Legal Matters®

Elder Law
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States may not terminate Medicaid benefits during coronavirus pandemic

Access to affordable medical care is especially important during a health crisis. One of the bills passed by Congress in response to the coronavirus pandemic increases Medicaid funding for states and includes a provision preventing states that accept the additional money from terminating Medicaid benefits while the current emergency continues.

The Secretary of Health and Human Services has declared a nationwide public health emergency for COVID-19. In light of that, the Families First Coronavirus Response Act provides that if you were enrolled in Medicaid as of March 18, 2020, the state (provided it accepted expanded Medicaid funds during the crisis) cannot terminate your benefits even if there is a change in your circumstances that would normally cause your benefits to be stopped. The law states that your Medicaid coverage must continue through the end of the month in which the Secretary declares that the public emergency has ended. The only exceptions to this non-termination rule are if you choose to terminate your benefits yourself or you move to another state.

States that already terminated a Medicaid recipient's benefits should be contacting recipients and encouraging them to reenroll. If the state determined that you were "presumptively eligible" for benefits before March 18, 2020, this rule does not apply to you, and

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the state may terminate your benefits if it eventually concludes you are not eligible for benefits. However, if you have coverage because you are appealing a decision of ineligibility that was made before March 18, 2020, the state cannot terminate your benefits during the health emergency.

If you have questions about Medicaid eligibility during the health emergency, contact your attorney.

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When inheriting real estate, consider your options

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Inheriting real estate from your parents can be both a blessing and a burden. Figuring out what to do with the property can be overwhelming, so it is good to carefully think through all of your choices.

There are three main options when you inherit real estate: move in, sell, or rent. Which one you choose will depend on your current living situation, whether or not you have siblings, the state of your finances, whether the house has a mortgage or liens, and the physical condition of the house. The following are some things to consider:

• **Taxes**. In most situations, you do not have to pay taxes on property you inherit, but if you sell the property you will be subject to capital gains tax. The good news is that inherited property receives a step-up in basis. This means that if you inherit a house that was purchased years ago for $150,000 and it is now worth $350,000, you will receive a step-up from the original cost basis from $150,000 to $350,000. If you sell the property right away, you should not owe any capital gains taxes. If you hold on to the property and sell it for $400,000 in a few years, you will owe capital gains on $50,000 (the difference between the sale value and the stepped-up basis). On the other hand, if you use the property as your primary residence for at least two years and then sell the property, you may be able to exclude up to $250,000 ($500,000 for a couple) of capital gains from your taxes.

• **Mortgage**. Does the house have a mortgage on it — either a regular mortgage or a reverse mortgage? Sometimes it is specified in the estate plan that the estate will pay off the mortgage. If that isn't the case, with a regular mortgage you will likely have to assume the monthly payments. But with a reverse mortgage, you usually have a limited time to pay off the mortgage in full.

• **Repairs**. It is a good idea to hire a home inspector to assess the condition of the house. If the property needs significant repairs, it may affect what you do with it. Renovations and repairs can be costly and time-consuming.

• **Property maintenance**. Once you inherit property, you will be responsible for maintaining it. The first thing you want to do is to make sure the utilities and homeowners' insurance are transferred to the new owners and continue to be paid on time. You will also need to pay all the property taxes and any other fees associated with the property.

• **Other owners**. If you inherit property with siblings, you will all need to agree on what to do. If one sibling wants the property, he or she can buy it from the other siblings. Otherwise, you can sell or rent the property and split the proceeds. If there is a dispute among siblings, you can try professional mediation. In mediation, the parties engage the services of a neutral third party to help them hammer out an agreement that all concerned can live with. If you go to court, the judge will likely order the house to be sold so the profits can be split.

Turning 65? You may need to sign up for Medicare Part B

If you are paying for your own insurance, you may not think you need to sign up for Medicare when you turn 65. However, not signing up for Medicare Part B right away can cost you down the road.

You can first sign up for Medicare during your Initial Enrollment Period, which is the seven-month period that includes the three months before the month you become eligible (usually age 65), the month you are eligible and the three months after the month you become eligible. If you do not sign up for Part B during this period, you will be subject to a penalty. Your Medicare Part B premium may go up 10 percent for each 12-month period that you could have had Medicare Part B, but did not take it. In addition, you will have to wait for the general enrollment period, which usually runs between January 1 and March 31 of each year, to enroll.

There are exceptions to the penalty if you have insurance through an employer or through your spouse's employer, but there is no exception for private insurance. The health insurance must be from an employer where you or your spouse actively works, and even then, if the employer has fewer than 20 employees you will likely have to sign up for Part B.

If you don't have an employer or union group health insurance plan, or that plan is secondary to Medicare, it is extremely important to sign up for Medicare Part B during your initial enrollment period. Note that COBRA coverage, retiree coverage or VA benefits do not count as a health insurance plan for Medicare purposes.

Three changes you may want to make to your estate plan now

The unique aspects of the coronavirus pandemic may make it advisable to review your current estate plan. Language in estate planning documents that is fine under normal conditions may cause problems for you and your loved ones if you fall ill during the pandemic.

