

BERWITZ & DiTATA LLP

Attorneys and Counselors at Law

310 Old Country Road Suite 101
Garden City, New York 11530
Telephone (516) 747-3200 • Facsimile (516) 747-3727

Lawrence N. Berwitz

Maureen R. DiTata

Medicaid Flip-Flops

In both of the two most recent issues of A Step Ahead, we addressed the proposed changes in Medicaid estate recovery procedures and their significant impact upon seniors, the disabled and their families. On December 6, 2011, Medicaid allowed the emergency regulation, which would have enabled expanded estate recovery, to expire.

Medicaid has advised its districts that, effective immediately, they may not include assets that pass outside of the probate estate as part of the decedent's estate for recovery purposes. It has promised that a "revised regulation" will be promulgated. Sounds like we are back to Square 1? Not really, Medicaid has also advised its districts that the "new" method for evaluating life estate interests that was set forth in the emergency regulation, and addressed in our earlier articles, will continue to apply despite its expiration!

The draft of the proposed revised regulation differs from the earlier emergency regulation in several significant ways. Presently in the "comments period," it is unclear whether this proposal will sustain further modifications. There are some positive aspects to the proposed regulation, particularly that it will apply only to estates of decedents' dying after July 1, 2012. This may provide some clarity lacking in the former regulation. However, there remain troubling concerns, such as its impact upon life estate and remainder interests that have already vested. The proposed regulation also has a detrimental impact upon spousal claims, retirement plans and annuities.

We anticipate that, in the months to come, there will be more news on the proposed regulations. It does not appear that this is a matter that will reach finality in the near future. We will continue to keep you apprised.