

Farm Management

Legislators amend estate planning laws



Farm & Family

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I'M taking a break from our usual discussion of estate planning and farm and business succession to highlight recent legislative changes in Minnesota that have been made law over the summer.

The 2016 regular session of the Legislature adjourned in May and with it, two bills were passed that are of significance in the areas of estate planning and elder law: 1) an amendment to Minnesota Statute 256B.059 that affects the spousal anti-impoverishment provisions and the asset assessment for medical assistance eligibility; and 2) an amendment to Minnesota Statute 256B.15 affecting estate recovery changes.

Asset assessment and spousal anti-impoverishment update

Effective June 1, 2016, the term “spousal share,” which was defined as one-half of the total value of marital assets as determined on the asset assessment date (the first day of 30 continuous days of institutionalization) was removed from the medical assistance statute. Under new law, assets are not assessed until an application for medical assistance payment of long-term care services has been made. Further, because the spousal share has been removed from the statute, the need for an asset assessment has been eliminated.

This change simplifies the medical assistance application process in a number of ways. It eliminates the need to determine asset values as of the asset assessment date, which could have been months or years in the past. It also makes calculating the required spend-down much easier, as there is no splitting of assets. All assets are simply assessed on the date of application, and any amount over the spousal allowance must be spent down before medical assistance will pay for long-term care services.

In addition to eliminating the asset assessment date, the statute was further amended to affect the spousal allowance. Previously, the law provided for a maximum and minimum amount of resources that the community spouse was allowed to keep under the spousal anti-impoverishment rules. The community spouse was allowed to keep a maximum of \$119,220 and a minimum of \$33,851. After the asset



LEGISLATIVE CHANGES: Laws concerning elderly Minnesota residents and estate planning were passed by the Minnesota Legislature in its 2016 regular session, which ended in May.

Key Points

- Amendments to state law in estate planning, elder law are significant.
- “Spousal share” is removed from medical assistance statute.
- Amendment limits state’s reach in recovery claims for medical aid.

assessment, assets were split 50/50, and if the community spouse was left with assets outside of that maximum-minimum range, he or she would either spend down (if over \$119,220) or receive assets from the long-term care spouse (if less than \$33,851).

This year’s legislative change removed the spousal share and splitting of assets, and consequently the minimum allowance. Now, the community spouse can keep up to the maximum amount of assets, still \$119,220.

Estate recovery update

Changes were also made in this session affecting which estates are subject to estate

recovery under the medical assistance statute. Previously, estates were subject to recovery: 1) for all medical assistance payments made for individuals age 55 or older; and 2) for medical assistance payments made for individuals under age 55 if those payments were for long-term care services. The statute had a broad reach in that the state could make a claim against the estates of those who received medical assistance after age 55, even if the individual never stepped foot in a long-term care facility.

The new law amends the statute to limit the reach of the state in recovery claims. Applying retroactively to services rendered on or after Jan. 1, 2014, recovery is only available against the estate of someone 55 or older who received nursing facility services, home- and community-based services or related hospital and prescription drug charges, and claims must not include interest. The change does not affect the estates of those who received

medical assistance payments prior to age 55 where the benefits were paid for long-term care services. Recovery efforts will still be made as previously allowed against those estates for medical assistance payments made.

For good or bad, medical assistance laws change frequently. If you currently receive medical assistance benefits or may in the future — for example, due to a potential long-term care facility stay — it is imperative to stay informed about changes in the laws and how those changes affect your rights. If you have questions about your particular situation, you should visit with an elder law attorney who is experienced in the area of medical assistance planning.

Please feel free to email your questions and comments to Miller Legal at comments@millerlegal.com.

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