

Free Webinar For Aging Professionals: Critical Legal Issues in Alzheimer's

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National Consumer Law Center



National Elder Rights Training Project for the National Legal Resource Center.
Sponsorship for this Webinar is provided by the National Consumer Law Center,

and a grant from the Administration on Aging.

Dec 12, 2012



NLRC

Providing Legal Support to the
Aging Advocacy Network

- <http://www.nlrc.aoa.gov/>
- Collaboration developed by the Administration on Aging between the National Consumer Law Center, National Senior Citizens Law Center, American Bar Association Commission on Law and Aging, Center for Elder Rights Advocacy, and the Center for Social Gerontology
- See upcoming trainings, conferences, and webinars
- Request a training
- Request consulting
- Request technical assistance
- Access articles and resources

Presenter – Jane Tilly, DrPH



- Joined the Administration on Aging in December 2008 as Team Leader for Dementia and Brain Health Programs.
- She has extensive experience with research and policy analysis on a variety of health, long term services and supports, and public benefit issues at the state, national and international levels stemming from her work at the Urban Institute and AARP's Public Policy Institute.
- Just prior to joining the Administration on Aging she worked on dementia policy and practice issues for the Alzheimer's Association.

Presenter – Troy Johnson

- Dr. of Programs and Services for the Nursing Home Ombudsman Agency of the Bluegrass (NHOA) in Lexington, KY.
- Advocates for respectful and dignified care for medically fragile adults living in Kentucky long-term care facilities, as well as counseling for those who are considering long-term care for themselves or a loved one.
- He coordinates a 17 county Friendly Visitor volunteer program, and provides problem solving support to 30 facility ombudsmen who visit nearly 5,000 long term care residents in the Bluegrass service area.
- Serves as chair of the State Long-Term Care Ombudsman Resource Center on Cultural Competency & Diversity, and chairs the Bluegrass Elder Abuse Prevention Council.

Presenter – David Godfrey

- Is a senior attorney at the ABA Commission on Law and Aging.
- He is responsible for the ABA's role in the Administration on Aging funded National Legal Resource Center.
- Prior to joining the Commission he was responsible for elder law programming at Access to Justice Foundation in Kentucky.





Critical Legal Issues in Alzheimer's

David Godfrey JD
Jane Tilly, DrPH
Troy Johnson MSW
December 12, 2012
2:00 – 3:30 PM

The Basics

- People with dementia may have the capacity to manage their own legal and financial affairs right now
- If the person with dementia has the legal capacity he/she should actively participate in planning
- As dementia advances, he/she will need to rely on others to act in their best interest

What is Dementia?

- Progressive decline in cognition and/or behavior from a prior level of functioning
- Decline in two or more: memory, reasoning, language, visual perceptual processes, executive functions, social interpersonal behaviors, personality
- Interferes with customary activities and social relationships, causing dependence, alienation
- Caused by brain disease

4 Common Types of Dementia

1) **Dementia of the Alzheimer Type:**

Initial Symptoms: Most often Short Term Memory Loss: Forgets conversations; repetitive comments/questions. Also reduced motivation.

Later Symptoms: word-finding difficulty, visual perception disorders, reasoning problems

4 Common Types of Dementia con't

2) **Dementia of the Frontotemporal Lobar Degeneration Type** (2 forms):

- a) **Primary Progressive Aphasia:** Early Symptoms: Word-finding deficits;
Later Symptoms: reading, spelling errors; behavioral changes; short term memory loss
- b) **Behavioral Variant Frontotemporal Dementia;** Early symptoms: personality change, poor judgment, inappropriate emotions, odd food habits
Later Symptoms: memory loss; also can have motor symptoms (tremor, etc.)

Note: Common dementia diagnosis in persons under age 60

4 Common Types of Dementia con't

- 3) **Lewy Body Dementia:** Prominent visuospatial deficits; visual hallucinations (usually pleasant, non-threatening); symptoms fluctuate; motor symptoms (parkinson-like)

- 4) **Vascular Dementia:** Many types of symptoms: aphasia, behavior, executive functions, motor symptoms; depend on brain location of stroke
Related to chronic cardio and cerebrovascular risk factors (heart disease, hypertension, high cholesterol); progressive loss of function due to multiple successive cerebrovascular events ("mini strokes")

10 Warning Signs

1. Abnormal forgetting
2. Difficulty performing familiar tasks
3. Language problems
4. Loss of initiative
5. Poor judgment
6. Problems with abstract thinking
7. Misplacing things
8. Changes in behavior
9. Personality changes
10. Disorientation

