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## New Medicaid Home Care Rules Will Severely Curtail Applicants Ability To Protect Assets

It is now more important than ever for clients to engage in Medicaid planning in advance of the need for Medicaid benefits because of changes that were implemented in the 2021 fiscal budget by our state's legislature and signed by Gov. Cuomo in early April 2020. In the Special Edition of this newsletter in April, we alerted our readership to the change in the Medicaid rules. Many of our clients heeded our advice and took advantage of the "grace period" before the implementation of the new rules. Unfortunately, many people have been unable to focus on this deadline during the pandemic. Only a short time remains before it will be too late to take advantage of the much more lenient asset protec-

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## Caring For The Caregiver

Covid has put additional stress on everyone. People are dealing with the threat of a deadly virus, loss, isolation, rising food costs and food shortages as well as economic and employment insecurity. Our most vulnerable populations feel the effects of these changes and stressors and are particularly hurt by the isolation being imposed to keep them safe.

The people who care for those with long-term illnesses or physical limitations are under a lot of stress in normal times and Covid has exas-



perated these conditions. Apart from the concern for loved ones who are "locked down" in facilities to minimize or prevent the spread of infection,

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## Medicaid Asset-Protection Trusts

Ideally, every client of Berwitz & DiTata LLP would have the foresight to plan now for the possibility that they will require care in the future. Most people believe that the only way to accomplish this is through long-term care insurance. Not everyone qualifies and those who do are often discouraged by the cost. Fortunately, insurance is not the only way to pay for a nursing home or home care. Many people expect to access the Medicaid system when and if they later require long-term care. Medicaid eligibility in New York requires that the applicant have limited assets. Our clients often ask whether this means they will be required to spend all of their money before qualifying for Medicaid.

A Medicaid qualifying, asset-protection trust ("Medicaid Trust") can shield assets from Medicaid and

allow you to preserve them to pass on to your family, provided that the planning is done in advance of the need for care. They are not suitable for persons who need Medicaid immediately or within a short period of time because there is a financial disclosure period, 60 months for Medicaid nursing home applicants and, beginning on October 1, 2020, 30 months for home care applications. The transfer of assets to a Medicaid Trust will create a period of inelig-

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## New Medicaid Home Care Rules Will Severely Curtail Applicants Ability To Protect Assets

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tion strategies that have always been available in New York.

Until the new budget was enacted, Medicaid eligibility rules for nursing home and home care benefits were radically different. For nursing home applicants, Medicaid employs a five-year look back period to determine eligibility for benefits. As part of the application process, it is necessary to identify all uncompensated transfers made in the five years preceding the date benefits are to start. Depending on the value of the transfers identified, the period of ineligibility

could extend for as much as five years, during which time the applicant is responsible to pay for all of the costs of nursing home care. These costs can exceed \$18,000 per month just for custodial care. In contrast, prior to the new budget, uncompensated transfers had no impact on home care applications. This means that an applicant could transfer all of their assets and still become financially eligible for Medicaid home care benefits as of the first day of the following month - with no imposition of a penalty period.

With the passage of the 2021 budget, beginning on October 1, 2020, a 30-month look back period will apply in determining eligibility for home care benefits. Hypothetically, an applicant having a home valued at \$500,000 and other assets of \$250,000 could transfer all of the assets in September and qualify for Medicaid home care benefits as of

October 1 without penalty. If the same applicant delays the transfers until October 1 or later, those same transfers will result in a "penalty" that will render the applicant ineligible for benefits for as long as 30 months. Instead of having Medicaid pay the costs of home care, all of the costs for the aide(s) are borne by the applicant until the penalty period expires.

It is imperative that Medicaid planning, which includes the transfer of assets, be implemented immediately to avoid these severe consequences. Remember, transferring assets is more than just going into a bank and closing an account. One or more trusts may have to be created. Brokers may have to be instructed to transfer stock accounts. Deeds may have to be prepared, signed and recorded. Ownership of insurance policies or annuities may have to change. Each task takes time and unless each is successfully completed before the end of September, the new rules will apply. Forewarned is forearmed. Help us to help you. Call now before it is too late.

## Caring For The Caregiver

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those who remain in the community are precluded from engaging in customary activities that provide socialization and structure. Visits from friends and family members and trips to the senior center, the library or the salon have not been part of daily life during these last several months and care givers must devote more time and energy to making life interesting and enjoyable.

