



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

Volume 7 Issue 1

Holding Your Breath? Now Exhale...

MEDICAID

The NYS Legislature and Gov. Andrew Cuomo have agreed on the fiscal year 2011/2012 state budget. Although cuts will occur in Medicaid and other programs affecting seniors and persons with disabilities, there is some cause for relief.

There is still spousal refusal for the Medicaid home care program. Gov. Cuomo proposed to eliminate *'spousal refusal'* when a Medicaid applicant applies for home care assistance. 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.

Medicaid home care program reviews all resources for a 'couple'. When their total countable resources exceed \$20,100, the applicant is not eligible for Medicaid services at home, unless the non-applying spouse submits a written statement refusing to contribute excess resources (and/or excess income, more than \$1,117/month) towards the cost of care and services. If Gov. Cuomo had been successful, many married seniors would not have access to Medicaid to pay for home care services.

Critics of the Governor's proposal had predicted that ill spouses would be placed into nursing homes if spousal refusal was eliminated from our state law for home care assistance, or that couples with long-term marriages would be forced to divorce.

Take a deep breath: Spousal refusal is still available if your spouse is applying for Medicaid's home care

program (covering personal care aides, medical model day care for persons with Alzheimer's, and other related services).

As a reminder, spousal refusal is still the law in New York if your loved one requires placement in a nursing home. My office provides a careful evaluation of all resources owned by a couple when this occurs. The evaluation includes an assessment of your 'refusing' amount and exposure for recovery as a refusing spouse, and strategies available to legally shelter excess resources.

VISIT US ONLINE

Information about our firm: www.bpaElderLaw.com and
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>

SPECIAL NEEDS PLANNING

The Governor's budget also is expected to make cuts and changes to many programs, schools and other programs affecting disabled young children (such as Early Intervention programs for pre-schoolers) and adults with developmental disabilities. Some of the cuts will reduce or limit case management services (also known as service coordination) for young adults certified into OPWDD and/or Mental Hygiene programs.

Let's go green together! View this newsletter online. To sign-up for e-newsletter alerts, send an email to Info@BPAbrahamsLaw.com with the subject line: "Yes: e-Newsletter".

If you do not sign-up, you will still receive the paper version of this newsletter.

Holding Your Breath? Now Exhale...Special Needs Programs ...*Continued*

Take a deep breath. If your child has special needs, it is important to begin planning for “after age 18” as soon as possible. In fact, age 14 is not too soon, but don’t worry if your adult child is over 18. “Special needs” is broadly defined, including developmentally disabled, physically disabled or medically complex or fragile, and disabling mental health needs.

SSI is a cash assistance program for persons age 18 and disabled – unable to perform full-time employment – or over age 65 and without a work history. The cash program, expected to continue but without COLA increases, is based upon the disabled person’s living arrangement.

Acceptance for SSI means automatic eligibility for Medicaid, but to receive specialized services you must submit a separate Medicaid application at the local Social Services Department for ‘waivered services’ such as day habilitation or supportive work programs. To qualify financially, you may not have more than \$2,000. A properly drafted Pay Back Special Needs Trust is also not a countable resource.

Students attending a college program may receive SSI. You may own an automobile worth less than \$4,500. If a specialized vehicle is needed with a wheelchair lift, there is no cap on vehicle value.

The *inherited special needs trust* (‘Escher trust’ in NY State) takes on more importance to provide for your child’s future care. In addition to naming a trustee to manage the monies after the parents’ death, it is essential to appoint guardians and successor guardian(s) if your adult child is unable to make personal decisions such as health care.

The guardian also has authority to advocate for your child when you are not there, as programming budgets change or are reduced, or programs are modified.

Pay back supplemental needs trusts for a disabled adult between age 18–65 will become critical to preserving resources greater than \$2,000, particularly if the Governor and legislature cut budgets. Pay back SNTs permit a disabled person to own more resources (and, in some cases, income) than typically permitted by SSI and Medicaid.

My office keeps you up-to-date on the NYS budget in my law blog. If you belong to a SEPTA or other support group, I will be glad to deliver my workshop, “My Disabled Child is Turning 18: Now What?”, covering government benefits, waived Medicaid programs, special needs trusts, and OPWDD programs.

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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