

Gray Matters

Published by the Elder & Special Needs Law Section of the North Carolina Bar Association • Vol. 20, No. 2 • April 2016 • www.ncbar.org

The Chair's Comments



Dori Wiggen

I'd like to begin by giving a huge thank you to our CLE planners, Helayne Levy and Nicki Applefield, for an amazing program at this year's Elder & Special Needs Law Symposium. Our keynote speaker, Paul Greenwood, gave a captivating, albeit sometimes uncomfortable, presentation on elder abuse and the signs to look for

in our clients. Among the many excellent speakers we heard from: Richard Gambrell about the new Special Needs Trust Review Unit in North Carolina; Doug Sea advised us on how to properly deal with Medicaid estate recovery claims; and Warren Coble spoke about the recent changes to the Social Security Administration's policy on spousal benefits. You can read more about the Social Security Administration's new policy in this month's newsletter.

We held our Annual Meeting on February 26 and voted in next year's Section Leaders. Although their terms don't begin until July, I'd like to congratulate our new Section Chair, Natalie Miller; Vice Chair, Casey Ferri; Secretary, David Silver; and Treasurer, Miriam Markfield. If you'd like to get more involved with the Section and possibly serve on the Section Council, the best place to start is by joining a committee. We always need more volunteers. Please reach out to Natalie Miller if you have any interest in serving on a committee this year. We have some exciting projects lined up, including a series of community education events across the state to educate the public about the new ABLE accounts. If you're interested in participating in your community, please contact Charlotte-Ann Alexander.

Finally, don't forget about our next Section networking event on Friday, May 13 in Wrightsville Beach. We'll send out more details as the event nears, but mark your calendars for a great event at the beach! I look forward to seeing you all there.

Dori Wiggen

Is PACE, North Carolina's Program of All-Inclusive Care for the Elderly, the Key To Aging At Home?

By Nicki Applefield

PACE to the Rescue

PACE rescued my friend and her mom. I know that may sound dramatic, but most long-term care crises are. My friend's mom, a retired nurse with an exhaustive list of chronic conditions and accompanying medications, was failing at living alone. After moving from Florida to be closer to her daughter, her ability to manage her fragile health began to decline. There were several middle-of-the-night trips to the emergency room. Some were the result of falls in the apartment and others were caused by reactions to improperly taking medications. She had to give up her keys to the car and she ceded control of finances. When the mom called, she was usually frantic and confused. A geriatric care manager was enlisted. The memory care specialists were consulted. Skilled twenty-four hour care was recommended. Then, my friend and her mom discovered PACE. Now my friend's mom has a multi-disciplinary team of physicians, nurses, physical therapists, dietitians, and social workers to create and implement a comprehensive health care plan designed to meet her specific needs. Also worth noting, my friend has her sanity back.

Continued on page 2

Inside this Issue...

[The Role of Care Managers in Estate Planning | 4](#)

[Help Needed: Pass House Bill 817, Adult Guardianship Uniform Law | 5](#)

[Elder Exploitation and Financial Abuse | 6](#)

[Social Security Benefits Planning Changes | 7](#)

[Recent Developments | 9](#)

EDITORS

Casey N. Ferri
Kathleen R. Rodberg

CHAIR

Doris J. Wiggen

IMMEDIATE PAST CHAIR

Rupinder S. Gill

VICE CHAIR

Natalie J. Miller

SECRETARY

Letha Sgritta McDowell

TREASURER

Casey N. Ferri

SECTION COUNCIL

Mark Edwin Edwards

John R. Potter

David W. Silver

Aimee Smith

Andrew W. Olsen

J. Gregory Wallace

Margaret K. Winfield

Jackie W. Bedard

Jesse V. Bone Jr.

Helayne B. Levy

Miriam H. Markfield

© 2015 North Carolina Bar Association.
Views and opinions expressed in articles
published herein are the authors' only and
are not to be attributed to Gray Matters,
the Elder & Special Needs Law Section or
the NCBA unless expressly stated. Authors
are responsible for the accuracy of all citations
and quotations. No portion of the publication
may be reprinted without permission.

PACE, continued from the front page

Have you ever had a client choose the nursing home over receiving care at home? Generally, people want to live independently in their own homes for as long as possible. As attorneys serving clients with functionality losses that come with aging, we engage in planning with this aim in mind. For some clients, the goal of aging at home is easily attainable. For others, especially for those with cognitive impairments and limited resources, the journey is more problematic. It is no secret that financial resources provide more options for care. Significant savings, hybrid life and long-term care insurance and annuity products, and Continuing Care Retirement Communities (CCRCs) can offer consumers more options for receiving and paying for assisted living and long-term care. A robust financial portfolio provides the freedom to choose how and where one receives care in old age. For clients with only a modest amount of resources, the care options become more limited. As resources are spent down on care, nursing home care in a semi-private room of a facility becomes the default. But, does it have to be? **North Carolina's Program of All Inclusive Care for the Elderly (PACE)** may be the key to providing clients with more options for assisted living and long-term care. PACE may also be the key to helping people age safely in their communities and avoid nursing home institutionalization.

