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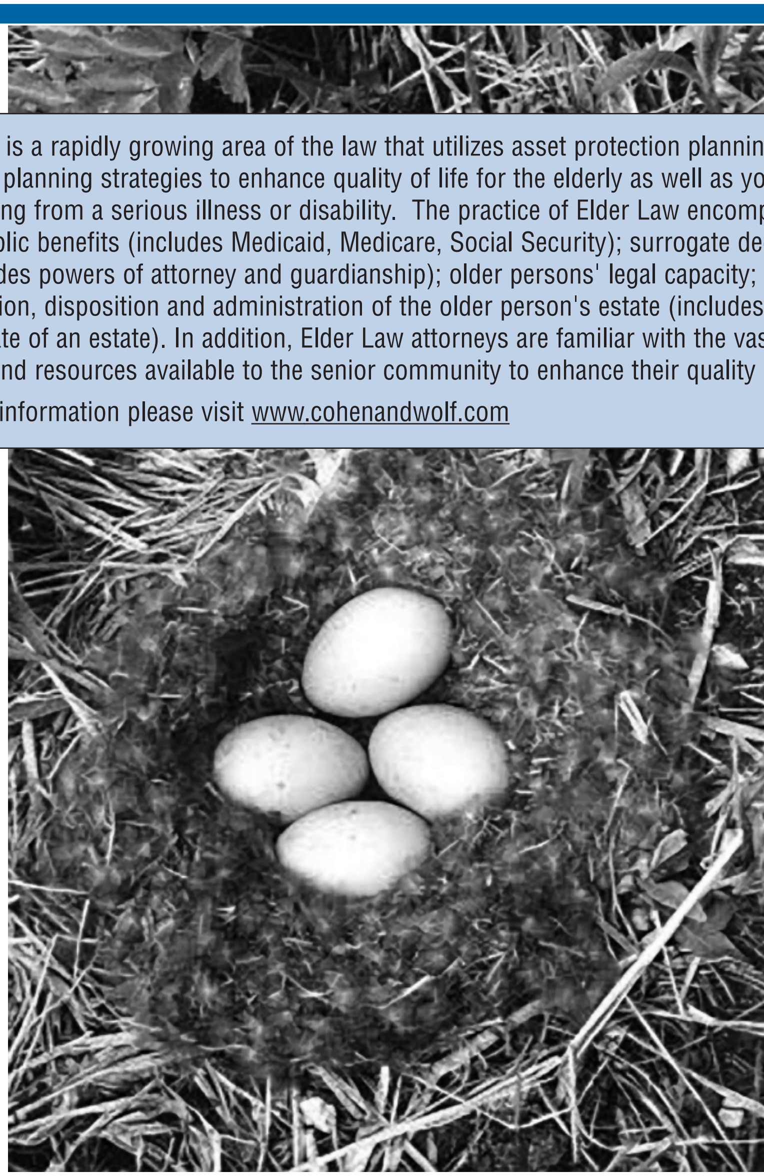
Elder Law ADVISORY



Elder Law is a rapidly growing area of the law that utilizes asset protection planning and long term care planning strategies to enhance quality of life for the elderly as well as younger people suffering from a serious illness or disability. The practice of Elder Law encompasses the law of public benefits (includes Medicaid, Medicare, Social Security); surrogate decision-making (includes powers of attorney and guardianship); older persons' legal capacity; and the conservation, disposition and administration of the older person's estate (includes wills, trust and probate of an estate). In addition, Elder Law attorneys are familiar with the vast array of services and resources available to the senior community to enhance their quality of life.

For more information please visit www.cohenandwolf.com

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TOPICS:

Hersh & Fowler-Cruz Join Firm
Spousal Refusal
5 Myths of Long Term Care
Special Needs Trusts
New Legislation Impacts Medicaid
Money Follows the Person

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Cohen and Wolf Expands Elder Law Services

Cohen and Wolf, P.C. is pleased to announce that Joshua Z. Hersh, Ann L. Fowler-Cruz, and Jane L. Tyree, formerly of Hersh & Fowler-Cruz, LLP, have joined our Trusts & Estates group. By joining forces with some of Connecticut's most recognized Elder Law attorneys, we are able to offer you an enhanced level of service by combining our respective firms' experience and know-how in the increasingly critical areas of Elder Law, Asset Protection Planning, and Trusts and Estates.

