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Positive Strategies for Aging & Living with Disabilities — Summer 2015

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Super Lawyers®

LRH Boasts 4 Super Lawyers!

We are delighted to announce that four of our attorneys have been recognized as Minnesota Super Lawyers: Laurie Hanson, Mary Frances Price, Cathryn Reher and Laura Zdychnec. Super Lawyer selections are made using a rigorous multi-phased process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice area. Only the top 5 percent of attorneys in Minnesota are included in the annual Super Lawyers list. We are honored to receive this recognition from our peers.

Achieving a Better Life (MABLE) Plan Accounts Authorized in Minnesota

In our Winter 2015 newsletter, we reported that President Obama signed the ABLE Act, authorizing states to establish tax-favored savings accounts for eligible disabled individuals — individuals who became disabled before age 26. Funds in these accounts do not count when determining MA or SSI eligibility and if the funds are used for qualified disability expenses, there is no tax on earnings. This spring, Governor Dayton signed a bill establishing the Minnesota ABLE plan — MABLE. Also, on June 22, 2015, regulations were published by the IRS. Next, the Department of Human Services must establish rules, procedures, and the application process. So, while accounts may be established now – we have to wait until the Department of Human Services sets up the MABLE program. Please review our winter newsletter for general information about ABLE accounts – the overall MABLE plan is consistent with what we reported there. Stay tuned for our next Winter newsletter — or our blog — for breaking news!

New Website and Blog

Our website has a new look! If you are wondering about the latest updates on Medical Assistance, want to see what we've had to say in our past newsletters, are looking for senior, long-term care, legal or caregiver resources, or if you are simply looking for recommendations on a good book to help cope with illness, disability or loss, then check out our new website and blog at www.mnelderlaw.com. As we continue developing the site and our blog, we will be adding posts that will include topics such as: roles of fiduciaries, frequently asked questions about estate planning, updates in the law, fun facts, book reviews, and much more! Our highly experienced Medical Assistance paralegal, Kari Shogren, will also share some of the snags and solutions she's encountered while traversing the labyrinth of MA applications.

Medical Assistance Financial Eligibility Updates

MA-EPD (Medical Assistance for Employed Persons with Disabilities). Beginning October 1, 2014, the monthly minimum fee on earned income increased to $65 per month, and the unearned income charge increased to 5%. Beginning July 1, 2015, these numbers return to pre-October 1, 2014 rates: $35 for the minimum fee on earned income, and .5% for unearned income. It is estimated that nearly 8,700 Minnesotans with disabilities will benefit from these rate changes.

MA (Medical Assistance) Income Limits. Prior law required that if individuals on MA made a dollar more than 100% of the Federal Poverty Guidelines (FPG) per month in income, they would need to "spend down" their income on health care to 75% FPG per month and keep their assets below $3,000 to qualify for and keep MA services and supports. Beginning July 1, 2016, this spend-down rate will be raised to 80%. To put this into perspective, this means that in 2015, if a person made one dollar more than $981 in income per month, they would need to spend down this income to $736 on health care – a total of $246 per month. Starting July 1, 2016, if a person makes one dollar more than $981 in income per month, they will need to spend down their income to $785 on health care – a total of $197 per month.

Married Waiver Recipients Continue to Face Uncertain Eligibility Future. In July, 2014, we reported that under the Alternative Care Act, federal law required spousal deeming for all waivered programs effective January 1, 2014. As of the date of this writing, DHS has submitted the waiver request to the federal government but has not received confirmation regarding whether the waiver has been accepted or denied. This means that for the time being, all married clients with spouses on one of the under-65 waivered programs remain in limbo as to what the future eligibility requirements will be.

Medical Assistance Annuity Update: A victory! Minnesota modified its Medical Assistance annuity law in 2002 to prevent excess assets from being converted to income for the benefit of a community spouse through the purchase of an immediate annuity. At that time, we believed this change violated federal law. On May 22, 2015, Governor Dayton signed into law an amendment to the Medical Assistance annuity law repealing the offending language effective July 1, 2015. DHS had accepted the need for change in March of 2015 and already instructed counties to permit such annuities prior to amendment of the statute in light of the *Geston* decision previously reported on in our July 2014 client mailing. **ANY MARRIED CLIENTS COMPLETING AN ASSET REDUCTION TO QUALIFY AN ILL SPOUSE FOR MEDICAL ASSISTANCE SHOULD CONTACT US IMMEDIATELY TO EVALUATE WHETHER A COMMUNITY SPOUSE ANNUITY SHOULD BE PURCHASED TO AVOID ADDITIONAL LOSSES TO YOUR ESTATE.**

Minnesota's Olmstead Plan Remains a Work in Progress

In 1999, the United States Supreme Court issued a decision in *Olmstead v. L.C.* requiring states to eliminate unnecessary segregation of people with disabilities, and ensuring that they receive services in the most integrated setting appropriate to their needs. In 2009, a class action lawsuit was filed in the United States District Court for the District of Minnesota alleging that residents receiving services through Minnesota's Extended Treatment Options program ("METO") were being subjected to restraint and seclusion in violation of their constitutional rights and protection under the Americans with Disabilities Act.

