

**BROOKS
&
BROOKS, LLP**



IMPORTANT ALERT!

New York State Department of Health Issues New Administrative Directive Regarding Medicaid Estate Recoveries

On September 26, 2011, Deputy Commissioner Jason H. Helgerson signed in effect 11 OHIP/ADM-8, effective as of September 8, 2011, which describes how recoveries are to be made against deceased Medicaid (MA) recipient's non-probate assets. Important points to know are as follows:

- Targeted assets - Jointly owned financial institution accounts, jointly held real property, life estate interests, interest in certain trusts and annuities, regardless of whether there is a named beneficiary or right of survivorship.
- After the death of a MA recipient, the Medicaid agency (DSS) must send a Notice of Claim to the estate fiduciary and/or to all beneficiaries on non-probate assets that are subject to recovery.
- Jointly owned bank accounts - Presumed to be owned 100% by the deceased MA recipient. Presumption is rebuttable.
- Jointly owned securities recovery to the extent of the decedent's per capita share. **Planning opportunity**
 - Have clients utilized joint securities accounts rather than joint bank accounts?
- Jointly held real property - recovery against the deceased MA recipient's interest in such property.
- Life Estate Interests - two types:

Reserved life estate created by the recipient or spouse in property that the recipient or spouse held an interest in at the time the life estate was created. Example: deed to children with reserved life use to parents.

Life estate created for the benefit of the deceased MA recipient or spouse of property in which the deceased MA recipient or spouse held any interest in within five years prior to the creation of the life estate.

Valuation - Actuarial computation based on the age of the deceased MA recipient and the fair market value of the property immediately prior to death. Uses IRS Table S, single life factors according to the most recent mortality table Table 2000 CM, and uses IRC § 7520 rates (120% of the AFR mid term rate). The ADM does not specify if the rate is annual, quarterly, semi-annual or monthly.

Brooks' Blast

The "Blast" is a one to two page blast of information designed to assist financial consultants and other attorneys with estate and asset protection planning, estate administration and tax information. The "Blast" is produced periodically as we discover information that would be helpful to others in the financial and legal community.

- **Important Note: effective September 8, 2011, valuation of a life estate interest pursuant to 96 ADM-8 is rescinded. All valuations of life estate interests now are pursuant to 11 ADM-8.** This is an important shift in valuation for life estates of Medicaid recipients and will reduce the value for Medicaid purposes.
- Interests in trust - All property in a revocable living trust is subject to recovery; although it should have been considered an available resource in any event at the time the individual applied for Medicaid. Therefore, nothing really changes here. Regarding irrevocable asset protection trusts, any unpaid items of income and/or principal that the deceased MA recipient was entitled to at the time of death is subject to recovery.
- Annuities - Annuitized annuities are subject to recovery for any remaining payments due upon the death of the MA recipient. Any such annuity purchased on or after February 8, 2006 would already have the State as a remainder beneficiary. If an annuity was not annuitized at the time of application for Medicaid benefits, it would have been considered a resource subject to be spent down.
- Life insurance - The ADM assumes that there will be little or no cash value at the moment before death; therefore, life insurance policies “generally” are not property of the estate.
- Deferral of estate recovery - Prior to September 8, 2011, certain assets were considered exempt if passed by a MA recipient at death to a surviving spouse, child under the age of 21 or to a disabled child. Now these assets will be subject to recovery; however, deferred until the surviving spouse dies, the surviving child attains the age of 21 or upon the death of the surviving disabled child.
- There are the usual hardship provisions which will remain difficult to prove in any event.

As a Private Client Law Firm, we have limited our practice to concentrate in estate and tax planning, asset protection planning and trust and estate administration.

We would welcome any referral for your clients' planning needs.

We would be honored to serve your clients with their estate and asset protection planning desires and goals. We are available not only at our office, but at yours and the client's home. We regularly serve clients in all eight counties of Western New York and the westerly Finger Lakes region as well.

Kameron Brooks, Brooks & Brooks, LLP

207 Court Street, Little Valley, NY 14755

tel: 716-938-9133; fax: 716-938-6155

kbrooks@brookslaw.biz

brookslaw.biz