 (Michie 1993); VT. STAT. ANN. tit. 33, § 6903 (Equity Supp. 1994); VA. CODE ANN. § 63.1-55.3 (Michie Supp. 1994); WASH. REV. CODE ANN. § 74.34.030 (West Supp. 1995); W. VA. CODE § 9-6-9 (Michie 1990); WYO. STAT. § 35-20-103 (Michie 1994). For voluntary reporting statutes, see 320 ILL. COMP. STAT. § 20/4 (West 1993); N.J. STAT. ANN. § 52:27D-409 (West Supp. 1994); N.Y. SOC. SERV. LAW § 473-b (McKinney 1992); N.D. CENT. CODE § 50-25.2-03 (Michie 1989); 35 PA. CONS. STAT. ANN. § 10,215 (West 1993); S.D. CODIFIED LAWS ANN. § 22-46-6 (Michie Supp. 1994); WIS. STAT. ANN. § 46.90 (West 1993).

9. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XV.

10. *Elder Abuse House Hearings*, *supra* note 1, at 17-19.

11. *Id.* at 18-19.

12. *Id.* at 19.

13. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

14. See, e.g., Lawrence R. Faulkner, *Mandating the Reporting of Suspected Cases of Elder Abuse: An Inappropriate, Ineffective and Ageist Response to the Abuse of Older Adults*, FAM. L.Q., Spring 1982, at 69 (criticizing mandatory reporting laws because they intrude on the privacy of older adults).

15. ELDER ABUSE & NEGLECT PROGRAM, ILLINOIS DEP'T ON AGING, ELDER ABUSE AND NEGLECT 5 (1991) (explaining that voluntary reporting achieves goals envi-

pale in the face of serious underreporting¹⁶ and graphic examples of its consequences.¹⁷ Third, the argument that mandatory reporting laws require a breach of physician-patient privilege¹⁸ can be refuted in several ways. Hospitals and professional medical organizations are training medical personnel to report elder abuse while avoiding a breach of physician-patient privilege.¹⁹ Moreover, statutory waivers of the privilege in mandatory elder-abuse reporting laws minimize intrusion into the physician-patient relationship.²⁰

This note also will discuss why adopting mandatory reporting laws alone is not enough to boost reporting of elder abuse. Funding should be increased for state adult protective-services departments and other governmental agencies that provide resources for elder-abuse victims. Mandatory reporters hesitate to report elder abuse unless adequate remedial resources are available for the victims.²¹ Additionally, public awareness of elder abuse and of the reporting requirements must be raised in order to increase compliance with mandatory reporting laws.²² Next, interagency cooperation should be heightened among the various state departments and agencies responsible for different facets of service delivery to elder-abuse victims. Cooperation will lead to better coordination of scarce remedial resources.²³ Finally, elder-abuse reporting laws should be amended to

sioned by mandatory reporting proponents without unnecessary invasion of the elderly person's right to self-determination).

16. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 42. The House Subcommittee on Health and Long-Term Care evaluated questionnaires returned by the states to determine the extent of the underreporting. The subcommittee found that the states were unanimous in responding that a significant number of elder-abuse cases are never reported. For example, Indiana responded that as few as 1 in 50 cases of elder abuse are reported in that state. *Id.*

17. *Id.* at 2-4 (providing examples of serious and graphic elder abuse). Specific instances of elder abuse are discussed later in this note.

18. See, e.g., Faulkner, *supra* note 14, at 82-83; see also Christine A. Metcalf, Comment, *A Response to the Problem of Elder Abuse: Florida's Revised Adult Protective Services Act*, 14 FLA. ST. U. L. REV. 745, 753 (1986).

19. See generally Roberta Gerry, *Diagnosing Elder Abuse: AMA Urges Doctors to Identify and Act on Growing Problem*, AM. MED. NEWS, Dec. 14, 1992, at 2 (discussing the American Medical Association's education of physicians to diagnose, treat, and report elder abuse in ways that minimize invasion of victims' privacy); Flora J. Skelly, *When the Golden Years Are Tarnished*, AM. MED. NEWS, Jan. 6, 1992, at 17 (explaining the role physicians play in victims' decisions to seek or to accept help).

20. E.g., ARIZ. REV. STAT. ANN. § 46-453 (West Supp. 1994).

21. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 44. See generally Andrew Webb, *Services Strained by Funding Shortages*, AM. MED. NEWS, Jan. 6, 1992, at 41-42.

22. *Elder Abuse House Hearings*, *supra* note 1, at 51-52.

23. *Id.* at 75.

include more protection for mandatory reporters and to expressly waive the physician-patient privilege.²⁴

II. History and Background

The fastest-growing segment of the United States's population is the elderly—thirteen percent of Americans were sixty-five and older in 1990 compared with eleven percent in 1980.²⁵ When the elderly population increases, the number of elder-abuse cases grows as well.²⁶ An estimated 1.5 million elderly persons may be abused each year, up approximately 500,000 cases annually since 1980.²⁷

Elder abuse first drew the nation's attention in 1981 when the House Select Committee on Aging held hearings about the problem.²⁸ The committee recommended that states enact protective laws, including mandatory reporting requirements.²⁹ In 1980, only sixteen states

24. *E.g.*, CONN. GEN. STAT. § 17a-431 (West 1992 & Supp. 1994) (providing that any person who makes any report pursuant to statute shall be immune from any civil or criminal liability and reporter need not give name at all); N.H. REV. STAT. ANN. § 161-F:48 (Butterworth 1994) (abrogating privileged communications). *See generally Elder Abuse House Hearings, supra* note 1, at 70 (discussing provisions in state statutes that encourage reporting: statutory immunity for good-faith reporting, anonymity for reporters, and language that requires only suspected abuse).

25. *ElderLaw Facts: Census Reports Growth of Older Population*, ELDERLAW REP., July-Aug. 1991, at 3.

26. *See* Audrey S. Garfield, *Elder Abuse and the States' Adult Protective Services Response: Time for a Change in California*, 42 HASTINGS L.J. 861, 861 (1991) (discussing the increase in elder-abuse reports in California).

27. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI. A vast majority of the states, 90%, told the subcommittee that the incidence of elder abuse was increasing. Six states told the subcommittee that the incidence of elder abuse was not only increasing, but was increasing at a rapid rate. *Id.* at XIV. Of the victims of elder abuse, approximately 29% are under 60, 11% are ages 60-69, 23% are 70-79, 27% are 80-89, and 8% are 90 or older. Approximately 40% of victims are male, and 60% are female. Deborah Sharp, *Reports of Abuse of Elderly Rise, More Go Undiscovered*, USA TODAY, June 2, 1992, at 3A. *But see Elder Abuse House Hearings, supra* note 1, at 83 (doubting validity of conclusion that 1.5 to 2 million cases of elder abuse occur each year). In response, see *Study to Probe Abuse of Elderly*, CHAMPAIGN-URBANA NEWS GAZETTE, Sept. 16, 1994, at C-3 (reporting that the U.S. Department of Health and Human Services will finance a study to gauge the scope of abuse of the elderly in response to concern that the number is actually higher than 1.5 million annually).

28. *See* H.R. REP. NO. 277, 97th Cong., 1st Sess. (1981) (summarizing data from 1980 hearings on elder abuse and exploring the issue further).

29. *Id.* at 94.

had mandatory reporting laws.³⁰ Since then, twenty-seven more states have enacted the recommended laws.³¹

These state laws generally mandate that a wide variety of professionals report known or suspected cases of elder abuse.³² The professionals include both health care and social service professionals: physicians and nurses, police officers, social workers.³³ Some state laws grant absolute immunity from any civil or criminal liability that reporters might incur; other states require that the reporters act without malicious intent and in good faith to qualify for immunity.³⁴ A number of states impose penalties for failing to report, although prosecution is rare.³⁵ A small number of states waive the physician-patient privilege in their mandatory reporting laws to encourage doctors to report suspected elder abuse without fearing reprisal from their patients.³⁶ All mandatory reporting laws specify a time frame within which reporters must report suspected abuse to designated authorities.³⁷ Designated authorities vary from state to state—protective-services statutes often allow more than one agency to receive reports.³⁸ Reporting statutes also detail the required contents of each report.³⁹

Congress has kept the elder-abuse issue in the national spotlight by continuing to study and report on this problem. Part of its efforts included holding extensive hearings before the Subcommittee on Human Services of the House Select Committee on Aging in 1991.⁴⁰ A decade after the first hearings on elder abuse, the chairman of the 1991 subcommittee was still asking, “[W]hat can be done [about elder abuse]?”⁴¹ The chairman noted that the subcommittee was returning once again to a “tragic problem that affects roughly one and a half to

30. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

31. *Id.* “Mandatory reporting provisions were the first major laws enacted in response to the problem [of elder abuse] and continue today to be the mainstay of most state elder abuse laws.” Garfield, *supra* note 26, at 874. For a list of states with mandatory report laws, see *supra* note 8.

32. Garfield, *supra* note 26, at 874 n.83.

33. *Id.*

34. *Id.* at 875.

35. *Id.*

36. *E.g.*, ARIZ. REV. STAT. ANN. § 46-453 (West 1988 & Supp. 1994) (waiving confidentiality).

37. Garfield, *supra* note 26, at 876.

38. *Id.*

39. *Id.*

40. *Elder Abuse House Hearings*, *supra* note 1.

41. *Id.* at 3.

two million of our older citizens—elder abuse.”⁴² This statistic seems staggering because by 1990, Congress had defined elder abuse quite broadly to include not only physical abuse and neglect, but also psychological and financial abuse.⁴³

Ten years after this serious national problem was uncovered, the Subcommittee on Health and Long-Term Care of the House Select Committee on Aging prepared a comprehensive report on elder abuse, describing the preceding decade as one of “shame and inaction.”⁴⁴ The subcommittee found that elder abuse continues to increase nationally even though many states have adopted mandatory reporting laws designed to identify and prevent the problem.⁴⁵ The report concluded that without more federal funding, the states are “severely hampered in channeling monies into this newly designated social services area—elder abuse protective services—on their own authority.”⁴⁶ This note will discuss mandatory reporting within the context of severe federal and state underfunding and will suggest methods to increase effectiveness of mandatory elder-abuse reporting laws.

III. Analysis

A. Why Mandatory Reporting Is Necessary: Addressing Some of the Criticism

1. EFFECTIVENESS OF MANDATORY REPORTING AS COMPARED WITH VOLUNTARY REPORTING SYSTEMS

A common argument against mandatory reporting is that it is no more effective than voluntary reporting.⁴⁷ This criticism may reflect a general feeling of uneasiness about “unnecessary” government involvement in a sensitive and personal matter.⁴⁸ As the GAO study demonstrated, obtaining solid data to compare the two systems can be difficult.⁴⁹ The GAO study, however, was based solely on survey re-

42. *Id.*

43. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XII.

44. *Id.* at 1.

45. *Id.* at XI.

46. *Id.* at XII.

47. See Faulkner, *supra* note 14, at 79, 89.

48. See generally *Elder Abuse House Hearings*, *supra* note 1, at 36 (chairman of subcommittee expressing his state’s concern about elder abuse and their feeling that mandatory laws will not help to abate the problem).

49. *Id.* at 47. There is more data on child abuse, and the public has come to believe and accept that this problem exists. Nothing is known about the back-

sponses of forty officials from state agencies on aging and adult protective services.⁵⁰ The GAO did not evaluate circumstantial evidence that indicates, at a minimum, mandatory reporting requirements are more effective than voluntary reporting laws, even if the degree of effectiveness cannot be measured exactly.

Representative Oakar testified at the 1991 subcommittee hearings about mandatory reporting of elder abuse.⁵¹ She estimated that, if voluntary reporting states adopted mandatory reporting laws, underreporting in those states would be cut in half.⁵² Studies verify the general notion that mandatory reporting laws increase reporting. One such study evaluated the impact of Washington state's elder-abuse mandatory reporting law.⁵³ The authors compared data from the first six months after the law was enacted to data from an equivalent period during the previous year and found a "significant" increase in the number of reported cases.⁵⁴

With only one in eight cases of elder abuse currently being reported, even a small percentage increase in reporting can result in large absolute numbers.⁵⁵ For example, one study estimated that switching from a voluntary system of reporting to mandatory reporting increases reports by ten percent.⁵⁶ Even this conservative estimate translates into the annual reporting of approximately 19,000 more cases of elder abuse nationwide under mandatory laws than under a voluntary system.⁵⁷

2. INVASION OF VICTIM'S PRIVACY WORTH THE SACRIFICE

Another argument against mandatory reporting laws is that they are an unnecessary invasion of the victim's privacy.⁵⁸ Critics assume that an elderly person who is mentally competent can report abuse or

grounds of the abused elderly because data have not been collected yet. Aida Rogers, *Abuse of the Elderly*, SHEPARD'S ELDERCARE L. NEWSL., July 1991, at 7, 8.

