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ELDER LAW UPDATE

MARCH 2005

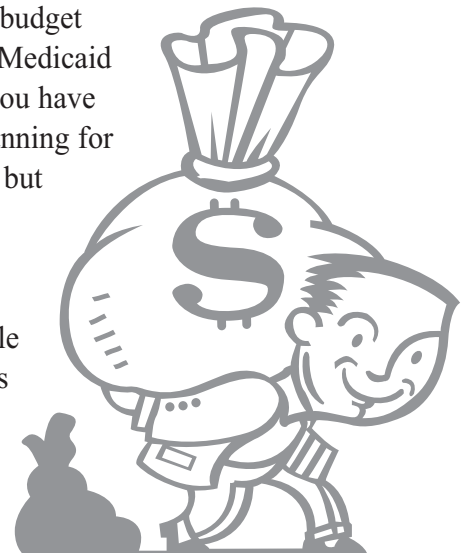
## The Demographic Imperatives And The 2005 Budget

**W**e are all getting older and this is a good thing. However, as the population ages, older citizens often require expensive long term care which results in more and more applications for Medicaid benefits. The increased need for Medicaid benefits is placing strain on the New York State and local county governments.

In 1995 there were 3.1 million people over 60 years of age living in the State. According to the New York State Office for the Aging, during the period between 2010 and 2025, the 60 and older population in the State is projected to increase from 3.4 million to 4.4 million when all baby boomers will be 60 to 79 years old. This is an increase of 40 percent over 30 years. Specifically the number of people 85 and older in New York State will grow steadily from approximately 275,000 in 1995 to over 390,000 in 2025. The number of people 75 and older will grow from 1.07 million in 1995 to 1.15 million in 2005 and to 1.4 million in 2025. The number of people 65 and older will

remain at 2.3 to 2.4 million through 2010 and then increase to 3.3 million in 2025.

In response to the demographic imperatives and the expanding cost of long term care, the 2005 state budget will seek to tighten Medicaid eligibility rules. If you have been thinking of planning for Medicaid eligibility but have procrastinated, now is the time to have a consultation with a knowledgeable elder law attorney as the planning window may be shut or curtailed in the near future. ■



# ELDER LAW UPDATE

YOUR ELDER LAW NEWSLETTER FROM

## Raskin & Makofsky

ATTORNEYS AT LAW • 600 OLD COUNTRY ROAD, SUITE 444, GARDEN CITY, NY 11530-2009  
TELEPHONE (516) 228-6522 FAX (516) 228-6525

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## Estate Tax for the Unwary

It is a common misconception that estate tax is not a concern as long as an estate is under \$1.5 million, the current federal estate tax exclusion amount. Many people also incorrectly assume that in the coming years, as the estate tax exclusion amount is scheduled to rise, that estate tax will become even less of a concern. This misunderstanding of the estate tax law is a trap for many, particularly for the unwary New York resident.

Current law requires that estates of New York decedents pay substantial New York estate tax if the estate exceeds \$1million. This is so even if the estate has a value of less than \$1.5 million and no federal estate tax is due. The New York estate tax is imposed on estates in excess of \$1 million and the tax rate can be substantial.

### HERE ARE SOME EXAMPLES:

Value of Estate	New York Estate Tax	Rate of Tax
\$1.5 million	\$64,400	12.88%
\$1.25 million	\$48,400	19.36%
\$1.1 million	\$38,800	38.8%
\$1,050,000	\$20,500	41%

Further, on a \$2 million estate, the current federal estate tax is \$200,100 and the New York estate tax is \$99,600.

There are several planning techniques that may be used to avoid or reduce New York estate tax. The plan will vary considerably depending upon the situation and the sooner an individual begins to implement a plan the better. There is no time like spring to take care of important planning opportunities.

If you think your estate may be caught in the estate tax trap, we advise you to speak to a knowledgeable attorney. ■

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# New Trusts Allow Seniors to Remain at Home

We now have a new planning technique to help those who require Medicaid to remain at home and out of a nursing home. In the past most of our clients were unwilling to apply for Medicaid home care not because they were ineligible for the services but because they were unable to finance the cost of maintaining their homes while at the same time complying with Medicaid's stringent income restrictions. Current law requires that those who receive Medicaid benefits at home are limited to receiving not more than \$687 per month in income. Those who have excess income are required to contribute that excess toward their medical care. As we know, in the metropolitan area it is very difficult to maintain a household on \$687 per month. As a consequence, many of our clients who were medically able to remain at home were unable to do so on the \$687 in income they were allowed to retain. This meant that clients were unable to remain at home and instead were required to enter a nursing home in order to access Medicaid benefits to pay for their care.

A recent fair hearing decision now makes it possible for Medicaid recipients to transfer their excess income

each month into a "pooled income trust" and authorize the trust to use the contributed excess income to pay for their everyday living expenses. These pooled income trusts are created by a nonprofit organization. The Medicaid recipient deposits his or her excess income each month into the trust and then submits invoices to the trustee to pay from the trust ordinary living expenses such as rent, heat, electricity, telephone, cable, food or clothing costs. The trust will then make payments directly to providers of services or merchandise. Of course the trust will only make payments up to the amount contributed to the pooled income trust each month. The organization is paid a fee to manage the trust. As no transfer penalties are imposed on those who receive Medicaid home care there are no penalty periods imputed for the transfer of excess income each month.

