A STEP AHEAD

NEW YORK STATE ADOPTS MEDICAID LEGISLATION

In our last issue we addressed the Deficit Reduction Act of 2005 (DRA) which President Bush signed into law in February 2006, federal legislation which will have a significant impact on Medicaid eligibility. Recently, certain portions of Governor Pataki's proposed budget were enacted which will also affect Medicaid eligibility, for both home care and nursing home care, for New York State residents. Without proper advance planning, the assets our clients have accumulated during their lifetimes, to ensure that a healthy spouse would be financially able to remain in the community or as a legacy for their children, will be greatly reduced.

Spousal Refusal. Under the prior law, the healthy spouse of an applicant for Medicaid benefits could elect to refuse to use his or her income and resources to support the ill spouse. Utilizing this planning device, Medicaid was required to evaluate the ill spouse's Medicaid application, for home care or nursing home care, without consideration of the refusing spouse's assets or income. Now, this technique will no longer be available when one of a couple is seeking Medicaid benefits for home care. Additionally, New York will be seeking permission to disallow spousal refusal when one of a couple is seeking nursing home care.

Look - Back Period. Previously, a three (3) year look-back period was imposed for Medicaid applicants seeking home care and nursing home care. However, for nursing home applicants who had transferred assets to an irrevocable trust, a five (5) year look-back period applied. The look-back period is the period evaluated by Medicaid to identify transfers that result in the imposition of a disqualifying penalty. Now, not only has New York extended the look-back period to five (5) years for nursing home applicants consistent with the DRA, it has adopted a five (5) year look-back period for home care applicants as well.

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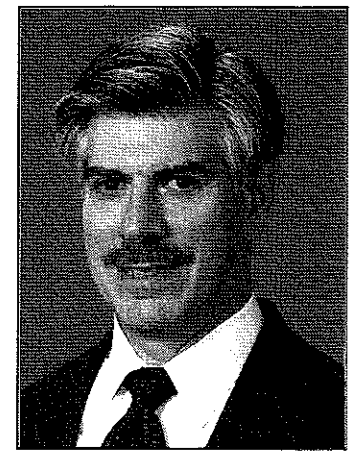

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Start Date of the Look-Back Period. Previously, the look-back period started on the first day of the month following a transfer of assets. New York has now adopted the start date specified under the DRA. The look-back period does not begin until the first day the individual is receiving services for which Medicaid would be available but for the transfer of assets, and which does not occur during any other periods of ineligibility.

Calculation of Ineligibility Period. If a transfer causing an ineligibility period is made while the applicant is institutionalized, the ineligibility period will continue even if the applicant returns home. If the transfer occurs while the applicant is not institutionalized, it will run if the applicant is institutionalized.

Increased Equity in the Homestead. Under the old rules, the full value of an applicant's primary residence was exempt from consideration in determining Medicaid eligibility. Under the DRA, equity in the primary residence in excess of $500,000 is considered an available resource unless a state elects to increase that amount to $750,000. New York has adopted the higher $750,000 amount.

Annuities. Previously, annuities which were "actuarially sound" were not considered available resources for Medicaid purposes. Under the DRA, and now under New York law, the state must be named as a beneficiary of any annuity owned by the applicant.

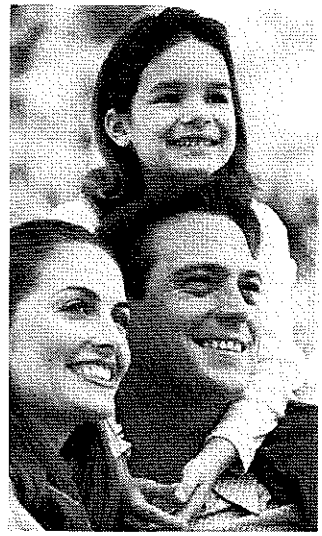
These new rules further complicate the planning available to our clients who have family members who require long term care. As we noted in our winter newsletter, planning is most effective when it is implemented before there is a need for care. Once care is required, the available planning options are diminished and the greatest loss of assets will occur. Please contact us to assist you with your planning needs. ◆