Source: Alzheimer's Association

http://www.alz.org/alzheimers_disease_10_signs_of_alzheimers.asp

Subtle Signs –

- Memory
- Unusually confusing people
- Trouble with dates /appointments
- Forgetting events – holidays- birthdays
- New difficulty paying bills
- Unusual repeating /questions / stories
- Unexplained loss of interest in previous interests



Subtle Signs of Cognitive Decline

- Finances in unusual disarray
- Deterioration in driving skills not linked to other health conditions or practice level
- Unusual and unexplained change in spending habits
- Changes in personal grooming
- Emerging defensiveness or withdrawal
- Decline in communication





Key Cognitive Impairments Related to Executive Function

- Short term memory
- Reasoning and logic
- Decision making skills

Dementia Capable Legal Services

- Identify persons with (possible) dementia
- Assess client capacity on a periodic basis
- Know the local services available to help people with dementia and their caregivers
- Provide linkages to other community-based services that are dementia-capable

Overview

- When to seek legal assistance
- Legal issue spotting
 - Obvious
 - Looking beyond the surface
- Resources
- Finding legal help



Timing is Everything

- Dementia is a progressive condition
- Assessing capacity is an ongoing process
- The greater the capacity
 - The more options
 - The easier the options
 - The sooner the better



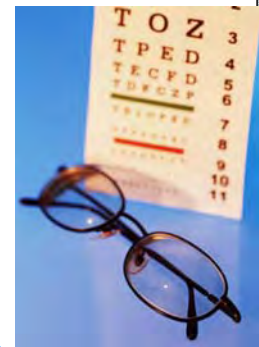
Live in the Moment

- Work with the client as they are now
- Capacity will vary



Legal Issues – The Obvious

- Advance care planning
 - Critically important for persons with dementia (planning must be done with capacity)
 - Who will make decisions when client can not?
 - Guidance for decisions
 - For more details see:
http://www.aoa.gov/AoARoot/AoA_Programs/HPW/Alz_Grants/index.aspx (under Resources and Useful Links)



Issue Spotting



- Urge the families to review planning for the following
- Do the relevant parties understand duties and obligations
- Do others understand who the health care decision maker will be - why
- Is decision maker willing to honor wishes and values
- Has there been a planning conference with critical care partners?
- Are copies of advance plans in medical records with providers



Health Care Advance Planning Issue Spotting

- Talk about when planning was done
- Think about likely capacity at that time
- If concerned, ask
- If it appears that documents were created without capacity – question validity –
- Call APS if unsatisfied

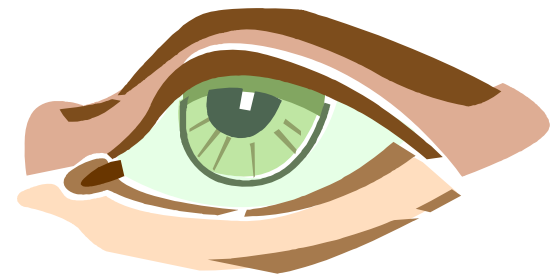
Financial Advance Planning

- Direct deposit
- Joint accounts
- Automatic bill pay
- Power of attorney (created with capacity and protections against abuse)
- Representative Payee planning
- Trusts for complex assets



Financial Issue Spotting

- What does the person own or control
- What sources of income
 - How paid, when paid
- If you see documents:
 - Monitor for changes in assets
 - Monitor for unpaid obligations
 - Look for unusual spending patterns
- Red flags for caregiver neglect, self neglect or exploitation



Power of Attorney Issue Spotting

- Does the document exist
- Does satisfy state law
- What does it really say
- What powers are included
- What powers are excluded
- Is there a back-up
- Is there accountability
- Does the agent have a copy and understand their duties and obligations
- Is it being used beyond the scope of the authority granted in the document – call APS



Getting the Bills Paid

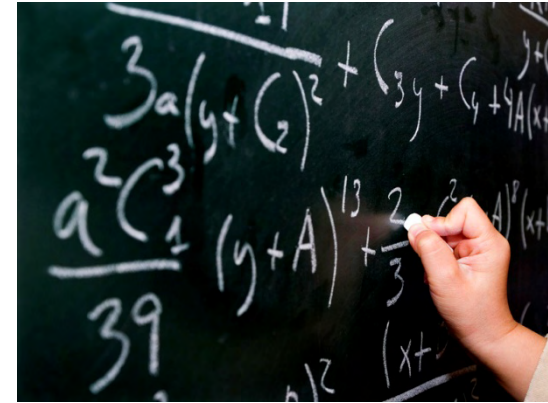
Issue Spotting

- How will bills be paid if the person cannot do so?
- Direct deposit - Direct bill pay
- Joint accounts – review the statements against the bills (trust but verify)
- Power of attorney – will the bank honor the power of attorney?