An Introduction to PACE

PACE is a unique combination of Medicare and Medicaid state waiver programs that provides comprehensive managed care to frail elderly people who might otherwise have to live in a nursing home. Services offered at community-based PACE sites are administered by a public or non-profit entity engaged in the task of addressing all medical and long-term care needs of PACE enrollees. Funded by Medicare, Medicaid, and private payments, PACE sites utilize a patient-centered interdisciplinary approach to providing medically necessary care and services. Each PACE site employs a team of healthcare and administrative professionals who are responsible for delivering around-the-clock support and services to participants who can receive long-term care services and continue living in the community.

PACE: A Brief Legislative History

In the 1970s, states began to experiment with community-based care for disabled and elderly beneficiaries funded by waivers of federal Medicaid requirements. One such program with staying power was PACE, which was developed at On Lok Senior Health Services in the Chinatown North Beach community of San Francisco. On Lok, Cantonese for "peaceful, happy abode," was created to provide community-based care to frail seniors in an effort to help them avoid institutionalization. Initially, On Lok provided hot meals, supervision, and health and social services during the day to elders who could safely return home in the evenings. In 1975, On Lok expanded its services to include in-home support services, primary care, and case management of acute chronic health conditions. A few years later On Lok initiated a Medicare-funded demonstration of its consolidated and holistic model of long-term care.

On Lok's PACE demonstration was successful in providing satisfactory care to participants at a cost that was actually 15 percent less than a traditional fee-for-service care system. After receiving a one-year grant from The Robert Wood Johnson Foundation (the RWJF), On Lok was tasked with determining the feasibility of replicating the PACE model in other communities across the country. In 1987, start-up grants from the RWJF funded the creation of several test sites for which On Lok provided technical assistance. In 1990, a collaboration of staff from the Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration Office of Research Development and Information), PACE sites, and states participating in PACE demonstrations developed the first PACE protocol. The success of these first PACE sites was not measured just by cost savings provided but also by satisfied participants and their families.

By 1994, ten replication sites were operating under state Medicaid waivers, and the PACE demonstration continued to operate until the Balanced Budget Act of 1997 (BBA) established PACE as a permanent Medicare program. Section 4801 of the BBA (Pub. L. 105-33) established PACE as a Medicare program by adding Section 1894 to Title XVIII of the Social Security Act, which covers Medicare payments to and coverage under PACE. Section 4802 of the BBA au-

thorized states to establish PACE programs as state options under Medicaid by adding Section 1934 to the Social Security Act. Section 1934 of the Social Security Act addresses states' ability to elect PACE as an optional Medicaid benefit under Section 1905(a)(26) of the Act, and 42 CFR Part 460 contains the regulations concerning these PACE implementation requirements.

PACE began and continues to operate as a three-way partnership between the federal government, the state administering agency, and the PACE organization. A PACE organization can be a not-for-profit entity, a for-profit organization, or a public agency. To operate as a PACE organization, an entity must have a governing body, a formal patient bill of rights, and a process for addressing grievances and safeguarding against conflicts of interest. Once an individual is enrolled in PACE, the organizational PACE site must provide comprehensive primary care, social services, restorative therapies, personal care, supportive services, nutritional counseling, recreational therapy, and meals to participants, regardless of frequency and duration of services. PACE entities must not discriminate on the basis of race, ethnicity, national origin, sex, age, mental or physical disability, sexual orientation, or source of payment.

The intention behind PACE is to efficiently and effectively meet the healthcare needs of enrollees and to help them avoid institutionalization. PACE participants agree to forego their own doctors to receive services at a local PACE site. If special care is needed, PACE officials will contract with the specialists to secure needed services for PACE participants. While most PACE services are provided at the local PACE site, services can be supplemented by in-home and referral services. When an individual enrolls in PACE, the PACE interdisciplinary team conducts a series of assessments and develops a holistic comprehensive care plan specifically tailored to the needs of the enrollee. The PACE team revisits this fluid care plan on a frequent basis to make adjustments as needed.

Payment for PACE most often comes from Medicaid and Medicare, with approximately 95 percent (95%) of PACE enrollees being classified as dual eligibles. When someone receiving Medicaid is enrolled in PACE, he or she may keep up to \$981 of income as opposed to having to pay all but \$30 of income to the nursing home each month. A PACE comprehensive care plan comes with no deductibles, copayments, coinsurance, or cost sharing. PACE services include, but are not limited to primary care, hospital care, medical specialty services, prescription drugs (including Medicare Part D Drugs), nursing home services, emergency services, home care, physical therapy, occupational therapy, adult day care, recreational and socialization services, dentistry, nutritional counseling, meals, laboratory and x-ray services, social work counseling, end of life and hospice care, and medical transportation. PACE organizations also provide support to caregivers and families through training, support groups, and respite care.