50. *Elder Abuse House Hearings*, *supra* note 1, at 51.

51. *Id.* at 35.

52. *Id.*

53. *Id.* at 72.

54. *Id.*

55. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI. "Elder abuse is one of the most underrecognized social problems. . . and therefore underreported." Rogers, *supra* note 49, at 9 (quoting Toshio Tatara, Director of the National Aging Resource Center on Elder Abuse).

56. *See Elder Abuse House Hearings*, *supra* note 1, at 71.

57. *See id.*

58. *See generally* Faulkner, *supra* note 14, at 84-86; Metcalf, *supra* note 18, at 754.

give permission for it to be reported; thus, the state and mandatory reporters have no reason to get involved.⁵⁹ For a variety of reasons, however, some mentally competent elderly victims cannot or will not report abuse or seek assistance. One commentator has described these mentally competent victims who nevertheless fail to report abuse as “in a dependent position and frail, confused or ignorant of the societal protection mechanism available.”⁶⁰ Another author describes some elderly victims as isolated and unwilling to implicate a loved one because of fear of retribution or embarrassment.⁶¹

The evidence supporting these contentions is mainly anecdotal,⁶² although the Subcommittee on Health and Long-Term Care of the House Select Committee on Aging reached some firm conclusions after thoroughly researching the subject.⁶³ The subcommittee found that many elder-abuse cases share a number of common elements: victims generally depend on their family or an unrelated care giver for care and protection, and elderly victims are less likely to report abuse than victims in other age groups, either because they are too ashamed to admit that their children or loved ones abuse them or they fear reprisals if they complain.⁶⁴ In their report on elder abuse, the sub-

59. See Metcalf, *supra* note 18, at 754. “They [lawmakers who balk at the idea of a mandatory reporting system] reason that elderly people are adults, not children, and should determine for themselves if they are being abused.” Rogers, *supra* note 49, at 7.

60. Faulkner, *supra* note 14, at 86 (quoting E. SALEND ET AL., MANDATORY REPORTING LEGISLATION FOR ADULT ABUSE, NATIONAL CONFERENCE ON ELDER ABUSE (1981)).

61. Melissa B. Robinson, States News Service, May 1, 1990, available in LEXIS, Nexis Library, States News Service File. Other descriptions of victims of elder abuse include “vulnerable” and “homebound.” *Elder Abuse House Hearings*, *supra* note 1, at 19. One graphic example of a victim’s reluctance to report abuse occurred when the son of a 79-year-old man attacked his father with a hatchet. Luckily, the son was drunk and the ax, aimed for the throat, just nicked the father’s back. In this case, the abuse had begun when the son was a teenager and continued unabated until the hatchet incident occurred. Remarkably, the father did not want to press charges, still referred to his son emotionally as “my boy,” and was astonished that the son had bought a brand new hatchet to “finish the job.” The father was embarrassed and afraid of his son and was still making excuses for him despite the attempted murder. Bella English, *It’s Society’s Secret Crime*, BOSTON GLOBE, Aug. 2, 1989, at 17.

62. See *Elder Abuse House Hearings*, *supra* note 1, at 36 (Rep. Oakar relating to the subcommittee that her evidence of dependent elder-abuse victims consisted of anecdotal examples, and the chairman responding that it is only anecdotal until you run into it yourself).

63. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI-XIV.

64. *Id.* at XIII; see also Phyllis Coons, *Harshbarger Seeks Protections for Elderly*, BOSTON GLOBE, May 21, 1992, at 40 (supporting the proposition that victims of elder abuse are ashamed to admit abuse).

committee cited an example of a mentally competent eighty-two-year-old woman who was brutally beaten by her forty-year-old daughter and was hospitalized for eight weeks.⁶⁵ The mother was passive, withdrawn, weak, and so intimidated by her daughter that she was incapable of taking remedial action such as moving out of her daughter's home or even seeking help.⁶⁶ In another case, an elderly woman was subjected to passive abuse when her family neglected to feed and bathe her properly.⁶⁷ She weighed sixty pounds and was severely dehydrated when she was finally admitted to the hospital.⁶⁸ The victim would not confirm to the police that her family had denied her care because she did not "want to get anyone in trouble."⁶⁹

Elder-abuse victims also tend to be isolated from others in the community, which compounds the problem of underreporting. One Massachusetts district attorney, who has implemented a comprehensive plan to combat elder abuse, contrasted child abuse with elder abuse in terms of the latter's isolation.⁷⁰ He concluded that at least child-abuse victims are seen by others when they go to school or to doctors and when they interact with other children.⁷¹ In contrast, elder abuse thrives on total isolation—it is a "secret crime."⁷² Therefore, when people do spot a victim, it is crucial that they report the suspected abuse. A physician may be the only person outside the family who regularly sees the elderly person.⁷³ He or she is uniquely qualified to diagnose and report suspected abuse.⁷⁴ Consequently, the physician, or any other professional who suspects abuse, should be required to report it because another opportunity to address the problem may not arise.⁷⁵

A recent University of New Hampshire study discovered yet another impediment to reporting.⁷⁶ The study found that a number of

65. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 1.

66. *Id.* at 2.

67. *Id.*

68. *Id.*

69. *Id.*

70. English, *supra* note 61, at 17.

71. *Id.*

72. *Id.*

73. Gerry, *supra* note 19, at 2.

74. *Id.*

75. See *id.*; see also Metcalf, *supra* note 18, at 753-54 (suggesting that elder abuse will be difficult to discover unless doctor or other professional reports the suspected abuse).