If you or a family member requires Medicaid services at home and you believe that a pooled income trust would allow you to remain at home give us a call. We will discuss the specifics with you and see if this new planning technique will work for you. ■



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## New Medicaid Calculations

The New York State Department of Social Services raised the regional rates deemed to be the average cost of nursing home care in various regions in the state. These rates are used to determine the period of ineligibility incurred by Medicaid applicants seeking institutional nursing home care or home care under the Lombardi program.

To calculate a Medicaid period of ineligibility based upon a gift of assets, the amount of the gift is divided by the applicable regional rate. The resulting figure is the number of months the applicant will be ineligible for Medicaid benefits because of the gift.

The 2005 rate is \$9,612 for Nassau and Suffolk County residents and \$8,870 for New York City residents. As an

example of how the penalty period is calculated, a \$100,000 gift by a Nassau or Suffolk County resident is divided by \$9,612 to arrive at an ineligibility period of 10.4 months. The penalty period begins to run the first day of the month following the month in which the gift was made.

The community spouse income allowance or MMMNA (Minimum Monthly Maintenance Needs Allowance) is now \$2,378 per month. The community spouse resource allowance ("CSRA") is now a minimum of \$74,820 and a maximum of \$95,100. The actual figure depends upon the amount of resources available to the couple on the date the ill Medicaid recipient was institutionalized. The Medicaid recipient is entitled to retain \$4,000 in available resources as a "luxury fund".

Medicaid rules are very complex. You are strongly advised to seek legal advice when contemplating Medicaid planning or a Medicaid application. ■

# Disabled Loved Ones Can be Protected

Many clients seek our assistance because they are concerned about a loved one who is disabled or requires long term care at home or in a skilled nursing facility. They want advice about how to leave an inheritance to benefit this loved one.

Leaving assets directly to a child who is disabled or to a spouse who will very likely require long term care may be a mistake. The inheritance of these assets could disqualify the person for certain government benefits or cause a reduction or loss of benefits until non-exempt assets fall below certain qualifying amounts. This is because public benefit programs such as Medicaid look to the available assets of the individual to determine eligibility for the program.

Consequently, there is a need to do a different kind of estate planning to protect loved ones with special needs. We usually advise our clients with these concerns to consider creating a Will which directs that a special type of trust be set up at the death of the client for the benefit of the disabled loved one. The terms of the trust mandate that trust funds be used solely for the disabled person's benefit to supplement, rather than supplant, any available government benefits. These trusts, when created within a Will, are called Escher Trusts after a famous case deciding the legality of this type of trust. If constructed properly, the assets in the Escher Trust will not be considered available when the person is applying for Medicaid or other needs based government benefits.

If you have someone in your family who might benefit from an Escher Trust, give us a call and we will be happy to provide you with more information. ■

## RASKIN & MAKOFSKY NEWS BULLETIN



The very handsome Brandon Antonio and his mom Lisa.

We know our readers are interested in what is happening with our Raskin & Makofsky family. We have wonderful news to report. Our paralegal, Lisa Valente, had an adorable little boy whom she named Brandon Antonio. Brandon weighed 8 pounds 2 ounces and is very

handsome. Brandon's older sister, Cayla is very happy to have a new playmate at home.

The Legal Committee of the Long Island Chapter of the Alzheimer's Association elected Judy Raskin to serve as its Chair in the upcoming year. Judy has some new and exciting ideas to implement on behalf of the Alzheimer's Association chapter during her term as chair. Ellen Makofsky continues to serve as an officer of the New York State Bar Association's Elder Law Section and as Co-Chair of the Senior Umbrella Network of Queens. As always Judy Raskin and Ellen Makofsky are available to speak on a variety of Elder Law and Estate planning topics to interested groups. Many of you are planning programs for the upcoming year. To arrange for a program, contact us at our offices.

### *Hear Us Speak!*

We often get telephone calls in the office asking for our seminar

schedule. We have a busy calendar this Spring and thought our readers might be interested in hearing from us, in person, about the latest Estate Planning and Elder Law news. Listed here are seminars currently on our calendar which are open to the public. If you are interested in attending, call us at (516) 228-6522 and we will provide you with the details.

Tuesday, March 1, 7:00 pm—Plainview Adult Ed

Tuesday, March 8, 7:00 pm—Plainview Adult Ed

Wednesday, March 9, 7:00 pm—Westbury Adult Ed

Tuesday, March 15, 7:00 pm—Rockville Centre Adult Ed

Wednesday, March 16, 7:00 pm—Long Beach Adult Ed

Wednesday, March 16, 7:30 pm—Roslyn Adult Ed

Tuesday, March 22, 7:00 pm—Rockville Centre Adult Ed

Wednesday, March 23, 7:00 pm—Long Beach Adult Ed



Judy Raskin

Ellen Makofsky