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NEW REGULATIONS SIMPLIFY MINIMUM DISTRIBUTION RULES FOR RETIREMENT BENEFITS

The IRS issued new rules in 2001 that make sweeping changes to the rules for minimum distributions from IRAs and qualified retirement plans. Surprisingly, the changes are almost all good: calculating distributions under the new rules is much simpler, smaller minimum distributions are required during the owner's life, greater flexibility in naming beneficiaries is permitted, and tax savings result from the changes. The proposed effective date for the new rules is 1/1/02. However, IRA owners may use the new rules for calendar year 2001 if they are more favorable than the existing rules.

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Required Beginning Date

The new regulations do not change the determination of the required beginning date (RBD). Therefore, for most account owners, the RBD is the April 1st following the calendar year in which the owner reaches age 70½.

Required Distributions During the Owner's Lifetime

The single most dramatic change for most account owners is that the pace of their annual Required Minimum Distributions (RMD) is now determined under a uniform distribution table contained in the new rules. The only exception involves owners whose designated beneficiary is the owner's spouse, and the spouse is more

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NEW MEDICAID REGULATIONS CHANGE HOW YOU PLAN FOR CATASTROPHIC NURSING HOME COSTS

On June 18, 2001, New Jersey's Division of Medical Assistance and Health Services issued new Medicaid regulations. The new regulations substantially changed the old law in the areas of asset transfers and the treatment of trusts. As a result, existing planning techniques must be changed and new techniques developed to address the new laws.

Financing Nursing Home Care in New Jersey

In New Jersey, there are five ways to finance the cost of long-term care: Medicare, Veteran's Administration (VA) benefits, long-term care insurance, private pay and Medicaid. Medicare's nursing home benefit is very limited: it covers nursing home care only after a hospital stay of at least three (3) days, the benefit only covers 100 days of care, and only rehabilitation services are covered. Residents of nursing homes generally require custodial care, which is not covered by Medicare. VA benefits are available only to a very small percentage of the people who need nursing home care, typically less than 4%. Long-term care insurance cannot be purchased once disabilities arise. Thus, most people rely on personal savings to private pay for nursing home care. Since the cost of a stay in a New Jersey nursing home can range between $75,000 and $90,000 per year, most people spend all of their savings paying for care in a short time. When all assets have been spent on care, nursing home residents are forced to turn to Medicaid.

Medicaid Eligibility

Medicaid is a program jointly funded by the federal government and the State of New Jersey. In New Jersey (and in most other states),

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than 10 years younger than the owner; they will continue to use a distribution schedule based upon their ages.

The uniform distribution table follows:

Table for Determining Applicable Divisor

Age	Applicable Divisor	Age	Applicable Divisor	Age	Applicable Divisor
70	26.2	86	13.1	102	5.0
71	25.3	87	12.4	103	4.7
72	24.4	88	11.8	104	4.4
73	23.5	89	11.1	105	4.1
74	22.7	90	10.5	106	3.8
75	21.8	91	9.9	107	3.6
76	20.9	92	9.4	108	3.3
77	20.1	93	8.8	109	3.1
78	19.2	94	8.3	110	2.8
79	18.4	95	7.8	111	2.6
80	17.6	96	7.3	112	2.4
81	16.8	97	6.9	113	2.2
82	16.0	98	6.5	114	2.0
83	15.3	99	6.1	115+	1.8
84	14.5	100	5.7		
85	13.8	101	5.3		

Under the new rules, commencing with the RBD an owner's required minimum distribution each year is determined by dividing the value of the IRA or plan benefit as of the preceding calendar year end by the applicable divisor as obtained from the table. For example, assume that John turns 73 in 2002. The applicable divisor for age 73 in the above table is 23.5. Assume that the value of John's IRA on December 31, 2001 was $450,000. Divide $450,000 by 23.5; the result ($19,149) is John's minimum required distribution for 2002 for that IRA. Calculating the RMD is that easy under the new rules!

Reporting Requirements

Custodians of IRAs have additional responsibilities under the new rules. Each year, custodians must report to the IRS and to the IRA owner the amount that had to be distributed from the IRA for the calendar year. This is a major change because, under the old rules, IRA custodians were not required to perform these calculations for owners.

Distributions After the Owner's Death

A. Before the RBD

If the owner dies before the RBD and has identified a designated beneficiary, distributions may be made over the designated beneficiary's life expectancy determined in the year following the year of the owner's death, reduced by one year for each year thereafter. However, if the spouse is the sole designated beneficiary, the distributions do not have to commence until the owner would have attained age 70½. Once the distributions commence, they can be made over the spouse's life expectancy determined each year while the spouse is alive. Once the spouse dies, the distribution period is the spouse's life expectancy in the year of death, reduced by one year for each subsequent year. If the owner did not have a designated beneficiary, the IRA or plan benefits must be distributed by the end of the 5th year following the year of death.

B. After the RBD

Generally, the rules that apply when the owner dies after the RBD are the same as the rules that apply when the owner dies before the RBD. One exception is when the owner dies after the RBD without a designated beneficiary. In that case, the distribution period is the owner's remaining life expectancy, determined in the year of death, reduced by one year for each year thereafter.

Choosing a Designated Beneficiary

In the past, the designated beneficiary could not be changed after the RBD. As a result, the distribution pattern based on the age of the designated beneficiary was locked in at the death of the account owner. The lack of any opportunity to change the beneficiary often led to the imposition of a large income tax burden on the designated beneficiary. This obstacle is eliminated under the new rules. Now, the final identification of a designated beneficiary does not have to be made until December 31st of the year following the year of the owner's death. In fact, the executor of the owner's estate can name a designated beneficiary as long as one was originally named by the owner. Thus, financially secure sons and daughters of the account owner can decline the retirement benefits in favor of the owner's grandchildren, thereby slowing the distributions.

