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## Medicaid Changes

Last year we addressed anticipated changes to community based Medicaid eligibility (home care) with the passage of the 2020 budget. Because of the pandemic, these new rules have not been implemented. They are currently deferred until October 2022. However, that could change depending on the severity of the new variants. In the last few weeks, the legislature passed the 2022 budget which also impacts eligibility for Medicaid benefits for both home and nursing home care. This article will discuss the status of both.

In 2020, the legislature changed the impact that transferring assets will have when applying for home care. Prior to the 2020 budget, no penalty was assessed if assets were transferred prior to the submission of a home care application. The transfer of assets alone, whether they were valued at one dollar or ten million, would not disqualify an applicant from eligibility for Medicaid

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## Spring Cleaning — Time To Review and Renew

**Tax season is over! Spring has FINALLY sprung! It's time to "Review and Renew."** Each spring, we at Berwitz & DiTata LLP encourage our clients, friends and "would be" friends to focus on estate planning, refresh those resolutions and stop procrastinating. We call it our annual "Review and Renew" program.

**If you have never created an estate plan, now is the time.** Although estate planning is rarely a topic people look forward to addressing, we are dedicated to helping clients identify and implement their estate planning objectives with ease and efficiency. We believe that our success is founded on this fundamental commitment to communicate with our clients in a caring and responsive manner. Those who have met with us in a one-on-one consultation know that we believe that everyone can benefit from estate planning regardless of personal income or net worth. Everyone has concerns regarding the future. For instance: How can I avoid probate or the dissipation of my assets to estate taxes? How can I avoid losing control of my assets if I become disabled? How do I protect myself and my family from devastating nursing home costs? Can assets still be protected if a loved one is already in a nursing home? How can I protect my minor children? How can I protect my disabled child or the assets that he or she may one day inherit? In designing strategies to effectuate our clients'



goals, we offer detailed advice and a high level of technical expertise. Now is the time to achieve estate planning peace of mind! Ask those questions, explore the options, get it done!

**If you created your estate plan or reviewed it last more than 3 years ago - now is the time.** Are your documents up to date? Have there been changes in the law or in your life that should now be considered? The documents that address the needs of a single person are frequently insufficient when he or she marries. If a couple has children, the

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## Selling Your Home in an Irrevocable Trust

Is your home owned in an irrevocable trust?<sup>1</sup> If so, you may have a life estate interest in your home and your irrevocable trust may own the remainder interest. This means that you continue to own the exclusive right to live in the home for the rest of your life, and are responsible for all the expenses of ownership including property taxes, insurance, maintenance, utilities and repairs. It means that, upon your death, 100% of the value is owned by the trust. It also means that the trustee

cannot sell the home without your consent. Your life estate interest has a monetary value and, if the home is sold during your life, it is essential to know this value and to make sure that the proceeds of the sale are properly administered. Berwitz & DiTata LLP can help. Here are some tips to keep in mind when a decision is made to sell a home that is titled in an irrevocable trust.

First and foremost, even before you call a realtor, know your trust. Be prepared to strictly adhere to its terms. If you are unsure of what you are looking at, get help. Here's why: mistakes are not only costly to correct but may be uncorrectable. You created the trust to protect the assets; a mistake may completely un-

dermine your goals. We like to say that Medicaid qualifying irrevocable trusts are like Humpty Dumpty, once broken, they can never be fixed.

Learn from Smart Client. Some years ago, she had implemented an irrevocable, asset-protection trust for Medicaid planning purposes. The trust owned a remainder interest in her home and she owned a life estate. Her sons are the trustees. Smart Client has lived alone since the death of her spouse and she finds the home hard to maintain. Together, she and her sons decided to sell the home. They called our firm and we reminded them of the terms of their trust and explained the importance of complying with the trust obligations *to the letter*. We suggested that she bring this to the attention of her realtor and real estate attorney and we offered to answer their questions. Smart Client and her trustees used the proceeds of the sale of her home to purchase a condominium apartment *in the trust* and, because Smart Client had her professional advisors working together, the Medicaid protection that she had anticipated when she established the trust was preserved and will be accorded to her replacement home.