Complex Planning for Complex Situations

- Trusts
- Business assets
- Rental property
- Investments (stocks, bonds, mutual funds)
- Beyond a home, car and bank accounts
- Should consult an experienced attorney for evaluation



Estate Planning

- Must have capacity
- Is there an existing estate plan?
- If so suggest review for sufficiency and desired changes if the individual has capacity
- With lack of capacity, and lack of a plan
- Family should explore the default under state law



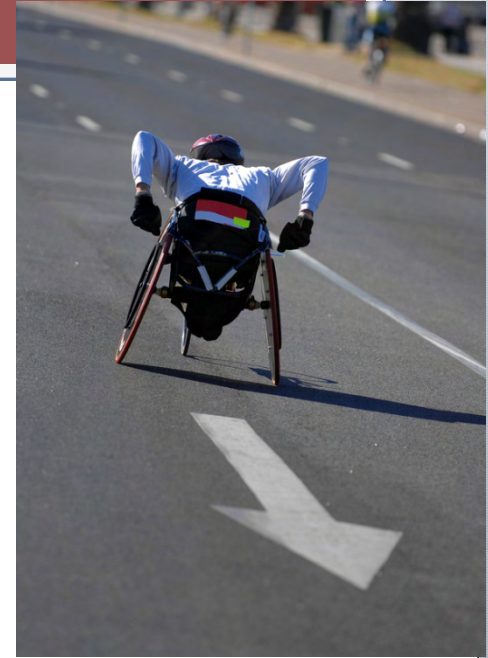
Other Inheritance Issues



- Is there a survivor benefit on a pension
- Beneficiaries on IRA/401K type plans
- Impact of Social Security survivor benefits
- Life insurance beneficiaries
- Bank account
 - Joint accounts
 - Payable on death /transferable on death
- Obligations under property settlements / divorce agreements

Beneficiary Issues

- Under the age of 18
- Adults with disabilities
 - Will they need assistance in managing the inheritance
 - Do they receive means tested benefits? (Medicaid – SSI – income based housing?)
 - If not – trust them as adults



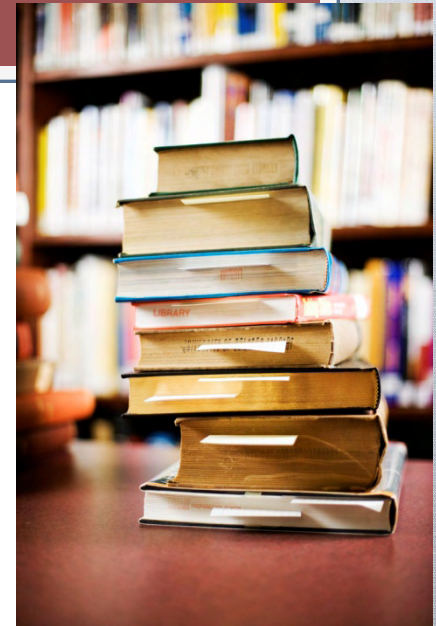
Paying for Long Term Care

- With dementia there is an increased risk of long stays in long term institutional care
- Focus for many families today is on home and community based long term care
- Priorities need to be based on desires of the client / ability of caregivers
- Must include looking at Medicaid / Veterans long term care rules



Need to Know

- Family structure
- Health of spouse or caregiver
- All assets owned (for both if married) no matter how titled
- All income received (for both by a married couple)
- Potential inheritances



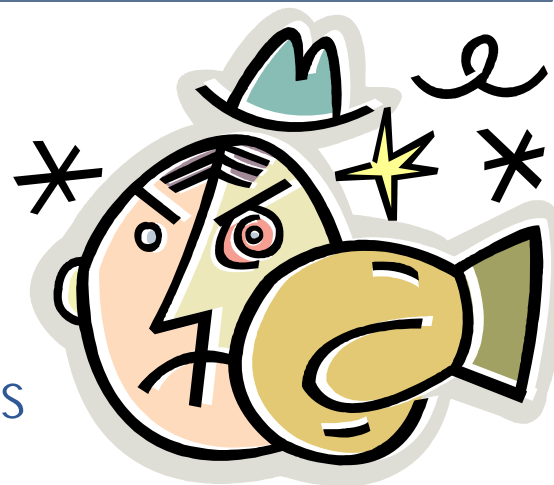


Long Term Care Planning

- Private Pay – assure sufficient funds are available to pay for foreseeable care needs
- For most private pay is the starting point
- Medicaid (state specific)/ Veterans benefits
- Means tested
- Understanding asset rules will protect the surviving spouse
- Ultimate decision needs to be made by client / spouse

