

ANDERSON'S OHIO PRACTICE MANUAL SERIES



ANDERSON'S

Ohio Elder Law Practice Manual

Browning & Meyer Co., LPA

2015 EDITION

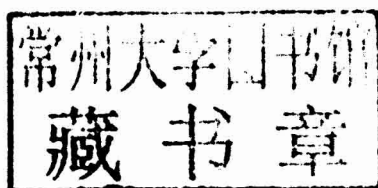


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Anderson's Ohio Elder Law Practice Manual

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Anderson's Ohio Elder Law Practice Manual, 2015 Edition

Publication 4331

Release 2015

December 2014

HIGHLIGHTS

Medicaid

- Ohio expands Medicaid coverage under the PPACA.

Durable Powers of Attorney for Health Care

- Attorney-in-fact may have access to principal's protected health information regardless of principal's capacity.

Elder Law

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Anderson's Ohio Elder Law Practice Manual, 2015 Edition, has been updated and contains the latest analysis, forms and statutes relating to the practice of elder law in Ohio. Highlights include:

Chapter 4—Medicaid Eligibility Rules. In October 2014, Ohio became the 25th state to expand Medicaid coverage

under the PPACA. This allowed the state to receive federal funding to cover an estimated 275,000 more people whose incomes are up to 138% of the poverty rate and are too poor to purchase health insurance in the new health insurance marketplace.

It is important to note that Am. Sub. H.B. 59 of the 130th General Assembly created the Department of Medicaid. The Act authorized the renumbering of the administrative rules on or after October 1, 2014 to reflect the transfer from Office of Medicaid Assistance within the Department of Job and Family Services to the Department of Medicaid. The old rules cited in previous versions of this manual **have** been changed to reflect the new numbers.

Chapter 9—Durable Powers of Attorney for Health Care. Effective March 20, 2014, Ohio **implemented** changes governing the durable power of attorney for health care statute. The most significant change is the fact that an attorney-in-fact may be authorized to access the principal's protected health information regardless of whether the principal has lost capacity to

make informed decisions. In addition, § 1337.12(E)(1) allows the principal to nominate a guardian over the principal's person, estate or both for a court to consider if guardianship is necessary at a later date. See § 9.2.

Rates and Figures. Medicare premiums, deductibles and co-pays have been updated, as have CSRA and MMMNA limits.

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ABOUT THE AUTHORS

Browning & Meyer Co., LPA. William J. Browning, CELA and Richard F. Meyer, Esq., founding partners, established Browning & Meyer Co., LPA in 1996. Mr. Browning and Mr. Meyer have a combined 55 years of experience in the firm's specialized areas of practice, which include estate planning, elder law, estate administration, probate administration, trust administration, asset preservation, tax planning, guardianships, special needs planning, and Medicaid eligibility planning and litigation. Browning & Meyer's office is conveniently located in Columbus, Ohio, and the firm offers a wide array of legal services to assist families throughout the various stages of life.

Richard F. Meyer, Founding Partner, focuses his practice on elder law, probate, customized estate planning, including special needs trusts and asset protection planning. He is an OSBA Certified Specialist in Estate Planning, Trusts & Probate Law (2003—present). Mr. Meyer is a member of the National Academy of Elder Law Attorneys (NAELA), and the Ohio State Bar Association Trust & Estate Section, Elder Law Committee, Columbus Bar Association Probate Committee. He is a frequent speaker in the elder law, estate planning and probate related fields for the National Academy of Elder Law Attorneys, Ohio State Bar Association and National Business Institute, and has published a number of articles. Mr. Meyer has a Martindale-Hubbell Rating of AV, which indicates very high to pre-eminent legal ability and very high ethical standards as established by confidential opinions from members of the Bar. He is Former Chair, Ohio State Bar Association Elder Law Committee (2010–2013); President, Ohio Chapter-National Academy of Elder Law Attorneys; Chair, Ohio State Bar Association Elder Law Certification Committee; and an Ohio Super Lawyer (2005—present). He received his J.D. from Capital University Law School.