NYC FIRM HPM&B TO SHARE OUR NEW SPACE

We are pleased to announce that the law firm of Heidell, Pittoni, Murphy and Bach LLP (HPM&B), is sharing our new office space with us. HPM&B is a NYC law firm, with principal offices at 99 Park Avenue, which provides a full range of litigation, counseling and appellate services to their clients. Their clients include drug and medical device manufacturers, major university medical centers, community hospitals, insurance companies, municipalities, educational institutions, professionals, entrepreneurs and retailers. Their practice is concentrated in the areas of product and professional liability, labor and employment law, healthcare law, medical liability, and commercial and general litigation. HPM&B's presence in Garden City will enable the firm to better serve their Long Island clients and be an excellent complement to the services which we provide in the areas of Estate Planning, Elder Law and Probate and Trust Administration. We hope that this liaison will better enable us to service the needs of our clients. Be sure to call if Berwitz & DiTata LLP or HPM&B can be of help to you. ◆

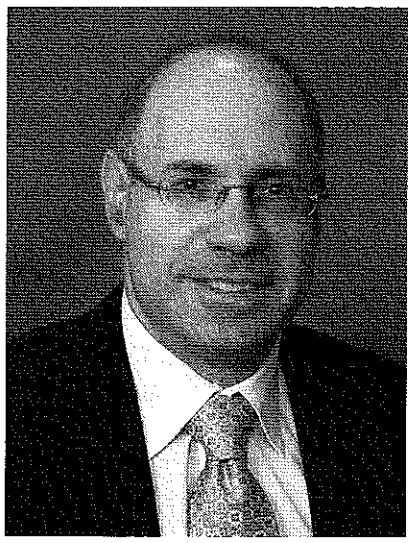
MISTAKES AND MISCONCEPTIONS

Estate planning, whether simple or complex, requires careful attention to details which, if overlooked or misunderstood can undermine the plan's effectiveness. We will devote space in each issue to highlight common estate planning mistakes and misconceptions.



One of the most frequently misunderstood strategies in "do-it-yourself" planning is to retitle real property in the name of the children. Homeowners seeking to "protect assets" often do not realize that such a transfer can have estate and gift tax consequences, will result in the loss of the capital gains tax exclusion when the property is sold, and constitutes an irrevocable transfer. It does not take into account the possibility that a child will predecease the parent and exposes the property to the child's creditors. The property can be subject to division if the child divorces. Before transferring property to childern, consult with your estate planning counsel. ◆

B&D WELCOMES EVAN



We are pleased to welcome associate attorney Evan C. Gansl to the firm. Evan has almost twenty years experience in the legal and financial affairs of seniors, including estate planning, probate and trust administration, elder law and taxation. He graduated from Muhlenberg College (cum laude) with a degree in accounting, received his law degree from Duke University School of Law and attained a Masters of Law in taxation from Georgetown University Law Center. Evan has also earned the designations Chartered Advisor for Senior Living (CASL), Chartered Financial Consultant (ChFC), and Chartered Life Underwriter (CLU) from the American College.

Evan is a member of the Nassau County and New York City and New York State Bar Associations and also belongs to the National Academy of Elder Law Attorneys, the Estate Planning Council of New York City and the Society of Financial Service Professionals. He lives in Manhattan with his wife Francie and his two children, Danielle and Harrison. He looks forward to meeting and speaking with you ◆

Berwitz & DiTata LLP

310 Old Country Road • Suite 101 • Garden City, NY 11530
Telephone: (516) 747-3200 • Facsimile: (516) 747-3727
Website: www.berwitz-ditata.com

TRANSFER-ON-DEATH SECURITY REGISTRATION ACT

New legislation will permit investment accounts and securities to be titled in beneficiary form. Previously, only bank accounts could designate a named beneficiary. Under the new law, which became effective on January 1, 2006 and will apply to securities registered on or after January 1, 2007 in order to provide financial institutions with time to initiate policies and procedures and to create the necessary forms, stocks and other investments can be "transferred on death" or "paid on death" directly to a named beneficiary, after the owner passes away, without going through the probate process. The beneficiary designation can be canceled or changed at any time during the owner's life without the consent of the beneficiary.

While this new legislation was intended to simplify post-death transfers, it has unintended consequences. Too often, and without any consideration of the tax consequences or family composition of the account owner, these designations will be recommended by financial consultants to simplify, for the institution, the transfer of the accounts after the owner's death.

These beneficiary designations supercede the disposition of assets under a last will and testament or trust and can be contrary to a well conceived and carefully designed estate plan. The intended beneficiary may be a minor, or incapacitated, or fiscally irresponsible, and the beneficiary's receipt of the security without management may undermine the account owner's wishes as expressed in the will or trust. The completion of these beneficiary designations may create an unacceptable risk and should only be undertaken after an overall review of the entire estate plan to ensure that they are not inconsistent. ◆