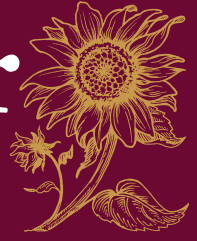




# ElderLaw Advisor



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## PROJECT 2020 AND HEALTH REFORM

Your Maine Association of Area Agencies on Aging is working closely with The National Association of Area Agencies on Aging (N4A) to support Project 2020. Project 2020 was introduced in the U.S. Senate as S. 1257 by Senators Maria Cantwell (D-WA) and Debbie Stabenow (D-MI). It was introduced in the House of Representatives as H.R. 2852 by Representatives Bruce Braley (D-IA) and John Sarbanes (D-MD). S. 1257/H.R. 2852 will implement state-wide person-centered access to information, evidence-based disease prevention and health promotion activities, and enhanced nursing home diversion services which would produce savings to both Maine and the Federal Government by reducing growing costs under the Medicare and Medicaid programs.

It is anticipated, based on independent analysis by the Lewin Group, that Maine would be able to serve just over 58,000 additional residents over five years through Project 2020. The new investment provided through Project 2020 activities is also expected to provide over \$3 million in net savings to our state budget over the same time period, while reducing federal Medicaid and Medicare costs by approximately \$2.8 billion.

Our goal now is to urge our Congressional Delegation to sign on as cosponsors of S.

1257/H.R. 2852 and to push for inclusion of the bills in the House and Senate health reform legislation currently being drafted. Towards that end, M4A is sending a letter to the Maine Delegation and has requested meetings with Senator Olympia Snowe, Senator Susan Collins and Representative Chellie Pingree.

## WHAT IS A SUPPLEMENTAL NEEDS TRUST?

Supplemental needs trusts (also often referred to as “special needs” trusts) have long been used by one person to set aside funds for the benefit of another person who is disabled. Parents often do this for disabled children, whether during life or through testamentary plans. The trusts are drafted to be completely discretionary so that the beneficiary has no legal right to demand distributions. As a result, for purposes of determining eligibility for public benefits, the trust funds are considered unavailable

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*“People grow through experience if they meet life honestly and courageously. This is how character is built.”  
- Eleanor Roosevelt*



JOHN NALE

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MARK NALE



## AGING PARENTS AND THEIR CHILDREN MUST TALK

**A**dult children and their parents should have an open discussion about the challenges of aging, and here are some tips on how to start that discussion.

This discussion is often not an easy one to have; a 2001 AARP study revealed that three-quarters of adult children think about their parents' ability to live independently, but one-third of the children surveyed have avoided discussing the topic with their parents. The results for parents are similar; 70% said they think about their ability to live independently, but more than one third said they do not discuss the subject with their children. The article provided several conversation-starting questions that adult children can ask their parents.

Do you have enough health insurance?

Your parents will want to be sure they have coverage through Medicare (both Part A and Part B, and a Part D prescription drug plan). You may also want to discuss adding a Medigap insurance policy, which can cover co-payments, deductibles, costs and services not included or partially included under Medicare.

Do you feel your doctor is well-informed about the issues common to older patients?

Geriatric physicians are invaluable resources but can be hard to find. You may want to look for doctors who emphasize care for seniors. If your parents require services from multiple specialties, hiring a geriatric care manager to help coordinate health-care services can be a big help, especially if you do not live nearby. Think of the geriatric care manager as a general contractor who will investigate the parents needs, scope out the project, and link the family with health and support services.

Can we help you make your home more comfortable?

Your family may want to discuss moving the master bedroom to the first floor of a multi-level home, or installing a stair climber. Simple changes such as removing throw rugs may help prevent falls, and if your parents get up at night to use the restroom, you can install motion-triggered nightlights to light the path. You might

want to discuss other housing options such as ranch houses, condos, and assisted living facilities, so that you can be prepared financially if and when the need arises.

Are you feeling secure about driving?

This can often be the most contentious issue between parents and children. The parents want to maintain their independence, and the children are concerned about safety. Seniors who are still capable of driving can enroll in the two-day 55 Alive driver safety program sponsored by AARP. If it appears that your parents will have to stop driving in the foreseeable future, you can help ease the transition by talking with the local chamber of commerce, community centers, churches, synagogues, the local agency on aging, to see if any of them offer shuttle services. Taxi or car services will often set up standing appointments to drive so people can shop, go to dinner or to the movies.

Do you have an estate plan in place?