Laurie E. Ohall is Of Counsel to the law firm of Browning & Meyer Co., LPA. Laurie Ohall is a Florida Board Certified Elder law attorney who has been practicing law since 1994. She concentrates her practice in the areas of estate planning and elder law which includes the related fields of asset protection planning, probate, guardianship and trust administration. Ms. Ohall is a member of the Florida Bar (1994) and the Ohio Bar (2010) and is also admitted to practice in the United States District Court for the Northern, Middle, and Southern Districts of Florida. She is a member of the Brandon Bar Association (Past President, 2009–2010, Treasurer 2010–2011), the National Academy of Elder Law Attorneys (NAELA), and the Academy of Florida Elder Law attorneys (AFELA). She is also a section member of the Real Property, Probate, and Trust Law Division and the Elder Law division of the Florida Bar, and serves as co-chair of the Resident's Rights Committee for the Elder law section. Ms. Ohall is also a Board member of the Momentum Festival, Inc., a not-for-profit committed to raising money for local charities. Ms. Ohall received her Juris Doctorate in 1994 from Stetson University College of Law. Ms. Ohall has published several articles related to estate planning and asset protection and she is a speaker in the elder law, estate planning and probate related fields for the National Business Institute. She is also a frequent lecturer at community events for topics related to estate planning basics, Medicaid and VA benefits.

David S. Banas, an associate with Browning & Meyer Co., LPA, is a graduate of the Capital University Law School in Columbus, Ohio and the Ohio University in Athens, Ohio. He focuses his practice on legal issues facing older adults and people with disabilities, and specifically on Special Needs Trust, Medicaid, and fiduciary litigation. Mr. Banas wrote an article while a member of the Capital University Law Review addressing Special Needs Trusts and deference owed to administrative agencies' interpretations of the Medicaid Act. Mr. Banas has co-written articles appearing in the *Probate Law Journal of Ohio* and has presented at the Ohio State Bar Association's Elder Law Institute.

David S. Arndt, an associate at Browning & Meyer Co., LPA, practices in the areas of elder law, estate planning, and asset protection planning. Mr. Arndt is a member of the American Bar Association, Ohio State Bar Association, and the Columbus Bar Association. Prior to practicing law, he spent eight years in sales and marketing in the pharmaceutical industry. He received his J.D. from Capital University Law

ABOUT THE AUTHORS

School in Columbus, Ohio, and his L.L.M. in Taxation at Capital University, and received his B.S. from the College of Charleston, Charleston, S.C.

PREFACE

Elder law continues to grow as a legal specialty. The National Academy of Elder Law Attorneys (“NAELA”), founded by 30 specialists in 1987, now has 4,200 members. The National Elder Law Foundation (“NELF”), founded in 1993, certifies attorneys as specialists in the field of Elder Law. There are currently 381 Certified Elder Law Attorneys in 41 states and Washington, D.C.

Legal issues of particular interest to the elderly are numerous. A comprehensive analysis of all of these issues is beyond the scope of this manual. This book focuses on planning issues for the elderly under Ohio law, with occasional references to other states, particularly those which border Ohio. Consequently, the following issues are not discussed in depth and are left to other sources: Medicare, Social Security and other entitlement programs, the Medicaid administrative process, guardianship, nursing home selection, and patient rights. Fortunately there are recent excellent comprehensive treatises covering these topics, including J. Regan, R. Morgan & D. English, *Tax, Estate & Financial Planning for the Elderly* (2008); A. Dayton, T. Guare, L. Mezzullo & M. Wood, *Advising the Elderly Client* (2008); and L. Frolik & M. Brown, *Advising the Elderly or Disabled Client* (2008). Similarly, issues widely affecting the general population and discussed in many other resources are not covered: wills and other testamentary issues, qualified retirement plans, and similar concerns.

Ohio

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