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KETRA A. MYTICH, LTD.

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New Medicaid Law Dramatically Changes Long-Term Care Planning

Part 6 of 10

In addition to the four major changes discussed in earlier issues, the Deficit Reduction Act of 2005 (enacted in February, 2006) further impacts Medicaid law in that it:

5. Limits the value of the Medicaid Applicant's homestead exemption

One of the benefits of homestead protection in many states has been the unavailability of the primary residence as an asset for Medicaid qualification purposes. The homestead property was exempt, regardless of its value, as long as the Medicaid applicant intended to return home (presumed in most states) or a spouse or minor/disabled child of the applicant lived in the home.

Under the new federal law, however, if the equity in the home is in excess of $500,000 the excess amount will be considered an available asset. This new provision could have a devastating impact in some parts of the country where property values have escalated greatly over the past few years.

In an effort to help limit the number of families that may be affected by the new law, the Act gives the states authority to extend the equity limitation up to $750,000. In addition, it maintains the unlimited exemption when the applicant's spouse or minor/disabled child resides in the home. The law does not, however, take into account any other vulnerable residents of the home, such as elderly siblings, grandchildren, or close friends.

6. Requiring use of the income-first rule in providing support to the Community Spouse

Under the old law, if a Community Spouse (the spouse not in the nursing home) had income below the minimum amount permitted by federal law, we could raise her income through one of two methods. The techniques became known as the "income first" and "resource first" tests. When using the "income first" technique, you simply pulled income from the nursing home spouse and gave it to the Community Spouse to raise her income to the amount permitted by Medicaid regulations. However, by using the "resource first" technique, we were able to exempt assets in excess of the $99,540 spousal asset limitation, that were necessary to produce income for the Community Spouse, up to the amount permitted by Medicaid regulations. It was not unusual to allow the Community Spouse to keep $300,000 or more in assets, while still obtaining Medicaid benefits for her spouse.

The federal law does not abolish either the "income first" or "resource first" techniques. Instead, the federal law mandates the use of the "income first" technique. If the Community Spouse can raise her income to the amount permitted by utilizing income of the nursing home spouse, then she will not be able to keep any assets in excess of the $99,540 limitation.

However, if the Community Spouse's income still does not meet the amount permitted under Medicaid regulations after full utilization of the other spouse's income, we may still be able to exempt assets in excess of the $99,540 limitation to the extent they are needed to produce income.

KETRA A. MYTICH, LTD.

We know summer is a busy time for everyone. We hope you all take the time to have some fun this summer. We truly appreciate the opportunity to enhance your client relationships.

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