76. David Streitfeld, *Abuse of the Elderly: Often It's the Spouse*, WASH. POST, Nov. 26, 1986, at D5.

elder-abuse victims actually assisted their abusers with cooking, cleaning, housing, and transportation.⁷⁷ The victims were reluctant to acknowledge or to report the abuse because they were unwilling to leave the abuser without adequate care.⁷⁸ Apparently, families try to stick together, both when the victim relies on the abuser and when the abuser depends upon the victim.⁷⁹

Mandatory reporting can bypass this misplaced concern about family members, which may take precedence over the victim's own well-being. Mandatory reporting also addresses situations in which victims are dependent on their families for care. In both instances, the reporter can give the victim an out by asserting that the report is required by law.⁸⁰ Reporters and even victims can say to themselves, "It is not me. I have to do this."⁸¹ The California Department of Social Services discovered the true value of mandatory reporting when it evaluated 12,000 documented reports of elder abuse that occurred in California in 1987.⁸² The survey found that eighty-five percent of abuse victims were willing to accept some help with respect to the abuse.⁸³ This statistic clearly indicates that once the abuse victim is given an out, most likely he or she will acknowledge the abuse and accept remedial services.

Once a report is made under a mandatory reporting system, almost all states restrict access to elder-abuse records in some manner.⁸⁴ Most statutes stipulate that the initial report and all information gathered during the subsequent investigation are not a matter of public record.⁸⁵ A number of states mandate total confidentiality, and others provide that information may be released with the victim's permission.⁸⁶ This protection also helps to blunt the argument that mandatory reporting is an invasion of privacy because confidentiality requirements protect the rights and sensibilities of the family members involved.⁸⁷

77. *Id.*

78. *Id.*

79. Rogers, *supra* note 49, at 9.

80. See *Elder Abuse House Hearings*, *supra* note 1, at 36.

81. *Id.*

82. Garfield, *supra* note 26, at 920.

83. *Id.* at 921.

84. *Id.* at 887.

85. *Id.*

86. *Id.* at 888.

87. *Id.*

3. PHYSICIAN-PATIENT PRIVILEGE NOT HARMED

Critics claim mandatory reporting laws may cause a breach of physician-patient privilege,⁸⁸ and “[t]his situation creates a serious conflict between the physician’s or clergyman’s professional and legal responsibilities.”⁸⁹ Although many reporters are professionals who have an obligation to uphold their clients’ privilege of confidential communication, specific provisions within some state reporting statutes expressly abrogate many of these privileges.⁹⁰ Those states’ statutes that fail to provide the waiver are less effective. They will be addressed in a later section about improving the effectiveness of mandatory reporting laws.

Some critics believe that a statutory exception to the physician-patient privilege for reporting elder abuse cannot be justified.⁹¹ Their view is that exceptions are only justified when there is a “significant social interest” at stake, such as preventing violent crimes or the use of dangerous drugs.⁹² However, states that have imposed mandatory reporting requirements found that preventing elder abuse is a significant social interest. In fact, many state statutes are prefaced with a legislative policy section or a declaration of intent similar to section 15,600 of California’s Welfare and Institutions Code: “[T]he Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse”⁹³

A recent development that will minimize forced breach of the physician-patient privilege under mandatory reporting laws is the American Medical Association’s (AMA) National Campaign Against Family Violence.⁹⁴ The AMA is training health care professionals to encourage elder-abuse victims to willingly utilize remedial services.⁹⁵ AMA training programs teach doctors how to ask the victim questions

88. See Faulkner, *supra* note 14, at 82-83; Garfield, *supra* note 26, at 884.

89. Metcalf, *supra* note 18, at 753.

90. Garfield, *supra* note 26, at 884.

91. See Faulkner, *supra* note 14, at 83.

92. *Id.* Faulkner actually takes the argument one more step and hypothesizes that victims of elder abuse are unlikely to be participants in a crime. Therefore, there is no reason to create an exception to the physician-patient privilege for their abuse. He also argues that the perpetrator of the “crime” of elder abuse is unlikely to commit it against members of the general public. *Id.*

93. CAL. WELF. & INST. CODE § 15,600 (West Supp. 1994).

94. Teri Randall, *AMA, Joint Commission Urge Physicians Become Part of Solution to Family Violence Epidemic*, 266 JAMA 2524, 2524 (1991).

95. *Id.*

about violence and how to discuss such issues as safety options, legal remedies, and advocacy programs.⁹⁶ This open and supportive approach should alleviate some of the concerns about breach of physician-patient privilege because physicians will encourage victims of elder abuse to report on their own behalf.⁹⁷

Perhaps the most significant aspect of the AMA's campaign is its strong support for mandatory reporting laws.⁹⁸ In 1992, the AMA organized a network of violence-prevention committees in state and local medical societies to lobby for state and federal legislation pertinent to the mandatory reporting of elder abuse.⁹⁹ The AMA is even drafting model state and federal legislation for those areas not adequately addressed by existing law.¹⁰⁰ This stance demonstrates that physicians are more concerned about getting help for elder-abuse victims than they are about potential breaches of physician-patient privilege.

B. Improving the Effectiveness of Mandatory Reporting Laws

Although the shortcomings of mandatory reporting laws are partially addressed by the above arguments, some serious problems still exist with these laws. Forty-three states now have mandatory reporting requirements in place,¹⁰¹ yet only one in eight cases of elder abuse is reported.¹⁰² Now that the laws are on the books, compliance with them must be increased. Four possible methods to increase compliance will be discussed below: (1) increase funding of state adult protective services; (2) publicize mandatory reporting requirements; (3) increase interagency cooperation to provide more effective delivery of remedial services; and (4) amend state statutes to protect reporters.

96. *Id.* The AMA has recently developed protocols that encourage physician inquiry about abuse, even if specific indicators are not present, for use in a variety of medical settings. *Id.*

97. *Id.* This supportive approach also will address concerns that victims of elder abuse may not seek medical care because of fear that the physician will breach the physician-patient confidentiality and report the abuse. *See generally* Faulkner, *supra* note 14, at 83; Metcalf, *supra* note 18, at 753.

98. Randall, *supra* note 94, at 2527.

99. *Id.* The societies will lobby for more state and federal legislation addressing spousal and child abuse at the same time. *Id.*

100. *Id.*

101. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

102. *Id.* at XI; *see also* Rogers, *supra* note 49, at 8.

