MA ESTATE RECOVERY

Minnesota Department of Human Services
Benefit Recovery Section
Special Recovery Unit

MFSRC Annual Training Conference
Best Western Kelly Inn/St. Cloud Civic Center
St. Cloud, Minnesota
September 20, 2011

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PRESENTATION OVERVIEW

- LITIGATION UPDATE
- CAUSE OF ACTION
- MA LIEN & NPC REFERRAL WORKSHEET (DHS-3203)
- TRANSFER ON DEATH DEEDS (TODDs)
- MULTIPLE-PARTY ACCOUNTS
- LIFE ESTATE EVAULATION
- DHS RECOVERY FROM ANNUITIES
- ONLINE FORMS
- Q&A

LITIGATION

• In re Estate of Perrin

- Facts

- Dorothy (MA Recipient Spouse) applied for MA on or about 1999 and passed away March 2004.
- Richard (Non-MA Recipient Spouse) passed away July 2006.
- The only significant asset in Richard's estate was the homestead, which the spouses owned as joint tenants before their interest was conveyed to Richard in August 1995.

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LITIGATION

Perrin Continued

- County filed a claim in the estate of Perrin in the amount of \$276,408.16 for MA paid on behalf of his predeceased spouse.
- -While the County was pursuing its claim against the <u>Perrin</u> estate, a similar claim against a surviving spouse's estate was being litigated in <u>Barg</u>.

LITIGATION

Perrin Continued

- The County and the estate agreed to wait for the outcome of <u>Barg</u> before moving forward with <u>Perrin</u>.
- After <u>Barg</u> was decided, the County again moved for allowance of its claim and asserted an alternative theory of recovery under Minn. Stat. § 519.05(a) (2008), which provides that spouses are jointly and severally liable for each other's necessary medical expenses.
- In February 2010, the District Court denied the County's original claim based on the <u>Barg</u> decision and concluded the § 519.05(a) alternative theory of recovery was barred by the decision in <u>Barg</u>.

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LITIGATION UPDATE

Perrin Continued

- County moved for review of the District Court's February order denying its claim against the Perrin estate. The Commissioner intervened.
- District Court issued an order in June 2010 affirming its February order.
 - Order recognizes the <u>Barg</u> decision does not mention § 519.05(a) in its decision, but found the issue to have been finally adjudicated.
- Appeals Court affirmed the District Court decision. Petition for Review was denied in June.

2009 LEGISLATIVE CHANGES

- Expanded definition of "estate"
 - Clarifies the ability to recover in the estate of the surviving (non-recipient) spouse.
 - Recognizes a marital property interest as a legal title interest for purposes of MA estate recovery.
 - Limits recovery to the value of property in the estate that was marital property or jointly-owned property at any time during the marriage
 - State Plan Amendment incorporating 2009 legislative amendments was approved by the Centers for Medicare and Medicaid Services (CMS).
 - See Laws of Minnesota, 2009, chapter 79, article 5, Sections 38-43 and 73.

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LITIGATION UPDATE

- In Re Estate of Ruddick, File No: 62-PR-10-183
 - -Recipient received MA;
 - Recipient died before June 30, 2009; and
 - Recipient was survived by a non-recipient spouse.

*If you receive a challenge to an estate claim in a case like this, please give me a call.

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LITIGATION UPDATE

In re Estate of Ruddick

- To obtain an outcome that establishes precedent on joint and several spousal liability that is beneficial to the State in other MA benefit recovery cases.
- To confirm joint and several spousal liability under § 519.05 is a valid basis for satisfaction of a recovery claim. This is necessary in light of the 2008 <u>Barg</u> decision and anticipated challenges to the 2009 estate recovery amendments.
- * If your claim is challenged in a case like this, please give me a call.

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LITIGATION UPDATE

Ruddick Continued

- Estate asserts that § 519.05 is barred by collateral estoppel because that statute was raised as an alternative in Barg.
- · Commissioner intervened to take the lead.
- Argument was held in December 2010 before
 District Court; however, case was put on hold
 pending the Court of Appeals decision in <u>Perrin</u>.
- Hearing has been rescheduled several times; now scheduled for November 8th.

