



# ElderLaw Advisor



This publication is provided by:  
Nale Law Offices • Waterville, Maine 04901 • (207)873-4304  
Visit our website at: [www.nalelaw.com](http://www.nalelaw.com)

Vol. VII No. 2



Member, National Academy of Elder Law Attorneys



Spring 2009

## BLUE RIBBON COMMISSION PROPOSES LEGISLATION

The Blue Ribbon Commission to study the Future of Home-Based and Community-Based Care made findings and proposed legislation that would improve the quality and availability of home-based care. The Commission declared it to be public policy of the State to promote a broad array of long-term care services that is consumer-driven and optimizes individual choice for services and support in settings that reflect the needs and choices of consumers.

**The Commission found that “in-home and community support services have not been sufficiently available to many adults with long-term care needs”. And that many adults with long-term care needs are unnecessarily placed in institutional settings such as nursing homes. The Commission also found that for many adults with long-term care needs, it is less costly for the State to provide in-home and community support services than it is to provide care in institutional settings.**

The proposed legislation would promote a system-based focus for providing a broad array of long-term care services that is consumer-driven and that:

- Maximizes consumer choice and autonomy throughout the continuum of long-term care services and increases the availability and percentage of adults with long-term care needs receiving quality in-home and community support services;
- Ensures that priority recipients of in-home and community support services, pursuant to this subtitle, are the elderly and disabled adults who are at the greatest risk of being, or who already have been, placed inappropriately in an institutional setting;
- Promotes and encourages public and private partnerships throughout a variety of agencies, facilities and individuals to provide in-home and community support services;
- Supports the role of family caregivers and a qualified workforce to streamline and facilitate access to quality in-home and community support services in the least restrictive and most integrative settings; and
- Establishes the most efficient, innovative and cost-effective system for delivering a broad array of long-term care services.



JOHN NALE

### NALE LAW OFFICES

*Elder Law – Understanding the Needs of Our Elders*

Nursing Home and Long-Term Care Planning

Trusted Legal Service Since 1977

44 Main Street • Waterville, Maine 04901

(207)873-4304

[info@nalelaw.com](mailto:info@nalelaw.com)

Visit our website at: [www.nalelaw.com](http://www.nalelaw.com)



MARK NALE



## MAINECARE TO RECEIVE \$470 MILLION

The American Recovery and Reinvestment Act (known as the “stimulus bill” includes an \$87 billion temporary increase in the share of Medicaid that the federal government would pay over nine calendar quarters (October 1, 2008, through December 31, 2010). **According to a report prepared for the Senate Insurance Committee by the Government Accountability Office, Maine’s Medicaid program, known as MaineCare, will receive an estimated \$470 million.**

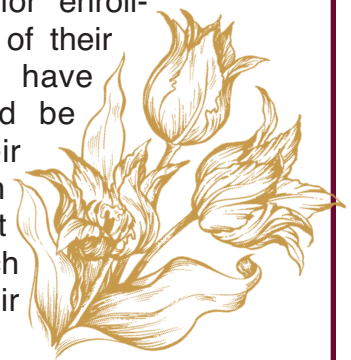
The legislation contains three provisions relating to increased Medicaid funding for states:

- It would suspend through fiscal year 2011 the reductions that some states would otherwise experience in the percentage of their Medicaid costs paid by the federal government. (The percentage of a given state’s Medicaid costs the federal government pays, known as the state’s FMAP, is adjusted each year, but because the adjustment is based on economic data from previous years, there is a substantial lag.) This “hold harmless” feature of the bill would prevent states from losing federal funding simply because economic conditions in the states were much stronger several years ago.
- All states would receive a “base” 6.2 percentage point increase in their FMAP rate. Thus in Maine, where the federal government usually pays 65 percent of MaineCare costs, the base federal share for the period of assistance would be 71.2 percent.

- States experiencing poor economic conditions as indicated by a significant rise in unemployment – such as Maine – would receive additional assistance. Depending on the extent of the state’s rise in unemployment, a state could receive 5.5 percent, 8.5 percent, or 11.5 percent reduction in the share of Medicaid costs the state pays.

This fiscal assistance for states would be effective for the period October 1, 2008 through December 31, 2010. A state’s qualification for a higher level of assistance due to rising unemployment would be evaluated each quarter, and states would receive the additional assistance if their economic situation worsens. While a state’s additional assistance could be increased, no state’s additional assistance would be reduced due to falling unemployment before July 1, 2010.

To receive any increased FMAP, however, a state’s Medicaid eligibility levels must not be more restrictive than they were on July 1, 2008. Restrictions on eligibility include changes that make it more difficult for recipients to meet procedural requirements for enrollment or periodic renewal of their coverage. States that have restricted eligibility would be allowed to reverse their actions and qualify for an increased FMAP in the first calendar quarter in which they have restored their Medicaid eligibility.