Elder Abuse

- Look for classic warning signs
- Unusual injuries
- Withdrawal not related to other factors
- Assess Power and Control dynamics
- Be wary of “new person” in the elders life
- Look for “caregiver” isolation of person



Financial Exploitation

- Follow the Money
- Missing personal property
- Missing assets
- Retitling of assets
- Changes in beneficiaries
- New debt – with nothing to show for it
- Unreasonable ATM, debt and credit card usage
- Review bank, brokerage and credit card statements



Legal Resources


www.NLRC.AoA.gov




Department of Health and Human Services

NLRC

Providing Legal Support to the
Aging Advocacy Network

 Administration on Aging

The National Legal Resource Center  is a collaborative effort developed by the Administration on Aging. Its partners are:

- The American Bar Association Commission on Law and Aging
- The Center for Elder Rights Advocacy
- The Center for Social Gerontology
- The National Consumer Law Center
- The National Senior Citizens Law Center

Case Consultation for
Professionals and
Advocates in
Field of Aging



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Legal Issues

The Legal Issues section this website is a resource for legal services providers, pro bono attorneys, and other poverty law advocates to find legal information on a variety of topics related to Elder Law. The resources have been gathered from a variety of websites including the NLRC Partners, government agencies and other non-profits and associations. Resources include Articles, Bibliographies, For Purchase Manuals, Manuals, Research Reports, State Laws and Websites.

Please select from the following topics to learn more:

- Access
- Advance Directives
- Consumer Protection
- Caregivers
- Elder Abuse
- Employment
- Family Law
- Financial Security
- Guardianship
- Health Care
- Housing
- Legal Capacity
- LGBT Aging
- Long Term Care
- Older Native Americans



Case Consultation

Legal Service Delivery Technical Assistance



Training

- Speakers
- Webinars
- On-site



TRAINING

Description and Request
Application
About Training Project

www.AoA.gov



The screenshot shows the homepage of the Administration on Aging (AoA). At the top, there is a navigation bar for the Department of Health & Human Services with a search box. Below this is the AoA logo and the text "ADMINISTRATION ON AGING". The main content area is divided into three columns. The left column contains a vertical menu with links to Home, About AoA, Press Room, Elders & Families, Emergency Preparedness, Aging Statistics, AoA Programs, Program Results, Grant Opportunities, and AoA Funded Resource Centers. The middle column features a large yellow-bordered box with the headline "AoA is Now a Part of the Administration for Community Living (ACL)" and two sub-headlines: "The Administrator for the Administration for Community Living and Assistant Secretary for Aging Announces Adoption of the United Nation's Economic Commission on Europe Ministerial Declaration" and "White House Event: The Affordable Care Act Supports Community Living". Below this box is a blue button labeled "Elders and Families" with a small image of an elderly person. The right column is titled "Stay Connected" and includes social media icons for Facebook, Twitter, and YouTube, a "get the ACL Newsletter" button, and three promotional buttons: "OAA Reauthorization", "YOU GAVE NOW SAVE" (with a dollar sign icon), and "Health Reform & the Aging Network".

Department of Health & Human Services

Search

AoA ADMINISTRATION ON AGING

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Elders & Families

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Grant Opportunities

AoA Funded Resource Centers

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YOU GAVE NOW SAVE

Health Reform & the Aging Network

www.alzheimers.gov

alzheimers.gov

For the people helping people with Alzheimer's

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[Treatment Options](#)

[How to Pay & Plan](#)

[Caring for Someone](#)

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The Answers Start Here

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1 2 3 4

Answers Start Here

Welcome to alzheimers.gov, the government's free information resource about Alzheimer's disease and related dementias. Here you can find links to authoritative, up-to-date information from agencies and organizations with expertise in these areas.



What is Alzheimer's disease?
How do you know if someone has it?

▶ Alzheimer's disease is more than

What are the treatment options?

Understand how to seek

How do I plan ahead?
What does insurance pay for? What does Medicare pay for?

www.nia.nih.gov/alzheimers


U.S. Department of Health & Human Services

Alzheimer's Go4Life Espanol NIHSeniorHealth Text Resize + -

NATIONAL INSTITUTES OF HEALTH
National Institute on Aging ■ ◆ ✦ ✧


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 ALZHEIMER'S DISEASE EDUCATION AND REFERRAL CENTER


Home About Alzheimer's Find Help Research Federal Initiatives About ADEAR


Welcome
Explore NIA's Alzheimer's disease website to find current, comprehensive information and resources.



