February 2017

Estate & Financial Planning Council of Southern New Jersey



Member of the National Association of Estate Planners and Councils

FEBRUARY 16, 2017 BREAKFAST MEETING "INTERNATIONAL TAX CONSEQUENCES HERE & ABROAD"

Date:

Thursday, February 16, 2017 Location: The Mansion Main Street, Voorhees, NJ

Speakers:

Patrick McCormick, JD & Kristin Schmid, JD-From Kulzer & DiPadova

Time:

8:00 am— Breakfast 8:30-9:30 am—Educational Program

This meeting is exclusively sponsored by:



For additional Information Please see Page: 7

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Dear Council Members:



At yesterday's EFPC Board meeting, as we do at every Board meeting, we talked about the quality of our EFPC educational events, attendance at our events and our membership. On behalf of our entire Board, please know that we strive to bring you the highest quality presenters to speak about the most compelling and useful material. We devote a great amount of time and energy to topic selection and then search out experts who we hope can edu-

cate each and every one of us. That, I assure you, is no small task for a group of such diverse, albeit complimentary, professionals. We appreciate that you help us in that endeavor by candidly completing our seminar evaluations. Tell us what you love, what you don't, and what you want to see next. We want to hear from you and appreciate your feedback. Our planning meeting for the 2017-2018 year is right around the corner, so please pay attention to our topic survey which will go out in April. Of course, always feel free to reach out to any one of us with speaker and/or topic suggestions for next year.

Until then, as we look to finish out our current calendar of events, I could not be more pleased with how active our Council has been and how great our event turnouts have been. Every one of our educational events has enjoyed a packed room, full of both members and their guests. I know many of you come for the credits, but you also come for the comradery and for the information. It has been a pleasure to watch the group grow in such a positive way.

With only two educational events remaining before the Installation Dinner in June, for any new member who joins between now and June, for the price of one year's membership, you can enjoy the benefits of membership for the balance of this year and receive next year's membership free. So, if you know of anyone who may have been on the fence about committing, please encourage them to join us. We all have colleagues and friends who would benefit from membership in our Council. Please consider bringing a guest to our next breakfast event on February 16th. They will thank you for it!

Looking ahead, our next breakfast meeting will be held **on February 16, 2017 at the Mansion, in Voorhees**. Breakfast will begin at 8:00a.m., and our programming will get underway promptly at 8:30 a.m. For that event, we are thrilled to have our friends from Kulzer & DiPadova, Patrick McCormick, Esquire, and Kristin Schmid, Esquire, speak to us about "International Tax Consequences Here and Abroad." As our world gets smaller, these issues become more and more prevalent and potentially problematic for our clients. You don't want to miss this!

Finally, I want to thank the sponsors for our January event, LifeSpan Care Management, the Rothkoff Law Group, Virtua Senior-Wise Care Management and Wells Fargo Private Bank. Thank you also to Jane Fern-Zimmer, Esquire, of the Rothkoff Law group, for your work facilitating the event. We very much appreciate your commitment to the Council, and could not run these events without your continued support. Thank you!

If you have any questions about sponsorship opportunities, membership, the Newsletters or anything else, please always feel free to reach out.

Sincerely, Jamie Shuster Morgan, Esq. Council President 2016-2017 Henry E. Kramarski, CFP® Wealth Advisor, President



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For more information contact Tim at <u>EFPCSNJ@mail.com</u> or 856-795-0551.

The AEP candidate form can be downloaded from the

2016-2017 MEETING SCHEDULE

Educational Meetings are usually approved for 1.0 CFP & CPE credits. Meeting registration and more information can be found at <u>www.EFPCSNJ.org</u>

Thursday, September 29, 2016

Topic: Update on Uniform Trust Code Speaker: Glenn Henkel, JD, LL.M., CPA - Kulzer & DiPadova, PA Location: The Mansion on Main Street, Voorhees, NJ Schedule: Breakfast 7:45 a.m.; Program 8:15-9:30a.m. Sponsor: Garden State Trust Company

Thursday, November 17, 2016

Topic: New Regime Financial Update Speakers: Anne Bucciarelli, CFA - Bernstein Wealth Management, Renee Vidal, J.D. LL. M. - Flaster Greenberg Moderator: Kip Schaefer - Bernstein Wealth Management Location: Laurel Creek Country Club, 701 Centerton Rd., Mt. Laurel, NJ Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m. Sponsors: Mass Mutual Financial Group, Praxis Data Systems, UBS Financial Services, Inc.