The federal guidelines provide that to be eligible for PACE, an individual must be age fifty-five (55) or older, have chronic conditions requiring nursing home care, be able to live safely at home

with the aid of PACE services, and reside in the PACE organization service area. Eligibility to enroll in a PACE program is not restricted to individuals who are either a Medicare beneficiary or Medicaid recipient, and eligible participants may privately pay for PACE services. Although PACE enrollees may be entitled to Medicare Part A, enrolled under Medicare Part B, eligible for Medicaid, or duly eligible for Medicare and Medicaid coverage, states are prohibited from implementing PACE programs that serve only dual eligible beneficiaries.

North Carolina PACE

In 2004, the North Carolina General Assembly directed the Department of Health and Human Services (DHHS) to develop a pilot PACE program. In 2008, the state amended its State Medicaid Plan to include PACE as a permanent Medicaid option, and NC's first PACE program, Elderhaus, began serving residents in New Hanover and Brunswick counties in Wilmington. The success of Elderhaus was soon followed by the opening of Piedmont Health SeniorCare PACE site in Burlington, which was established under a national initiative to expand PACE in rural areas. Thereafter, more PACE sites began operating in Fayetteville, Greensboro, Newton, Lexington, Charlotte, Durham, Gastonia, Asheville, and Asheville.

Currently, there are 11 PACE programs and 12 PACE sites serving enrollees in 35 counties across the state. The NC PACE Association has enabled over 2,500 people to receive the care they need and avoid having to move to a nursing home. In my conversation with NC PACE Association Executive Director, Linda Shaw, and Education and Member Services Coordinator, Robin Porter, I asked about the 65 North Carolina counties without access to PACE services. Linda and Robin told me without hesitation that expansion is the NC PACE Association's number one goal. As of late January 2016, several applications and expansion requests were currently pending before the Department of Medical Assistance (DMA), and on December 7, 2015, the NC PACE Association presented a plan to DMA that would make PACE available in 60 counties by late 2018, and would eventually cover 91 counties in the state.

It is unclear what PACE will look like when the General Assembly has finished developing the details of its recently adopted **Medicaid Transformation and Reorganization** legislation, which will change Medicaid from a fee-for-service system to a system of capitated pre-paid health insurance coverage. If you live in a county with a great PACE program, advertise and educate people about it. If you live in a county without access to PACE, encourage your legislative representatives to seriously consider bringing a PACE site to your local community. After all, PACE may be the saving grace for families in crises and the key to aging at home.

Nicki Applefield is an associate at Patla, Straus, Robinson & Moore in Asheville, where she focuses on elder and special needs law.

The Role of Care Managers in Estate Planning

By Jennifer T. Szakaly and Amy Smialowicz Fowler

The typical estate planning team most often includes the attorney, an accountant, financial advisor, and sometimes an insurance professional. With the increased number of older adults in our society and the changing landscape of family systems, there is a growing need for an estate planning team to include the professionals who can make client-specific recommendations related to healthcare – care managers.

Care management, while not a new profession, is still relatively small in exposure the number of professionals working in this area. Pulling from skillsets that include nursing, gerontology, social work, counseling, and healthcare administration, care managers are equipped to manage family conflict and bring much-needed neutrality to toxic family relationships. Their expertise also makes them valuable members of the estate planning team due to the care manager's ability to make recommendations related to the proper care of an older or disabled adult. Through comprehensive assessments that examine health and wellness, memory and mental health, social support networks, and financial resources, care managers can craft a long-term care plan that ensures the estate plan matches the reality of the client's situation at home.

Resources for Aging

Care managers are able to help families sort through the rapidly growing assortment of services and resources aimed at keeping older adults independent later in life. Because of constant interaction with various service providers, care managers are familiar with the staff, strengths, and weaknesses of each provider and are able to make referrals based on the needs of the clients and their families. Attorneys often rely on care managers to determine the appropriate level of care for clients and to obtain recommendations for specific services that meet their clients' needs.

Resistance to Care

After appropriate resources are identified, many families have difficulty getting the older adult to agree to care, whether it is provided in the home or in a care community. The care manager, as an advocate, is tasked with ensuring that the older adult is encouraged to be as independent as possible, while also mitigating health and safety risks.

For older adults who are resistant to assistance, care managers take the time to understand their fears and concerns. Equipped with this knowledge, they can work with the older adults to help them understand that the use of care isn't a sign of disability, but rather an opportunity to focus on a client's abilities, while being supported in other areas. Sometimes families consider guardianship because their loved ones' reluctance in using support services is threatening their health and wellbeing. Care managers can quickly address these concerns by connecting with the older adult and are often able to eliminate the need for a guardianship.

