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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, as a legacy for their children or to ensure that a healthy spouse would be financially able to remain in the community, 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.

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.