Recovery in Surviving (Non-Recipient) Spouse's Estate

- The county shall file a claim in the probate proceedings of the surviving spouse's estate for recovery against martial property in the surviving spouse's estate for MA benefits received by the predeceased recipient spouse who died on or after July 1, 2009.
- Indicate the statutory authority for such a claim as Minn. Stat. § 256B.15 and § 519.05(a).
- * If the county's claim is challenged in a case like this, please give me a call.

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LITIGATION

- In re Estate of Paetznick; Washington County File No: 82-PR-10-4323
 - Claim against the surviving (non-recipient) spouse for MA provided to recipient spouse. The estate was comprised mainly of the homestead, which could only partially satisfy the claim.
 - The personal representative disallowed the claim in order to challenge the 2009 amendments.
 - Property was transferred to the community spouse in 2006 when recipient began receiving MA.
 - Recipient passed away March 20, 2010, surviving spouse passed away May 20, 2010.
 - Commissioner intervened to take the lead.
 - Case settled in June 2011.

LITIGATION UPDATE

Transferee Cause of Action

- <u>Douglas County v. Lindgren, et al</u>; file No:21-CV-09-477
 - Douglas County brought forth a claim against the defendants alleging entitlement to recover the value of gifts given to the Defendants by their mother, an MA recipient.
 - Cause of Action brought forward under Minn. Stat. § 256B.0595, subd. 4 and subd 9.
 - Court found Minn. Stat. § 256B.0595 to be preempted by federal law.
 - Not appealed to Court of Appeals, no precedential decision barring bringing a cause of action.
 - If pursuing a cause of action, please contact me so I can share example pleadings and offer guidance and support.

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CAUSE OF ACTION – Transfer Prior to Death Minn. Stat. § 256B.0595, subd. 8

- (a) A cause of action exists against a transferee who receives assets for less than fair market value from:
 - (1) an MA recipient who made an uncompensated transfer that was **known** to the county agency, but a penalty period could not be applied due to the **death** of the recipient; or
 - (2) an MA recipient who made an uncompensated transfer that was **not known** to the county agency and the transfer was made with the intent to hinder, delay, or defraud the state or local agency from recovering as allowed under § 256B.15.

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TRANSFER ON DEATH DEED

("TODD")

- Minn. Stat. § 507.071
- TODD provides a way to convey real property to one or more grantee beneficiaries upon the death of the grantor(s) without the cost of probate or granting interest prior to death.
 - No interest is transferred until after the death of the grantor.
 - The TODD may be revoked at any time by the grantor owner as long as revocation is recorded prior to death.

TRANSFER ON DEATH DEED

Rights of Creditors

- The interest transferred to the grantee after the death of the grantor is subject to all encumbrances the property was subject to during the grantor's lifetime.
 - This includes any claim for MA not already satisfied by the grantor's estate.

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TRANSFER ON DEATH DEED

Clearance Certificate Minn. Stat. § 507.071, subd. 23

- Any person claiming an interest in real property conveyed by a TODD must apply to a county agency in the county where the real property is located for a clearance certificate to release public assistance claims and liens on real property.
 - NOTE: A County with an interest in the real property conveyed by TODD may petition or move the district court, as appropriate, in the county in which the real property is located or in the county in which a probate proceeding affecting the estate of the TODD grantor is pending, for an order allowing sale of the real property free and clear of any public assistance claim or lien, but subject to disposition of the sale proceeds as provided in § 525.313.
 - On a showing of good cause and subject to such notice as the court may require, the court without a hearing may issue an order allowing the sale free and clear of any public assistance claim or lien on such terms and conditions as the court deems advisable to protect the interests of the state or county agency.

