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Medicaid Myths and Misconceptions

In our last issue of *A Step Ahead*, we generally addressed Medicaid planning. From time to time we discuss particular planning strategies that can be implemented in advance of the need for long-term care. Unfortunately, too often we meet with families who neglected to do planning, when the need for long-term care arose, because they mistakenly believed that it was “too late” to plan for Medicaid benefits. The reasons for this are varied. We hope that, by pointing out some of the more common errors, we can help you navigate these difficult waters.

The Five (5) Year “Look-Back” Will Disqualify a Home Care Applicant

Most families are aware that Medicaid “looks back” five (5) years to identify transfers of assets. The penalty that Medicaid imposes for uncompensated transfers, however, does not disqualify applicants from *all* Medicaid benefits. This is a widely held misconception. Very often, a loved one needs assistance with activities of daily living but is able to remain at home. Community based Medicaid covers the cost of home care. The transfer of one’s assets has no affect on one’s eligibility for

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Berwitz & DiTata LLP Implements “Young Families Program”

Estate planning is important for all adults. Our priorities change as we age, if we marry, if we have children or pets or aging parents, if we have loved ones with disabilities and, of course, when we retire. But an estate plan is something that each of us should have.

Younger individuals and/or newly married couples frequently find it hard to focus on estate planning. They have many responsibilities: jobs, family, friends, continuing education, career building. They may postpone estate planning believing that there will be time for that “later.” Unfortunately, for some, later doesn’t come.

Estate planning may be the last thing on the mind of a newly expectant parent, one with young children or “four-



legged children,” but what would happen if they suffered an accident or illness and were no longer able to care for those they love? The only way to

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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 com-

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this program. The error is to delay in meeting with us as soon as the need for help at home is identified. We can assist in the protection of assets that can be used for a healthy spouse or preserved for the family.



Once the Crisis Strikes, It's Too Late for Medicaid Planning - Clients have come to us with the erroneous belief that it is too late to do Medicaid planning. This has caused families to expend many thousands of dollars on care that could have been paid for by Medicaid. In fact, it is only too late to do Medicaid planning when there are no remaining assets to protect. As indicated above, for home care, there is no penalty associated with transferring assets, regardless of when the transfer occurs. Even after placement in a nursing home, a significant portion of one's assets can be protected. Typically, between 40 and 60% of a person's assets can be insulated and preserved. However, each month of delay reduces the assets that we can protect. While the best results from asset protection planning are obtainable when Medicaid planning begins

before the need arises, assets can still be protected even after placement in a nursing home.

Revocable Trusts Protect Assets for Medicaid - Many people are mistaken in believing that assets in a revocable trust are protected for Medicaid purposes. This is false. In determining Medicaid eligibility, assets in a revocable trust are considered "available." A revocable trust is designed to afford its creator complete access to the funds in the trust. If the creator is able to access trust assets, Medicaid will require that those assets be utilized to pay for care. A trust must be irrevocable and provide the creator with no right to benefit from the trust principal in order to protect the trust assets and render them "unavailable" to Medicaid. However, the implementation of an irrevocable trust that complies with Medicaid's requirements is not something that should be attempted without the guidance of an attorney who is familiar with Medicaid's rules. There is no "one-size-fits-all" when it comes to Medicaid planning. It is necessary to identify the assets, establish their value and gauge the income of the prospective Medicaid applicant before embarking on a plan. The goal is to ensure that care can be afforded during any penalty period caused by the funding of the irrevocable trust. Again, the sooner the better! Seeking legal assistance as early as possible maximizes the protection afforded by an irrevocable trust.

The Value of My Retirement Account Will Disqualify Me - The impact of a qualified retirement account, such as an IRA or 401K, is typically misunderstood. A retirement account owned by a prospective applicant is exempt and will not be considered in determining the owner's *eligibility* for benefits provided it is in "pay-out" status,

meaning that the applicant is withdrawing at least the required minimum distribution each year. Thus, an exempt retirement account will not interfere with Medicaid benefits regardless of its value, \$5,000 or \$500,000! It is important to note, however, that while the value of the account is exempt, the income the applicant receives from it is not. Once again, we caution you to consult with attorneys who are familiar with Medicaid planning before implementing any planning.

The House is an Exempt Resource - Do not be fooled. There are significant pitfalls. First, only homes that are valued at under \$840,000 are exempt. If the house is worth more, it is a countable resource - all of it, not just the value in excess of \$840,000. Secondly, if the applicant is in a nursing home, the house is only an exempt resource if he or she intends to return home to live. If returning home is an impossibility or the house is placed on the market or sold, the house is a countable resource. Finally, if the applicant owns a home and is approved for Medicaid community care, the house is only exempt while he or she is living in it. It loses its exempt status if the Medicaid recipient moves to a nursing home and, once the Medicaid recipient dies, Medicaid may seek reimbursement, in the form of "estate recovery," against the value of the house for the payments it has made on behalf of the Medicaid recipient.

Medicaid rules are complex and can be contradictory. It is important to start Medicaid planning early. But remember, as long as there are assets to protect, it is not too late to begin. Schedule an appointment with us at the earliest possible time and we will help you protect as much of your estate as possible.

Berwitz & DiTata LLP Implements “Young Families Program”

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ensure that your minor children are raised by the person whom you have selected is to designate a guardian in your last will and testament. Doing it the right way prevents litigation, guardianship proceedings and disagreements among family members. The most important thing for a child who has lost both parents is consistent care from the remaining family, not dissension, disagreement and custody battles. For those with “four-legged children,” planning is just as impor-

tant. If you are in an accident or hospitalized, who has the right to enter your home and care for your pet? If you aren't coming home, what happens? Proper planning is the key.

Berwitz & DiTata LLP is proud to announce our “Young Families Program.” The program is designed to help young individuals accomplish the goal of implementing an estate plan - to protect themselves and their families. We offer traditional estate planning at a significantly reduced rate.

As part of the “Young Families Program” those individuals who qualify will receive the essential estate planning documents: last will and testaments, powers of attorney, health care proxies and living wills. As part of the program we also offer a “Pet-Package” that ensures the protection of your pets and designates an individual with the legal authority to care for them and carry out your wishes.

At Berwitz & DiTata LLP we practice preventative planning for individuals of all ages. If you or a loved one might be eligible for our “Young Families Program” please give our office a call to schedule an appointment for a consultation.

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municate 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 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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Berwitz & DiTata LLP Welcomes Kristi

Berwitz & DiTata LLP welcomes associate attorney Kristi L. DiPaolo to the firm. After earning a bachelor's degree in Criminal Justice from SUNY Brockport, Kristi obtained her law degree from Touro College Jacob D. Fuchsberg Law Center. During law school, Kristi was the Research Editor of the *Journal of Race, Gender and Ethnicity* and participated in the Not-for-Profit Corporation Law Clinic where she assisted individuals with the creation of corporations on a pro-bono basis. She also had the opportunity to work as counsel for a firm that serviced school districts, colleges and other municipal and private clients. Kristi practices in the

areas of estate planning, estate administration and elder law. Kristi is admitted to practice law in the State of New York and is a member of the Nassau County, Suffolk County and New York State Bar Associations. Outside of work, she enjoys traveling and spending time with her husband and dogs.



Kristi L. DiPaolo

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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