

THE B&B ALERT

(800) 533-7227



No. 6 Vol. 2

June 14, 2002

BEGLEY &
BEGLEY, PC

ATTORNEYS AT LAW
COMMITTED TO EXCELLENCE

Please visit us on the World Wide Web at:

www.begleylawyer.com

Under New Leadership, the Elder Law Section of the NJ Bar Works to Improve State Regulations

On June 12, 2002, Dana E. Bookbinder was installed as the new Chair of the Elder Law Section for the New Jersey State Bar Association. The Elder Law Section, consisting of approximately 400 attorneys from across the State, sponsors legal education seminars for attorneys and the public and meets regularly to discuss elder law issues. By initiating legislation, meeting with State government representatives, and creating task forces to address legal oversights and inconsistencies, the Section continues to enhance planning opportunities for the elderly and disabled. Having completed a year term as Vice Chair of the Elder Law Section, Dana will serve as Chair until June 2003.

The Elder Law Section anticipates a busy year as it works proactively toward acquiring clarification and modification of certain provisions contained in the Medicaid regulations enacted by the State in June 2001. Under the new regulations, certain legal planning techniques that had been utilized in New Jersey and which are still frequently used in other states are held suspect by ambiguous language. The most dramatic divergence from past Medicaid planning regulations is contained in the provisions regarding the use of annuities. The new regulations state that, to be permissible for Medicaid eligibility purposes, annuities must have certain characteristics, such as being actuarially sound, which means they must be within the life expectancy of the annuitant. Yet, the new regulations also proclaim that any annuity, regardless of whether it meets listed criteria for Medicaid approval, will be considered a countable asset for benefits eligibility purposes. The language of the regulation is self-contradictory.

In another apparent oversight, the 2001 regulations do not specifically exempt transfers to trusts created for the sole benefit of a disabled child from Medicaid transfer penalties. Yet, federal law specifically lists such transfers as exempt from such penalties. These well-established legal vehicles, used for years in this state and others for benefiting disabled individuals, are threatened if the new provisions are broadly enforced. Without such legal devices, prospective Medicaid applicants would have a strong incentive for making outright transfers rather than transfers in trust to disabled children, although such children may lack the capacity to appropriately manage the transferred assets.

The new regulations aim to conform state Medicaid eligibility requirements to federal law, yet with respect to certain legal issues, they appear to go a step further. Nevertheless, substantial opportunity is preserved under both federal and state law to protect assets for spouses of ill individuals, preserve inheritances, and avoid liens on property. The attorneys in the Section, while arguing for changes to the 2001 regulations, continue to advocate for their clients, and in many cases, can even obtain Medicaid eligibility for clients more quickly than before the Medicaid rules were revised. Yet, the ambiguities in the regulations could pose traps for those unfamiliar with Medicaid policy and procedure.

Begley & Begley, P.C. proudly announces the opening of its new office for the benefit for our clients and referral sources who live in the city of Philadelphia and the adjoining area. Our new office is located at:

**Two Penn Center Plaza
1500 John F. Kennedy Blvd.
Suite 200
Philadelphia, PA 19102
(215) 568-5770**

We are here to serve you for your Estate & Medicaid Planning needs.



Begley & Begley P.C. is a law firm that concentrates on Estate & Tax Planning, Elder Law, Estate Administration, Guardianship and Will Contests, Real Estate, as well as Medicaid Planning. We are based in Moorestown, NJ, with offices in Avalon, Lawrenceville & Philadelphia, PA.

If you have any comments, e-mail us at ldickens@begleylawyer.com

Our web site contains a library of firm newsletters, articles, on-line forms for Medicaid, Estate Planning and Guardianship, as well as our upcoming speaking engagements, our products, and other relevant information.

If you are interested in having an Elder Law Attorney from Begley & Begley speak at an event, please contact Laura Dickens at (856) 787-4233.

This newsletter is not intended as a substitute for legal counsel. While every precaution has been taken to make this newsletter accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this newsletter.



Member, National Academy of Elder Law Attorneys

Copyright © 2002 by Begley & Begley, P.C., 509 South Lenola, Building 7, Moorestown, NJ 08057

This newsletter is expressly produced to be sent electronically. If we currently fax you a copy of the B&B Alert, and you would prefer to receive it via EMAIL, please contact:
ldickens@begleylawyer.com