Thursday, January 19, 2017

Topic: Dilemmas of Dementia - Elder Care Event Speakers: An exciting line up of presenters will be announced shortly Location: Laurel Creek Country Club, 701 Centerton Rd., Mt. Laurel, NJ Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m. Sponsors: LifeSpan Care Management, Rothkoff Law Group. Virtua SeniorWise Care Management, Wells Fargo Private Bank

Thursday, February 16, 2017

Topic: International Tax Consequences Here and Abroad Speakers: Patrick McCormick, JD & Kristin Schmid, JD—Kulzer & DiPadova Location: The Mansion on Main Street, Voorhees, NJ Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m. Exclusive Sponsor: Praxis Data Systems

Thursday, May 4, 2017

Topic: Able Act Accounts and Special Needs Trusts Speaker: Jane Fearn Zimmer - Rothkoff Law Group Location: Laurel Creek Country Club, 701 Centerton Rd., Mt. Laurel, NJ Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m. Sponsor: Gelnmede, Wells Fargo Private Bank There in only **One** Sponsorship Opportunity still available Do not miss this opportunity to sponsor an EFPCSNJ Event - Call 856-795-0551 Today!

June 1, 2017

EFPCSNJ Installation and Awards Dinner Location: Seasons 52, Cherry Hill Mall, Cherry Hill, NJ Schedule: 6:00 pm - 9:00 pm Sponsor: Bernstein Private Wealth Management Sponsorship Opportunities are Still available Do not miss this opportunity to sponsor an EFPCSNJ Event - Call 856-795-0551 Today!

INTERESTED IN SPONSORING AN EVENT?

If you are interested in sponsoring an EFPCSNJ meeting in the 2015–2016 Meeting Year, please contact Abby Murray at 856-795-0551.

New Jersey Medicaid 101 Provided by Jane Fearn Zimmer, Esg. LL.M.

Medicaid, a joint federal-state, means based program financing institutional and community based long-term care, has been called "... a virtually impenetrable thicket of legalese and gobbledygook." <u>Lamore v. Ives</u>, 1991 WL 193601(D.Me.) Here is my translation of the Medicaid rules, as applied in New Jersey.

If there is going to be a problem in obtaining Medicaid eligibility, it will most likely be in establishing income and resource eligibility. To be "income eligible," the applicant in New Jersey must have less than \$2,199 in gross monthly income. Those with higher gross monthly income should deposit the entire source of the "excess" into a Oualified Income Trust (OIT) on a recurrent, monthly basis. The OIT must also be established and funded only with income dollars (not resources) during the month for which Medicaid eligibility sought. Any expenditures from the trust be paid in the following order: (1) monthly personal needs allowance for the beneficiary, (2) spousal allowance necessary to meet the minimum monthly maintenance needs allowance, (3) incurred medical expenses of the primary beneficiary as determined by the county welfare office, (4) the patient pay amount computed by the county welfare office, and (5) trustee fees and up to \$20 monthly in bank fees. If non-allowable expenses are paid from the QIT prior to the date of the beneficiary's death, this will invalidate the QIT and the individual is determined income ineligible for Medicaid.

To obtain Medicaid dollars to pay for long-term care, the applicant must also demonstrate resource eligibility without any Medicaid transfer penalty. A single applicant for Medicaid must have less than \$2,000.00 in countable resources on the Medicaid eligibility date sought. If a Medicaid applicant is married, all of the countable resources in the name of the Medicaid applicant and the spouse (i.e., the community spouse) are computed as of the date of the first continuous thirty day period of institutionalization. This date is known as the "snapshot date. " If the couple's countable assets exceed double the sum of \$120,900 on the snapshot date, then the community spouse is allowed to reserve \$120,900 of the couple's assets as her community spouse reserve allowance. The institutionalized spouse may reserve up to \$2,000. Any assets held by either spouse in excess of the combined \$122,900 Medicaid eligibility cap must be spent down prior the first date of the following month for the applicant to become resource eligible for Medicaid. Where both spouses are married, the resource threshold is \$3,000 for the couple.