Guardianship Support

If a guardianship is needed, care managers can work closely with attorneys, most importantly by assisting to determine client's

the level of cognitive functioning. Care managers are trained in the use of various cognitive assessments that can play an important part in determining when a person has reached the point of incompetency. Facilitating the collection of relevant medical documentation and creating a plan for post-guardianship is also part of this critical role.

Care managers often act as a health care advocate for older adults who already have a guardian. Frequent monitoring ensures that the older adult receives the appropriate care and that the guardian can make informed decisions as needs change.

Family Discord

Another trend in long-term care is the growing number of blended families and cases of estrangement in families. As most estate planning and elder law attorneys will attest to, this dynamic can be paralyzing to the estate planning process and can create practical challenges to an older adult who is in need of family support later in life.

When managing family conflict and disagreements about the care of a client, attorneys can pull in care managers to provide an unbiased, informed position on what is best for the older adult. Care managers act as a mediator for families to allow each voice to be heard. This process empowers families and often enables them to work together on a plan for their loved one.

Exploitation

Cases of exploitation and fraud committed against older adults are on the rise due to technology that makes carrying out identity theft easier than ever. Care managers are knowledgeable about strategies for preventing acts of exploitation, as well as warning signs that point to the possibility that an older adult is making himself vulnerable to a threat. The care manager's ability to step in when family is absent, or if a family member presents the greatest threat, provides an additional protective barrier between areas of risk and older adults.

Future Considerations

With an aging population and increasing complexity in estate planning, we can expect that the need for an augmented team to put together a comprehensive plan will only increase in coming years. Whether you use a care manager as a resource for your office, or as a part of your client's estate planning and care team, broadening the resources available to you as an attorney will ultimately enhance the value you bring to your clients. To find someone to work with who is nationally certified as a care manager, you can visit the website for the Aging Life Care Association at www.aginglifecare.org for a complete directory.

Jennifer T. Szakaly, M.A., CMC is a nationally certified care manager who opened Caregiving Corner, a Charlotte-based care management firm, in 2005. She can be reached at 704-492-0554 or by email jennifer@caregivingcorner.com. **Amy S. Fowler, B.A., CMC** is a nationally certified care manager and owner of WNC Geriatric Care Management based in Asheville. She can be reached at 828-776-4269 or by email amy@wncgcm.com.

Help Needed: Pass House Bill 817, Adult Guardianship Uniform Law

Your help is needed to make caregiving easier across state lines by passing **House Bill 817 - Adult Guardianship Uniform Law**.

Imagine you are helping care for a loved one in another state. As his health declines, you become a legal guardian in the state where your loved one resides— a time consuming and costly process. Then, your loved one wants to move to North Carolina to be closer to you. Currently, this is a problem because North Carolina doesn't yet recognize a guardianship order from another state. Without passage of HB 817, you will now have to repeat the extensive, time consuming, and expensive process all over again in North Carolina.

Nearly half of North Carolina counties border another state, raising the likelihood that many North Carolinians are caring for loved ones only a few miles away yet across state lines. North Carolina is one of the last states in the country to enact this law. **For more information on efforts to adopt this legislation nation-**


wide, see the graphic below.

Forty-two states, including Virginia, Tennessee and South Carolina have already passed this bill, officially known in other states as the **Uniform Adult Guardianship and Protective Proceedings Jurisdictions Act (UAGPPJA)**, a law to support family caregivers as they care for their parents, spouses and other loved ones across state lines. Remaining states are currently working on legislation.

Your help is needed. Before the State Senate adjourns this summer, please pass House Bill 817. It passed the State House unanimously with bipartisan support and bipartisan leadership from Representatives Rena Turner, Pat Hurley, Graig Meyer and Jean Farmer-Butterfield.


To be a part of the AARP's Online Advocacy Effort for HB817, please see: <https://action.aarp.org/site/Advocacy?cmd=display&page=UserAction&id=5247>



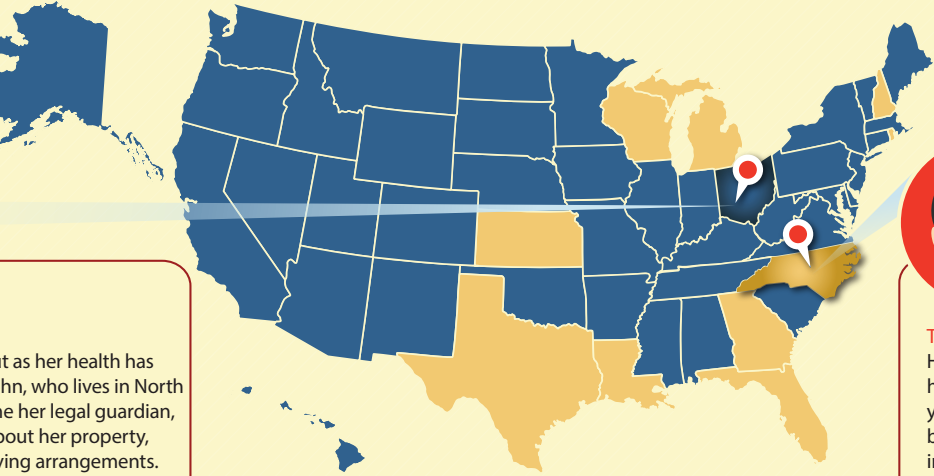


CAREGIVING *Across State Lines*


North Carolina House Bill 817, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), will help family caregivers and the aging parents, spouses and other loved ones who count on them for care and support.