In 2010, the parties entered into a settlement agreement prohibiting the use of aversive restraint practices, and also requiring the State of Minnesota and the Department of Human Services to develop appropriate policies to serve individuals with disabilities in the most integrated setting consistent with *Olmstead*. The federal court approved the settlement in 2011, but implementation has stumbled since then. On multiple occasions, the state has submitted a proposed *Olmstead* plan for court approval, and in each case, the court has criticized the plan as lacking in measurable goals and accurate reporting. In May, the court again declined to accept Minnesota's plan, and ordered further revisions to address gaps and deficiencies identified in previous orders. This most recent order included a healthy amount of frustration on the part of the federal judge, who reserved the right to impose sanctions if the state fails to fulfill its obligations in a timely manner. We remain hopeful that a comprehensive plan will be put in place that respects the individual needs of our clients living with disabilities, and will continue to monitor its progress.

Technology as Caregiver?

Walt Disney was known for his futurist views and inventive imagination. To this day, the company that carries his name is still creating attractions for Disney park visitors to experience futuristic living. "Tomorrowland" is a forward looking area in Florida's Magic Kingdom that allows guests to eat futuristic food, ride vehicles of "tomorrow" and incorporates other space-aged ideas. Currently Minnesotans are bracing for our own "Tomorrowland" in facing changes to the delivery of care for the elderly and disabled.

Reform Waiver 2020 is proposed legislation pending federal approval that would change the way disabled individuals access Home and Community Based Services. Specifically, the current Personal Care Assistance program (PCA) would be reformed into a new service called Community First Services and Supports (CFSS). The CFSS program supporters envision the program will be more accessible, flexible and will facilitate transition out of nursing home care or delay future admissions to the nursing home. The idea is to provide better support for the elderly and disabled at home in the community.

In order to accomplish this goal, the CFSS proposes to use assistance, teaching, coaching and prompting, home modifications to *replace human assistance* and technology to replace human assistance. If current technology trends in home care are any indication, one might reasonably expect that wireless monitoring devices will be implemented to replace human PCAs under CFSS.

There has been a steady rise in technology solutions that integrate sensors, cameras, wireless devices, call buttons and medication dispensers to track and monitor and individual's activities at home. For example, an elderly person living at home alone may have sensors installed in their home that will track their movement within the home. If the person falls, fails to move from room to room in a normal pattern, leaves the home for a protracted period of time or fails to take their medications on time, the sensing system could send a signal through a wireless device to alert an adult child on their cell phone that they need to check in with their parent.

The Reform Waiver 2020 will likely target areas where humans are now providing services that can be delivered more cost-effectively through the use of technology. The senior home of today may look radically different under CFSS as we enter Minnesota's elderly and disabled "Tomorrowland."

Only One IRA Rollover Per Year!

A rollover is a direct distribution from an IRA to the account owner, who then has 60 days to reinvest the funds in another IRA. Rollovers allow a person to move IRA money around from one investment to another or to get a short-term tax-free loan from an IRA without paying a current tax. For many years, the IRS has applied the 12-month wait period separately to each IRA a person owns. As a result of a recent tax court case, beginning January 1, 2015, the IRS will treat all of your IRAs as one IRA in applying the 12-month wait period. In other words, a person can make only one rollover in a 12-month period. If more than one rollover is made within the 12-month period, only the first rollover will avoid taxation. Subsequent rollovers within the same 12-month period would be taxable and also could be subject to a 10% early withdrawal penalty. If you have questions regarding this significant change, contact your accountant or tax advisor.

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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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The Medical Assistance Numbers That Change in July

Below are the basic Medical Assistance figures that change annually in July.

- The monthly personal needs allowance for a Medical Assistance recipient has been increased to **$97** ($90 for veterans and widows and widowers of veterans).
- The minimum monthly income allowance for a community spouse is between **$1,992** and $2,980.50, depending on the community spouse's qualifying shelter costs.
- The maximum community spouse asset allowance is $119,220 for applications in 2015. The minimum community spouse asset allowance is $33,851 for applications in 2015.
- If you are receiving Elderly Waiver services and your gross monthly income (not including your spouse's income) does not exceed $2,199, your monthly maintenance needs allowance (including room, board and personal needs) will be **$988**, otherwise it will be **$97** or **$736**.
- The home equity limit for 2015 has increased to $552,000, up from $543,000.