News & Highlights 

Publications 

Research Centers 

Clinical Trials 

Finding Legal Help

- Knowledge / experience of working with clients / families with dementia
- Ask for referrals from
 - Alzheimer's Organizations
 - Other families
 - Legal aid
 - Bar association lawyer referral services



Questions to Ask Legal Professionals



- Tell me about other families you have helped dealing with dementia?
- How do you assess capacity?
 - How often will you assess capacity?
- Who do you refer to for clinical assessment, when necessary?
- What legal planning is likely needed for a family dealing with dementia?
- Do you refer clients to community services such as the Area Agency on Aging or Alzheimer's organizations?
- How many Medicaid long term care – home Care / Veterans long term care / home care benefits applications did you help with last year?
- What will it cost / how do you bill?

Not all Elder Law or Legal Aid Attorneys are Dementia Capable

- Always screen using “questions to ask legal professionals”
- Ask for referrals from trusted resources
- You are looking for:
 - Experience in assessing capacity, collaboration and connections, knowledge of planning tools
 - Keep talking to providers until you feel comfortable

Dementia Training for Legal Professionals

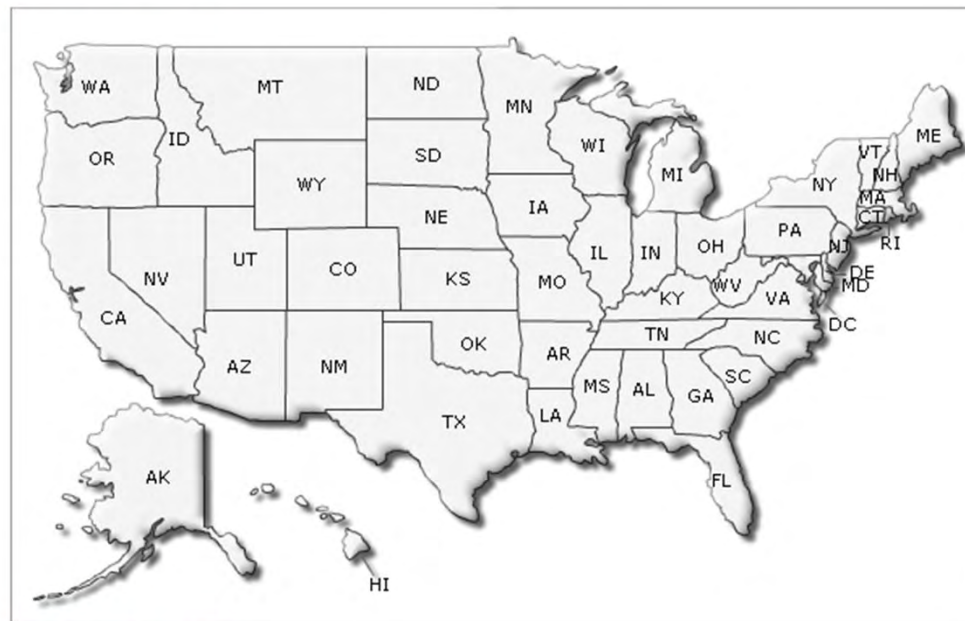
- AoA/ABA Legal Issues and Alzheimer's Webinar Series
 - Playback found at:
http://www.aoa.gov/AoARoot/AoA_Programs/HPW/Alz_Grants/index.aspx under **Resources and Useful Links**
- CLE-accredited programs may be available through your local Alzheimer's organization

Finding Legal Aid Providers

www.nlrc.aoa.gov/nlrc/Services_Providers/index.aspx

Selected Legal Service Provider Listings

Click on the interactive map or select a state from the drop down for a listing of legal service providers and services in the state. Because of database limitations not all providers are listed.



-- Choose a State -- ▾

CELA

- Elder Law is a recognized specialty in some states – not all
- CELA designation (Certified Elder Law Attorney)
- <http://www.nelf.org/becoming-certified>



Finding a CELA

First Name

Last Name

City

State

or [search by state](#) 

National Academy of Elder Law Attorneys

- www.NAELA.org
- 30 year old specialty bar association



Questions



The logo for NLRC is displayed in a large, bold, blue sans-serif font. The letters are thick and closely spaced. The entire logo is centered on a white background within a grey border. A dark red rectangular box is positioned in the top right corner of the page, partially overlapping the border.

NLRC

**Providing Legal Support to the
Aging-Advocacy Network**

www.NLRC.AoA.gov



THANK
YOU

- David Godfrey
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Administration for Community
Living/Administration on Aging