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Medicaid's Protections Are Afforded To Same-Sex Couples Nationwide

In a landmark decision, the U.S. Supreme Court has ruled that state bans on same-sex marriage are unconstitutional and that states must recognize same-sex marriages performed in other states. Among other implications, the ruling means that same-sex couples living in states that previously did not recognize their marriage will now be covered by Medicaid's "spousal impoverishment" protections and asset transfer rules. Of course, marriage is for better or for worse, and the Medicaid implications of marrying, or securing recognition for the marriage, can be either helpful or detrimental depending on the couple's financial circumstances.

Certain Medicaid regulations are aimed at keeping the spouses of Medicaid recipients from becoming impoverished. These rules now apply to same-sex married couples. For instance, in New York, nursing home residents are not eligible for Medicaid if their countable resources exceed \$14,850. The healthy (or "community") spouse is permitted to keep up to \$119,220 in assets and, if he or she has less than this amount, the nursing home spouse may transfer assets to the community spouse to make up the difference. So, too, if the community spouse's monthly income is less than \$2,980.50 (the "community spouse income allowance"), he or she is permitted to retain so much of the nursing home spouse's income as will bring his or her own income to that level. Medicaid's rules also help married couples protect their homes. The state cannot seize or impose a lien on the home of a deceased Medicaid beneficiary if the spouse still resides there, and Medicaid applicants may transfer title of the home to their spouse, thus allowing the spouse to remain in the home.

Same-sex spouses of Medicaid recipients will now be shielded from Medicaid "estate recovery." Under Medicaid law, following the death of the Medicaid recipient, Medicaid must attempt to recover the cost of the benefits provided from his or her estate. However, no recovery can take place until the death of the recipient's spouse.

Another advantage to being a married couple is that one spouse may transfer assets to the other without triggering Medicaid's penalties for asset transfers. Even after entering a nursing home, the institutionalized spouse may transfer any asset to his

spouse, although this may not help him become eligible for Medicaid since the same limit on both spouses' assets will apply.

None of the above protections are available to non-spouse partners of Medicaid recipients. In 2011, when only six states allowed gay and lesbian couples to wed, the federal government gave states the option of extending spousal protections to same-sex domestic partners. With same-sex couples now having the right to marry nationwide, it is unclear whether individual states will continue to offer spousal benefits to same-sex domestic partners.

The newly available protections cut both ways. The asset and income protections primarily help lower income individuals. Although under Medicaid's rules, the transfer of assets to individuals other than a spouse is not exempt, domestic partners are also not subject to the asset limits. Thus, if the healthy domestic partner is also the "monied" partner the assets are not counted in determining the applicant's eligibility for Medicaid.

If you would like to discuss the implications of Medicaid planning before undertaking your marriage vows, call Berwitz & DiTata LLP and ask for a consultation.