## WHAT IS ELDER LAW?

Nale Law Office is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid/MaineCare, Medicare, Social Security, SSI, disability planning, care management, and fiduciary services.



## LONG-TERM CARE INSURANCE

The Deficit Reduction Act of 2005 requires that all state Medicaid programs give beneficial treatment to applicants who received benefits from “certified” long-term care insurance policy purchased from an insurance company. Maine’s Medicaid program is known as MaineCare and this program is known as the MaineCare Long-Term Care Partnership Program. The Program will work like this: In order to qualify for the MaineCare long-term care benefit a person or a couple’s assets must be within certain exempt amounts. Generally speaking, assets in excess of the exempt amounts must be spent down or result in a denial of benefits. The Partnership Program would increase the exempt asset amounts by the amount of benefits actually paid out under a certified long-term care insurance policy. For example, and again, generally speaking – a married couple may now have as exempt assets, their home, auto, personal belongings, and \$119,560 – between them. Any excess would need to be spent down or result in a denial of benefits. However, if this same couple had a certified long-term care insurance policy that had paid out full benefits of \$100,000, that same couple could then exempt \$219,560 of cash assets and qualify for the MaineCare long-term care benefits. **So, in effect, the couple receives the \$100,000 benefit under the policy and an additional \$100,000 exemption under the MaineCare program.**

**Long-Term Care Insurance is not for everyone. Some may not qualify; some may not be able to afford it; some may not need it; and some may need a little and some may need a lot.** Every case is different. You should first consult with an independent advisor, such as an elder law attorney, financial advisor, or other, before purchasing a policy.

ElderLaw Advisor is written by John E. Nale, Esq. & Mark J. Nale, Esq. This newsletter is published as a service of Nale Law Offices, 44 Main Street, Waterville, ME 04901. This information is for general informational purposes only and does not constitute legal advice. For more information please consult Nale Law Offices at 873-4304 or visit our website at [www.nalelaw.com](http://www.nalelaw.com).

## NEW TAX LAW SUSPENDS RMDs FOR 2009

In an effort to give retired Americans some tax relief in the face of declining stock values and, therefore, declining value of their IRA accounts, a new law suspends required minimum distributions (RMDs) for 2009. The Worker, Retiree, and Employer Recovery Act of 2008 was signed into law by the President on December 23, 2008. **By suspending required withdrawals from retirement accounts, seniors will not be forced to sell devalued assets to raise enough cash to make that distribution.** The suspension of the RMD rule is for 2009 only. In 2010 the rule will reverse. The suspension applies to distributions from deferred contribution plans like IRAs, 401(K)s, 403(b)s and 457 plans, but not to deferred benefit plans. The suspension of RMDs applies to both account owners and account beneficiaries, including Roth IRA beneficiaries. That’s right, beneficiaries are covered as well.

If you decide to skip your 2009 distribution you will not have to double your 2010 distribution. This is not a “deferral”. If you’re a retiree whose asset value has plummeted this law could reduce your losses and, hopefully, give you an opportunity to rebuild your asset base.

### *What Can We Do For You?*

We frequently provide lectures for various groups in central and mid-coast Maine. A few suggested topics include estate planning, long-term care planning, MaineCare benefits, long-term care insurance and reverse mortgages. If your group is interested in any of these topics, please contact Angela N. Jenney at 207-873-4304 or sign-up at our website at [www.nalelaw.com](http://www.nalelaw.com).

# *In Loving Memory*

## CAROLINE T. NALE

This issue of the ElderLaw Advisor is dedicated in loving memory of our dear Mother, who passed away at peace, peacefully, on December 8, 2008 at age 92. Although we miss her dearly, we are grateful to have had her as our Mother for so long.

As elder law attorneys, we are often called upon to work with elders and their families regarding the care of our most frail elderly as our Mother was during the last eight months of her life. From our first hand personal experience, we are pleased to write that while our Mother needed care, she received excellent care from nurses, front-line care givers at the nursing home, and Hospice Volunteers of Waterville Area. All were very caring, dedicated and hard-working people who we sincerely thank for their hard work, caring and professional “love” given to our dear Mother and our family. To all, we thank you from the bottom of our hearts.

### SPRING ISSUE ARTICLES:

- Blue Ribbon Commission Proposes Legislation
- MaineCare to Receive \$470 Million
- Long-Term Care Insurance
- New Tax Law Suspends RMDs for 2009

**NALE LAW OFFICES**  
44 Main Street  
Waterville, Maine 04901

PRESORT STD  
US POSTAGE  
PAID  
Permit #56  
Waterville, ME