While caring for our loved ones is a full time job and requires tremendous patience and compassion, it is just as important to ensure that the *caregivers*, whether they are providing full-time care or overseeing and supplementing care, are supported. Caregiver exhaustion or "burnout" creates its own set of problems and health concerns for a family. There are resources available to help. Sometimes friends or family members can take on various responsibilities such as meal preparation or shopping. Perhaps they can schedule a

weekly visit just to give the caregiver some time off. Service providers can be employed to reduce the chores a caregiver must accomplish in a given week such as housekeeping, laundry or errands. Often, the caregiver is juggling work, their own family and other responsibilities.

Here are some examples of organizations and resources dedicated to providing support to caregivers:

<https://caregiveraction.org/>  
[www.caring.com](http://www.caring.com)  
[www.helpguide.org](http://www.helpguide.org)

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## Medicaid Asset-Protection Trusts

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bility based upon the value of the property transferred.

There are many different types of trusts and most are not Medicaid compliant. Revocable living trusts, for instance, do not afford Medicaid protection because they allow you to use the trust assets. Assets in this type of trust *would* have to be “spent down” before you qualify for Medicaid benefits.

A Medicaid Trust must be irrevocable meaning that, under most circumstances, once assets have been transferred to the trust, they cannot be transferred back. But once the trust owns assets, Medicaid cannot count them as resources that disqualify you from receiving benefits and Medicaid cannot recover those assets after your death to reimburse itself for the costs of your care. Once you pass away, the trustee will distribute the assets to your beneficiaries in accordance with your wishes.

Protecting assets in a Medicaid Trust is often preferable to transferring ownership directly to a child or other beneficiary. First, you maintain some control over the asset. Even though you are not the trustee or manager of the trust, you select your trustee and can retain the right to change trustees and even beneficiaries during your lifetime. If the trust assets are income producing, i.e. rent, interest or dividends, you can collect the income. The principal of the trust is protected but you can receive all of the income produced by the principal. Certainly, this is not true if, instead, you transfer assets directly to a beneficiary. But many other circumstances can

then threaten the assets. Your beneficiary may get divorced or incur debt. With a Medicaid Trust, embittered spouses or aggressive creditors of your beneficiaries cannot deplete its value.

A number of different types of assets can be put into a Medicaid Trust, including your home. When you transfer your home to a Medicaid Trust you continue to live there. Not surprisingly, you continue to be responsible for the expenses but this also means that, if you qualify for exemptions on your real estate taxes, such as a STAR exemption, you continue to be eligible. Moreover, when you pass away, your beneficiaries will receive a step-up in basis, thereby reducing or eliminating capital gains tax. In fact, you can even direct the sale of your

home and the purchase of another in its place! Other assets that are customarily transferred to Medicaid Trusts are real estate other than one’s home, investment and savings accounts, stocks and bonds, mutual funds, and CDs. Transferring retirement accounts (401Ks and IRAs) is not recommended due to the unfavorable tax consequences.

It is imperative that a Medicaid Trust be correctly drafted in order to ensure that the assets transferred to it will be exempt from Medicaid’s reach and that they will be protected and preserved for distribution to your loved ones in accordance with your wishes. If you have questions about the benefits of a Medicaid Trust in your estate plan, please call Berwitz & DiTata LLP.





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Taking care of the mental and emotional strain of caregiving is always vital. New York State has set up an emotional support help line to help address anxiety during the Coronavirus emergency. It can be reached at 1-844-863-9314. There may be additional resources available through insurance, New York State or your communities. We encourage everyone to make sure they are getting the help and support they need.

In addition to connecting with friends, family members or organizations to reduce the caregiver's workload and address the physical,

mental and emotional challenges of being a caregiver, especially during a pandemic, enormous relief is available from professional aides who can assist in the day-to-day care of your loved one. With proper planning, provided your loved one meets the physical and cognitive criteria, home health aides can be paid for through the Medicaid system. Berwitz & DiTata LLP will explain how this works and help you determine whether applying for benefits is the right choice for you. Professionals can also be hired privately and, sometimes, paid for with insurance. Having a trained home care attendant or aide in the home allows the caregiver to focus their attention on companionship, meal sharing and overseeing care. Regardless of whether the assistance

in caregiving is paid for privately, through insurance or the Medicaid system, the result may restore balance and the enjoyment of the familial relationship and eliminate the sometimes dispassionate caregiver/"patient" connection. If you think it might be time to reassess your need for help and support, please contact Berwitz & DiTata LLP and discover that we can help.

### Have You Relocated? Do You Want to Keep Receiving This Newsletter?

If you have moved to a new home, either permanently or temporarily, please contact our office with your up-to-date address, telephone numbers, and e-mail addresses. We want to be sure that you will continue to receive communication from us.

This newsletter does not constitute the provision of legal or tax advice.  
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