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## Important Update to Who the New Medicaid Look Back Period Applies

People with disabilities receive services from the Office for Persons with Developmental Disabilities, the Office of Mental Health, and the Department of Health. These services are funded through Medicaid. Each person receiving these services must, therefore, obtain Medicaid, often Medicaid Waiver, funding to attend and participate in programs. Most of these programs are pursuant to the Home and Community Based Waiver (HCBS). The services provided are provided in the Community and not in an institution.

On April 1, 2020, the New York State Budget was passed by the Legislature and signed by Governor Cuomo. The Budget included significant changes to New York State Medicaid Home Care Program. The changes are effective for applications for community Medicaid beginning on October 1, 2020.

To put it simply, if you were to apply for Medicaid on behalf of your loved one ("the applicant") in October 2020, the assets of the applicant will be traced back to April 1, 2018 due to the 30 month "look back." That is, you will have to provide all financial records of the applicant from April 1, 2018 through September 30, 2020. Medicaid is looking to see if the applicant gave any money away—if the applicant made any "uncompensated transfers" or gifts.. An "uncompensated transfer" is a transfer of assets (ie stock, cash, a home) for less than fair market value. If an uncompensated transfer or gift has been made, then there will be an imposition of a penalty period during which Medicaid will not pay for services.

The biggest question was whether or not these changes applied to people who received services through the Home and Community Based Waiver 1915 (c) and (d). No one had an answer until now.

### So what's new?

We have confirmed that the changes proposed to the Medicaid program in the April 2020 Budget do not apply to persons receiving services from OPWDD, the traumatic injury waiver (TBI), the Nursing Home Transition Waiver and others receiving Medicaid services under the 1915(c) and (d) waivers.

### Takeaway:

As published in the New York State Register dated August 19, 2020 (page 76), the look back period and the other changes set forth in the Budget do **NOT** pertain to waiver services obtained pursuant to 1915(c) or (d) of the Social Security Act, which are waiver services provided through the Office for People with Developmental Disabilities (OPWDD) the Comprehensive Home and Community-Based 1915(c) Waiver, the Traumatic Brain Injury Program, the Nursing Home Transition and Diversion Waiver Program, the consolidated 1915(c)

Children's Waiver among others.

If your loved one with disabilities does not have Medicaid through one of these waivers, the look back period would still apply if they are looking to receive Medicaid. You should file for Medicaid benefits prior to the October 1 deadline in order to avoid any issues.

We know this is a confusing time. If you have any questions or need assistance, our office is here to help.

Stay healthy and safe,

Saundra Gumerove & Associates

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