This is Jane.
She lives in Ohio, but as her health has declined her son John, who lives in North Carolina, has become her legal guardian, making decisions about her property, medical care, and living arrangements. Jane wants to move closer to John.




● In states with blue, UAGPPJA is law.




This is John.
He lives in North Carolina but cares for his mother Jane, who lives in Ohio. Last year he racked up huge legal fees becoming his mother's legal guardian in Ohio.




Because UAGPPJA isn't law in North Carolina, our courts might not accept the guardianship court order from Ohio. John will now have to repeat a potentially expensive, time-consuming process in North Carolina.




While every family situation is different, the fact is: Caregiving situations change. And, caring for our loved ones across state lines should be consistent when it comes to the law. UAGPPJA simply:




Outlines a set of rules for transferring guardianship from one state to another.



Allows states to recognize and register guardianship orders from other states.



Creates a clear process for determining jurisdiction by designating the "home state."



Protects seniors by giving the court information and authority to act on abuse and exploitation.

Elder Exploitation and Financial Abuse

By Erica M. Erickson

It is a very sad and unfortunate fact that the elderly are among the most likely groups to be targeted and victimized by abusers, especially those seeking to take advantage of them financially. The elderly are often more vulnerable than others due to age-related issues, such as a decline in physical or mental health, loneliness, and other related issues that cause the senior to rely on others for companionship and assistance in remaining at home. Although many seniors remain active, healthy, and happy into their later years, there are many others who struggle to retain their independence and who do not have a strong family or social network to help them as they start to need help with basic activities of daily living, such as shopping for groceries or paying the bills.

Nationwide, Adult Protective Services units indicate an across the board increase in reports of elder abuse. Statistics show that fewer than one in 10 cases of elder abuse are ever reported and that about 90 percent of abusers are family members of the victim. The majority of victims experience financial abuse, sometimes in addition to physical or emotional abuse. Females are more likely to be abused or financially exploited and the risk for both genders increases with age, isolation, and disability level. Seniors with dementia are particularly vulnerable to abuse, with a recent study showing that nearly 50 percent of those with dementia are subject to abuse.

Given the rapidly growing elderly segment of the population, the increase in reports of elder abuse and exploitation, and the number of seniors living alone at home or in facilities, it is crucial for those who care for or work with seniors be able to recognize the signs of elder abuse. Elder abuse can occur in a variety of forms, including physical abuse, emotional abuse, neglect by caregivers, financial exploitation, and healthcare fraud. Some general signs of abuse can include a change in the personality and behavior of the senior, such as increased depression or anxiety, withdrawal from social activities, and an unexplained decline in overall health.

Signs of physical abuse can include bruises, welts, or more

severe unexplained injuries. A senior may be suffering from neglect if the senior appears disheveled, unbathed, underweight, under-dressed for the weather, or if his or her home is unusually unsanitary or unsafe. Emotional abuse may be occurring if the senior's mood seems more melancholy or depressed, if the senior's self-esteem decreases, or if the senior becomes more isolated. Signs of financial abuse can include the inability of the senior to afford basic necessities, such as food, medication, or other things the senior has always been able to afford, such as phone service and utility bills. Financial abuse can be detected by reviewing the senior's bank statements for unusual spending habits, ATM withdraws, and purchases from businesses that the senior does not frequent.

Another way to detect signs of all types of abuse is to observe the interactions between the senior and their caregiver or the family member they may depend upon for help. If the senior appears to fear the other person, if the other person is hostile or threatening toward the senior, if the person isolates the senior by not taking the senior on outings or does not encourage others to visit the senior, or if the person appears to be overly controlling of the senior and his or her finances and refuses to accept help from others, then the senior may be at risk of being abused by this person.

In North Carolina, the law requires that abuse of a disabled adult be reported. If you suspect that an elderly person you know is being abused or exploited, you should make a report to Adult Protective Services through the Department of Social Services in your county. If you believe the senior is at immediate risk or is in serious danger, report the situation to law enforcement right away. In most instances, the reporter's identity will be kept confidential. As abuse increases a senior's risk of death by approximately 300 percent, you could literally save a life by reporting suspected abuse, neglect, or exploitation.

Erica M. Erickson is an elder law and estate planning attorney at Strauss & Associates, Hendersonville.



Rupe Gill, past chair of the Elder & Special Needs Law Section, presents current chair Dori Wigen a plaque recognizing her service to the section.