A resource is cash, liquid assets, or other property which the prospective Medicaid applicant or that individual's spouse owns and could convert to cash to pay for his support and maintenance. If the prospective Medicaid applicant has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If the applicant lacks the right, authority or power to liquidate her share in the property, through no fault of her own, the asset is unavailable and excluded from treatment as a countable resource. The State Medicaid Manual cites irrevocable trust funds, property in probate and real property which cannot be sold due to the refusal of a co-owner to liquidate the property, as examples of inaccessible assets. Chalmers v Shalala, 23 F.3d 752 (1994) instructs that the term "right, authority or power" is disjunctive. An individual has the power to liquidate a resource if she either has the mental or physical ability or the legal authority to liquidate a resource. Id. See also S.D. v. D.M.A.H.S., (N.J. App.Div., Docket No. A-591-10T3 February 22, 2013) (upholding Agency Director's refusal to authorize an earlier Medicaid eligibility date for a disabled, nursing home resident for whom a guardian was eventually appointed, where

the power of attorney continued to write checks on behalf of an incapacitated individual).

Generally, unless expressly excluded, all resources are treated as countable resources. N.J.A.C. § 10:71-4.2. The State Medicaid Manual excludes the following resources from treatment as countable resources: up to \$828,000 in home equity in the applicant's primary residence, for the first sixth months of Medicaid eligibility, or, if the Medicaid applicant is married, the home is excluded (up to the current home equity maximum limit of \$828,000) for as long as the community spouse resides in the home. N.J.A.C. § 10:71-4.4.1; Medicaid Communication 16-07 (June 29, 2016). Also excludible is one motor vehicle, if used for employment and to provide medical transportation of the Medicaid applicant. N.J.A.C. § 10:71-4.4.2. Personal effects value at less than \$2,000.00 are also excludible (N.J.A.C. § 10:71-4.4.3), as are irrevocable prepaid burial accounts. N.J.A.C. § 10:71-4.4 9. The cash surrender value of any whole life insurance policy owned or controlled by the Medicaid applicant, may be excludible, if the face value is less than \$1,500.00. N.J.A.C. § 10:71-4.4 4. Group term life insurance, has no cash surrender and thus is not counted in determining Medicaid eligibility.

If a Medicaid applicant gives away assets without receiving fair market value in return during the five year Medicaid look back period, a Medicaid penalty period for the uncompensated transfer of assets will generally result. Title 42 U.S.C. § 1396p(E)(i), provides, in pertinent part:

With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to –

- i. the **total, cumulative uncompensated value of all assets transferred** by the individual ... on or after the look-back date specified in subparagraph (b)(i), divided by
- II. the average monthly cost to a private patient of nursing facility services in the State ... at the time of the application.

In planning a transfer for less than fair market value, sufficient assets should be reserved in the name of the prospective Medicaid applicant to carry that individual through the five year look back period, taking into consideration their income. Ideally, the Medicaid application should be filed only after the conclusion of the sixty-first month following the date of the transfer.

Where there has been an uncompensated transfer, and Medicaid is needed prior to the expiration of the five year look back period, consider returning all of the transferred property. If there has been an involuntary transfer, as in the case of fraud, theft or conversion, it may be possible to waive the penalty period on the grounds of an undue hardship. N.J.A.C. § 10:71-4.10q(1)(i) provides that undue hardship exists when a transfer penalty " ... would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered" and "when the transferred assets are beyond his or her control and ... cannot be recovered. " The applicant bears the burden of demonstrating a good faith effort, including exhaustion of remedies at law or in equity, to recover the assets transferred." See also 42 U.S.C. §1396p(c)(2)(D); 20 C.F.R. §416.1246, HCFA Transmittal 64, § 3258.10(C)(4), 5. New Jersey courts are very restrictive in determining whether there is any basis to grant a waiver for undue hardship. The courts seem to draw a line between cases where the Medicaid applicant and his or her spouse have purchased luxury items during the five year look back period, and cases involving fraud, theft or conversion.

To prevail on a hardship waiver application, make every reasonable effort to recover the missing funds. Strategies may include filing a complaint with the County Prosecutor's, pursuing the matter to a grand jury and prosecution, filing a civil lawsuit to recover the missing funds, filing an adversary claim in a bankruptcy action and/or objecting to discharge of the claim in bankruptcy, and reporting the alleged financial abuse to the Ombudsman for the Institutionalized Elderly or Adult Protective Services and the Medicaid Fraud Unit of the County where the alleged wrongdoing occurred.