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"Spousal Refusal" Now Recognized in Connecticut

Morenz v. Wilson-Coker is a breakthrough victory for elderly spouses

In August, 2005, the 2nd U.S. Circuit Court of Appeals upheld the doctrine of "Spousal Refusal" which brought about exciting new changes in the Medicaid rules that affect married persons. This landmark case was brought by Attorneys Joshua Z. Hersh, Ann L. Fowler Cruz, and Jane L. Tyree, newly affiliated with Cohen and Wolf.

Spousal refusal is an estate-planning tool for married couples faced with medical crisis planning that may offer an alternative to strict Medicaid eligibility requirements. Any married couple with substantial assets who might face a health crisis someday should be aware of this option. Unfortunately, since this is a federal rule, the changes will most likely not help couples in a civil union. New legislation that challenges the practical application of spousal refusal was recently proposed, so it is important to consult with an experienced elder law attorney during the Medicaid planning process.

> *Spousal refusal is an estate-planning technique that enables an elderly spouse to keep his or her home and other assets longer, even when the spouse is in a nursing home paid for by Medicaid.*

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5 Myths About Long Term Care

MYTH #1: THE STATE WILL TAKE AWAY MY ASSETS IF I NEED LONG TERM CARE

Fact: The State of Connecticut does not take your assets if you get sick and need long term care. The State will, however, deny benefits to anyone until he/she meets the eligibility requirements (which contain asset limitations). There are many strategies for achieving eligibility beyond the simple "spend down" of assets. Also, the rules are applied differently to married couples than to single persons. Please note that partners in a civil union are not considered married for purposes of Medicaid since it is based on federal law. Experienced counsel can help you navigate the maze of benefits and qualification rules.

MYTH #2: I CAN ONLY GIVE AWAY $12,000 (PREVIOUSLY $10,000) TO ANY ONE PERSON DURING THE CALENDAR YEAR.

Fact: You can give away any amount of money, whenever you want, to any other person, without limitation. However, if the amount given to any one person is greater than $12,000 (considered a "taxable gift"), you must file gift tax returns with the federal government and the State of Connecticut. If the total amount of these taxable gifts is greater than $1,000,000 over your lifetime, you may have to pay gift taxes. You should not confuse the tax rules discussed above with the rules regarding transfer of assets that affect your ability to qualify for Medicaid (also referred to as "Title 19") benefits. Any gifts can affect your qualification, even those of small amounts. The new laws effective February 8, 2006, created a 5-year lookback (see related article in this newsletter) which will capture all gifts, no matter what value.

MYTH #3: I WILL LOSE MY HOME IF MY SPOUSE GOES INTO A NURSING HOME OR IF I NEED HOME CARE PAID BY MEDICAID.

Fact: If your spouse enters a nursing home, you will not lose your house as long as you live in it. The house is an exempt asset when you apply for benefits. The State of Connecticut will not even put a lien on your house if your spouse is on Medicaid.

If you are single and want to stay at home with care, you may qualify for Medicaid and keep your house, as long as you are able to stay at home. The State of Connecticut will put a lien on your house, which means that when you move out of your house and sell it, or when you die, the State will be reimbursed for the costs of your care from the proceeds of the sale of the home or from other assets of your estate, if any.

MYTH #4 I WILL BE TREATED DIFFERENTLY IF I AM IN A NURSING HOME AND I GO ON MEDICAID

Fact: The treatment of patients of a nursing home is not different based on status. According to Connecticut law, nursing homes are prohibited from discriminating in the care of a Medicaid patient. In fact, most nursing home staff and doctors will not even be made aware that a patient is on Medicaid.

MYTH #5: IF MY PARENTS GET SICK, I WILL HAVE TO PAY FOR THEIR CARE

Fact: A recent article in The New York Times described the hardships children sometimes face when their parents become ill and need care. However, you should consult with a long term care planning professional, such as an elder law attorney, in order to understand the many state and federal benefits available to your parents before they run out of funds. In many cases, long term costs can be paid from other resources and family assets can be preserved.

