



Moriah Adamo, Esq., Lawrence N. Berwitz, Esq. and
Maureen Rothschild DiTata, Esq.

A Letter from Moriah: Reflections and Aspirations

Dear Clients:

The new year brings a time of reflection and a renewal of aspirations. In reflecting upon the addition of the Berwitz & DiTata team with that of our existing Lake Success Elder Law and Estate Planning Practice, I am pleased to conclude that fresh perspective and an exchange of ideas has fortified procedures and increased our ability to meet the needs of our clients. All this without wavering from our commitment to personalized representation of you and your family.

Going into 2024, I wish to continue to acquaint you with all that Abrams, Fensterman, LLP has to offer. I also hope to meet many of you! We will be expanding our client outreach program and inviting you to our office for a complimentary review. Of course, no need to wait for an invitation, you are always welcome to contact us with any questions or concerns. We will continue to boast our holistic approach to legal representation that pivots to the needs of our diverse clients by developing the **best practices for the best results**. Our aim is to be **your family's lawyers for life**.

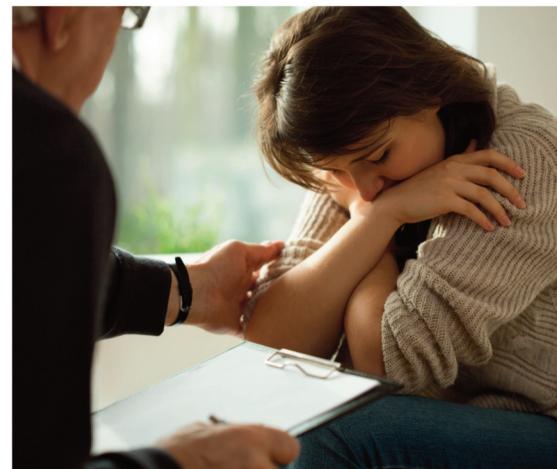
Sincerely,
Moriah Adamo, Esq.

A STEP AHEAD

Introducing Mental Health Law At Abrams Fensterman, LLP

Mental Health law crosses into all areas of legal practice. We have a unique family-focused law practice which guides families through the complex landscape of legal issues that impact loved ones with serious mental illness and/or substance use issues. We employ both straight-line interventions as well as those which require the ability to "think outside of the box" to develop appropriate and timely legal and clinical interventions.

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Revenue Ruling 2023-2 and Estate Planning

The IRS recently issued Revenue Ruling 2023-2, which has garnered a lot of media attention because of its implications on the treatment of assets that have been transferred into an irrevocable grantor trust. We have received calls from clients who are concerned that their careful estate planning has been undermined by this new ruling and their heirs will not benefit from a "step-up" in basis. This article seeks to clarify how the recent ruling affects estate planning.

Trusts are sophisticated estate planning tools. They have been uti-

lized in estate planning for many years – to accomplish many different goals, one of which is the minimization or elimination of transfer or estate tax liability. After a trust is created, it is funded with assets,

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Impactful Medicaid Changes Postponed What to Expect in 2024



Since the enactment of the 2020 NYS budget, advocates have been on the lookout for what are expected to be meaningful changes to the Medicaid program, from financial and medical eligibility, to how assessments are conducted. Fortunately, some of these critical transformations have been delayed and will likely not go into effect in 2024.

The most significant of the anticipated changes is the implementation of a 30-month lookback in determining eligibility for community Medicaid. Community Medicaid pays for long term care in the Applicant's home, i.e. home health aides. Home health aides assist with activities of daily living such as eating, walking, bathing, dressing, personal hygiene,

toilet use (including diaper changes), transferring (in and out of bed, on and off a chair or toilet) and bed mobility also known as turning and positioning. They also help with things like cooking, cleaning, shopping, and paying bills.

The implementation of a 30-month lookback means that an application for home care benefits will require the submission of 30 months of financial information preceding the application/date services are expected to commence. The Department of Social Services will then determine if transfers were made for less than fair market value and impose a penalty period or period of ineligibility for Medicaid based upon the value of the uncompensated transfer. This may

result in the Applicant's having to pay for aides, out of pocket, for up to 30 months. Home health agencies currently charge anywhere between \$28-45 per hour. As you can imagine, paying for care at home is, for many individuals, prohibitive.

The good news is that, due to several factors, the Medicaid homecare 30-month lookback will likely not go into effect in 2024. Indeed, it is not expected to be implemented until at least March 2025. This does not, however, mean that you should delay in Medicaid planning. Quite the opposite. If your goal is to age with dignity in your home, the time to plan is now.

In other news, in 2023, the limits for financial eligibility for Medicaid increased significantly, making it easier to qualify for Medicaid benefits. Currently, the resource limit for a household of one is \$30,182.00 and the income limit is \$1,677.00. For a household of two, the resource limit is \$40,821.00 and the income limit is \$2,268.00. This increase in one's resources allows Applicants to continue to afford to remain in their homes and still qualify for community Medicaid benefits. Owning a home does not disqualify one from receiving Medicaid benefits. In fact, in 2024, if an Applicant's primary residence does not exceed \$1,071,000 in value, it is considered an exempt resource for as long as services continue to be provided at home (or a spouse, minor or disabled child also lives in the home).

It is important you speak to a legal professional versed in the complex Medicaid rules to determine the best way to tackle your Medicaid plan today. Call us and schedule a consultation.