Social Security Benefits Planning Changes

By Warren W. Coble

This article focuses on recent changes in Social Security based on Section 831 of the Bipartisan Budget Act of 2015 (Public Law No. 114-74).

Recent Congressional Changes To Affect Social Security Planning

The Bipartisan Budget Act of 2015 (Public Law No. 114-74) signed by President Obama on November 2, 2015, included major changes directly affecting the long term planning strategies of many individuals relating to when Social Security benefits should be initiated. However, it should be noted there are **NO** changes in the basic requirements for retirement and/or spousal benefits, and there are **NO** changes related to surviving spouse/surviving divorced spouse applicants. There are primarily four major changes involved in the law, with varying degrees of effect on claimants, and with varying effective dates. See PL 114-74, Title VIII, Section 831 for specifics.

A. Deemed Filing

Social Security automatically “deems” an individual who files an application for benefits to have filed for all benefits, both retirement and spousal unless the individual meets the requirements (i.e. full retirement age) and they can then choose to restrict the application, resulting in higher benefits later in life.

With the new Amendments, the ability to restrict a deemed application will be removed, effectively eliminating the Restrict to Spousal benefits only.

B. Understanding File and Suspend Strategy

If you and your current spouse are full retirement age (FRA = Age 66) one of you can apply for retirement benefits now and have the payments suspended, while the other applies only for spouse’s benefits (restrict to spousal benefits only). This strategy allows both spouses to delay receiving retirement benefits on their own records so they can get delayed retirement credit resulting in as much as 32% more on a monthly basis.

Additionally, one spouse can actually file and receive benefits as early as age 62 and the other spouse delay until age 70. The spouse who is delaying benefits can also receive spousal benefits from age 66 until age 70.

Note: For a married couple, only one spouse can apply for “spouse’s only” benefits.

Example: Mary, born June 15, 1949, attained age 66 (FRA) in June 2015. Her spouse, John, born August 20, 1949, attained age 66 (FRA) in August 2015. Mary’s Primary Insurance Amount (PIA) is \$2,000. John’s Primary Insurance Amount (PIA) is also \$2,000. Mary could file for benefits at or after FRA (06/2015) and ask to have the payment suspended. John could then file a restricted application for spousal benefits only upon attainment of his FRA in August 2015. John would thus qualify for 50 % of Mary’s PIA amount, or \$1,000 per month from age 66 to age 70, gaining \$48,000. This strategy would then allow both members of the couple to wait until age 70 (or some other point between FRA and age 70) and receive the full benefit of the delayed retirement credit (DRC.) The resulting benefit for *each* spouse would be \$2,000 x 32%, or \$2,640 each (for a total net increase of \$1,280 monthly) for the remainder of their

lifetimes.

The application must be restricted at time of filing/prior to adjudication and the restriction must be unequivocal, i.e. cannot include such phrasing as “but I want my retirement benefits later.”

Example: (Another file and suspend planning scenario related to the payment of minor child(ren) of a retirement applicant who had attained FRA) George attained FRA in September 2015, has a PIA of \$2,400, and has a minor child, James, age 6. Under file and suspend, George could file an application for retirement, ask for the application to be suspended until age 70, and the minor child, James, could then receive 50% of the PIA, or \$1,200 per month for the period that George would be age 66 to age 70. At age 70, George’s benefit would be unsuspended, and the full 32% of delayed retirement credits, or \$3,168 would be payable for George’s lifetime. Another interesting twist or potentiality of the DRC’d benefit is that any future Survivor benefits for George’s current spouse or prior divorced spouse would potentially be based on the DRC rate of \$3,168. The auxiliary child benefit for James would NOT be based on the DRC rate, but on the basic FRA PIA, plus any subsequent cost of living adjustments (COLA’s.)

C. Elimination of File and Suspend Strategy to Entitle Auxiliary Beneficiaries

The “file and suspend” strategy for allowing individuals to receive benefits from a “suspended” record will be eliminated for individuals born May 2, 1950, and later. Beginning May 1, 2016, an individual can still “file and suspend” for the purpose of accruing delayed retirement credits, but no auxiliary benefits can be paid from that record while it is suspended. Thus, in the example above, if George were born on May 2, 1950, or later, he could file and suspend his benefit to age 70 to accrue DRC’s, but James (the minor child) would be paid **no** benefits during the period of George’s suspended benefit.

An individual who is already past Full Retirement Age (66) and wants to delay his own benefit to age 70 must file and suspend prior to May 1 to take advantage of allowing Auxiliary Beneficiaries (spouse/children) to receive benefits while the individual’s own retirement benefit is suspended.

