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Positive Strategies for Aging & Living with Disabilities — Winter 2016

ALERT!!!! Married Persons on Waiver Programs

This is a critical update for persons with disabilities under age 65 enrolled (or planning to enroll) in the Community Alternative Care (CAC) waiver, Community Alternatives for Disabled Individuals (CADI) waiver, Brain Injury (BI) waiver, or Developmental Disability (DD) waiver.

The spousal impoverishment rules deem assets of the well spouse to the ill spouse in determining financial eligibility for waivered programs. Except for the Elderly Waiver program, the waivered programs currently do not apply these rules. In other words, the well spouse's assets are not counted in determining the ill spouse's eligibility. However, a provision in the Patient Protection and Affordable Care Act (ACA) requires states to apply spousal impoverishment rules to the under 65 waivers.

The Minnesota Department of Human Services (DHS) requested an exemption from the federal Centers for Medicare and Medicaid Services (CMS) to avoid applying the spousal impoverishment rules to Minnesota's waiver programs. CMS rejected DHS's application for an exemption and subsequently issued a compliance letter to all states. DHS sought reconsideration, as Minnesota is the only state that does not deem assets of a well spouse for the under 65 waivered programs, but to no avail. Cathryn Reher and Anne Henry, an attorney with the Minnesota Disability Law Center, have coordinated advocacy efforts requesting a congressional delegation to challenge this mandate. These efforts are ongoing, but in the meantime, DHS must move forward with a corrective action plan to transition all waivered programs to spousal impoverishment rules by the following dates:

- **June 1, 2016:** Spousal impoverishment applied to new waiver applicants.
- **March 1, 2017:** Spousal impoverishment applied to waiver recipients.

Many waivered recipients in the state may lose eligibility because of this change in law and it was for this reason that DHS sought the exemption. It is possible that DHS and congressional representatives may find a path to allow Minnesota to continue its current eligibility rules prior to the above implementation dates. This makes it difficult for persons affected to know whether to sit tight or begin strategic planning immediately. DHS has indicated that any recipient on Medical Assistance for Employed Persons with Disabilities (MA-EPD) in conjunction with a waiver program will not be affected by this change. Nonetheless, if an MA-EPD recipient cannot continue to work in the future, then the above dates may be relevant.

We would encourage married persons of any age on the CAC, CADI, BI, and DD waivers and MA-EPD/waiver recipients under 65 who may not be able to continue working to contact us immediately for further guidance.

We will post additional information about spousal deeming on our firm website as it becomes available.

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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Medical Assistance Numbers that Change in January 2016

Below are the basic Medical Assistance figures that change annually in January:

- The monthly personal needs allowance for the Medical Assistance recipient has been increased to $97 ($90 for veterans and widows and widowers of veterans).
- The cap for the minimum income allowance for the community spouse is between $1,992.00 and $2,980.50, depending on the community spouse's shelter costs.
- The maximum community spouse asset allowance is $119,220 for applications in 2016. The minimum community spouse asset allowance is $33,851 for applications in 2016.
- 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 personal needs allowance will be $971, otherwise it will be $97 or $730.
- The home equity limit for 2016 remains at $552,000.

New Minnesota Law Provides Additional Protection for Medicare Beneficiaries

Over the past few years, there has been a dramatic rise in observation status admissions to hospitals. Observation status refers to the classification of hospital patients as "outpatients," even though, like inpatients, observation patients may stay for many days and nights in a hospital bed, receive medical and nursing care, diagnostic tests, treatments, supplies, medications, and food. The distinction is important because only a person admitted for inpatient treatment is eligible for Medicare coverage for skilled nursing care following a hospitalization. In the past, many patients first became aware that they were admitted on observation status when they were stunned to learn that skilled nursing home coverage had been denied. The new law seeks to eliminate this problem by requiring hospitals to provide oral and written notice to each patient no later than 24 hours after the patient is placed on observation status, and to provide additional resources to "understand the implications of placement in observation status."

The notice must state that the patient is not admitted to the hospital, but is under observation and that such placement may affect the patient's Medicare coverage for: hospital services, including medication and pharmaceutic al supplies, or home or community-based care, or care at a skilled nursing facility upon the patient's discharge. The law also codifies federal hospital requirements that proper discharge planning must be done, including counseling by hospital staff to prepare them for post-hospital care. This involves providing the patient with a list of Medicare-eligible home care agencies or skilled nursing facilities, and assisting them in securing care covered by their health plan.