1. INCREASE FUNDING TO STATE ADULT PROTECTIVE-SERVICES DEPARTMENTS

Many states have enacted adult protective-services legislation to combat elder abuse. Adult protective services are services provided by the state which are necessary to prevent abuse and neglect.¹⁰³ Protective-services legislation generally provides guidelines for reporting, facilitated access by investigators to suspected victims, and social and health services for victims.¹⁰⁴ A standard list of social and health services includes medical care for physical and mental health needs; assistance in personal hygiene; food, clothing, and adequately heated and ventilated shelter; protection from health and safety hazards; protection from physical mistreatment; and protection from exploitation.¹⁰⁵

The importance of fully funded adult protective services, beyond assisting the victim, is that reporters will have a greater incentive to report elder abuse if they know that adequate remedial services are available to support the victim.¹⁰⁶ A system in which legislated services are not provided or are inadequate because of underfunding forces physicians and social workers who suspect elder abuse to make tough decisions. They must either comply with mandatory reporting requirements or leave the elderly person in the abusive situation where the victim is at least fed, clothed, and sheltered.

Generally, state adult protective-services legislation is comprehensive. The state statutes detail various types of services that state agencies and health departments should provide.¹⁰⁷ Unfortunately, states may not provide some or even all of the services described in the statutes because state and federal funding is insufficient.¹⁰⁸

The 1990 report on elder abuse by the House Subcommittee on Health and Long-Term Care continually refers to government's "woefully inadequate" funding of adult protective services.¹⁰⁹ The report also notes that many states which passed mandatory reporting laws during the 1980s expected to receive federal funding for adult protec-

103. Metcalf, *supra* note 18, at 749-50.

104. *Id.* at 749.

105. Laurie A. Lewis, *Toward Eliminating the Abuse, Neglect, and Exploitation of Impaired Adults: The District of Columbia Adult Protective Services Act of 1984*, 35 CATH. U. L. REV. 1193, 1196 n.27 (1986).

106. See generally Webb, *supra* note 21, at 41; Daniel A. Quirk, *An Agenda for the Nineties and Beyond*, GENERATIONS, Summer-Fall 1991, at 23.

107. See generally Webb, *supra* note 21, at 41.

108. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 67, 69.

109. *Id.* at 69.

tive services.¹¹⁰ The states anticipated that eligibility for such funding would be based in part on the enactment of mandatory reporting requirements.¹¹¹ The Elder Abuse and Prevention Act (House Bill 7551), a bill originally introduced in the Ninety-sixth Congress, promised funding for state adult protective services.¹¹² When the bill failed to pass, however, states were hard pressed to actually carry out their new adult protective-services mandates.¹¹³ Congress did pass another piece of legislation aimed at helping the elderly, the Older Americans Act Amendments of 1987, but it did not appropriate any money to implement the Act until 1990.¹¹⁴ Even then, Congress appropriated only a meager \$3 million.¹¹⁵ If the money were distributed equally among the fifty states, each state would have received the trivial sum of \$60,000.¹¹⁶

The elder-abuse report then made the “shocking” discovery that, in 1989, each state spent about \$45.03 per resident child on protective services, while spending only \$3.80 per elderly resident on adult protective services.¹¹⁷ In addition, protective services for the elderly accounted for only about 3.9% of the average state’s budget in 1989.¹¹⁸ This figure represents a forty-percent decrease from the 1980 average state funding level for adult protective services.¹¹⁹ States also have been unable to channel funds into newly designated elder-abuse protective services because the federal government has reduced federal social services block grants by nearly one-third.¹²⁰ These grants are the primary source of existing federal funding for state protective services.¹²¹

After the elder-abuse report was released, the 101st Congress appropriated \$5.5 million in federal funding to combat elder abuse.¹²²

110. *See id.* at V.

111. *See id.*

112. *Id.* at 66.

113. *Id.* at 67.

114. *Elder Abuse House Hearings, supra* note 1, at 4.

115. *Id.* at 24.

116. *See generally* Quirk, *supra* note 106, at 26 (noting that the promise of federal legislation to aid the elderly has not been realized).

117. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 67. In Massachusetts, the disparity is even more severe. The state spent \$229.95 per child in 1989 and only \$2.48 per elderly resident. Robinson, *supra* note 61.

118. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 67.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Elder Abuse House Hearings, supra* note 1, at 24.

As part of the fiscal year 1991 Labor-HHS appropriations bill, Congress earmarked \$3 million for state elder-abuse programs and \$2.5 million for the state long-term care ombudsmen program.¹²³ However, this minimal amount of funding will not even begin to close the gap between current funding levels and actual need.¹²⁴ In fact, some critics of the government's limited funding of adult protective services insist that society must change its attitude toward the elderly before the government will fund elder-abuse programs adequately.¹²⁵ They argue that the United States must reexamine its current notion of equity in distribution of government resources and become an "elder-oriented" society such as the Scandinavian countries and the Netherlands.¹²⁶

This idealistic point of view is admirable, but it ignores the reality of scarce federal resources. States *must* find low-cost ways to prevent and identify elder abuse, as well as to increase compliance with mandatory reporting laws, without relying on the federal government to fully fund adult protective services.¹²⁷

2. INCREASE PUBLIC AWARENESS OF ELDER ABUSE AND OF THE REPORTING REQUIREMENTS

The same GAO report that dismissed the importance of mandatory reporting requirements recommended increasing public awareness as a strategy for combatting elder abuse.¹²⁸ The GAO surveyed forty public officials from adult protective-services agencies in twenty-five states and found that they rated a high level of public and professional awareness as the most effective factor in elder-abuse identification.¹²⁹ Little headway will be made in treating or eliminat-

123. *Id.*

124. Webb, *supra* note 21, at 42. Advocates are, at best, cautiously optimistic. They say it is heartening that Congress seems to be taking a greater interest in these issues, but they question the extent to which this interest will translate into actual dollars. *Id.*

125. Rogers, *supra* note 49, at 9.

126. *Id.* One commentator asserts that during the '90s, the United States must consider new ways to organize effective responses to the needs of older people, gain experience with new delivery vehicles, and fundamentally address funding realities. New concepts must be forged and tested. New attitudes must be considered by administrators, consumers, providers, and payers about both public and private roles in meeting the needs of the older population. Quirk, *supra* note 106, at 26.

127. See *Elder Abuse House Hearings*, *supra* note 1, at 82 (noting that the public is unaware that reporting laws fail to provide additional funding).

128. *Id.* at 51, 74.

129. *Id.* at 51.

ing elder abuse without an informed public and trained governmental service staffs to identify elder abuse and to provide remedial resources.¹³⁰

A recent North Carolina study reinforced this conclusion when it found that eighty percent of the doctors interviewed did not know there was a state law requiring them to report abuse.¹³¹ In response to such studies, the director of the National Aging Resource Center on Elder Abuse said, "[W]ho's to blame? It's easy to blame physicians, but someone has failed to inform them and those adult protective service people of the law."¹³² Before reporters can report abuse, they must know how to recognize abuse, that they are required to make the reports, and how reports are made.

