Life Planning Newsletter
The Law Offices of James A. Busse Jr.
Long Beach CA, Carson City NV.
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In this issue:

Our law firm focuses on Estate and Life Planning for those who wish to preserve their assets for their family. By doing Probate work for our clients we have established Estate Planning methods that are court tested. Because the goal of every person is to have peace of mind their wishes will be carried out, our integrated approach constantly tests the effectiveness of your Estate Plan with actual California and Nevada Cases. We are particularly involved in Medicaid and Medi-Cal Estate planning. We create Special Needs Trusts and Estate Plans to ensure our clients meet the eligibility requirements, lower their share the cost expense, and reduce or eliminate the potential recovery by the State.

Our law firm integrates low cost Probate with coordinated Estate Planning documents to significantly reduce the impact of the State claim for nursing home care.

This newsletter is provided to our clients free of charge via e-mail and on line at www.jabusse,com

Medi-Cal Estate Planning DRA-05.

The Deficit Reduction Act of 2005(DRA-05), Public Law Number 109-171, was signed into law by President George Bush February 8, 2006. As Related to MediCaid and Medi-Cal, this law: (1) implements stricter policies for those claiming to be U.S. Citizens to receive benefits, (2) implements the Income First rule thus reducing the stay at home spouse's income forever, (3) changes the treatment of annuities, (4) limits home equity exclusion eligibility for Qualification to $500,000 (maybe $750,000) and (5) extends the qualification look-back period from 30 months from the date of the gift to 60 months from the date the applicant is otherwise qualified.

Together, these changes make it more difficult for an individual to qualify for benefits and indeed may disqualify some already receiving benefits. It also increases the Share-the-Cost fraction for many and it eliminates many methods heretofore used to reduce or eliminate recovery.

Estate planning under the DRA is now more important than ever. Planning that once started late in the client's life needs to be addressed by the estate planning attorney much earlier.

The principal DRA-05 changes to qualification for benefits under Medi-Cal involve increasing the look-back period to 60 months, accumulation of gifts, computation of the start date for benefits, and limiting excludable home equity to $500,000-$750,000. These requirements will require a bit of explaining.

Currently, to qualify for nursing home care, a single person is allowed to have $2,000 in cash or securities, up to $1,500 cash or securities set aside for burial expenses, a life insurance policy with a $1,500 or less face value, jewelry valued at less than $100, a home, a car of any value, household goods, personal clothing, and possibly a business if it is the sole method of the individual's support or if there are business partners who won't let go.

Annuities present a more complex problem. A single individual may have an annuity under the following conditions: For annuities purchased prior to 8/11/93 the balance is considered unavailable if applicant is receiving periodic payments (of any amount) of interest and principal. Annuities purchased between 8/11/93 (the date the federal law changed) and 3/1/96 (the date California law changed) that cannot be restructured to meet the new requirements will continue to be treated under the old rules. Annuities purchased on or after 3/1/96 by the applicant or the applicant's spouse must take steps to distribute periodic payments of interest and principal payments and must be scheduled to exhaust the balance of the annuity at or before the end of the annuitant's life expectancy. Annuities purchased by the applicant on or after 9/1/04 will be subject to Medi-Cal recovery when the beneficiary dies.

The spouse of the recipient is entitled to a Community Spouse Resource Allowance (CSRA) of $101,640 (2007) in assets if living at home and may be able to keep more if his or her income is below the Minimum Monthly Maintenance Needs Allowance (MMMNA) of $2,541.

The maximum Look Back period will increase from thirty to sixty months. If the individual gives available resources away within thirty months of the date of application for benefits that person is disqualified from the date the money was given away for a number of months calculated by dividing the amount gifted by the Average Private Pay Rate (roughly the average cost per month for Medi-Cal accepting Nursing Homes; Currently $5101/month) For Example, if Grandma gives $40,000 to Junior for college, Grandma will be disqualified from receiving Medi-Cal for her nursing home care for $40,000/$5,101, or almost 8 months. So if Grandma gave Junior $40,000 in September 2006 and was admitted and applied for Medi-Cal in February 2007 she would only be disqualified for 1-3 months (depending on when in each month the triggering event occurred). When fully implemented under DRA-05 the period of disqualification would run from the date Grandma was otherwise eligible for Medi-Cal and run for a period of 7 months 25 days from that date.

The Department of Health Services (DHS) has made it known that they do not plan to implement the 60 month look-back rule retroactively.

DRA-05 eliminates the unlimited home equity exclusion and replaces it with an exclusion capped at between $500,000 to $750,000. While there are still questions about how equity in the home is determined, the trend for an increase to $750,000 is now clear. Senator Sheila Kuehl D- 23rd District, (Santa Monica, Beverly Hills, Malibu, etc.) has introduced SB 483 to increase the home exclusion amount to the maximum of $750,000. SB 483 has cleared the Senate and is now in the House.

Life Estates, Special Needs Trusts, and Defective Trusts May be used to Reduce Recovery

An individual who receives MediCal if over 55 years old or for nursing home care at any age must pay back the amount received to the state. The repayment is limited by the amount of funds in the estate when the person dies adjusted for gifts given away within the look back period. DRA-05 eliminates many current techniques.

An irrevocable life estate is still a viable alternative to avoid recovery. Transfer of the residence to a person other than the spouse will trigger the look back period, which now runs from the time the recipient is otherwise qualified. Therefore the process would be to first transfer the property to the non-institutionalized spouse then transfer the property irrevocably to a third party, reserving a life estate in the non-institutionalized spouse.

Special needs trusts will remove funds from the institutionalized person thus allowing qualification. However the trust must be used to payback the State on the Medi-Cal Recpient's death for up to ALL Medi-Cal funds received by that person over his or her life if established by the institutionalized person. Of course a Special Needs Trust established by a third person with the third person's funds is not subject to recovery.

Intentionally Defective Irrevocable (Grantor) Trusts (IDGT) A trust where the Grantor pays the tax (incomplete transfer for qualification purposes but complete transfer for recovery purposes) will move property from the estate in order to reduce recovery. These are tricky and need a competent attorney.

Another method to reduce recovery

Finally, one method that does not save the estate but may make the patient more comfortable would be to use a home equity loan to generate funds for in-home care. A balance could be struck among the in-home duration, the amount of money borrowed, and the new limits on home equity. Of course, the applicant is left with a loan payment, which the beneficiaries of the estate could pay (and deduct from their taxes).

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