ELDER LAW REPORT

MARTIN PETROFF & ASSOCIATES
270 Madison Avenue, New York, NY 10016
P (212) 679-5800 • F (212) 679-5801
www.petroffelderlaw.com

Medicaid Update – The Good News

Individuals in need of home care or nursing-home care should understand that despite recent changes in the Medicaid eligibility rules, they do not have to spend down their savings or income in all instances to qualify for Medicaid services. The Deficit Reduction Act of 2005 burdens the Medicaid laws with new complexities. However, a number of valuable planning options have been left in place and they are outlined here.

Home Care & Assisted Living

Although those persons receiving Medicaid home care services are permitted to have no more than $13,800 in savings, there continues to be no penalty period for transferring assets to become eligible for the services. The Medicaid program includes home care; adult-day care; private-duty nursing; the Consumer Directed Personal Assistance Program; community managed long-term care; the Assisted Living Program and more.

Nursing Home Care

Under the old and new law an individual who transfers assets to qualify for Medicaid institutional services may incur a penalty period during which time the individual will not qualify for Medicaid coverage in a nursing home. **However, it is never too late to conserve lifetime savings.** An individual who has resources in excess of the Medicaid limits and faces immediate placement in a nursing home, or who is already a resident there, may still protect a substantial portion of his resources and ultimately qualify for Medicaid. In this instance, a legal instrument such as an annuity may be used to avoid the spending down**. Note also that there is no penalty period for Medicaid eligibility if assets are transferred to a spouse; the individual's child under age 21; a blind or disabled child of any age; or a trust established for the sole benefit of any disabled person under the age of 65.**

The Home

An individual's home – a house, cooperative or condominium apartment – is an exempt asset; that is, it is not counted by Medicaid, regardless of the value of the home, as long as the individual's spouse, child under 21, blind child or disabled child lives there. If an individual does not live with any of the above individuals, but lives in the home or is a resident of a nursing home and expresses an intent to return home, the individual's home is exempt as long as the home's value – minus any outstanding mortgage or loan on the home – is worth $750,000 or less. Medicaid may, under some circumstances, be able to impose a lien on the home or otherwise be able to recover the sale's proceeds of the property for all it spent on behalf of the Medicaid recipient. However, in some instances, this outcome may be often avoided through the use of life estates, trusts and other planning options. Note that the transfer of the home will not incur a penalty period for nursing-home eligibility if the transfer is made to a spouse; a child who is blind, disabled or under age 21; a brother or sister who has an equity interest in the house and resided there for at least one year before the individual was institutionalized; or a caretaker child who resided in the home for at least two years before the person was institutionalized and provided care to maintain the person at home.

Supplemental Needs Trusts

A disabled individual under sixty-five-years with savings in excess of the amount permitted under the Medicaid rules may transfer his own savings to a supplemental needs trust without jeopardizing his eligibility for Medicaid services in the community or in a nursing home. The money in the trust may be used to pay for luxuries and necessities. Similarly, a relative or friend may establish a supplemental needs trust and use the funds in the trust for the benefit of the disabled person of any age while that individual continues to receive Medicaid benefits in the community or in a nursing home.

Pooled Income Trusts

By participating in a pooled-income trust, disabled persons of any age who are receiving community Medicaid including home care, adult-day-care and other non-institutional services may continue to use virtually all their income to cover their living expenses. After joining the trust they will qualify for Medicaid without having to give over to Medicaid that portion of their income which is in excess of the Medicaid allowed limit of $787 per month. ■