



Call the Minnesota Elder Law Attorneys for Assistance with:

Veterans Benefits
Medical Assistance
Elder Care
Planning for Disability or Incapacity
Planning for a Disabled Child
Special Needs Trusts
Guardianship & Conservatorship
Estate Planning

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Veterans Benefits — An Important Part of Your Planning.

As Medicaid eligibility laws have become increasingly rigid, it has become increasingly important for our clients to explore benefits administered through the Department of Veterans Affairs at both the state and federal level. While eligibility and benefits vary widely, some benefits are available even for those with limited active duty service. Many are surprised to find out that benefits are available to a veteran even if he was not injured as a result of service. Some benefits are extended to surviving spouses as well.

One benefit available to Minnesota Veterans is the opportunity to receive skilled or memory care at the Minnesota Veterans Homes. This benefit is available to Veterans, or spouses of Veterans, who served at least 181 consecutive days of active duty service. The Veterans Home has its own eligibility rules and these rules have historically been more favorable than Medicaid eligibility rules. For families who need this level of care and meet the eligibility standards, the Veterans Home option should be explored.

Another notable benefit available to veterans who served at least 90 consecutive days (one of which was during a wartime or conflict period) is the federal Non-Service Connected Pension (NSD Pension). This benefit is commonly referred to as "Aid and Attendance." The Aid and Attendance benefit can provide monthly assistance in the form of a pension for veterans (or surviving spouses) who are in need of help paying for medical expenses that are not covered

by Medicare. Expenses may include the cost of home care, memory care or skilled nursing care.

Many veterans are also eligible for a host of benefits through the Veterans Health Administration. In order to apply, the veteran must have served at least one day and been discharged honorably. There are also other eligibility criteria such as service record, disability status, income and assets. Once in the system, veterans are able to see providers in the system, obtain reduced co-pay prescriptions as well as access community based benefits such as day programming and home health services.

Our attorneys have undergone special training to be able to counsel and advise veterans on how to access these benefits. Call to arrange an appointment with one of our VA accredited attorneys to discuss your eligibility for benefits.

Medical Assistance — Beware!

MNsure:

We have received reports from clients who have used the MNsure website to obtain health coverage indicating that they were led to inappropriately apply for Medical Assistance.

Nursing Homes:

Similarly, we have clients entering nursing home facilities who are being inappropriately told to apply for Medical Assistance.

The Bottom Line:

If you think you are in need of Medical Assistance (or are not sure), it is imperative that you know your options. If you or someone you know is being told that they must apply for Medical Assistance, please contact our office.

Medical Assistance Update — The Numbers

Highlighted below are the basic Medical Assistance figures that change annually in July:

- Income Standard for those who are either age 65 or older, blind or disabled and living in the community:
 - **One person household:** The income limit is 100% of federal poverty guideline standards (FPG), **\$973** per month as of July 1, 2014. People with income over 100% of FPG may be eligible by spending down to 75% of FPG, currently **\$729**. In other words, they can pay a “deductible” (for medical costs) equal to the amount by which their countable income exceeds **\$729**.
 - **Two person household:** The income limit for a household of two is **\$1,311** per month. Couples with income over 100% of FPG may be eligible by spending down to 75% of FPG, currently **\$983**.
- A community spouse is entitled to a spousal income allocation to bring his or her income to **\$1,967**/month up to a maximum of \$2,931 depending on qualifying shelter costs in excess of **\$590** per month).
- If you are receiving Elderly Waiver services and your gross monthly income (not including your spouse’s income) does not exceed \$2,163, your monthly maintenance needs allowance will be **\$970**. If your income exceeds this amount, it will be **\$95 if married** or **\$719 if single**.
- The divisor for calculating a period of ineligibility as a result of uncompensated transfers is **\$5,660** from July 1, 2014 – June 30, 2015.

If you have questions about how these changes may impact your situation, please contact your attorney.

2013 Gift Tax Law Repealed; Estate Tax Exemption Increased

In last summer’s newsletter we reported that Minnesota had “the dubious honor of being one of two states that now has a gift tax.” In 2014, the Legislature did away with the gift tax retroactively. It did not, however, do away with the three-year “pull-back” rule. All gifts made in excess of the annual exclusion amount to any individual (currently \$14,000) during the three years preceding the date of death will be included in the calculation of the decedent’s estate tax. This includes all Minnesota-situs gifts made after June 30, 2013.

The Minnesota Estate Tax exemption will double from \$1,000,000 to \$2,000,000 in phases. Beginning in 2014, the exemption amount was raised to \$1,200,000. The exemption will increase by \$200,000 annually over the next four years until reaching \$2,000,000 in 2018. Previously, individuals with estates over \$1,000,000 would be subject to an estate tax.

This is good news for individuals with estates between one and two million dollars and couples between two million and four million. It may be time for you to revise your estate plan if your estate is within these parameters.

LRH Succeeds in Overturning DHS Position on Life Estates (State Ignores Ruling)

Many Minnesota families use “life estates” as a planning technique to pass their home, cabin or the family farm on to the next generation. For more than 25 years, the value of a non-homestead life estate was not counted when determining eligibility for long-term care Medical Assistance, whether that interest was held by a husband or wife. Beginning in 2011, Minnesota’s Department of Human Services (“DHS”) changed the rules without notice. According to DHS, the value of a life estate held by a community spouse is counted toward the community spouse’s asset allowance.