The 1991 House hearings on elder abuse claimed there was no objective evidence demonstrating that education increased awareness and thus reporting of elder abuse.¹³³ Despite inadequate objective evidence, however, the report concluded that the correlation between education and increased reporting seemed a "reasonable connection."¹³⁴ Objective evidence is now available to confirm that connection. There was a 350% increase in elder-abuse reports from 1987 to 1989 when a program in Middlesex County, Massachusetts provided special training on the state's mandatory abuse reporting law.¹³⁵ Similarly, Montana officials encouraged and trained adult protective-services staff to publicize elder abuse and the services available to victims in their communities.¹³⁶ Reported cases of abuse increased fifty percent in one year.¹³⁷

The successful Middlesex County program is an action plan developed by the Middlesex County District Attorney.¹³⁸ The District Attorney's Office implemented the action plan in 1988 in response to

130. *See id.* at 74.

131. Rogers, *supra* note 49, at 7. Some professionals would even deny that the problem of elder abuse exists. Some would say the problem exists, but that it only touches an insignificant number of people. Some of those same skeptics would say that the problem rests with social workers trying to find a new cause or problem.

Id.

132. *Id.* (quoting Toshio Tataru).

133. *Elder Abuse House Hearings, supra* note 1, at 74.

134. *Id.*

135. Robinson, *supra* note 61.

136. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 38.

137. *Id.* at 38-39.

138. SCOTT HARSHBARGER, DISTRICT ATTORNEY'S OFFICE OF MIDDLESEX COUNTY, MASS., ACTION PLAN FOR CRIMES AGAINST THE ELDERLY (1988) [hereinafter ACTION PLAN].

extreme underreporting of elder abuse.¹³⁹ The District Attorney was convinced that increasing public awareness, better training of the professionals who are in contact with the elderly, and enhancing awareness among the elderly of the available resources would encourage more people to report elder abuse and enable the office to respond more effectively to the reports.¹⁴⁰ The action plan targets the four groups of people who are most likely to come in contact with the elderly for education and training: the police, state protective-services workers, staffs of hospitals (including clinics and other medical service providers), and employees of financial institutions.¹⁴¹ The training programs explain and describe warning signals of physical and emotional abuse and neglect, how and where to report abuse once it is suspected, and how to report deaths where abuse is suspected as the precipitating factor.¹⁴²

The professional staffs of hospitals and clinics, including physicians, nurses, and social workers, are all mandated to report elder abuse in Massachusetts.¹⁴³ Nonetheless, these professionals routinely reported very few cases of elder abuse before the Middlesex County action plan was implemented in 1988.¹⁴⁴ Assistant district attorneys now meet with representatives of hospitals, clinics, and other medical institutions to educate them about their reporting responsibilities and to encourage them to develop internal protocols for handling suspected elder abuse and neglect.¹⁴⁵

Professional medical organizations also recognize the value of increasing physicians' awareness of elder abuse and of the mandatory reporting laws. The AMA designed its National Campaign Against Family Violence partly to educate physicians to recognize and report suspected elder abuse.¹⁴⁶ Furthermore, the AMA's ethics guidelines for physicians include considering elder abuse as an alternative diagnosis and avoiding misconceptions that can affect diagnosis and

139. *Id.* at 3.

140. *Id.*

141. *Id.* at 11.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. Randall, *supra* note 94, at 2524. The medical consequences of physicians' misperceptions about the existence of elder abuse are: failure to consider abuse in diagnosis; disbelief, even when signs are evident; reluctance to broach the subject; and failure to acknowledge elder abuse in the medical record. *Family Violence: A Doctor's Ethical Duty*, AM. MED. NEWS, Feb. 3, 1992, at 2.

management of a case.¹⁴⁷ The AMA's guidelines also encourage physicians to learn protocols for diagnosing and treating abuse, including state reporting requirements, protective services, and community resources.¹⁴⁸

By December 1992, the AMA had distributed more than 20,000 copies of its elder-abuse guidelines to medical schools, residency training programs, and local medical societies.¹⁴⁹ The guidelines provide a list of questions for physicians to ask suspected elder-abuse victims and advise which steps to take if any of the answers indicate a need to report.¹⁵⁰ The guidelines stress that mistreatment need only be suspected, not proved, in order to report.¹⁵¹ Physicians are cautioned that if they treat abused elders and do not report suspected mistreatment, they may be civilly or even criminally liable.¹⁵² The guidelines also advise that "most experts" believe that a physician's duty to report suspected abuse supersedes physician-patient confidentiality issues.¹⁵³

The medical media also is educating physicians about elder abuse. *American Medical News* recently reprinted a portion of "Guidelines for Physicians: Identification of Abuse Victims," a document prepared by the Elder Abuse Prevention Project, Community Care Organization of Milwaukee County.¹⁵⁴ The guidelines list a number of signs of elder abuse.¹⁵⁵ Physical indicators include bruises, malnutrition, poor hygiene, and duplication of medication.¹⁵⁶ Behavioral indicators are agitation, anxiety, withdrawal, confusion, fear, and nonresponsiveness.¹⁵⁷ Care-giver indicators include an elderly person's silence within the presence of the care giver, the care giver characterizing the elderly person's medical condition as intentional or as a deliberate act, and a care giver's previous history of abusing others.¹⁵⁸ The guidelines also recommend that physicians document all sus-

147. *Family Violence: A Doctor's Ethical Duty*, *supra* note 146, at 2.

148. *Id.*

149. Gerry, *supra* note 19, at 2.

150. *Id.*

151. *Id.*; see Jay E. Jorgensen, *An Intervention Program for Dentists to Detect Elder Abuse and Neglect*, PUB. HEALTH REP., Mar.-Apr., 1993, at 171 (discussing that even dentists are attempting to educate themselves to recognize signs of elder abuse).

152. Gerry, *supra* note 19, at 25.

153. *Id.*

154. Skelly, *supra* note 19, at 17.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

pected elder abuse.¹⁵⁹ Accurate elder-abuse reports depend on physicians documenting suspected victims' physical and emotional symptoms.¹⁶⁰

Thus, affirmative evidence suggests that increasing public awareness of elder abuse and of reporting requirements does increase compliance with mandatory reporting laws. States that lack educational programs must develop them through adult protective-services departments, through district or state's attorneys' offices, or by cooperating with professional associations.