The key pieces of the plan are a general durable power of attorney to manage finances if a parent becomes ill, an advance medical directive to make medical decisions if needed, and a will or trust for final disposition of assets. The plan also includes a thorough financial review to ensure that asset allocations are appropriate, and that any necessary insurance is in place. Your parents should have lists of their important information (including funeral and burial preferences) in one place, and let you know where to find this information in case you need it. You will want to consult with an elder law attorney to ensure that the plan is comprehensive and integrated.

If possible, parents and children should discuss these issues in person. The atmosphere should be one of comfort and collaboration, not

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## “DOUGHNUT HOLE” MAY BE CUT IN HALF

Things are far from perfect when it comes to health care in the U.S. In fact, it's difficult to imagine the situation being much worse, especially when it comes to caring for those most in need, including our seniors. However, I believe that we may have seen a glimmer of hope last month when the current administration in Washington, D.C. worked with the Senate Finance Committee, AARP and the nation's pharmaceutical industry to broker a deal to help bring down costs of prescription drugs for American seniors. The deal will help close the notorious and burdensome “doughnut hole” in the Medicare Part D prescription drug program. The “doughnut hole” refers to the gap in prescription drug coverage that makes it harder for millions of Medicare beneficiaries to pay for the medication they need. The way the program is now structured, Medicare covers the first \$2,700 in yearly prescription costs; the senior then pays the next \$3,400 (the “doughnut hole”) before Medicare coverage starts back up.

Under the “new deal”, Medicare beneficiaries whose costs fall within the “doughnut hole” will now receive a discount on prescription drugs of at least 50% from the negotiated price their plan now pays. This deal will make prescription drugs more affordable for millions of seniors.

We have a long way to go, but, as the state with the “oldest” population in the U.S. and an in-migration that continues to bolster that figure, we owe it to our seniors to continue to push for a more level playing field when it comes to prescription drugs, and to educate seniors about other low-cost drug programs, such as the Prescription Assistance Program, that provides low- or no-cost prescription drugs to seniors with limited income. I encourage all Mainers to look into such programs ([www.pparx.org](http://www.pparx.org)) while continuing to let your elected officials know that we appreciate this baby-step forward, but at this late date we need marathon runners to get the job done.

### **Ageing Parents**, *continued from p2*

confrontation. Children should emphasize that their top priority is ensuring that the parents' wishes are honored and carried out. There is no need for children to parent their parents; rather they should become partners in helping their parents manage their lives. If possible, all family members should be on board; sometimes it may be necessary to involve a third-party facilitator, such as a therapist, trusted family lawyer, or a financial planner who is already working with the parents or children. Above all, be patient, most issues may not be resolved with the first conversation. The key is to start the ongoing dialogue.

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

We frequently provide lectures for various groups in central and mid-coast Maine. If your group is interested in any of these topics, please contact us at 207-873-4304 or sign-up at our website at [www.nalelaw.com](http://www.nalelaw.com).

### **Supplemental Needs**, *continued from p1*

to the beneficiary, unless actually paid out directly to the beneficiary or in ways deemed to be “in-kind” income.

Supplemental needs trusts are also used to manage and shelter funds belonging to the disabled person himself or herself. Often these funds are available as the result of a personal injury award, an inheritance, or life insurance. A disabled individual under the age of 65 may fund a supplemental needs trust so long as it is established by his or her parent, grandparent, legal guardian, or by a court and provides that at the beneficiary's death any remaining funds will first be used to reimburse the state for Medicaid paid on the beneficiary's behalf. If these requirements are met, the assets in the trust will not be countable if the beneficiary applies for Medicaid or Supplemental Security Income (“SSI”) and transfers to the trust will not cause an ineligibility period when applying for either Medicaid or SSI.

## NALE LAW OFFICES

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### ELDERLAW ADVISOR SEPTEMBER ISSUE ARTICLES:

- Project 2020 and Health Reform
- What is a Supplemental Needs Trust?
- Aging Parents and Their Children Must Talk
  - “Doughnut Hole” May Be Cut In Half
  - Update

### UPDATE

The Appropriations Committee is meeting monthly to address the State's budget situation. The Appropriations Committee began the process of finding \$30 million in budget savings by hearing from witnesses who reported on ways to make the government more efficient and also reported on what other states have done. Of course, as state revenue declines, more savings will have to be found. The 2-year, \$5.8 billion state budget passed in the last session assumes \$30 million in cuts that haven't been identified for the fiscal year that begins July 1, 2010. Already, the Appropriations Committee learned this month that state revenue is down an additional \$50 million, meaning they will have to come up with at least \$80 million in savings.

### 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, VA disability planning, care management, and fiduciary services.



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