

FINKEL & FERNANDEZ, LLP

Elder Law, Estate Planning and Special Needs

16 Court Street, Suite 1007, Brooklyn, New York 11241
Tel. 347-296-8200 Fax. 718-965-3185 www.ffelderlaw.com

Fern J. Finkel, Esq., Partner | ffinkel@ffelderlaw.com

Julie Stoil Fernandez, Esq., Partner | jstoilfernandez@ffelderlaw.com

Abby Zampardi, Esq., Associate Attorney | azampardi@ffelderlaw.com

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To Our Valued Clients, Friends, and Community:

As this pandemic continues, we at Finkel & Fernandez are here to help you with your legal issues and planning needs. Given the Governor's "Stay At Home" mandate, planning is certainly more challenging to accomplish. Although in-office and at-home consultations are not a possibility for now, planning opportunities are still 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.

The 2020-2021 (Fiscal Year 2021) New York State Budget was enacted by Governor Cuomo on April 3, 2020, with a severe impact on Medicaid eligibility rules and requirements. Some of the most significant changes that may affect you or your loved ones include:

Medicaid Changes Appear to be Scheduled to Take Effect on October 1, 2020: 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 new Medicaid rules, currently anticipated to take effect on October 1, 2020, may be delayed.

If you have been already 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.

New 30-Month Lookback for Community (Home Care) Medicaid Eligibility: In addition to meeting the requirements for income and resource eligibility, Community Medicaid applicants will be subject to a lookback period of 30 months. 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, and will begin on the date the applicant is "otherwise eligible" for Medicaid.

Calculations of penalties for home care coverage are anticipated to be performed in the same manner as in applications for Institutional (Nursing Home) Medicaid coverage, and to be based on the monthly divisor for the county of application. Non-exempt transfers 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) commencing the first day of the following calendar month. In Nassau and Suffolk counties, the divisor is \$13,407.00,

and in Westchester, Dutchess, Rockland, Putnam, Orange, Ulster, and Sullivan Counties, the divisor is \$12,805.00. The larger the transfer, the longer the penalty. 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.

There is a lack of clarity as to when the new Community Medicaid transfer rules with the lookback period and penalty imposition will commence. We anticipate the effective date to be October 1, 2020, but if New York State remains in a declared state of emergency, the Director of the Budget may delay this further.

Consumer Directed Personal Assistance Program (CDPAP) and Personal Care Services will be more restrictive in eligibility criteria and compensable services: 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 not 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. Be proactive, save all financial statements, and do your planning ahead of time.

If you or a loved 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 for you 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 stay home, be safe, stay healthy, and keep yourself socially connected while remaining physically distanced.

Finkel & Fernandez, LLP
Fern J. Finkel & Julie Stoil Fernandez