When Audrey Larson applied for Medical Assistance in August of 2011, she and her husband had very limited available assets. Nonetheless, Audrey was denied Medical Assistance because her husband still held a life estate in the family farm. Laura Zdychneć of Long, Reher & Hanson, represented the Larsons on appeal, and argued that DHS’s change in policy not only violated federal law, but was outside the scope of the agency’s authority as well. In *Larson v. Minnesota Department of Human Services and Polk County Social Services*, the District Court agreed and reversed the DHS Commissioner’s final determination. Judge Kurt Marben ruled that DHS acted 1) in an arbitrary and capricious manner, and 2) contrary to federal law by counting the value of a non-homestead life estate owned by a community spouse when determining Medical Assistance eligibility for the institutionalized spouse. Although the proper outcome was achieved for the Larsons, we have learned that DHS continues to impose the policies found arbitrary and capricious and in violation of federal law in other counties. If you would like further information on the Larson case and its possible implications for your family, please contact our office.

Notice to Conservators!

On April 15, 2014, Minnesota launched the new electronic accounting system My Minnesota Conservator (MMC) to replace CAMPER. MMC retains the same functions as CAMPER but is considered more user friendly. MMC is also considered superior to CAMPER because of the ease in which information is compared as well as transmitted to various programs within the state including the Conservator Account Auditing Program (CAAP) and the Minnesota Case Information System (MNCIS).

Please note, you may no longer use the CAMPER system to file documents. However, you are allowed to access archived information in CAMPER with the same login and password information.

Further, as of July 15, 2014, Hennepin County will no longer send reminder notices when a guardian or conservator fails to file timely reports in their appointed cases. Failure to timely file the appropriate report or accounting may result in an order to show cause, sanctions, or even removal. If you have any questions about your responsibilities as a conservator, please contact our office.

No Annuity Planning (Yet) for Community Spouses

We have long been of the opinion that Minnesota is out of compliance with federal Medicaid annuity laws that would permit a community spouse to annuitize excess assets to qualifying resource limits. The United States Court of Appeals recently reached the same conclusion in *Geston v. Anderson*, 729 F.3d 1077 (8th Cir. 2013) when reviewing a North Dakota law that was similar to Minnesota's. We, together with other elder law attorneys, supported legislative attempts this session to repeal the offending provision of Minnesota law. Unfortunately, the law that did pass is only a mandate for the commissioner of human services to study the impact of the Geston decision on Minnesota's Medical Assistance program and provide a written report to members of the house and senate committees with jurisdiction over Medical Assistance policy and finance no later than January 5, 2015. The report must include proposed legislation to ensure Minnesota's Medical Assistance program complies with the requirements of the Geston decision. We nonetheless anticipate litigation will be needed to resolve this ongoing violation of federal law.

Married Waiver Recipients Face Uncertain Eligibility Future

Minnesota provides a variety of home and community based care options for people with disabilities that otherwise would require an institutional level of care. These community-based Medical Assistance programs for people under age 65 are known as "waiver" programs. They include the Community Alternative Care, Community Alternatives for Disabled Individuals, Traumatic Brain Injury and Developmental Disability waivers. The waiver benefits are tailored to specific populations and include access to long term care services.

For some Medical Assistance programs, the resources of the community spouse are counted when determining eligibility known as spousal deeming. The waived programs, however, have included an exemption from spousal deeming for the waived programs under 65. Under the Alternative Care Act, however, federal law requires spousal deeming for all waived programs effective January 1, 2014. The Minnesota Department of Human Services is seeking a Spousal Deeming Waiver to be excepted from the federal law and to be able to continue to exclude the resources of the community spouse in determining eligibility for the MA recipient spouse. Hearings were held earlier this year and some of our clients testified or provided written responses. As of this writing, DHS had not submitted the waiver request to the federal government and all married clients with spouses on one of the under 65 waived programs remain in limbo as to what the future eligibility requirements will be.

GAO Study on Medicaid Eligibility Submitted to Congress

The U.S. Government Accountability Office (GAO) has completed a report on financial eligibility for Medicaid long-term care requested by several Congressional Republicans. GAO was examining, among other things, the extent to which Medicaid financial eligibility rules affect the methods available to reduce assets in order to qualify for long-term care coverage. The report is based on a random review of 294 approved Medicaid applications in three states. One of the key findings — only five percent of applicants had transferred assets for less than fair market value prior to application. We will closely monitor any proposed legislation prompted by the study for further restrictions on Medicaid eligibility.

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REVIEW OF YOUR SITUATION

If you have questions or concerns about any of the information presented in this newsletter or would like to consult with us about how the changes might affect your own circumstances, please call our office to set up an appointment with Cathryn Reher, Laurie Hanson, Laura Zdychnec or Mary Frances Price. We will be happy to meet with you to answer any questions you may have and to help you re-evaluate your particular circumstances.

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Long, Reher & Hanson Welcomes Two New Associates

We are delighted to announce the addition of two new associate attorneys to Long, Reher & Hanson: Christine Huberty and Jessica Lindstrom. Both Christine and Jessica served as law clerks with the firm while in law school.

Christine is a 2013 graduate of William Mitchell College of Law and will focus her practice in the areas of estate planning and Medical Assistance. She is licensed to practice in both Wisconsin and Minnesota. Prior to joining Long, Reher & Hanson, P.A., Christine conducted research for the Center for Elder Justice and Policy and the National Senior Citizens Law Center. She also collaborated with the Elder Justice and Policy Keystone class of 2013 to develop a mobile app that provides easy access to information addressing the rising issues of elder abuse, neglect and exploitation.

Jessica is a 2013 graduate of Hamline University School of Law. Jessica also received her Certificate in Advocacy and Problem Solving from the Hamline Law Dispute Resolution Institute. She is currently licensed to practice in Minnesota. Jessica will focus her practice in the areas of probate, trust, guardianship and conservatorship, and estate planning. Prior to joining Long, Reher & Hanson, P.A., Jessica worked for Fairview Healthcare for five years while attending law school on the weekends. In addition, Jessica serves as a volunteer Guardian ad Litem for Ramsey County in cases involving child neglect and abuse.