If establishing the grounds for an undue hardship waiver is unlikely, the usual presumption that transfer of assets was undertaken to qualify for Medicaid benefits may be rebutted by presenting convincing evidence that the assets were transferred solely for some other purpose. N.J.A.C. §10:71-4.10(j). However, where some possibility of Medicaid eligibility appears to have influenced the decision to transfer, the presumption will not be overcome. Rebutting the presumption may be feasible if the prospective Medicaid applicant was healthy and living at home independently when the uncompensated transfer was made, retained sufficient means to pay for any prospective care anticipated at the time of the transfer, and subsequently sustained a traumatic onset of disability and/or the loss of other assets, resulting in the need for Medicaid to pay for any longterm care. N.J.A.C. § 10:71-7 (j). A pattern of prior gifting by the Medicaid applicant, and financial distress on the part of the donee, is relevant. See e.g., R.C. v. D.M.A.H.S., HMA 80467-10 (business records or tax records would demonstrate financial distress); A.M. v. D.M.A.H.S., Docket No. A-4789-09 TI, 2011 N.J. Super. Unpub. LEXIS 674 (App.Div. 2011)(pattern of prior gifting).

It may be possible to successfully challenge a Medicaid transfer penalty by rebutting the presumption that the assets were transferred for entirely other purposes than Medicaid eligibility and/ or by challenging the value assigned to the property transferred by the Medicaid caseworker. Appraisals may establish that the fair market value of real estate is less than the tax-assessed, equalized value at the time of sale. For instance, in J.W. v. Camden County Board of Social Services and DMAHS, HMA 0336-2016S, Final Decision, Dir. (December 13, 2016), the petitioner entered into an assisted living facility in March, 2013 and remained there until transitioning to skilled nursing care in June, 2014. In January, 2014, the petitioner and his wife sold their home to their daughter and son-inlaw for the reduced sum of \$68,000. The tax-assessed equalized value of the property was \$120,456.30. After its sale at the reduced price, home was extensively repaired by the purchasers, increasing its value to the tax-assessed value. The Medicaid determination imposed a transfer penalty of 167 days, based upon the sale of the property for allegedly \$52,456.30 less than the fair market value.

At Fair Hearing, the evidence demonstrated that the petitioner's home would probably have been condemned on an application for a certificate of occupancy. Purchasing the home was the only way the purchasers knew of to keep the petitioner in assisted living. A retroactive appraisal, photographs, a videotape showing the condition of the home at the time of the sale, and copies of the receipts for the repairs made to the premises were presented in the Fair Hearing. On Fair Hearing, the Medicaid transfer penalty was set aside on account of the property's deplorable condition, established to be at or less than \$65,000 at the time of purchase. The reduced valuation meant that the transfer was not at all for an uncompensated value. Because the property was sold (when it could have simply been listed for sale) to provide financing to pay for the petitioner's assisted living care, the prospect of Medicaid eligibility for petitioner played no role in the reason for the transfer.

The second case involved the imposition of a Medicaid transfer penalty on the gift of commercial real property to the petitioner's grandson, who had good credit. After the property was retitled in the grandson's name, the grandson took out a home equity loan against the property and gave the loan proceeds (which were less than the fair market value of the property) to his grandfather. The transaction was undertaken because the petitioner had no established credit rating of his own, but needed funds to fix up the commercial property for sale. The Medicaid transfer penalty was set aside as a way to circumvent traditional financing, having nothing to do with Medicaid eligibility for the petitioner. At the time of the real estate transfer, the petitioner was living actively and independently in the community, and only required Medicaid after a massive stroke. <u>H.G. v. D.M.A.H.S. and Camden County Board of Social Services</u>, HMA 2023-13, Final Decision, Dir. (June 12, 2014).

While applying for Medicaid in New Jersey is not for the faint of heart, the good news is that a seasoned elder law attorney can help you to successfully navigate the sometimes tortuous Medicaid application process.

Jane Fearn Zimmer, Esq., LL.M. is Vice President, Elder and Disability Law Section, New Jersey State Bar Association who works at Rothkoff Law Group in Cherry Hill, NJ.