D. Understanding Restricting to Spousal Benefits Only

While often related to the File and Suspend Strategy described above, Restricting to spousal benefits only does not necessarily have to go along with File and Suspend. If an individual has reached Full Retirement Age (FRA), currently age 66, and if he/she has a spouse entitled to Social Security Retirement, the 66 year old spouse could file a restricted application, meaning the spouse specifically chooses to receive only the spousal benefit. The spouse will then receive up to 32% higher retirement benefits from age 70 (and continuing) based on the effect of delayed retirement credits (DRC’s).

E. Elimination of Restricting to Spousal Benefits only

Although the Balanced Budget Amendment of 2015 is eliminating many of the claiming strategies effective May 1, 2016, the restriction to spousal benefits only will continue to be available for a longer period

of time. Individuals born January 1, 1954, and earlier will be grandfathered so that they can still utilize the restriction for spousal benefits only. Additionally, any individual who was already entitled to spousal restricted benefits will remain grandfathered for those benefits.

F. Lump Sum Reinstatement of Benefits

Under prior law, an individual could file and suspend an application for monthly retirement benefits and accrue delayed retirement credits. At any point subsequent to the entitlement date, the individual could request an immediate reinstatement and be paid all retroactive benefits back to the entitlement date. This could potentially result in a huge payout of up to 48 months of benefits retroactive from age 70 to age 66.

G. Elimination of Lump Sum Reinstatement

Effective on May 1, 2016, individuals will be restricted to standard retroactivity rules for individuals beyond full retirement age, i.e. a maximum retroactivity of 6 months from the date of the reinstatement request.

H. Comparison of changes

The following chart shows a comparison of certain case characteristics and how they are treated under prior law and under the new Section 831. (see chart)

Sources for more information:

You can find answers to frequently asked questions about Social Security, learn about factors that could affect benefits, and much more by visiting Social Security online at www.socialsecurity.gov. From the home page, click on the “Benefits Planner” link in the items of interest. This helpful site contains a variety of subjects including planning your retirement, calculating your benefits, applying for benefits, and retirement benefit publications, as well as other appropriate information.

Information about Social Security is also available by calling 1-800-772-1213 (1-800-325-0778 for the deaf or hard of hearing) or by calling or visiting a local Social Security office. Local phone numbers and addresses are listed in the phone book in the white pages under U. S. Government.

Other useful websites:

☐ www.mymoney.gov – This website contains calculators for financial planning and information on money-related matters, such as retirement planning and starting a small business.

☐ www.dol.gov/ebsa/pdf/nearretirement.pdf - Helps you determine how much money you will need in retirement. There are many tools available to help you, such as the “Taking the Mystery Out of Retirement” planning workbook available at this link.

☐ www.sec.gov/investor/seniors.shtml - Information about the investment options available to you as you enter retirement. The Securities and Exchange Commission has a wealth of information on various investment products and topics available at this website.

Other sites on the web are easily located using the search terms “Early Retirement.”

Warren Coble, of Warren Coble & Associates, Inc., in Asheboro, focuses on pre-retirement planning, application assistance, Medicare eligibility, Medicare Supplement, Advantage and Part D prescription plans. Reach him at www.warrencoble.com or 336-879-0848.

Category	Scenario	Old Law	Section 831
Deemed Filing	Applicant is full retirement age and potentially eligible for both Retirement and Spousal Benefits	Client at or beyond full retirement age could restrict to spousal benefits only which eliminated the "deemed" filing provision	Individuals born after January 1, 1954 cannot "restrict" the application and are deemed to have filed for all benefits they qualify for
File and Suspend	Full Retirement Age worker who wants to wait until age 70 but has spouse or eligible child	Worker could file and suspend until age 70 to accrue full DRC's, and spouse/child could receive benefits during the suspension period	Worker can still file and suspend to accrue DRC's. However, spouse and child will also be suspended. Benefits are only payable if the Worker is receiving benefits
Restrict to Spousal only - Date of birth 01/01/1954 and earlier	Worker is potentially eligible for both retirement and spousal benefits at age 66	Age 66 worker could file a restricted application to spousal benefits only and continue to accrue delayed retirement credits and switch to higher benefits at age 70	Worker can continue to file a restricted application and receive spousal benefits and accrue delayed retirement credits - Grandfathered provision
Restrict to Spousal only - Date of birth 01/02/1954 and later	Worker is potentially eligible for both retirement and spousal benefits at age 66	Age 66 worker could file a restricted application to spousal benefits only and continue to accrue delayed retirement credits and switch to higher benefits at age 70	Worker CANNOT restrict to spousal benefits only. Any retirement benefits due will be paid first, and then any additional spousal benefits. To accrue delayed retirement credits (DRC'S) applicant must suspend all benefits until age 70
Lump Sum Voluntary Reinstatement	Entitled beneficiary suspended retirement benefits at age 66 and has accrued delayed retirement credits (DRC's)	Beneficiary can request retroactive reinstatement as far back as age 66 and receive lump sum payment of all benefits from age 66 on (will be at age 66 rate rather than DRC rate)	Beneficiary can request retroactive reinstatement for only six months of benefits. Remaining benefits are credited with DRC's for the non-reinstated period