New Name and Other Firm News

We are proud to announce that Mary Frances Price has become a shareholder! And with that, we have changed our name to Long, Reher, Hanson & Price! We are excited by our growth and look forward to continuing our service to clients in the years ahead. Also since our last newsletter:

- Cathryn Reher was instrumental in advocating for a Congressional delegation to challenge a federal mandate impacting Minnesota's under age 65 Medicaid Waiver programs.
- Laurie Hanson presented at the Special Needs Trust National Conference in October, and was named to the board of directors of the Special Needs Alliance, a national association of attorneys committed to helping individuals with disabilities and their families.
- Mary Frances Price began serving as Chair of the Elder Law Section of the Minnesota State Bar Association, and also testified before the Minnesota Department of Commerce as a consumer advocate for seniors dealing with long-term care insurance claims.
- Laura Zdychnec received special recognition from the Elder Law Section for another victory in challenging policies of the Department of Human Services, and was also named to the Board of Directors of Our Lady of Peace Hospice.
- Both Mary Frances and Laura were invited to speak at the upcoming Meeting of the Minds Dementia

Conference sponsored by the Alzheimer's Association of Minnesota/North Dakota and the Mayo Clinic.

- Jessica Lindstrom served as faculty at a continuing legal education program for lawyers new to Medical Assistance sponsored by Minnesota CLE.

Medicare to Cover Costs of Advance Care Planning

In a major change of policy, Medicare will cover the costs of advance care planning and end of life care counseling effective January 1, 2016. This is a significant development allowing individuals to communicate their preferences regarding their medical treatment they receive in the time leading up to their death. Medicare reimbursement should assure that there is sufficient time for patients to have these discussions with their doctors. As with most other physician services, beneficiaries are subject to cost sharing for advance care planning provided by their physician or health professional. However, beneficiaries will not have any cost sharing liability when the advance care planning takes place in the course of an annual wellness visit. Advance planning should help individuals make well-informed, financially responsible decisions in conjunction with their physician regarding what medical treatment they receive towards the end of their life.

New Social Security Retirement Rules for Married Couples

Social Security law has built-in incentives to encourage people to delay claiming retirement benefits. Age 62 is the earliest a person can claim retirement benefits on his or her own work record, or on a spouse's record. Each year that Social Security retirement is deferred, the monthly benefit has historically grown by 8%, resulting in a monthly benefit that could be 75% more if benefits start at age 70 instead of age 62. However, the following two strategies used by married couples to maximize Social Security retirement benefits have been eliminated:

1. *File and Suspend.* The file and suspend method permitted one spouse to file for benefits at age 62, allowing his or her spouse to begin collecting spousal benefits. The claimant would then suspend his benefits and continue to earn deferral credits.

   The new regulations state that when a claimant suspends benefits, all benefits payable on his or her earnings record (including spousal benefits) will also be suspended. Individuals already using this method will be grandfathered in; the ability to use the file and suspend method for new claimants ends on April 30, 2016 - 180 days after the law was signed on November 2, 2015.

2. *Restricted Spousal Benefits.* Similarly, the restricted spousal benefits method allowed a person age 62 and older to apply for spousal benefits only, and continue to earn deferral credits on his or her work record. This option has been eliminated for people turning 62 in 2016 or later, who will have to claim all benefits to which they are entitled upon filing for benefits.

Long-Term Care Insurance — What You Need to Know

Did you know that the median age of Americans is at an all-time high? Currently the number of individuals over age 65 is greater than the number of teenagers in this country. People are living longer and during their later years are managing on average 2 chronic health conditions per person. This means that the group between age 40-65 is thinking about how they will afford to cover their medical expenses in the future. One response to this trend has been that more people are purchasing long term care insurance.

Long term care insurance can pay for a wide range of medical, personal and social services that are not covered by Medicare or other health insurance plans. These may include home health care, assisted living and nursing home care. Ideally, this type of insurance should be purchased well before any documented health condition is present. Depending on the coverage under the plan, the premiums can be costly.

For consumers who have been investing in long-term care insurance for years, many are finding that the type of housing they choose is not be covered or is covered at a lesser rate. The problem for consumers who purchased long term care insurance years ago, is that assisted living facilities may not be covered under their policy or assisted living services may be covered at a much lower rate than a nursing home.

Further complicating this issue is the regulatory framework that Minnesota uses to license assisted

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INSIDE

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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living communities and nursing homes. Minnesota distinguishes assisted living communities from nursing homes even though a patient may be receiving the exact same level of care. This difference in licensure has provided the opportunity for long term care insurance companies to deny claims or pay at a much lower rate for individuals who choose to live in assisted living communities. This has resulted in consumers having to pay much more out-of-pocket even when they invested years of premiums in a long term care policy.

There are several things you can do to ensure that you are maximizing your long-term care insurance policy. First, be sure to have a recent copy of your policy on hand and make sure you understand what benefits your policy offers. Second, know what your elimination (deductible) period is and plan accordingly. Third, understand what the policy will pay for when investigating senior housing options including home care, assisted living, memory care and nursing home care. Lastly, educate yourself on the claims process before contacting the insurance company to make a claim. A little preparation for the claims process can save a lot of time, money and anguish in the long run.

Our lawyers continue to make presentations on elder law topics to the public through charitable organizations, support groups, veterans' groups, church groups, and other entities. If you know of a group that you think would benefit from one of our presentations, please call Tracie Fenske at (952) 929-0622.