

Elder Law eNews

A Production of the Elder Law Section Communications Committee

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Medicaid Income and Resource Levels for 2011 Established

The New York State Department of Health established income and resource levels for 2011, which remained unchanged for Medically Needy applicants and recipients (SSI-related). Spousal Impoverishment standards also remained the same. For singles and childless couples who are not medically needy, the income allowance increased slightly from \$706 to \$708 per month for individuals and from \$881 to \$883 per month for couples, with corresponding adjustments for families.

Complete details can be found at the following link:

http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/10ma026.pdf

In addition, effective January 1, 2011, the substantial home equity limit increases from \$750,000 to \$758,000. (See GIS 10 MA/025).

Medicaid Regional Rates for Calculating Transfer Penalties Released for 2011

New regional rates have been released by the Department of Health. The Northern Metropolitan and Rochester rate show a small decrease; however all other regional rates have been increased.

<u>Central \$7,688</u> Broome Jefferson Oswego Cayuga Lewis St. Lawrence Chenango Madison Tioga Cortland Oneida Tompkins Herkimer Onondaga	<u>Northern Metropolitan \$10,105</u> Dutchess Sullivan Orange Ulster Putnam Westchester Rockland
<u>Northeastern \$8,323</u> Albany Fulton Saratoga Clinton Greene Schenectady Columbia Hamilton Schoharie Delaware Montgomery Warren Essex Otsego Washington Franklin Rensselaer	<u>New York City \$10,579</u> Bronx Queens Kings (Brooklyn) Richmond (Staten Island) New York (Manhattan)
<u>Western \$7,863</u> Allegany Genesee Cattaraugus Niagara Chautauqua Orleans Erie Wyoming	<u>Long Island \$11,445</u> Nassau Suffolk
	<u>Rochester \$8,942</u> Chemung Seneca Livingston Steuben Monroe Wayne Ontario Yates Schuyler

The complete transmittal can be found at the link below:

http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/11ma001.pdf

Federal Legislative Update:

Obama Administration Reverses Position on Medicare End-of-Life Counseling

Three days after enacting a Medicare regulation that would have reimbursed doctors for addressing end-of-life planning with patients during their annual checkups, the Obama Administration reversed course and withdrew the regulation.

In 2010, during the nationwide debate over health care reform, when the proposal to encourage end of life planning touched off a political storm over so-called “death panels”, Democrats dropped the provision from legislation to overhaul the health care system. On December 26, 2010, the New York Times reported on the front page that the Obama Administration would achieve the same goal by regulation, which was supposed to become effective on January 1, 2011. The new policy was laid out in a Medicare regulation, thus avoiding the legislative process.

If the regulation had not been reversed, Medicare would have paid doctors who advised patients on options for end of life care, including advance directives to forego aggressive life sustaining treatment. The final version of the health care legislation, signed into law by President Obama in March 2010, authorized Medicare coverage of annual physical examinations, otherwise known as “wellness visits”.

According to the Times article, the Obama Administration said research showed the value of the end of life planning. “Advance care planning improves end of life care and patient and family satisfaction and reduces stress, anxiety and depression in surviving relatives,” the administration said in the preamble to the Medicare regulation, quoting research published this year in the British Medical Journal.

Although the Obama Administration said that the reason behind the reversal was that the public did not have a chance to comment on the proposal, critics of the move suspected that the Administration feared the regulation would revive the specter of government “death panels” at a time when its health reform law is being challenged by Republicans.

Tax Act of 2010

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, which extends Bush-era income tax cuts and introduces new estate and gift tax provisions. Some of the most noteworthy of these are summarized below.

Effective January 1, 2011, through December 31, 2012, the federal estate tax, gift tax, and generation skipping transfer tax are unified so that the exemption for all three will be \$5 million for individuals and \$10 million for married couples. The top rate for estates in excess of the exemption will be 35 per cent.

The exemption for married couples is portable, meaning that if one spouse dies without using the full exemption, the remaining amount can be added to the surviving spouse's exemption amount.

The Tax Act of 2010 also allows heirs of decedents dying in 2010 the option of applying the

2011 exemptions, including the step-up in cost basis, to their inheritance, rather than modified carryover cost basis (with no estate tax).

After 2012, the law “sunsets” bringing the federal exemption down to \$1 million, with a 55 % top tax rate.

Federal Health Care Reform: Tax Impacts of Federal Health Care Reform

This item is the second in a series on federal Health Care Reform contributed by the Health Care Issues Committee.