Jane can be reached by phone at 856-616-2923 or



email: jane@rothkofflaw.com or via the Rothkoff Law Group Website at: www.rothkofflaw.com

This article reflects the opinions of the author and not necessarily those of EFPC of SNJ.





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	Y 4, 2017 BREAKFAST MEETING
"ABLE ACT ACC	OUNTS & SPECIAL NEEDS TRUSTS"
Time: Breakfast - 8: *****Location: Laurel Cre	Date: Thursday, May 4, 2017 :00 am, Educational Program - 8:30 am - 9:30 am ek Country Club, 701 Centerton Rd., Mt. Lautel, NJ**** ker: Jane Fearn Zimmer, Esq., LL.M.
	EFPCSNJ Members - \$30.00
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Estate and Financial Planning Council

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Member-Get-a-Member Contest

EFPCSNJ is announcing a great opportunity to get involved in the organization and help all of the members and meeting attendees become more successful. As you know, one of the most important benefits of EFPCSNJ is networking with other professionals that work in the same industry as you do. By increasing membership we will increase the opportunity for networking and that will help everyone increase their professional circle. Increased membership and meeting attendance will help in the sharing of industry best practices as well as increase the potential for business referrals.

Please Help EFPCSNJ Grow!!! <u>HERE IS HOW</u>

EFPCSNJ will be running a contest now through April 30, 2017. Any current EFPCSNJ member that recruits a new member will receive complimentary attendance at a future educational event in the 2016-2017 program year. The EFPCSNJ member who recruits the most new members will receive 2 complimentary tickets to the Installation and Awards Dinner where they will receive an award.

The process is simple:

1. Discuss EFPCSNJ and the great benefits you receive from being a member with your professional colleagues that meet the membership criteria (Trust Officers, Chartered Life Underwriters, Attorneys, CPAs, CFPs, CFCs and other qualified professionals who are primarily involved in the financial planning process). Once they are ready to join they simply need to go to <u>www.efpcsnj.org</u> and select "Application Form" on the left hand menu.

1. They will need to complete the form and make sure to put that they are recommended by you for membership at the bottom of the online form.

Once the application is received it will be reviewed and the EFPCSNJ Office will get back to them regarding the status of their application.

Please help EFPCSNJ grow so we can continue to help all of our members prosper.

Some information about EFPCSNJ:

The Estate and Financial Planning Council of Southern New Jersey (EFPCSNJ) was established in 1975 and serves our members by providing educational and networking opportunities throughout the year. Our members are Trust Officers, Chartered Life Underwriters, Estate Attorneys, CPAs, CFPs, Chartered Financial Consultants and other qualified professionals who are involved in the estate and financial planning process. We have approximately 125 members that service clients in the NJ counties of Camden, Burlington, Atlantic, Cumberland, Ocean, Salem and Cape May. Being a part of this group provides you educational opportunities, networking events and the ability to get continuing education credits of you are a CFP, CPA or lawyer registered in NJ or PA.

EFPCSNJ holds 5 educational events per year and has an annual Installation and Awards Dinner. The educational events are held in September, November, January, March and May and the dinner is usually held in early June. For a complete listing of events please visit www.efpcsnj.org.

For more information on the Member-Get-a-Member Contest please call Abby Murray at 856-795-0551 or contact her by email at efpcsnjmbrsvcs@bowermanagementservices.com.



Estate and Financial Planning Council of Southern New Jersey, Inc. PO Box 460 • Collingswood, New Jersey 08108 <u>P: 856-795-0551 • F: 856-210-1619</u> efpcsnjmbrsvcs@bowermanagementservices.com • www.EFPCSNJ.org

2016-2017 DUES RENEWAL

	Description	Amount
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Corporate Members – 5	5th member and more @ \$120	
	Total	
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12		February 2017
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Call for Articles

Please consider submitting an article for inclusion in future newsletter issues. We are now seeking articles for the EFPCSNJ newsletters.

Articles should be between 1,200 and 2,000 words

which is usually three to six typed pages.

Submissions should be sent as a word document to Abby Murray at <u>efpcsnjmbrsvcs@bowermanagementservices.com</u>.

This is a great way to get involved with EFPCSNJ and to share knowledge and information with the rest of the members.

To view recent newsletters please visit the EFPCSNJ website (<u>www.efpcsnj.org</u>) and go to Documents.