Members of Cohen and Wolf's Elder Law Group are dedicated to the protection of the elderly and their families by preserving the accumulative wealth for which they have strenuously labored throughout their lives. We are available to assist you with any questions you have about long term care and asset protection planning. www.cohenandwolf.com

Special Needs Trusts for Both Young & Old

Some of the planning techniques we use for our elderly clients can be applied to families with children who have special needs. We can also apply these techniques when planning for younger disabled adults.

Supplemental needs trusts, also known as special needs trusts, ("SNT's") preserve family assets. Often, children with special needs or disabled persons can avail themselves of benefits but only if they have no assets. However, families do not want to completely leave these loved ones out of their estate plans. Funds held in an SNT are not considered when the State determines eligibility for many programs and benefits. Yet, the funds of the SNT can be used to enhance the quality of life for these loved ones.

We understand how overwhelming it can be to handle the myriad medical and educational needs of a child with special needs or a disabled family member, but it is important that you do not overlook the financial and legal aspects of their care. Planning at the early stage of a child's life is critical to assure that benefits are maximized.

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New Legislation Impacts Medicaid Coverage

The United States Congress dramatically changed the transfer of assets rules as applied to applications for Medicaid (Title 19 in Connecticut) when it passed the Deficit Reduction Act of 2005 ("The Act"). The Act imposed new restrictions on the ability of clients to transfer assets before qualifying for Medicaid coverage. President Bush signed this legislation into law on February 8, 2006.

Summary of the New Legislation

Lookback Period

Has been extended from 3 years. The state now looks at 5 years of financial records to determine if any gifts have been made.

Penalty Period

Under the new rules the penalty period (when someone is not eligible to receive any Medicaid benefits) does not BEGIN when the first gift is made, but rather, begins to run when the applicant has less than $1,600 and is otherwise eligible for Medicaid. Once five years has passed, no penalty will be assessed.

Exemption of Real Estate

Prior to this legislation, all the equity in one's residence was protected if you were married and if your spouse needed care. However, now the exemption is limited to $500,000 of equity unless a spouse or minor child or disabled child is lawfully residing in the home. (The State of Connecticut can raise that amount to $750,000, if it so wishes). This may force homeowners to obtain traditional or reverse mortgages to protect their homes.

Annuities

The legislation also changes the treatment of annuities, including a requirement that the state which is paying the benefits be named the remainder beneficiary, in second position after the community spouse or minor or disabled child, of the annuity

Continuing Care Communities (Assisted Living) Payments

Previously, it was believed that buy-in payments to assisted living or independent living facilities would be treated as exempt (as if one owned a home). This new legislation requires that such payments be part of the "spend down" before applying for Medicaid.

What Does This Mean for You?

The new law severely limits the ability of the elderly to make gifts. Under the new legislation, all gifts greater than $1,000 made within 5 years of application will be scrutinized. Members of the Elder Law Group at Cohen and Wolf are working to develop strategies that help families preserve assets. Our attorneys are part of a select network of attorneys throughout the country dedicated to finding new solutions to address the costs of long term care for their clients.

$24 Million Federal Grant Boosts Home Care

On January 10, 2007, Governor Jodi Rell announced that the State of Connecticut would be receiving a $24.2 million federal grant to assist persons who reside in nursing homes so they can return home to their families and to their communities. The initiative is known in Connecticut as "Money Follows the Person." The program will serve individuals with physical disabilities, mental illness and mental retardation, ranging in age from children to elderly.

Essentially, the grant is a financial incentive for states to reduce reliance on expensive institutional care for Medicaid recipients. The most notable expense to be newly covered by Medicaid through the initiative is 24-hour, in-home care which Medicaid has not traditionally paid for. Also covered are home improvements to accommodate wheelchairs and other medical equipment needs and other support services. This initiative gives those who need assistance paying for long term care more control over how and where they receive their care. This is a big step forward toward more compassionate care options.

Cohen and Wolf, P.C. provides a wide range of sophisticated legal services to leading businesses, organizations and individuals, both regionally and nationally. For more than half-a-century, Cohen and Wolf has successfully represented business and individual clients in matters involving litigation, corporate and securities law, real estate, tax, employment and labor, municipal law, personal injury, estate planning, family law, elder law and asset protection planning. Our team of more than 45 experienced lawyers is based in our three Connecticut offices: Bridgeport, Danbury and Westport. For more information please visit: www.cohenandwolf.com