MULTIPLE-PARTY ACCOUNTS

- Minn. Stat. § 524.6-207 Rights of Creditors
 - If a decedent's other assets are insufficient to pay an MA claim arising under Minn. Stat. § 256B.15, a multiple-party account does not transfer the decedent's interest in the account to the surviving account holders to the extent the decedent was the source of funds or the beneficial owner of the account.

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MULTIPLE-PARTY ACCOUNTS (Cont.)

- Duty of Surviving Account Holders or P.O.D. Payees
 - A surviving account holder or Pay on Death (P.O.D.) payee who receives payment from a multiple-party account after the deceased recipient's death is liable to account to the county with a claim for recovery of MA. They must account for the amounts the deceased recipient beneficially owned immediately before death to the extent of the MA claim which remains unpaid after application of the decedent's other assets.

MULTIPLE-PARTY ACCOUNTS (Cont.)

- How Recovery is Made:
 - By Action:
 - The county must make a written demand on the personal representative to commence a proceeding for recovery of the decedent's interest in the account.
 - The statute appears to imply that a county with an MA claim can bring the action on its own independent of the personal representative.
 - By Serving an Affidavit of Collection on the Financial Institution Where the Account is Located
 - Minn. Stat. § 524.3-1201 and Minn. Stat. § 524.6-207.

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LIFE ESTATE MORTALITY TABLE

- How is the life estate mortality table used for MA Estate Recovery?
 - Minn. Stat. § 256B.15 provides for the continuation of a recipient's life estate interest in real property after the recipient's death for MA recovery purposes if it was established after August 1, 2003.
 - A deceased recipient's life estate is:
 - Owned by the remainderperson(s) as their interests appear on the date of the recipient's death;
 - Not merged into the remainder interest; and
 - Subject to the provisions of Minn. Stat. § 256B.15.

LIFE ESTATE MORTALITY TABLE (Cont.)

- Use the life estate mortality table in the Health Care Programs Manual (HCPM) to determine the value of the recipient's life estate interest on the date of death.
- See HCPM 19.25.15.15 Life Estates and 19.25.15.20 - Life Estate Mortality Table

http://hcopub.dhs.state.mn.us

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LIFE ESTATE EXAMPLE

Recipient who was 70 years old at time of death has a life estate interest in real property with an equity value of \$200,000.

Recipient's Life Estate Value: \$200,000 x 0.60552 =

\$121,104

Equity Value = Fair Market Value less Encumbrances

Age	Life Estate Interest	Remainder Interest
67	.73267	
62	.72002	,4
63	.70896	304
64	.69352	30648
65	.67970	.32030
66	.66551	.33449
67	.65098	4902
68	.63610	390
69	.62086	
70	.60522	.39 778

