ELDERLAW NEWS
New Jersey ®
Legal News For Older Americans April 2000

Recent Changes in the Social Security, SSI and Medicaid Laws

I. INTRODUCTION.

There have been several significant changes to the Social Security, SSI and Medicaid Laws in the recent past which are important for recipients and others to understand.

II. CONGRESS ELIMINATES THE SSA RETIREMENT EARNINGS TEST.

Background. The Social Security Act (SSA) of 1935 set the minimum age for receiving full retirement benefits at age 65. In 1983, Congress passed amendments which phased in a gradual increase in the age for collecting full Social Security retirement benefits. The retirement age will increase from 65 to 67 over a 22 year period. Persons born after 1959 must attain age 67 before they attain normal retirement age and can collect full retirement benefits.

Earnings Test. In March 2000, Congress unanimously passed the "Senior Citizens' Freedom to Work Act of 2000". The bill would wholly eliminate the Social Security retirement earnings test beginning in the month in which a person attains normal retirement age. The President said he would sign the bill.

Under existing law, Social Security recipients under age 65 who have earnings in excess of the annual "exempt amount" ($9,600 in 1999 for those under age 65 and adjusted annually) are subject to a $1 deduction from benefits for each $2 earned over the exempt amount. Beneficiaries aged 65 through 69 who have earnings in excess of the exempt amount ($15,500 in 1999 for those aged 65 through 69 and adjusted annually) are subject to a $1 deduction for each $3 earned over the exempt amount. Social Security benefits are not affected by earned income after a person reaches age 70 under existing law. It is estimated that, when enacted, the new law will affect 800,000 workers aged 65 to 69.

UPCOMING WORKSHOPS: ***How To Protect Your Estate From Catastrophic Nursing Home Costs.***

FREE Hands-On Workshops are scheduled to show you how to protect your estate against catastrophic nursing home costs. Attendees will receive a free 50 page booklet covering legal issues. Free Parking-Refreshments Served. Limited Seating-Advanced Registration Required. Call 908-232-7400 or 908-580-0400.

DATE	LOCATION	TIME
June 7, 2000	Clark Library	1:30 pm to 3:00 pm 7:00 pm to 8:30 pm
June 12, 2000	Municipal Bldg, Westfield	10:00 to 12:00 noon

QUESTIONS? CALL CERTIFIED ELDER LAW ATTORNEYS FOR ANSWERS.

Questions about protecting your assets against catastrophic illness and nursing home costs, Estate Planning and Administration, Social Security, Medicare, Medicaid, Nursing Home Litigation, Retirement or Disability Planning?

Call or write: Donald D. Vanarelli, Esq., Certified Elder Law Attorney and former Social Security Claims Representative.

Mr. Vanarelli is available to speak before your social or educational group on retirement, estate planning or elder law issues. He can also meet with your employees at your work-site

A PUBLICATION OF

THE LAW OFFICES OF DONALD VANARELLI
The Legal Centre
211 North Avenue E.
Westfield, NJ 07090
Tel: (908) 232-7400
Fax: (908) 232-7214

Other Conference Locations Available

CAREFUL PLANNING MAKES A DIFFERENCE

III. CONGRESS TOUGHENS SSI ASSET RULES.

In December 1999, the President signed legislation that imposes harsh new asset standards on those seeking to qualify for Supplemental Security Income (SSI).

First, the legislation reinstates the transfer of asset penalty that Congress eliminated in 1988. The penalty is similar to Medicaid's in that assets transferred for less than fair market value within the 36 months prior to the date of the SSI application are subject to penalty. The length of the penalty is the uncompensated value of the transfer divided by the SSI federal benefit rate and the SSI state supplement. There are certain exceptions to the rules which are also similar to Medicaid's, such as transfers to a special needs trust for a disabled person.

Second, all trusts established on or after January 1, 2000 will be counted as a resource regardless of whether they are revocable, irrevocable, the purpose for which they are established, the discretion of the trustees, or any restrictions on distributions. Again, there are certain exceptions that are similar to Medicaid's.

Third, the bill contains strict new provisions on collections of SSI overpayments. Social Security is now required to recover outstanding overpayments from SSI lump sum payments by offsetting at least 50% of the lump sum or the amount of the overpayment, whichever is less.

IV. HCFA AUTHORIZES ESTATE RECOVERY AGAINST ANNUITIES.

Purchase of an annuity is a common estate and Medicaid planning technique. For Medicaid purposes, the purchase of an annuity by an elderly person, with the balance of the payments going to a designated beneficiary upon the policyholder's death, does not result in a transfer of asset penalty if the policyholder is or becomes a nursing home resident.

However, the Health Care Financing Administration (HCFA), the agency that administers Medicaid, has ruled that any state has the option to recover Medicaid expenditures for a deceased annuity policyholder from the surviving beneficiary of the annuity. To do so, a state must amend its probate law to include annuities within the definition of an "estate" subject to Medicaid estate recovery. Most states do not presently include annuities within the definition of "estate" under their probate code.

V. QUICK SUMMARY OF THE NEW JERSEY INHERITANCE TAX SYSTEM.

Like the federal government, New Jersey imposes a tax on decedent's estates, called an inheritance tax. The amount of inheritance taxes due to the State of New Jersey is determined based not solely upon the size of the estate, as is the federal estate tax system, but upon the relationship of the beneficiary to the decedent. "Class A" beneficiaries, such as the surviving spouse, parents, children and others, pay no inheritance taxes. "Class C" beneficiaries, such as brother and sisters of the decedent, the wife or widow of a son of a decedent, etc. are taxed at rates which increase from 11% to 16% depending on the size of the estate. There is no tax paid on the first $25,000.00 inherited by Class "C" beneficiaries.

In This Issue...	RECENT CHANGES IN THE SOCIAL SECURITY, SSI AND MEDICAID LAWS UPCOMING WORKSHOPS: HOW TO PROTECT YOUR ESTATE FROM CATASTROPHIC NURSING HOME COSTS

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LAW OFFICES OF
DONALD D. VANARELLI
The Legal Centre
211 North Avenue East
Westfield, NJ 07090

Mailing Address