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Conclusion

Although the new rules are still very detailed, they are simpler now than they were, so seniors should have an easier time planning for their retirement distributions.

Account owners who take the new lower required minimum distributions may have substantially larger balances in their plans or IRAs at death than they would have had under the old rules. The retirement funds may subject their estate to larger estate taxes, and the beneficiaries will be required to pay income taxes on the amounts received.

Owners who leave larger balances at death must confirm the sufficiency of their liquid assets (other than IRAs or retirement plans) to pay estate taxes. If not sufficient, other estate planning techniques may be useful to provide liquidity, such as life insurance trusts and the like. ■ ■ ■ ■

NEW MEDICAID REGULATIONS CHANGE PLANNING FOR NURSING HOME COSTS

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Medicaid is the only program available to help defray the cost of long-term custodial care in a private nursing home.

In order to qualify for Medicaid, the applicant must be over 65, blind or disabled. In addition, the individual must be financially eligible, which means he or she may have only $2,000.00 in "available" liquid assets. All assets are "available" except for those that are specifically excluded. Excluded assets include: the home (if a spouse or disabled person resides there); one automobile (if the spouse needs it for work or medical care); wedding rings and engagement rings; life insurance (if the total face value does not exceed $1,500.00, or the insurance is term insurance); burial spaces and burial funds. If the individual has more than $2,000.00, he or she will have to spend-down before qualifying.

Community Spouse Resource Allowance

If the Medicaid applicant is married, a snapshot is taken of the couple's countable assets as of the first day of the first month that the spouse was institutionalized in a hospital or long-term care facility. The couple's resources are pooled together regardless of how the assets are titled. In order to protect the spouse remaining in the community, the spouse (called the Community Spouse) is entitled to a Community Spouse Resource Allowance (CSRA). The CSRA is one half of the value of the combined assets, with a maximum CSRA of $87,000.00 this year.

Minimum Monthly Maintenance Needs Allowance

In addition to the CSRA, the Community Spouse is entitled to a monthly income allowance to pay for his or her expenses. This allowance is known as the Minimum Monthly Maintenance Needs Allowance (MMMNA). As of July 1, 2001, the MMMNA amount is $1,452.00, while the excess shelter allowance increased to $436.00. The amount the Community Spouse receives is dependent upon the gross income of both spouses and on the shelter expenses of the Community Spouse. This amount is paid from the income of the institutionalized spouse.

Transfer Rules

In order to spend-down the resources to the $2,000.00 level, the Medicaid applicant may have made certain transfers. If the transfers were made and the applicant received fair market value in return, no transfer penalty results. But if the transfers were made within 36 months (60 months if transfers were made to a trust) prior to the time the applicant applies for Medicaid, and the applicant received less than fair market value (in other words, the applicant made a gift), then Medicaid will compute a penalty period. The penalty is imposed based on the uncompensated value of the non-excludable resource that was transferred, divided by the average private nursing home rate set by the State, presently $5,540.00 a month. That quotient is the penalty period, for which the applicant must find another source to pay for the nursing home costs.

However, assets may be transferred to certain persons for less than fair market value and no resulting penalty period. That is, assets may be transferred without penalty to the Community Spouse or to a child who is blind and totally and permanently disabled.

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Transfer of the Home

With regard to the principal residence, a transfer can be made without penalty as long as the home is given to: the Community Spouse; a child under 21; a blind or disabled child regardless of age; a sibling who already had an equity interest in the home prior to the transfer and who was residing in the home for at least one year immediately prior to institutionalization; or, a son or daughter who lived in the home for a period of at least 2 years immediately prior to institutionalization and who provided care to the parent, which permitted the parent to reside at home rather than in an institution. Such care must have exceeded normal personal support activities and must have been essential to the health and safety of the individual and consisted of such activities as supervision of medication, monitoring of nutritional status, and ensuring the safety of the individual. If none of the above "exempt" persons live in the home, the home may lose its exemption as the principal residence after the owner has been institutionalized for more than six months. If that happens, the Medicaid applicant must sell the home and use the proceeds to pay for care.

New Regulations

The new regulations effect several important areas, specifically look-back periods, annuities and trusts. With respect to the look-back rules, the old law stated that New Jersey would look-back 30 months to see if a gift was made within that period. The new regulations extend the look-back period to 36 months for gifts to any person, and 60 months for transfers to a trust.

Transfers (or gifts) made within the look-back period result in a penalty. In the event of multiple gifts made within the look-back period, all gifts must be *aggregated*, and the total period of ineligibility begins on the date of the first gift.

Additionally, the average monthly cost of nursing home care in New Jersey, which was set at $3,376.00 a month under the old rules, has increased to $5,540.00 a month. Because of this change, large gifts will result in a shorter penalty. The use of annuities, both private and commercial, has been severely curtailed. In particular, annuities for the Community Spouse are limited under new law to the amount of the CSRA. Furthermore, the establishment of a trust to shelter assets is treated much more restrictively than before. In general, all trusts in which a Medicaid applicant is a beneficiary are included in the spend-down no matter who sets up the trust, with limited exceptions.

Despite the changes, which appear to foreclose some planning opportunities, many techniques remain viable to help an applicant qualify for Medicaid without paying all assets to the nursing home. As New Jersey becomes more restrictive, planning for nursing home care must become more creative.

The concepts addressed above are by no means exhaustive in nature. The Medicaid laws are quite complex and are constantly changing. Care must be taken before undertaking any plan to preserve assets.

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