

FINKEL & FERNANDEZ, LLP

Elder Law, Estate Planning and Special Needs

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To Our Valued Clients, Friends, and Community:

As this pandemic continues into the second wave, we at Finkel & Fernandez are here to help you with your legal issues and planning needs. Given the safety concerns of in person meetings, planning is certainly more challenging to accomplish. Although in-office and at-home consultations are not being currently offered, successful planning opportunities are available. We are meeting with our clients by telephone and video conferences, enabling you to move forward with your planning and your documents at this critical time. Eight months post Governor Cuomo's Emergency Executive Orders, we have assisted many clients to achieve their planning goals.

As many of you are aware, the 2020-2021 (Fiscal Year 2021) New York State Budget enacted by Governor Cuomo on April 3, 2020 will have a severe impact on Medicaid eligibility rules and requirements. Significantly, the implementation of the rules has been pushed forward from its prior designated start date of October 1, 2020 to April 1, 2021. This extends the time to put your planning in place.

Medicaid Changes Appear to be Scheduled to Take Effect on April 1, 2021: For New York State to maintain eligibility for federal relief under the March 18, 2020 "Families First Coronavirus Response Act", which may provide more than \$6 billion in additional federal health care funds to New York, the current New York Medicaid eligibility standards and procedures must not be made more restrictive than those in effect on January 1, 2020. For the duration of the federal emergency, increased federal funding may remain available, and the implementation of the new Medicaid rules and requirements, originally slated to take effect on October 1, 2020, have been delayed until April 1, 2021.

If you were accepted into the Medicaid program on or before March 18, 2020, your Medicaid coverage cannot be terminated until the last day of the month during which the declared COVID-19 public health emergency ends.

Implementation of the 30-Month Lookback for Community (Home Care) Medicaid: In addition to meeting the requirements for income and resource eligibility, Community Medicaid applicants will be subject to a lookback period of 30 months when the new rules are implemented, currently set for April 1, 2021. Transfers of assets to others for less than fair market value, or gifts made, with certain exceptions, will create a penalty period for home care Medicaid coverage. The length of the penalty period computed will be based on the amount transferred.

The penalties for home care coverage are anticipated to be calculated in the same manner as applications for Institutional (Nursing Home) Medicaid coverage, using the monthly divisor for the county of application. The larger the uncompensated transfer(s) or gift(s) made, the longer the penalty that will be incurred. There are certain exemptions, transfers and allowable expenditures which will not incur a penalty, even if made within the 30-month lookback period. The rules are technical and strict compliance is required.

Non-exempt transfers/ gifts within 30 months prior to application will incur a penalty for Community Medicaid for New York City for the amount transferred divided by \$12,844.00 (the New York City divisor in 2020, to be adjusted for 2021) commencing the first day of the following calendar month. In Nassau and Suffolk counties, the 2020 divisor is \$13,407.00, and in Westchester, Dutchess, Rockland, Putnam, Orange, Ulster, and Sullivan Counties, the 2020 divisor is \$12,805.00.

While we anticipate the effective date to now be April 1, 2021, while we remain in a declared state of emergency, this may be further delayed.

Consumer Directed Personal Assistance Program (CDPAP) and Personal Care Services will be more restrictive in eligibility criteria and compensable services: Going forward, once these rules are implemented, to qualify for CDPAP and or personal care services, applicants will have to require assistance with more than two activities of daily living, or be diagnosed with Dementia or Alzheimer's Disease and require assistance with more than one activity of daily living. Housekeeping and other level 1 services will no longer be counted as care categories. An independent physician selected or approved by the New York State Department of Health, and not the applicant's treating physician, will be required to prescribe personal care services.

Documentation: Going forward, once these rules are implemented, the application process and gathering of documentation will gain an added layer of preparation, complexity, and review. We anticipate that there will be substantial delays in approvals of applications, scheduling of Fair Hearings and appeals. If Medicaid Home Care services are on your horizon, you will be required to provide all financial statements (each and every page for each and statement for each and every account) throughout the lookback period.

What can you do now to get ready? Be proactive, save all financial statements, and do your planning ahead of time.

If you or a loved one anticipate needing home care services, please feel free to contact us, or another knowledgeable practitioner, to discuss the specifics of your situation and planning opportunities.

We are here to remotely and safely guide you in accomplishing your goals, and are available during regular business hours for telephone or video appointments. Please do not hesitate to contact us with any questions or concerns we may be able to assist you with. Above all, we wish you and your loved ones safety and good health during this difficult time. Please be safe, stay healthy, and keep yourself socially connected while remaining physically distanced and protected.

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