



# The Polner Abrahams REPORT

Insights for Intelligent Estate, Special Needs & Elder Law Planning

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Courtesy of The Law Office of Beth Polner Abrahams

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## Ready for Medicaid Changes?

### Expected Medicaid Changes Will Alter Senior and Disabled Planning Options

The new fiscal year budget passed by New York Governor Andrew Cuomo and the NYS Legislature on April 1, 2011, included sweeping proposals for changes to Medicaid. Because many of these changes dramatically alter the federally approved plan all states must submit to receive federal funds as part of services cost sharing (with county and state), they must be approved by the federal government. It comes as no surprise that cost saving measures affecting advance planning are now under review. This effort is expected to produce regulations that will enable the state to implement those law changes.

As a reader of my newsletter, you already know that spousal refusal will remain legal in NY State for nursing home and home care. Spousal refusal permits a couple to 'divide' their countable assets into two pots: one owned by the Medicaid applicant, and the other owned by the non-applying spouse.

The state has now asked the federal government to expand 'estate recovery' as broader than a Surrogate estate matter ('probate' if the applicant or their spouse die with a will; 'administration/intestacy' if

there is no will). Recovery is expected to be broadened to cover 'testamentary substitutes' such as revocable living trusts, jointly owned financial accounts, life insurance with designated beneficiaries, and, most troubling, real property subject to a life estate.

Since 1993, seniors have legally transferred their homes (or other real estate) to adult family members, and retained a life estate in the real property as a simple and often less expensive form of asset preservation or Medicaid planning. If the transfer is the

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[www.bpaSNTLaw.com](http://www.bpaSNTLaw.com)

Review of books for families of special needs children:

<http://BethsBookshelf.wordpress.com>

Law blog with new weekly articles on many topics:

<http://bpaLegalUpdateBlog.wordpress.com>

homestead, the life estate permits the senior to keep real estate tax reductions such as the Veterans exemption, STAR and senior exemption. New York State's proposal to recover against the life estate interest would permit the state to determine the value of the life estate interest based upon the value of the home and the age of the Medicaid senior on the day before the death of the senior and recover

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## Expected Medicaid Changes...Continued

that sum against the Medicaid person's estate. The regulatory proposal does not appear to carve out any exceptions to the proposed benefits recovery, even if the transfer of the home was lawful, including to a caregiver child who resided for 2 years with the parent, or to a disabled adult child.

The good news appears to be that irrevocable living trusts (Medicaid Trusts) will still be a lawful way to preserve a home or investments and cash. Some estate recovery may be enacted which permits the state to recover 'income' in the trust after the death of the Medicaid senior.

The best planning is to have a plan. If you qualify for, and can afford long term care insurance, it is important to explore this option. If you have a disabled family member, remember that there can be no recovery against a special needs trust (created during your lifetime or in your estate plan) and the trust secures their future as cuts and changes are made in the Medicaid program for persons with various disabilities.

## More News Coming Soon...

The NYS Bar Association and other legal advocacy groups are researching the constitutionality of the State's efforts to expand recovery against life estates.

If you have prepared a life estate deed with my law office, contact us to discuss your options. As more information becomes available, we will update you in my blog and newsletter.

### **SAVE THE DATE**

## **SATURDAY, NOV. 12, 2011**

Beth Polner Abrahams will speak on **Special Needs Trusts** on Saturday, Nov. 12 at East End Disability Associates (EEDA) in Riverhead, New York. This is the second lecture in the three-part EEDA series, "**Planning Ahead – What You Need To Know**".

If you are a caregiver, a person with developmental disabilities or a staff member who serves these persons, this program can benefit you. Lunch is included.

*More information: Contact EEDA via email at [info@eed-a.org](mailto:info@eed-a.org) or call EEDA at (631) 369-7345.*

### COMMUNICATIONS UPDATE

If you know someone who would benefit from this newsletter and our blog, please forward the eBlast to their email.

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