Look over the following documents to see if they may need updating:

• **Living will**. A living will is a document that you can use to give instructions regarding treatment if you become terminally ill or are in a persistent vegetative state and unable to communicate your instructions. The living will states under what conditions life-sustaining treatment should be terminated. Many living wills contain a prohibition on intubation, which can be used to prolong life. However, in the case of COVID-19, intubation and placement on a ventilator can actually save a patient's life (although many patients who are intubated still die). If your living will contains a blanket prohibition on intubation, you may want to rethink that.

• **Durable power of attorney**. A power of attorney (POA) allows you to appoint an agent to act in your place with regard to financial matters. A POA can be either current or springing. A current POA takes effect immediately, usually with the understanding that it will not be used until and unless you become incapacitated. A "springing" POA only takes affect when you become incapacitated. The problem is that when presented with a springing power of attorney, a financial institution will require proof that the incapacity has occurred, often in the form of a letter from a doctor. In the current environment, getting a letter from a doctor may be difficult. Consider changing your POA so that it can take effect immediately if needed.

• **Health care proxy**. A health care proxy allows you to appoint someone else to act as your agent for medical decisions. It will ensure that your medical treatment instructions are carried out. Without a health care proxy, your doctor may be required to provide you with medical treatment that you would have refused if you were able to do so. Usually, the person who is appointed to act as your agent would confer with the doctors in person. That may be impossible now because family members often are not allowed to be in the hospital with sick patients. You need to make sure your health care proxy contains a provision that expressly authorizes electronic communication with your agent.

Consult with your attorney to make sure these documents and your other estate planning documents express your wishes during this time.

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Free tax preparation help is available to seniors

Seniors and retirees should know that they may be able to use online tax preparation software free of charge. Most low- and middle-income Americans qualify for free help but do not take advantage of it, and all seniors, regardless of their income, are eligible for free counseling assistance from the Internal Revenue Service.

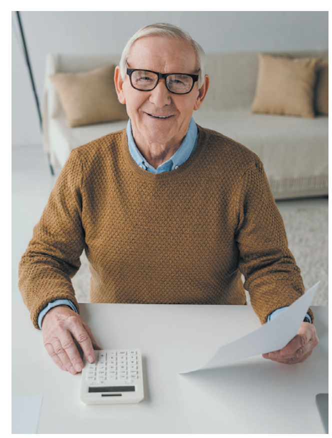
The tax preparation software industry has had a decades-long deal with the IRS to make free versions of its software available to low- and middle-income individuals. However, a report by ProPublica in April 2019 revealed that software companies were making it difficult for customers to find the free tax filing software. According to the IRS's Taxpayer Advocate Service, some 70 percent of taxpayers qualified for free filing, but only 1.6 percent used the free software in 2018. The IRS has subsequently amended its agreement with the software industry to bar companies from hiding the free products.

The IRS Free File website links to the available free products. Each company sets its own eligibility standards based on income, age, and state residency, but as long as your adjusted gross income is $69,000 or less you will find at least one free product to use. There are also two products that are in Spanish.

If you would rather not prepare your own tax return, seniors can use the IRS's Tax Counseling for the Elderly (TCE) program. The TCE program is available to taxpayers who are 60 years old or older and specializes in answering questions about pensions and retirement plans.

For the IRS Free File web page, go to: https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free

For the TCE program, go to: https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers



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How does the Coronavirus Relief Act affect seniors?

In addition to authorizing direct payments to most Americans, including seniors, the $2 trillion economic relief package that Congress passed to help Americans deal with the devastating financial impact of the coronavirus pandemic changes required retirement plan distributions for this year and includes Medicare-related provisions.

Signed into law on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided a one-time direct payment of $1,200 to individuals earning less than $75,000 per year ($150,000 for couples who file jointly), including Social Security beneficiaries. Payments are based on either 2018 or 2019 tax returns.

The CARES Act also affects retirement plans. Recognizing that stock market volatility has depleted many retirement plan accounts, the Act waives the requirement that individuals over a certain age take minimum distributions from their non-Roth IRAs and 401(k)s in 2020. This includes any 2019 distributions that would otherwise have to be taken in 2020.

In addition, the CARES Act allows individuals adversely affected by the pandemic to make hardship withdrawals of up to $100,000 from retirement plans this year without paying the 10 percent penalty that individuals under age 59 ½ are usually required to pay. Individuals who use this option will still have to pay income taxes on the withdrawals, although the tax burden can be spread out over three years. The dollar limit on loans from retirement plans is also increased until the end of the year.

Finally, the Act includes potentially important provisions for Medicare beneficiaries. While the Centers for Disease Control and Prevention has been advising people to have a three-month's supply of needed medications on hand, many Medicare Part D plans limit the amount beneficiaries may order. The CARES Act requires that during the crisis Part D plans lift these restrictions. Also, when a vaccine against COVID-19 is developed, it will be available to Medicare beneficiaries as part of Medicare, not Part D, and there will be no cost.