



— ELDER LAW NEWS —

IMPORTANT CHANGES TO MEDICAID “RIGHT OF RECOVERY” RULES

NEW REGULATIONS

On September 8, 2011, the New York State Department of Health released new Medicaid regulations which, among other changes, expand the definition of “estate,” allowing for recovery of benefits paid upon the death of the Medicaid recipient. An Administrative Directive was subsequently released on September 29, 2011 which sets forth with more clarity the scope of the new regulations.

The purpose behind the regulations is to provide a larger pool of assets from which New York State can collect its lien at the time of a Medicaid recipient’s death.

How will these new laws affect you? That, of course, depends upon your individual circumstances.

NEW DEFINITION OF “ESTATE”

Since 1994, New York State limited estate recovery to only the probate or intestate estate of a Medicaid recipient. However, the new regulations expand the recovery, now providing that the Medicaid recipient’s “estate” consists of assets such as:

- Jointly owned bank accounts
- Jointly held real property
- Life estate interests in real property

- Interests in a trust
- Annuities
- Life insurance if the estate is the beneficiary or there are no surviving beneficiaries
- “Other arrangements”

LIFE ESTATES

The most significant change involves the addition of a life estate to the expanded definition of “estate.” Under the new regulations, Medicaid is now authorized to seek recovery from life estates in property.

The value of the life estate will be determined immediately prior to death and based on the actuarial life expectancy of the life tenant.

If you have transferred your property to your children or other beneficiaries by a deed with retained life use in the property, these new regulations will affect you.

INTERESTS IN A TRUST

Medicaid can now seek recovery of benefits paid from interests in both revocable and irrevocable trusts.

- **Revocable Trust:** Any assets and accumulated income in a revocable trust is now recoverable at death.
- **Irrevocable Trust:** Any trust income that should have been distributed during the Medicaid recipient's lifetime and was instead accumulated in the trust is now recoverable at death.

NEW LAW RETROACTIVE

There is no "grandfathering" under the new regulations. The expanded definition of "estate" extends retroactively to any Medicaid recipient who died on

or after September 8, 2011. Therefore, any property transfers, including trusts and deeds with retained life use, are now subject to these new regulations.

CONCLUSION

We expect there will be legal challenges to these new regulations and will keep you updated with any significant developments.

We look forward to working with you and assisting you with all of your estate planning needs, including how the new Medicaid regulations may affect you.

Should you require legal advice or additional information about these changes and your estate plan, please contact Cora A. Alsante, Esq., Chair of our Trusts and Estates Practice, or any of the attorneys in the Practice: Michael L. Corp, Esq., Marion Hancock Fish, Esq., Karin Sloan DeLaney, Esq., Martin L. Fried, Esq., Mary C. King, Esq., Timothy P. Crisafulli, Esq. and Jaime J. Hunsicker.



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