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Emily Starr

Ron Fatoullah

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## LEGISLATIVE WATCH

# NAELA Advocacy Seeks to Influence Public Policy

The National Academy of Elder Law Attorneys is an organization with an agenda. This advocacy group works to improve legislation affecting its professionals and their clients.

**By Emily Starr and  
Ronald Fatoullah**

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*Emily S. Starr, Esq.*, is a partner in the law firm of Ciota, Starr & Vander Linden and is a Fellow of the National Academy of Elder Law Attorneys. She concentrates primarily in the area of elder law.

*Ronald Fatoullah, Esq.*, is in the general practice of law concentrating on elder law, estate planning, estate administration, and health care issues. He has been appointed Co-Chair of the Public Policy Committee of the National Academy of Elder Law Attorneys.

This is the first in a series of columns devoted to public policy issues affecting elder law attorneys. The perspective will be primarily national. We hope that the articles will offer insight into the political process in Washington, D.C., and how it affects the ability of elder law attorneys to practice and protect the interests of their clients. We make no predictions on what issues will be covered, but the range of public policy discussions that are taking place in the nation's capital that relate to elder law attorneys includes long-term care, Social Security and Supplemental Security Income, Medicaid reform, Medicare, managed care, and health care decision making.

In this issue, we describe the National Academy of Elder Law Attorneys' (NAELA) public policy program as an example of the direction a national organization of elder law attorneys has taken to involve its membership in advocacy and to improve and influence policies affecting its clients and the profession. We

conclude with a brief forecast of aging-related issues facing the 106th Congress.

### **Expansion of NAELA's Public Policy Program**

NAELA's approach to public policy has developed quickly during the past few years as interest in federal and legislative advocacy has grown among NAELA members. There is a desire to educate the executive branch and the legislative branch of the federal government regarding the needs of our elderly clients and the role of the elder law attorney. NAELA members would like to influence the policy-making process when decisions will directly affect their clients and profession.

The membership of NAELA has diverse opinions on specific policy issues, but the advocacy process that it has established has strengthened member involvement and consensus on participation in the public policy arena as well as improved the quality of issue analysis.

NAELA has instituted a subcommittee structure under its Public Policy Committee in

order to involve more members and accomplish more tasks.<sup>1</sup> The subcommittee subjects reflect NAELA's shift to a broader perspective on the problems that older adults face with regard to health and long-term care. The subcommittees are Medicare, Long-Term Care Financing, Long-Term Care Delivery, Social Security, Supplemental Security Income, Managed Care, and Health Care Decision-Making. The full committee or task forces cover issues that do not fall within the subcommittees' jurisdictions. The president of NAELA recently created a special task force to develop recommendations regarding long-term care proposals.

The subcommittees have written, and the full committee and the board of directors have approved, public policy guidelines for NAELA. Based on these guidelines, previous NAELA positions, and the outlook for legislative and regulatory activities for the 106th Congress, the subcommittees and the full committee have established priority issues for 1999 and beyond.<sup>2</sup>

During the early stages of its public policy expansion, NAELA faced the crises of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and two laws that attempted to make criminals out of older individuals (and subsequently their attorneys) who apply for Medicaid and are found to be ineligible because of a transfer of assets. Thanks in part to a vigorous education campaign and the unconstitutional design of these laws, Attorney General Janet Reno informed Congress that the Department of Justice will

not prosecute anyone for violation of the criminalization provisions in Section 4734 of the Balanced Budget Act.

### **Education and Outreach Activities**

In support of NAELA's public policy goals, interested NAELA members will meet with their members of Congress, members of key congressional committees, and executive branch personnel. Personal constituent contact is critical for successful education of legislative and federal policy-makers. NAELA members are equipped to provide examples of how national policies affect local jurisdictions and individuals.

The Public Policy Committee has developed a Public Policy and Advocacy Kit, which includes materials on how to be an effective advocate, background information on Congress, the NAELA public policy guidelines, issues briefs on NAELA's priority issues, and other pertinent information. Many NAELA members are nationally recognized experts on substantive public policy issues and could serve as valuable resources to Congress and federal agencies.

### **Training of NAELA Membership**

As the interest in public policy has increased throughout the NAELA membership, NAELA has added training sessions to its symposia and institutes. The training sessions have covered a wide range of topics, including how Congress works, how NAELA advocates work with executive and legislative branches of government, and how to

interact with individual members of Congress. The Public Policy Committee has incorporated more public policy-oriented sessions on issues such as Medicare+Choice, home care, and managed care into these conferences as well. The training effort culminated with a specific public policy track at NAELA's November 1998 institute held in Washington, D.C. In addition, NAELA is planning a 1999 legislative advocacy conference in Washington, D.C., which will include training and visits to Capitol Hill.

### **Strategies**

Each NAELA public-policy priority issue will have its own strategies and tactics. Strategies are based on past and current relationships with members of Congress, the executive branch, and other organizations and coalitions. Issues are assessed to determine whether they are best addressed by individual or group advocacy, and the present congressional legislative calendar, regulatory opportunities, and political scenarios are considered.