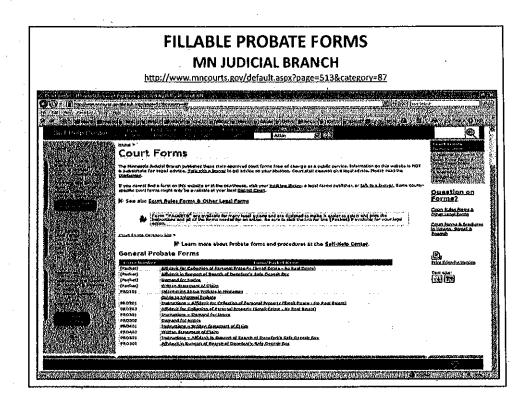
Recovery from Annuities in a Nutshell

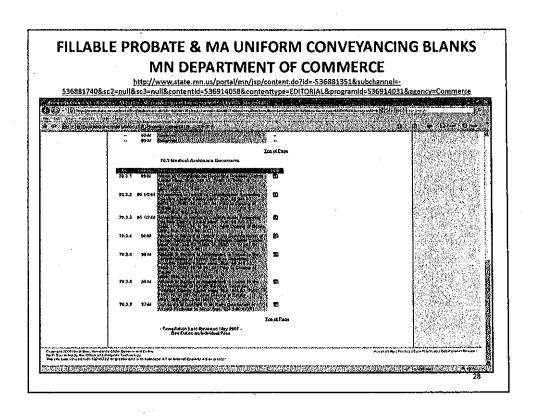
- When an individual requests MA payment for long-term care (LTC) services, the individual and/or the individual's spouse must name DHS as a preferred remainder beneficiary under the annuity if an annuity transaction occurred on or after February 8, 2006, and within the individual's lookback period.
- As the preferred remainder beneficiary, DHS may receive up to the total amount of MA paid on behalf of the individual and/or the individual's spouse when a death benefit becomes payable under the terms of the annuity contract.
- If the client's spouse, <u>child under 18</u>, or a disabled adult child (based on the criteria of the Supplemental Security Income (SSI) program) is named as a beneficiary at the time the death benefit becomes payable, DHS is a secondary beneficiary to such individual(s).

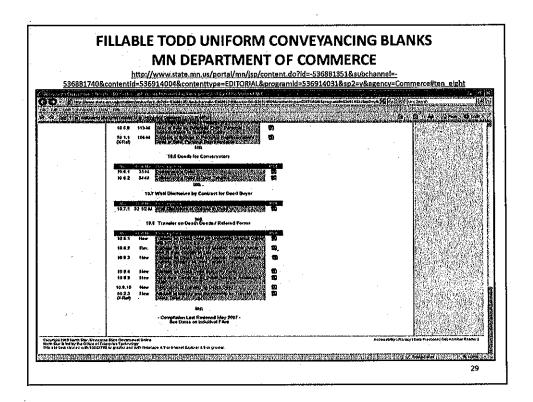
Recovery from Annuities in a Nutshell (Cont.)

- 1. Send the appropriate Annuity Beneficiary Designation Form (DHS-5036 or DHS-5036A) to the individual requesting MA payment of long-term care (LTC) services.
- 2. When the DHS-5036 or DHS-5036A is returned, complete the Issuer of Annuity Notice of Obligation (DHS-5037)
- 3. Send the original DHS-5037 and DHS-5036 or DHS-5036A to the annuity issuer.
- 4. When the annuity issuer returns the DHS-5037, confirm DHS has been named a preferred remainder beneficiary.
- If DHS is allowed to recover from the annuity upon the owner(s) death, payment is sent to the DHS Special Recovery Unit.

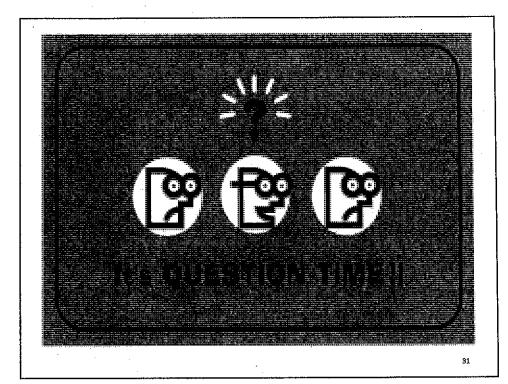
See HCPM 19.25.30.10 – Naming DHS a Preferred Remainder Beneficiary.







MA COLLECTION INCENTIVE: Increased Federal Match under the American Recovery and Reinvestment Act (ARRA) -- MN MA Program (Federally Funded) Punt land Fadaral Hen-Faderal Maiching Rein There October 1, 2001 through March 11, II quarters) April I, 1000 through December 11, 1111 i marteri immory 1, 2011 through Mirch II. April I, 2011 through Lone 95, 2011 56.2H¥ i maneri Liy 1, 2011 Congoing



SPECIAL RECOVERY UNIT ASSISTANCE

See MN Health Care Programs Manual (HCPM): http://hcopub.dhs.state.mn.us/

Section19.50 – Liens & Estate Recovery Section19.50.05 – Methods of Estate Recovery

Property Liens/Notice of Potential Climas (assigned by last name):

A-G	Jan Curran	651-431-3154
H-M	Denise Meyer	651-431-3158
N-S	Greg Lulic	651-431-3152
T-Z	Kristen Lorsung	651-431-3115

Policy Questions:

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