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The Elder Law Voice

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Medicaid Update: The Evolution Of A Revolution

We have previously reported the drastic changes in Medicaid protections for senior citizens in our Spring 2006 newsletter article. Although Congress passed the law on February 1, 2006 and President Bush signed it into law on February 8, most states have encountered considerable difficulties in drafting their local rules and regulations to implement the federal law in each state. Fewer than half of the fifty states have put their new rules into effect, and North Carolina still remains one of the states which has not yet finished the process. Administrative hearings are scheduled for January 2007 to seek public comment on a part of the rules dealing with undue hardship, so the effective date of North Carolina's revised rules has been pushed back at least until February 1 and



perhaps March 1, 2007.

When the new rules do go into effect, drastic changes will occur. All changes are to the disadvantage of senior citizens and their families who may want to preserve some of the assets accumulated over a lifetime from

being paid for nursing home care. Neither the very poor nor the quite wealthy will be much concerned about these changes. This is because the very poor may readily qualify for long-term care assistance, and the wealthy may never qualify for assistance yet still be able to afford the cost of whatever care they may need. However, for middle-income families, these new rules can have a dramatic impact.

The first change, and the easiest to understand, is that the Medicaid look back period increases from three years to five years. When a person makes application for Medicaid benefits, under the current law, Medicaid looks back a period of three years from the application date and then requires a disclosure of all assets transferred out by gift for the three-year period preceding the applica-

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tion date. North Carolina Medicaid penalties are applied if more than \$4,800 has been gifted out. This means that for every \$4,800 transferred by gift, there is a period of one month of Medicaid ineligibility. Therefore, if a Medicaid applicant had made gifts of \$9,600, a sanction penalty of two months of Medicaid ineligibility will be assessed. Under the new rules, Medicaid will look back five years to capture all gifts made during that period. The transition from three years to five years is expected to be phased in over a two-year period.

However, the biggest difference between the current rules and the new rules is **when** the sanctions for gift transfers will be imposed. **Under current Medicaid law**, sanctions on gifting begin to occur when the gift is made. For example, if a \$9,600 gift had been made in July of 2006, the sanction clock on that gift would have started in July 2006 and at the end of August 2006 the two-month sanction

for that gift would have elapsed. If the gift giver had applied for Medicaid in July or August, they would have been ineligible. However, if the person applied for Medicaid in September, no sanction would be imposed and the funds gifted in July would be protected from Medicaid spend down requirements. Consequently, under current Medicaid rules, strategic gifting in advance of long-term care assistance needs can result in protecting real property, CDs, bank accounts, stocks, mutual funds, and other valuable assets from Medicaid spend down requirements.

Under the new law to take effect this spring, the sanction rules are changed so that sanctions on transfers do not start when the gifts are made. Under the new rules, the person applying for long-term care benefits must first have spent their countable assets down to

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less than the \$2,000 limit allowed by Medicaid. The Department of Social Services will then look back for a five-year period and add up all gifts transferred out during that time. Then, the sanction penalties will be assessed to make the nursing home resident ineligible for Medicaid at the rate of one month of ineligibility for every \$4,800 gifted out. The sanctions will not have run on \$4,800 gifts made years earlier, but **will be imposed to deny benefits prospectively once a Medicaid application has been filed.**

Another rule change will impose Medicaid penalty sanctions for partial months instead of rounding down to the nearest whole number as is currently the case – thus, a 3.72 month sanction will create about three months and three weeks of Medicaid ineligibility rather than only three months.

Exempt equity in the homeplace will be limited to \$500,000 and Medicaid exempt annuities will require that North Carolina be named as a contingent beneficiary to the extent of the Medicaid lien that has accrued. Deposits with a continuing care retirement community may also be counted as a disqualifying resource.

Even with these changes, our knowledgeable elder law attorneys will be able to offer meaningful planning strategies to families with foresight who are planning ahead against the contingency of long-term care needs as well as for families who suddenly find themselves in crisis from an aging member suffering a stroke, a broken hip, or rapidly accelerating dementia. So we at Booth Harrington & Johns LLP look forward to assisting families with these planning complexities as that task becomes increasingly challenging.

- Jack Harrington

Changes in Notary Public Requirements

Over the past year, there have been significant changes in the Notary Public laws. You may have noticed some changes when you have signed documents before a Notary Public. One particular change requires the Notary to verify the identification of a person signing a document with whom the Notary is not personally acquainted. Our policy is to verify the identification of everyone through presentation of a valid identification, such as a driver's license or identification card issued by the Department of Motor Vehicles or a Passport.

