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**To:** Kester, Tonykester@aging.sc.gov  
**Date:** 8/31/2015 2:30:00 PM  
**Subject:** New Issue of Bifocal: Health care decision-making authority, new status of home care workers, CMS arbitration agreement rules, and more

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Dear Subscriber:

The August issue of *Bifocal*, e-Journal of the ABA Commission on Law and Aging is now available on the [Bifocal homepage](#).

You can read the issue online or download the pdf.

## What's inside this issue?

### Cover Story

#### Health Care Decision-Making Authority of Guardians and Agents: An Update

By Dara Valanejad

Does the court-appointed guardian or the patient-appointed agent have the ultimate authority over an incapacitated individual's health care? This article provides a brief update on the statutorily established health care decision-making authority of each state. Additionally, this article highlights the growth of decision-making standards for court-appointed guardians with health care authority and emphasizes that patient-appointed health care agents should be the final authority on an incapacitated individual's health care.

### Featured Articles

#### Should CMS Prohibit Arbitration in Nursing Home Admission Contracts?

By Erica F. Wood

CMS invites comments by 9/14 on binding arbitration agreements.

#### The New Status of Home Care Workers Under the Fair Labor Standards Act

By Charlie Sabatino, Caroleigh A. Newman

On August 21, 2015, the U.S. Court of Appeals for the District of Columbia Circuit, in the case *Home Care Association of America v. Weil*, reinstated regulations that will allow some 2 million home care workers to qualify for minimum wage and overtime protection. The rule which was originally slated to go into effect at the beginning of 2015 is now expected to be effective by January 2016.

#### Managing Someone Else's Money: Virginia

These remarks were given by CFPB Director Richard Cordray upon the release of the Virginia state guides at an event held on August 17 at the Greenspring senior living community in Springfield, Virginia. State guides for Arizona, Florida, Georgia, Illinois, and Oregon are forthcoming, along with tips and templates to make it easy for legal and aging experts in other states to adapt the guides for their states.

#### The Older Americans Act: Seeking to Improve Lives

By David M. Godfrey

This year marks the 50th anniversary of the Older Americans Act (OAA). The goal of the OAA is to improve the lives of older Americans. The OAA was first passed in 1965 and has been periodically reauthorized over the decades.

#### Dementia Friendly America Initiative Launches in Communities Across the U.S.

The Dementia Friendly America initiative (DFA) is a cross-sector, national effort leveraging tailored resources and tools to equip all community sectors to support those with dementia and their caregivers and families. By 2016, the Dementia Friendly America initiative will pilot 15 dementia friendly communities across the nation.

#### Toolkit on Design and Implementation: Outreach and Enrollment Materials in States Implementing a Dual-Eligible Demonstration

Justice in Aging has created a toolkit of design and implementation resources. The toolkit consists of: a new tool for advocates comparing different state outreach and enrollment materials to highlight effective models to use when reaching vulnerable populations; and resources on appeals procedures, designing enrollment notices, care continuity, and ensuring consumer protections in integrated models.

### Inside the Commission

#### 2015-2016 Commission on Law and Aging

Each September 1, a new roster of commissioners is appointed by the ABA president. Most commissioners serve for multiple years with a handful of new faces starting in any given year. This year, we have a new Chair and six new commissioners; you will find them to be a diverse and highly expert group in their individual disciplines.

#### Emeritus Pro Bono Practice Rules Survey

The ABA Commission on Law and Aging in collaboration with the ABA Center on Pro Bono is researching what works when recruiting volunteers, placing cases, and data on closed cases with Emeritus Pro Bono Practice Rules. These rules waive some of the licensing burden for attorneys who agree to limit practice to Pro Bono cases only and exist in 38 jurisdictions. The Survey will remain open until September 1, 2015.

#### Understanding the Four C's of Elder Law Ethics

The Commission's popular brochure has been updated and is again available in print or as a free download. This consumer-friendly brochure explains the "Four C's" of elder law ethics--client identification, conflicts of interest, confidentiality, and competency. It helps family members understand the relationship between a lawyer and an older client.

## Events and CLE

#### 2015 National Aging and Law Conference Update

Registration is open and the detailed Conference Program is online.

#### Webinar on VA Pension: Income Security for Veterans and Their Family

Panelists will discuss how to get the best results for a client looking to obtain a VA pension. Practical pointers on obtaining the highest amount for pension will be discussed, as well as how a client can keep that amount each year. Practice tips on dealing with a VA debt--due to an overpayment issue related to a VA pension---will also be provided. This presentation will give practitioners an understanding of the law and provide practical tips on how to work within the confines of the VA.

#### Webinar on The Fine Art of Balancing Protection with Self Determination

This free webinar will talk about recognizing the signs and signals of abuse, neglect (self-neglect) and exploitation, tools to maximize communication with persons with differing abilities, and promoting self-determination and choice through supported approaches that mitigate against risk and empower individuals. The session will explore the application of the Supported Decision Making model to assist persons in making choices, increase access to positive life outcomes, and reduce the risk of harm.

To subscribe to *Bifocal* or to submit news items or a manuscript for consideration, contact editor [Andrea Amato](#).

*Bifocal* is distributed six times a year to state and regional elder bar section and committee officers and members, legal services providers, elder law and other private practitioners, judges, court staff, advocates, policymakers, law schools and elder law clinics, law libraries, and to other professionals in the law and aging networks.

The mission of the ABA Commission on Law and Aging is to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders. It carries out this mission through research, policy development, technical assistance, advocacy, education, and training on a wide range of law-related issues, including: legal services to older persons; health and long-term care; housing; professional ethical issues; Social Security, Medicare, Medicaid, and other public benefit programs; guardianship; elder abuse; health care decision-making; pain management and end-of-life care; dispute resolution; and court-related needs of older persons.

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