3. INCREASE INTERAGENCY COOPERATION

The GAO survey of state adult protective-services agencies demonstrated that public officials believe mandatory reporting is required to "define the responsibilities of government and private citizens . . . and [to] establish official procedures for making, receiving, and investigating reports."¹⁶¹ The dilemma is that state health departments and agencies, although aware of reporting requirements, have not developed an actual protocol for abuse identification and referral.¹⁶²

A contributing factor to this apparent lack of progress is that state elder-abuse legislation generally places implementing authority with human services or law enforcement agencies rather than with health departments and adult protective-services agencies.¹⁶³ State health departments are ostensibly familiar with the law and concerned about the welfare of vulnerable populations, and they are critically situated to educate health providers about elder abuse and their reporting obligations.¹⁶⁴ State health departments and adult protective-services agencies are in a unique position of authority and possess knowledge to initiate such programs as awareness campaigns for reporters and in-service training of health care providers.¹⁶⁵

159. *Id.*

160. *Id.*

161. *Elder Abuse House Hearings, supra* note 1, at 52.

162. Phyllis Ehrlich & Georgia Anetzberger, *Survey of State Public Health Departments on Procedures for Reporting Elder Abuse*, PUB. HEALTH REP., Mar.-Apr. 1991, at 153.

163. *Id.*

164. *Id.* at 154.

165. *Id.* The health departments can be useful facilitators in the coordination process because they are in a better position to be neutral in interdepartmental discussions than agencies charged with report investigation and provision of protective services. *Id.*

Currently, most states have assigned implementation of reporting laws to a single agency.¹⁶⁶ However, multidepartmental responsibility is a more appropriate mechanism to protect elder-abuse victims than single-agency responsibility.¹⁶⁷ Protocols and guidelines must be developed across departmental lines to utilize as many sources of information and resources as possible. Such coordinated efforts encourage mandatory reporters to report suspected elder abuse because they know that remedial resources will be efficiently and effectively provided to the victim.

Several states, such as Illinois and Montana, are experimenting with a multidisciplinary approach. They are testing "interorganizational coordination projects" to determine if such an approach will improve service delivery to elder-abuse victims.¹⁶⁸ Montana was the first state to create multidisciplinary teams, generally comprised of adult protective-service social workers and supervisors, representatives from health departments and mental health centers, and the police.¹⁶⁹ The teams' goals are to assist adult protective-services staff in training reporters to comply with reporting laws, to generally support adult services caseworkers in their work, and to help resolve cases.¹⁷⁰

A few states have established educational and advocacy programs that involve both the public and private sectors.¹⁷¹ Each state's approach is geared to unique local needs, yet the goals are similar: to enhance the state agencies' services to elderly clients who are at risk of abuse.¹⁷² Representatives from governmental units such as adult protective services, mental health, social services, and criminal justice pair up with hospitals, home health care services, and legal services to increase public awareness of elder abuse, to conduct education programs and training, to advocate for needed services, and to promote interagency communication.¹⁷³

166. *Id.*

167. *Id.*

168. *Elder Abuse House Hearings, supra* note 1, at 75.

169. *Id.* at 76. Illinois also has implemented an experimental team system although it is a voluntary reporting state. *Id.*

170. *Id.*

171. *Id.* at 75; *see also* Quirk, *supra* note 106, at 26 (arguing that new sophistication must be applied in the ongoing management of existing programs).

172. *Elder Abuse House Hearings, supra* note 1, at 75.

173. *Id.* at 75-76. Case consultation is another specialized function that the teams perform. For example, the New York Coalition on Elder Abuse Task Force has a case consultation subcommittee that meets on a regular basis. *Id.* at 75.

The Middlesex County District Attorney's action plan, discussed above, is based on a multidisciplinary approach.¹⁷⁴ The District Attorney's Office works closely with protective-services agencies and the police to provide joint training programs and to develop guidelines for managing elder-abuse cases.¹⁷⁵ The goal is to establish ongoing relationships between protective-services workers and the police.¹⁷⁶ Cooperative relationships encourage more reporting and referrals of suspected elder abuse to the proper officials.¹⁷⁷

Studies are now being conducted to ascertain the degree to which multidisciplinary approaches will succeed in elder-abuse education, prevention, and identification. One of these studies examined multidisciplinary teams in Illinois and found increased awareness of elder-abuse issues among team members and also in their communities.¹⁷⁸ Further studies must be conducted to determine the most effective approach in this area—whether coordinating efforts should be initiated through state health departments or criminal justice departments, whether interagency governmental efforts can be enhanced through private-sector involvement, and which guidelines are the most effective in encouraging multidisciplinary cooperation.

4. AMEND STATE STATUTES TO PROVIDE MORE PROTECTION FOR THE MANDATORY REPORTER

Very few mandatory state reporting laws address the inherent conflict between physicians' confidential relationships with their patients and a duty to report suspected abuse.¹⁷⁹ The medical media has encouraged physicians to report, stating that "experts" interpret the mandatory reporting laws as superseding physician-patient confidentiality.¹⁸⁰ However, physicians are still reluctant to violate that confidentiality.¹⁸¹ Thus, to increase compliance with mandatory reporting laws, states must amend their statutes to explicitly waive physician-

174. ACTION PLAN, *supra* note 138, at 11.

175. *Id.*

176. *See generally id.*

177. *Id.* The plan also provides specific instructions as to case referral and the initial investigatory response, as well as how to handle ongoing cases and how to close out a case. *Id.* at 8-10.

178. *Elder Abuse House Hearings, supra* note 1, at 76.

179. *See Metcalf, supra* note 18, at 753.

