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ELDER LAW NEWS UPDATE

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TO: Clients, Friends and Colleagues

SUBJECT: **EXPANDED ESTATE RECOVERY HAS BEEN REPEALED & ELIMINATION OF SPOUSAL REFUSAL REJECTED!**

As you are all well aware by now, in 2011 Governor Andrew Cuomo assembled the Medicaid Re-Design Team to proffer proposals that would change the manner in which we undertake medicaid planning. The 2011 New York State Health Budget Bill, which expanded estate recovery, passed on April 1, 2011. **Virtually any asset in which an individual (who had received Medicaid) had an interest at death, was recoverable by New York State, including life estate interests in homes, joint financial accounts, assets in living trusts, and IRAs & retirement plans etc.** Emergency regulations were issued on September 8, 2011 informing the agency and the community-at-large how the law was to be implemented. Within a week, families of medicaid recipients were receiving letters from a **collection firm** in Texas, requesting information about the decedent's assets. No longer was recovery limited to the probate estate, meaning assets owned solely by the medicaid recipient without designated beneficiaries or co-owners.

Thanks in no small part to the lobbying efforts of the NYS Bar Elder Law Committee with our NYS Legislators, who were not aware of the import of that law, submitted matching Bills in the NYS Senate and Assembly to *Repeal* Expanded Estate Recovery and to *Reject* the Elimination of Spousal Refusal.

*****It is my greatest pleasure to inform you that the 2012 Health Budget Bill repealed the expanded definition of "estate" and rejected the elimination of "spousal refusal" in the context of community medicaid!***

WHAT DOES THIS MEAN TO YOU? For those of you who need or will need home health care assistance and live with your spouse, you will *continue to benefit from the use of the Spousal Refusal*, which allows the non-applying spouse to retain his/her income and resources for the couple's own expenses at home. The alternative would have been, **DO WITHOUT ASSISTANCE, MOVE IN WITH YOUR KIDS or MOVE TO A NURSING HOME FACILITY!**

As for the Repeal of *Expanded Estate Recovery*, you may continue to undertake medicaid planning for home or nursing home care, without fear that your interest in your home, living trusts, joint bank & brokerage accounts, retirement accounts, IRAs, life estates in your homes, etc. would, in essence, serve as credit cards for your warranted health care needs!

WHAT'S NEXT? What we know for sure is that the landscape surrounding the planning and application for Medicaid Assistance will become more restrictive and difficult. The health care budget controversies will continue to rage, and solutions will have to be sought. *For now*, the most prudent of us, will enact planning that should protect from future assaults on the Medicaid Programs, while ensuring that we continue to access badly needed health care. Remember the five year rule still applies. Too many of my clients return to me to do last minute *emergency planning!* ***I urge you to plan ahead.***

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