A number of Tax changes will take place over several years as a result of the federal health care legislation:

In 2011, in effect is a new uniform definition of “medical expenses” to be reimbursed from Health Savings Accounts, Medical Savings Accounts (MSA), and Flexible Spending Accounts (FSA), and Health Reimbursement accounts (HRA's). Over the counter medications will no longer be reimbursable and reimbursement will only be acceptable for prescription drugs and insulin. The penalty for non qualified withdrawals is 20%. Persons 65 years and older are exempt from any penalty.

In 2013, there will be an increased excise tax of 2.3% on the sale of medical devices. It will be passed on to consumers. Exclusions for this new tax are eyeglasses, contact lenses, hearing aides and other consumer retail purchases.

In 2013, the FSA contribution maximum will be \$2,500; previously the limit was the imposed by the employer. Clients should be advised to use the FSA accounts on expenses such as eyeglasses etc. or other expenses which will not longer be permissible in 2011 an 2012 while permissible.

In 2013, high income earners will be taxed at higher rates. For example Medicare tax will increase by 9 % on earnings in excess of \$200,000 if single and \$250,000 if married. Medicare tax of 3.8% will be imposed on net investment income, or modified adjustment in excess of \$200,000 if single.

In 2013, itemized deductions will raise to 10% of the adjusted gross income

In 2014, all individuals will be required to carry health coverage for themselves, their spouses and their dependents .Those who fail to carry ‘minimum essential coverage” will be subject to a tax penalty that will be collected by the IRS. The penalty starts at \$95 and increases to \$325 in 2015 and \$695 in 2016.

In 2018, “Cadillac” health care plans will be taxed at a rate of 10% for deluxe services, which will be passed on to consumers.

Business taxes:

Starting this year and for the next four years, there is a credit of 35% of the insurance premium paid for small business that pay at least one-half of the cost of the health insurance. A small employer is a firm with 10 or fewer employees whose average annual compensation is less than \$25,000.

In 2011, Employers will have to report health care benefits on employees' W-2 forms.

In 2014, employers with 50 or more employees will be mandated to share responsibility for health care coverage or face an assessment payment.

In 2014, group health plans will have to permit dependents to remain covered under their parent's plan until they attain the age of 27.

New York Legislative Highlights in Review:

Federal Tax Committee

Chapter 331 of the Laws of 2010 requires medical personnel to provide information about end of life care options to persons diagnosed with a terminal illness allowing persons with a terminal illness to make informed decisions whether to choose aggressive care or palliative care that includes hospice and pain management. In the event the person is incapacitated and unable to make decisions, his or her health care agent or designated person under the New York Family Health Care Decisions Act will be counseled on patient's behalf.

New York Family Health Care Decisions Act

Chapter 8 of the Laws of 2010 allows family members, domestic partners and close friends according to a hierarchical list to make health care decisions in the absence of a Health Care Proxy. Under prior law, medical decisions could not be made on a person's behalf without clear and convincing evidence of the person's wishes. Very often invasive treatment of an incapacitated patient would be administered whether appropriate or not due to the absence of a Health Care Proxy. The statute provides safeguards so that a medical professional or family member can object to a decision he or she disagrees with. Although the statute provides a prioritized list of relationships to designate the patient's Health Care Agent, clients should designate the person of their choice.

Power of Attorney Legislation

Chapter 340 of the Laws of 2010 amends legislation making technical corrections to the Power of Attorney Revision Act effective September 12, 2010. The Power of Attorney Revision Act brought many changes to drafting and proper execution of a Power of Attorney. These include requiring that a principal authorizing an agent to make gifts in excess of \$500 in the aggregate must sign a gifts rider witnessed by two persons and allowing a principal to appoint a monitor to oversee the Agent's activities. The amendment permits prior properly executed POA's to remain in effect whereas the original Revisions Act revoked them.

No-Fault Divorce Act

Chapter 384 of the Laws of 2010 allows for expeditious issuance of a divorce decree. It remains to be seen how this new law will affect the rate of divorce for elderly clients in a long-term care planning context.

Program and Events Update

Save the Date for these upcoming Section Meetings:

January 25, 2011, Elder Law Section Annual Meeting, NY Hilton Hotel, NYC

April 28-29, 2011, Elder Law Unprogram, Hampton Inn, Poughkeepsie

August 18-21, 2011, Elder Law Section Summer Meeting, The Equinox Hotel, Manchester, VT.

October 13-15, 2011, Elder Law Section Fall Meeting, The Embassy Suites, Buffalo

January 24, 2012, Elder Law Section Annual Meeting, NY Hilton Hotel, NYC

If you have any suggestions as to how we can improve our electronic subscription, please send an e-mail to either Deepankar Mukerji, dmukerji@kblaw.com, Howard S. Krooks, hkrooks@elderlawassociates.com, or Antonia J. Martinez, elderlawtimes@yahoo.com.