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which may consist of real estate, valuable items, stocks, bonds, and other investments. These items have a "basis" for tax purposes which, generally speaking, is their cost including fees and commissions. These assets are sometimes referred to as the "principal." Principal may increase or decrease in value over the course of time. An increase in its value is called "capital appreciation" or "capital gain."

Section 1014 of the Internal Revenue Code generally provides that the "basis" of an asset that has increased in value between the time of

purchase and the death of the owner, is the fair market value of the asset at the date of the owner's death. This is called "step-up in basis" and is very advantageous in the calculation of capital gains tax when the asset is later sold. Capital gains tax is assessed on the appreciation in value of the asset from the time of purchase to the date of sale. The step-up in basis closes the gap and reduces or eliminates capital gains tax!

The new Revenue Ruling calls into question whether assets which have been transferred into an irrevocable grantor trust are eligible for this step-up in basis upon the death of the grantor. The IRS affirmed that, if the transfer of the asset into the trust constitutes a "completed gift," as defined by the tax code, the asset

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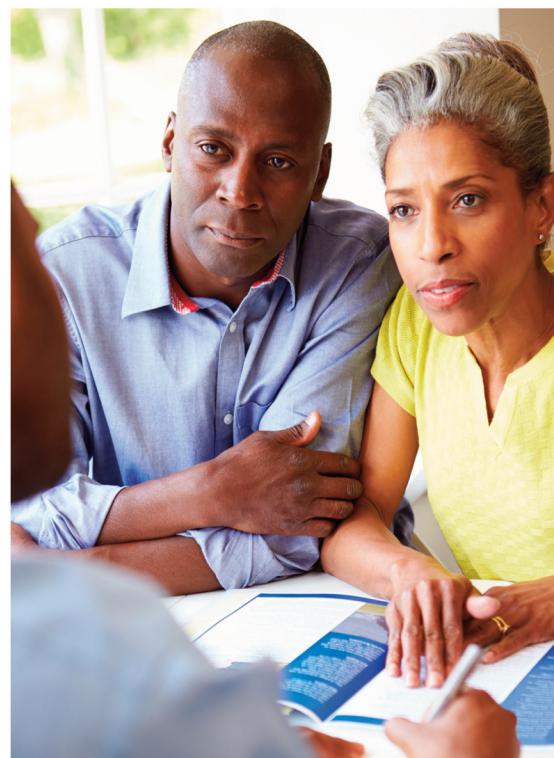
Introducing Mental Health Law At Abrams Fensterman, LLP

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We also represent individuals, families, and healthcare providers in proceedings relating to mental health law. Our services include representing individuals and hospitals in Mental Hygiene Law Article 9 proceedings for psychiatric treatment, continued involuntary hospitalizations, and Kendra's Law proceedings. We also assist individuals and their families with securing treatment using Mental Hygiene Warrants; pursuing Mental Hygiene Law Article 81 Guardianships; Extreme Risk Protection Orders; and Orders of Protection. As mental illness touches all aspects of a person's life, outside of traditional mental health law matters

we also represent individuals in criminal and employment matters, where mental illness and/or substance use disorders are a contributing factor. We have frequently partnered with other lawyers, in matrimonial matters, real estate disputes, trusts and estates cases, and defending doctors or other healthcare providers when their professional licenses may be in jeopardy. In all, we are here to assist clients with matters that are directly tied to mental illness, or matters that have a secondary connection, but require some mental health expertise.

If you, a family member, relative, friend or colleague require assistance, advice, guidance or even a second opinion as to any of these matters, please contact Maureen DiTata, Larry Berwitz or Moriah Adamo at (516) 328-2300 and we will be happy to make an introduction for you.



Haven't Seen Us In A While?

As many of you know, Berwitz & DiTata LLP customarily invited clients in for a complimentary review three (3) years following the execution of their estate planning documents. We will be continuing this practice at Abrams Fensterman, LLP. Has it been more than three (3) years since we reviewed your estate planning documents? Have you moved, married or divorced? Have your children become adults? Has a spouse or beneficiary passed away? Are the people whom you have entrusted to manage your affairs if you become ill or disabled still able to carry out that task? Maybe it is time for a visit. Please call us for a complimentary review. 516-328-2300. We look forward to seeing you again and showing you the new office.

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will not qualify for a step-up in basis under Section 1014 upon the death of the grantor. This is what has caused the stir!

What the media has failed to headline is that there are many different types of irrevocable grantor trusts and that they are utilized for a variety of different reasons. Some grantor trusts are designed to remove assets from the estate of the grantor. If the assets no longer belong to the "owner" at death, if they would not be considered part of the owner's taxable estate, the step-up in basis afforded by Section 1014 will not apply.

However, our Medicaid qualifying irrevocable trusts are designed to invoke Section 1014 of the tax code. The grantor retains control over the property transferred to the trust and can receive the income generated by it. Because a completed gift to the trust has not been made, as defined by the tax code, the asset remains in the estate of the grantor and receives the step-up in basis at the time of grantor's death, minimizing capital gains taxes.

The key takeaway here is to consult with and retain qualified counsel who can assist and advise you as to your needs, based on your unique circumstances. If you believe Revenue Ruling 2023-2 might affect you, or you have concerns and would like to review your documents and

ensure they provide the most robust protection for your financial needs, please give us a call and schedule a consultation.

Join our Go-Green Initiative

Want to help reduce our carbon footprint? Opt out of paper delivery and into our e-newsletter by simply sending an e-mail to planninggroup@abramslaw.com with the subject line "e-newsletter". You will then receive the same valuable information in our emailed newsletter and reduce environmental impact!

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