ELDERLAW NEWS

Volume 1, Issue 1 April 1996

STOP GUESSING!!

Questions about protecting your assets against catastrophic illness and nursing home costs?
Social Security, Medicare?
Medicaid Planning?
Nursing Home issues?
Estate Planning?
Guardianships?
Probate?

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Answers in upcoming editions of the Elderlaw News.

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CAREFUL
PLANNING
MAKES
A
DIFFERENCE

Medicaid Planning: Advance Planning for Transfers of Non-Exempt Resources is Critical for Medicaid Eligibility.

Upon submitting a Medicaid application, the Medicaid authorities must determine whether the applicant, or his or her spouse, previously disposed of assets for less than fair market value. Tax returns, savings and checking accounts and other documents are examined for the 3 year period prior to the date of the Medicaid application, called the "lookback period". (If a trust is involved, the lookback period may be extended to 5 years) If any assets were transferred during the lookback period, the type of asset transferred is examined to determine whether it is "countable" or "exempt". All assets are counted in determining Medicaid eligibility, except for exempt assets such as a home and lot, an automobile (if necessary for work, medical treatment or worth under $4,500), personal effects (if worth under $2,000), life insurance (if term insurance or if total face value is under $1,500), certain income-producing property, inaccessible

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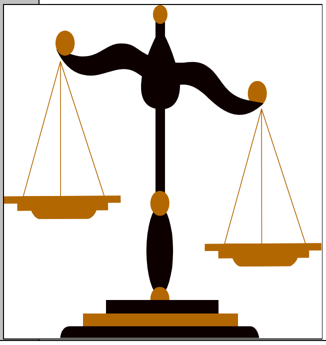

Elder law attorneys focus on the legal needs of the elderly, and work with a variety of legal tools and techniques to meet the goals and objectives of the older client.

Estate Planning Strategies: Use the "Split-Gift Technique" to Double Your Annual Gift Tax Exclusion.

This is the first in a series of estate planning strategies for your consideration. A donor may gift up to $10,000 free from federal gift and income tax to any number of persons every year. However, if the donor is married and the spouse would like to participate in gifting, each donee can receive $20,000 annually free from gift and income tax to the donors. This is called the split-gift technique. For IRS purposes, it is prudent to

Estate Planning for Parents of Mentally Ill Children.

To ensure that the disabled child will continue to enjoy the same comfortable standard of living after the death of parents that he or she presently enjoys, parents should do the following:

1. Write a Letter of Intent to give future care providers insight into your disabled child and express your hopes and desires for the future care of your child;
2. Select a Guardian, Conservator or Advocate;
3. Prepare a Special Needs Trust to provide maximum supplemental benefits and manage financial resources while protecting governmental needs-based benefits (i.e., SSI, Medicaid);
4. Select a combination of resources that will guarantee adequate funds for your disabled child's lifetime, such as insurance, savings, investments, etc, and change the ownership of each asset to the Special Needs Trust;
5. Select a Trustee and successors to manage the Special Needs Trust;
6. Prepare Last Wills and Testaments excluding your disabled child from receiving any portion of your estate which may cause the child to lose governmental benefits;
7. Remove the disabled child as the beneficiary from all of the parents' financial programs;
8. Hold a meeting with the Guardian, Trustees and siblings to review the estate plan;
9. Place all estate planning documents in a safe place; review and modify as needed; and
10. Relax- Everything has been done to meet the future needs of your disabled child.

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Elderlaw on the World Wide Web.

A great deal of valuable and interesting information is available for free on the internet in the areas of Elderlaw and Medicaid planning. A recent search of the World Wide Web, one portion of the internet, revealed more than 8,000 web pages containing the words "elderlaw" and "medicaid". Two web pages of particular interest are: the web page for the Health Care Financing Agency ("HCFA"), located at http://www.hcfa.gov. HCFA is the federal agency charged with administering the Medicare and Medicaid programs. The other web page of note is published by the Social Security Administration and contains the Social Security handbook, available online in hypertext format, at http://www.ssa.gov.

New Jersey Broadens Medicaid Estate Recovery Provisions.

New Jersey has enacted a bill that broadens the definition of a Medicaid recipient's "estate" from which the government can recover benefits after the recipient's death. The new law, N.J. Senate Bill S2437, defines an estate to include all real and personal property and other assets included in the Medicaid recipient's estate under N.J. law, as well as all assets in which the recipient had any legal title or interest at the time of death which are conveyed to an heir, survivor or assignee through joint tenancy, tenancy in common, survivorship, life estate, living trust or other similar arrangement. The law also permits the state to recover Medicaid payments to recipents who are 55 years of age and older, and eliminates the dollar threshold requirements for Medicaid recovery.

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Medicaid Planning *(Continued from page 1)*

resources, such as irrevocable trust funds and property in probate, and burial spaces and burial funds. If an exempt asset is transferred , the transfer is ignored in determining Medicaid eligibility. However, if a countable asset is transferred during the lookback period for less than fair market value, a period of Medicaid ineligibility will ensue, called the "penalty period". The penalty period is calculated by dividing the uncompensated value of the transferred asset by the statewide monthly average cost for a semi-private room in Medicaid-certified facilities, currently $3,376 in NJ. For example, if Mr. Smith makes an uncompensated transfer (i.e., a gift) of $50,000 to his children in April 1996, then enters a nursing home and applies for Medicaid in May 1996, he will be ineligible for Medicaid for 14 months beginning on April 1st. The penalty period is calculated as follows: $50,000 ÷ $3,376= 14.81, rounded to 14 months. Under federal law, there is no limit on the length of the penalty period. Therefore, absent careful consideration of the timing and amount of transfers, an individual can be faced with an unlimited period of ineligibility for Medicaid.

> ***"[A]bsent careful consideration of the timing and amount of transfers, an individual can be faced with an unlimited period of ineligibility for Medicaid."***

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