Recent Developments

By Kathleen R. Rodberg

Burt's Law. SL 2015-36 provides additional protection to clients of facilities that provide care, treatment, habilitation, and rehabilitation of individuals with mental illness, developmental disabilities, or substance abuse disorders. Burt's Law is named after Burt Powell, a young man with developmental disabilities who was abused by a manager in the nursing home where he resided. Burt's Law increases the penalties for those abusing residents and those who fail to report the abuse. This includes both paid employees and volunteers of the facility. In addition, the legislation increases the penalty for offenders that take personal property from residents or intentionally injure residents. The penalty portion of Burt's Law became effective December 1, 2015, and applies to offenses committed on or after that date.

Direction to DMV to Restore Driver's License for Persons Restored to Competency. S.L. 2015-165 states that after an adult individual has been restored to competency, that the Clerk of Superior Court shall notify the North Carolina Division of Motor Vehicles (DMV). The DMV shall then restore the previously incompetent individual's driver's license *unless* the license was previously revoked due to a conviction or other act, or if the person has not met other requirements for obtaining a valid driver's license. This law became effective October 1, 2015.

In re Taylor. 774 S.E.2d 863 (N.C.App. 2015). Dispute ensued between the personal representative of the estate and a beneficiary regarding the reimbursement of a funeral bill paid by the beneficiary from funds received via a pay-on-death account held by the decedent. Court found that funeral expenses are a claim against the estate. Thus, the claim must be presented within the time limit set forth in N.C.G.S. §28A-19-3, which is six months from the date the claim arises. The court rejected the beneficiary's argument that the funeral reimbursement is a reimbursable expense that may be submitted at any time prior to the closing of an estate *or* are automatically presented or exempted from presentation. In addition,

this case confirmed that it is within the clerk of superior court's authority to review attorneys' fees for reasonableness. However, in the order approving or denying those fees, the clerk must make findings of fact and conclusions of law sufficient to allow meaningful review of the order on appeal.

Morgan-McCoart v. Matchette. 2016 WL 47625 (N.C. App. 2016). Ms. Simpson created a revocable trust and a general power of attorney in 2008. Her daughter, Julie, was named as primary trustee and attorney-in-fact, and Julie's sister Claudia was named as the successor. Ms. Simpson was declared incompetent in 2009. Julie and Claudia reached an agreement, whereby Julie would seek reimbursement for expenses she incurred as trustee and attorney-in-fact, Julie would not oppose Claudia's appointment as guardian for Ms. Simpson, Claudia would assume the role of trustee and attorney-in-fact, and Claudia would keep Julie informed of Ms. Simpson's health and status. Julie submitted a petition to the clerk of superior court seeking both reimbursement of expenses *and* a distribution from the trust as a beneficiary. The clerk rejected the trust distribution request and only allowed a small portion of the reimbursement. Julie filed a complaint in district court claiming breach of contract against Claudia. The trial court dismissed finding lack of subject matter jurisdiction over the claims. Julie appealed. The North Carolina Court of Appeals confirmed that original jurisdiction over the allegations against Claudia in her capacity as trustee and guardian, as the appointment of Claudia as guardian and the internal affairs of the trust, are solely within the original jurisdiction of the clerk of court. However, the Court of Appeals said that the district court did have jurisdiction in Julie's claims against Claudia in her individual capacity for breach of contract.

Kathleen R. Rodberg has been practicing in the areas of trusts, estate, and elder law in Western North Carolina since 2012. She is currently an attorney at McGuire Wood & Bissette Law Firm in Asheville. She can be reached at krodberg@mwblawyers.com.

Consider a gift to the Patron Campaign
www.ncbar.org/giving/donate-now

Thank you for joining us!

Is there something you would like to see in the next newsletter? Let us know!



CONTACT THE NCBA
Call toll-free 1.800.662.7407
Email newsletter@ncbar.org
Visit us at www.ncbar.org

Join us at the beach for a drink!

WHEN | Friday, May 13, 5–6:30 p.m.

WHERE | Holiday Inn Resort | 1706 N. Lumina, Wrightsville Beach

COST | Free for all section members!

RSVP | Click [here](#) to RSVP no later than May 11

HOTEL | If you would like to spend the night at the hotel, the cost is \$199 per night. You can call 910.256.2231 to reserve a room or book online (enter group code BAR).

Networking at the beach!

Andrew Olsen, Elder & Special Needs Law council member invites all section members to his home for some fun on the water (kayaking, boating, canoeing), a BBQ picnic around 5 p.m., and relaxing in the sun!

WHEN | Saturday, May 14, 2 p.m.

WHERE | 818 Sound View Drive, Hampstead, NC 28443

RSVP | RSVP no later than May 10 by clicking [here](#).

COST | Free to all section members and their guest (please register your guest).