### **Building Coalitions**

One of NAELA's outreach/public policy efforts has focused on creating relationships with like-minded organizations. The benefits of joining other groups and being a part of a coalition are many: the exchange of information is facilitated, there is power in numbers, and the efficiency of effort is improved. In addition, NAELA is able to educate other organizations about what elder law attorneys do and the experiences and needs of their clients.

NAELA is now a member of the Leadership Council of Aging Organizations, the Long-Term Care Campaign, the Campaign for Quality Care, and the Consumer Coalition for Quality Health Care, for example.

### Forecast of Legislative Issues

The first session of the 106th Congress has the potential to be a busy year. In addition to the necessary order of business in the budget and appropriating committees, many aging, health care, and consumer issues could be addressed. Republicans will try to reverse the "do nothing" label of the last Congress.

*Older Americans Act (OAA).* Several issues have blocked the reauthorization of this critically important law, including the formula for distributing funds to states, and the Title V employment program's allocations to states and national contractors. Also of importance to elder law attorneys is the retention of legal services as a priority service and the Long-Term Care Ombudsman Program under Title VII. The President's long-term care initiative includes a National Family Caregiver Support Program and \$625 million over the next five years under the OAA.

*Medicare.* The Medicare Commission report, due to the Congress in March, will make recommendations on eligibility age, benefits, coverage, cost sharing, and Medigap insurance. Many pundits are predicting no

action this year on the commission's recommendations, but the need to fix Medicare's financial predicament is more urgent than that of Social Security. At press time, Chairman Breaux's proposal to shift Medicare away from a defined benefit program toward a defined contribution program did not have sufficient support from commission members.

*Managed Care.* Although a Republican managed care bill passed in the House last year and the Democrat version failed by only five votes, Congress is far from consensus on regulating the managed care industry. Many Republicans will do nearly anything necessary to protect managed care organizations, insurance companies, and employers from increased liability or malpractice. Washington insiders argue whether either side wanted legislation last year—some Democrats wanted to take the issue to the voters and some Republicans wanted to pass a bill that had no chance of becoming law. Some believe there is a short window of opportunity to pass a compromise bill before the year 2000 election campaigns begin. This will depend partly on the length of the impeachment trial and how many of the other big issues are taken up by Congress this year. It is worth noting that Speaker Hastert led the task force that developed the managed care bill that was passed last year.

*Long-Term Care.* Interestingly enough, long-term care

seems to be on the current agendas of rather diverse organizations. The administration has included in its budget proposal a modest package of tax incentives, long-term care insurance incentives, and respite care opportunities to get the discussion going. Advocacy groups are gearing up for the year 2000 presidential elections to influence candidates' positions on long-term care. In addition, a coalition called "Citizens for Long Term Care" is in the making that includes both providers of long-term care and advocates and is funded by the nursing home industry. Their plan seems to focus on getting the issue on the minds of more candidates and legislators. The insurance industry has also formed a coalition on long-term care. The difficult issues of how to finance long-term care will be left for later!

*Social Security.* Many may recall that Social Security was a key factor in the 1986 Republican loss of the majority in the Senate. Both the leadership of the House and Senate would like to structure a way to avoid negative results in the 2000 election because of their work this Congress on Social Security. The Social Security system is not in critical condition, but both parties have made it a high priority for this Congress. The President has conducted town hall forums around the country to get input from citizens and had a White House Conference on

Social Security in December. Republicans pushed the President to put his legislation on the table first to get the discussion moving. He has done that (partially) by putting a large portion of the surplus toward Social Security in his budget. Critical issues include privatizing all or part of the system, eligibility age and benefit levels, taxation levels, and preservation of the disability and survivors benefits.

### Conclusion

Larger issues loom ahead of Congress this year. How should

the budget surplus be used? For tax cuts? Increased military and domestic spending? Reducing the national debt? Will the caps on spending be modified, or will the President and Congress continue to find ways to get around them? Will any or all tax cuts be vetoed until the Social Security system is overhauled? Will the new Speaker of the House of Representatives and the new Chairman of the House Appropriations Committee allow conservative Republicans to attach policy initiatives onto appropriations bills this year? These questions go to the heart of Republican and Democrat philosophies regarding

the roles of government and will not be resolved easily, particularly following the partisan impeachment process.

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### Endnotes

1. If you are interested in receiving more information about the NAELA or its Public Policy Committee or subcommittees, please contact Laury Adsit, Executive Director, or Janice Phillips at 520-881-4005.
2. The public policy guidelines and a list of the current priority issues are available upon request from NAELA.

# Elder's Advisor

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*Elder's Advisor Journal*  
Alison Barnes  
Marquette University Law School  
1103 W. Wisconsin Avenue  
Milwaukee, WI 53233-2313  
Tel. (414) 288-5368  
Fax: (414) 288-5914  
E-mail: Alison.Barnes@marquette.edu

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Dana Bland  
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