180. Gerry, *supra* note 19, at 25.

181. Rogers, *supra* note 49, at 7.

patient confidentiality.¹⁸² Waivers will encourage physicians to report suspected elder abuse and protect them from liability.¹⁸³

Almost all mandatory reporting statutes immunize the reporter from civil and criminal liability that might otherwise be incurred or imposed for reporting suspected elder abuse.¹⁸⁴ "Some states grant absolute immunity, but others require that the report be made without malicious intent and in good faith to qualify for complete immunity."¹⁸⁵ Such immunity clauses provide some protection for the reporter, but accused abusers still may bring civil actions against them. Reporters must absorb the legal costs of defending against such actions, even though they are ultimately immune from liability. States should consider expanding protection for the reporter to guard against this problem. California, for instance, provides that reasonable attorneys' fees incurred by reporters in defending actions will be reimbursed if the reporter presents a claim to the State Board of Control.¹⁸⁶

The majority of states also protect reporters of elder abuse by either guaranteeing their anonymity or confidentiality or by limiting circumstances under which the reporter's name may be disclosed.¹⁸⁷ For example, some states specify that the reporter may be asked to divulge his or her identity only during the course of a subsequent investigation.¹⁸⁸ Confidentiality or anonymity is essential because it encourages reporting by those who fear discovery or retaliation by the alleged abuser or victim.¹⁸⁹ Thus, all state statutes must provide anonymity for reporters to increase reports of suspected elder abuse.

Even if all states amend their mandatory reporting laws to expand protection for reporters—i.e., abrogate confidentiality require-

182. *See id.*

183. *See, e.g.,* ARIZ. REV. STAT. § 46-453 (West Supp. 1994) (waiving confidentiality); N.H. REV. STAT. ANN. § 161-F:48 (Butterworth 1994) (abrogating privileged communications). *See generally* Rogers, *supra* note 49, at 7 (noting that doctors who fail to report are hindered by patient-physician confidentiality issues).

184. Garfield, *supra* note 26, at 875.

185. *Id.*

186. CAL. WELF. & INST. CODE § 15,634(c) (West 1991). The parties who may recover under this statute are care custodians, health practitioners, and employees of an adult protective-services agency or a local law enforcement agency. Only if the court has dismissed the action upon a demurrer or motion for summary judgment made by that party, or if he or she prevails in the action may the defendant recover. *Id.*

187. Garfield, *supra* note 26, at 875.

188. *Id.*

189. *Id.*

ments, reimburse legal costs incurred in defending actions stemming from a report, and allow for anonymity—these provisions must be publicized to make reporters aware of them. Even when reporters are aware of their responsibility to report, they may not know about protections built into the laws for their benefit.

IV. Resolution

The GAO was mistaken in ignoring the importance of mandatory reporting laws. Critics of mandatory reporting are also wrong to call for the adoption of voluntary systems of reporting. Elder abuse is a hidden and growing problem that produces severe results if not brought to light and addressed. Because only one out of eight cases of elder abuse is ever reported,¹⁹⁰ all reasonable means must be used to increase reporting. Requiring professionals to report suspected elder abuse, although arguably an intrusion into the lives and families of the elderly, can only result in more investigation and remedial action.

Instead of ignoring the type of reporting statute a state has adopted, as the GAO report has done, mandatory reporting requirements should be publicized. Health care professionals and providers are just now beginning to understand the problem of elder abuse and to recognize the symptoms.¹⁹¹ These reporters should know that they are expected to report the suspected abuse once they identify it. In the states with mandatory reporting, there have been very few objections to it.¹⁹² Why *not* add an extra incentive to report?

State legislatures and government agencies must move beyond complaining about funding shortages for adult protective services. The recommendations discussed in this note—publicity, interagency cooperation, and statutory amendments—will increase compliance with mandatory reporting laws at a relatively low cost to the states. All states should implement them as soon as possible to stop a serious social problem from becoming even worse.

Not only do the three methods listed above have the advantage of being low-cost, but they can be modeled after successful programs

190. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

191. See Oscar W. Clarke & David Orentlicher, *Reporting Abuse of Competent Patients*, 268 JAMA 2378, 2378 (1992); Gerry, *supra* note 19, at 2; Skelly, *supra* note 19, at 17.

192. *Elder Abuse House Hearings*, *supra* note 1, at 35.

in Massachusetts, Illinois, New York, and other states that are proactive in identifying and preventing elder abuse. The problem of how to allocate responsibility for initiating measures among existing state government agencies has been solved in the proactive states. They have divided the assignments in the following manner: state adult protective-services agencies or district attorneys' offices publicize the elder abuse and reporting laws; state health departments or departments on aging coordinate interagency cooperation; and state legislatures review and amend their states' reporting laws to include better protection for reporters.

States have no excuse for failing to adopt these relatively simple measures to improve compliance with their mandatory reporting laws. Only by getting past the excuse of underfunding and by implementing these measures can the states avoid having a congressional subcommittee look back on the nineties as yet another decade of shame and inaction.

V. Conclusion

The United States is finally beginning to realize that elder abuse is a serious social problem of increasing magnitude. This awakening, and the realization that efforts to address elder abuse over the past decade have been ineffective, provide the context in which this note has discussed and dismissed the three most common arguments against mandatory reporting of elder abuse.

First, mandatory reporting brings to light more cases than voluntary systems of elder-abuse reporting. Second, careful handling of reporting situations by mandatory reporters and state statutes mandating restricted access to elder-abuse records minimizes the invasion of elder-abuse victims' privacy. Third, states should abrogate the physician-patient privilege to prevent claims of breach and thus encourage physicians to report elder abuse. The AMA supports this position and is even drafting model legislation for states that lack such confidentiality waivers.¹⁹³

This note also examined proposals to increase compliance with state mandatory reporting laws. Ideally, all state adult protective services should be fully funded. When adult protective services are fully funded, reporters do not hesitate to report because they know

193. Randall, *supra* note 94, at 2527.

that victims will receive adequate remedial services. Full funding also sends a signal to potential reporters that the government is taking elder abuse seriously and expects reporters to respond. Unfortunately, there never seems to be enough money to fully fund protective and preventive services for those in need. Therefore, the note also suggested three low-cost alternatives to the initial proposal of full funding.

First, states should increase public awareness of elder abuse and of the reporting requirements. They must publicize the reporting requirements directly and also work with professional organizations who are just beginning to educate their ranks about elder abuse and the reporting laws. Second, state and local government agencies must increase interagency cooperation to assure potential reporters that the victims they are trying to help will receive timely and appropriate assistance. Third, states should amend their mandatory reporting laws to provide maximum protection for reporters. These amendments also should be publicized to reach potential reporters who fear reprisals for reporting.

State agencies that fail to take the measures described in this note are ultimately failing to adequately protect the elderly, a growing segment of our population who need more help than they are currently receiving. It is time to quit complaining about deficient funding and to take some meaningful steps toward decreasing elder abuse.