Some of our legal documents, like wills and healthcare powers of attorney, require witness signatures to be valid. Another change in Notary Public laws now requires that the Notary and the witnesses judge the understanding and willingness of the individual signing the document. Therefore, do not be surprised if a Notary or the witnesses to your signature ask you questions to confirm their observations.

Finally, it has been forecast that future laws will require each Notary Public to keep a journal of the documents he or she has nota-



rized. We are asking our Notaries to do this now, and have provided each with a journal to document their notarial acts. Do not be surprised! You may be asked by a Notary in our office to sign in their journal for their documentation purposes.

- Beverly Eckard

Gift Tax Reminder

In the course of our work performed for your family in 2006, we may have recommended gifting of assets to loved ones. We try in our correspondence and conversations to help you, the attorney-in-fact and family, understand the consequences of gifting assets. One of the potential consequences is gift tax payable by the person making the gift. Our plans recommend gifting assets in a manner that mitigates gift tax due, but due to the size of some gifts or the number of people available to receive gifts, sometimes it is not possible to reduce or elimi-



nate the need to pay gift tax in the future.

There is no gift tax on a transfer from one spouse to another. However, we remind you that if anyone has made gifts to another person (not their spouse) totaling greater than \$12,000 in 2006, then the gift giver needs to file a gift tax return by April 15, 2007. Please seek the assistance of your tax preparer or Certified Public Accountant for the preparation of this return. We will assist your tax advisor in any way possible to make sure this return is complete and accurate for the gifting we recommended during the year.

- Beverly Eckard

New Faces at Booth Harrington and Johns

We want to introduce you to the newest additions to our staff roster.

Hannah V. Averitt joined BH and J as an associate attorney. Hannah was born in Baltimore and spent her childhood in Omaha, NE and Birmingham, AL. She graduated



Hannah V. Averitt

at Vanderbilt University (BS, 2000) in a short three years with a double major in psychology and child development and a cum laude on the diploma. Hannah attended the University of Alabama for her JD Degree, graduating in May of 2005 and was the Editor-in-Chief of the Law and Psychology Review. With husband James (Jay) Averitt – also an attorney in corporate law at Nexsen Pruet Adams Kleemeier in Greensboro – Hannah settled in Greensboro and joined our firm in August. In addition to becoming an old hand at taking bar exams (three in the last year for qualifications in Alabama, Georgia and North Carolina), Hannah spends her free time as a member of the Junior League, loves to bake and is an accomplished singer. Hannah is ramping up in the practice of Special Needs Trusts, Guardianship and Asset Preservation for our firm – areas of practice that will have long-term positive results for the clients we serve.

Lucy D. Stiefel is the most recent addition to our crew of paralegals - joining us in August as well. Born and raised in Greensboro, Lucy attended Duke University and graduated with honors in 1991. From Duke, Lucy completed her paralegal training in Atlanta, GA at the Lawyer's Assistant Program of the National Center for Paralegal Training - finishing at the top of her class. She practiced in New Jersey, Missouri and Sydney, Australia. A devoted Duke basket-

ball fan, Lucy also is a avid reader, loves to cook and bake and to keep the caloric balance in place does yoga and rollerblading. Like a number of our other staff members, Lucy is also a cat lover



Lucy D. Stiefel

and human caretaker to her furry pals Wynston and Chloe She brings her considerable talents and experience to our firm as an Elder Law paralegal.

Our most recent staff member joined us in November of this year. **Melissa F. Roberts** is another native North Carolinian from King, NC. She now lives in Whitsett with her husband Mike, who is a former Marine and is currently a Quality Control Analyst with Argos Therapeutics. Melissa has two children – Lauren, who is attending Tidewater Community College in Virginia (and, rumor has it, was recently engaged) and Jonathan who is a junior in high school. Melissa has a Business Management Degree from Forsyth

Technical Community College. Her greatest joy is spending time with her family but counts a m o n g her other passions cooking, traveling, boating and photography. Melissa is an active supporter of the Stokes County Little League and a member of the Stokes County Athletic Boosters Club. She is an Administrative Assistant with Booth Harrington and Johns and spends most of her time with courthouse filings, bank runs, closing files and supporting our Firm Administrator, Karen McLaughlin.



Melissa F. Roberts