Ultimately, your realtor and real estate attorney must be apprised that they actually have two clients: you, the life estate holder, and the trustee, the holder of the remainder interest. This will help them understand that they may be apportioning the closing costs and legal fees - because the trust requires it. Berwitz & DiTata LLP is poised to calculate life estate values and advise the realtor and real estate attorney on the apportionment of fees, costs

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home care. However, the 2020 budget changed that dramatically. Applications for home care benefits will have to be accompanied by thirty months of financial records. But for the pandemic, as of October 2020, a thirty-month look back period will identify “uncompensated transfers” during the period and cause the applicant to be responsible for the cost of his or her care. For example, the purchase of a car for \$40,000 would not disqualify one from receiving home care because something of equivalent value was received in return for money - the car. However, if one gives a gift in that same sum, \$40,000, because nothing was received in return, Medicaid will penalize the transferor and deny home care benefits for a period of time commensurate with the value of the gift once the new rules are enforced.

Another change made in the 2020 budget is the level of care an applicant requires before he or she is eligible for Medicaid. Previously, to be eligible, an applicant needed to be unable to perform two of six activities



of daily living: eating, bathing, dressing, transferring, toileting, and ambulating. Under the new rules, unless the applicant is suffering from dementia, eligibility is based on the inability to perform *three* of the six activities of daily living. This change will become effective this month.

In 2022, an applicant for home or nursing care Medicaid benefits is ineligible if their available resources are worth more than \$16,800. Additionally, a home care applicant is only able to retain income of \$934 a month. Excess income must be used to pay for care before Medicaid ben-

efits are available unless the Medicaid recipient employs certain strategies to protect the excess income. The 2022 budget which was recently passed by the legislature does not become effective until 2023. Under this new budget, in 2023, the income allowance will increase to \$1,563 and the resource allowance has almost doubled to \$28,134! This will not only enable an applicant to retain more income and resources, but it will also impact the length of the penalty period imposed for uncompensated transfers made during the look back period.

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appointment of a guardian should be a key factor in estate planning. Those documents that were created when the kids were small may no longer reflect their parents' wishes now that the kids have grown and flown. Indeed, once your child reaches the age of 18, he or she

should have a valid and enforceable Health Care Proxy empowering you or another to make health care decisions. The “sandwich generation” is discovering that the joy and responsibility of raising children is all too frequently overshadowed by the illness of parents. The need for estate planning takes on new meaning as one approaches retirement and, if illness threatens, timing becomes more critical. Lifetime changes affect estate planning. Even if you can't conceive that the changes in your life may

have an impact on your estate planning documents, an estate planning review is a vital element to ensuring that your wishes will be accomplished.

Because Berwitz & DiTata LLP understands the importance of keeping the plan current, we offer our clients a unique value-added component: a complimentary three-year review. For those who have not yet retained our services, there is a nominal fee to review your plan. Let us help you realize your estate planning objectives.



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and expenses to comply with the trust's terms.

Once property in an irrevocable trust is sold, the proceeds of the sale must be properly distributed. If you own a life estate, you may be entitled to some portion of the proceeds but the balance must be deposited into the trust or, more properly, an account in the name of the trust. If these amounts are not precise, you may be breaking Humpty Dumpty! Furthermore, if you are purchasing replacement property, the proceeds from the first sale must be properly handled during the transition and

the new property must be properly titled. When purchasing replacement property, if you are purchasing a life estate in the new property, your interest in the new property must also be calculated.

Lastly, if you are already receiving Medicaid benefits and your home is sold, Medicaid will need to be advised. If you were the owner of a life estate, your share of the proceeds must be disclosed. In that event, Berwitz & DiTata LLP can help you formulate a plan to preserve and protect excess resources and communicate with Medicaid on your behalf.

<sup>1</sup>For a related article on this topic, please read A Step Ahead, Volume 18, Issue 4, "Are You Contemplating the Sale of Property in a Trust?"

## 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.  
It is to provide general information only and should not be acted upon without legal and/or professional assistance.

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