

September 21, 2020

## **UPDATES IN ELDER LAW AND SPECIAL NEED PLANNING 2020**

There have been several elder law and special need planning updates in 2020. The NC General Assembly enacted legislation directing the North Carolina Department of Health and Human Services (“DHHS”) to transition Medicaid and NC Health Choice from fee-for-service to managed care. Under a managed care model, the state would contract with insurance companies to provide all services for a predetermined set rate per person. DHHS was on track to go live with implementation of managed care on February 1, 2020, awaiting NC General Assembly authority. On November 19, 2019, the DHHS announced that due to the NC General Assembly’s failure to provide the required spending and program authority for Medicaid’s transition to managed care, managed care implementation and open enrollment for NC Medicaid must be suspended. Note, nothing changes for NC Medicaid beneficiaries. NC Medicaid will continue to operate under the existing fee-for-service model administered by DHHS.

On December 10, 2019, Section MA-2242 of the NC Medicaid Manual was revised to increase the home equity limit to \$595,000. This means that for applications for institutional services under NC Medicaid’s program after January 1, 2020, the applicant’s primary residence will be an excluded asset if the applicant is living in the home or intends to return home and the equity in the home is less than or equal to \$595,000. Previously, the home equity limit was \$585,000.

A recent decision in the North Carolina Court Appeals highlights the importance of reading and understanding nursing home admission documents prior to signature. In *Hager v. Smithfield East Health Holdings, LLC*, 826 S.E.2d 567 (N.C. Ct. App. 2019), the court held that facilities do not owe prospective residents, or their agents, any fiduciary duty during the admissions process to ensure complete understanding of the terms and consequences of each document. In this particular case, the prospective resident’s agent signed a mandatory **arbitration** agreement without reading it. If you or a family member is entering a long-term care facility, it is important to read and understand all documentation provided. If you have any questions about the admission documents, we invite you to reach out to a member of the **Trusts and Estates Group** at **Johnston Allison Hord** for assistance.

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