

The  
Law Offices  
of

DAVID R. OKRENT

# Briefs

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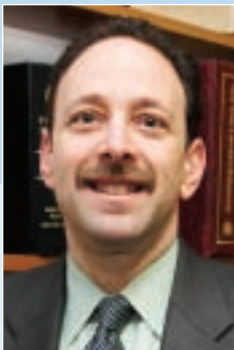
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## ASK DAVID

**Q.** In light of proposed changes in Medicaid eligibility laws, do I need to transfer funds now?

**A.** There will still be planning opportunities under the new law.

However, clients are encouraged to complete pending transfers before the end of the month.

## Congress May Hurt Long Island Seniors

*Clients Urged to Complete Pending Transfers Before Jan. 31*

A Congressional Budget Reconciliation Bill, designed to cut the federal budget deficit by \$39.7 billion, includes draconian cuts to Medicaid eligibility, which will have significant impact on Long Island's aging popula-



Lawmakers on Capitol Hill have made provisions to alter Medicaid eligibility.

tion. The bill, which was passed in the Senate with a tiebreaking vote by Vice President Dick Cheney, includes these provisions:

- Alteration of the homestead exemption that allowed a person to qualify for Medicaid, while remaining in their home, or if their spouse or disabled child remained in the home.
- Replacement of the 3-year look back period with a 5-year look back for asset transfers.
- Changes to the law that make annuities vulnerable.
- Transfer penalties will start when a person needs institutional care, instead of when a transfer is made.

The House of Representatives is scheduled to consider the Budget Reconciliation Bill for final passage at the end of January.

## The New Medicare Prescription Drug Coverage

By **David R. Okrent**, Managing Attorney and **Claudia T. Salazar**, 2nd Year Associate

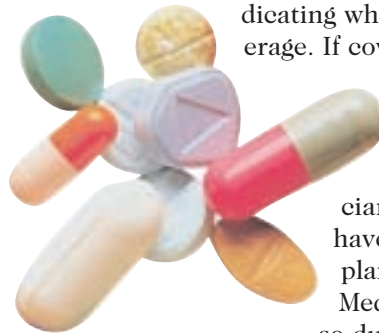
The new Medicare Part D prescription drug program began on January 1, 2006. Almost 3 million Medicare beneficiaries in New York State will be affected by the new prescription drug benefit. Medicare Part D will be available to all Medicare beneficiaries through over 40 prescription plans offered through private companies. There are rules and specific deadlines beneficiaries must be aware of.

All Medicare beneficiaries must make decisions regarding a Part D plan. Medicare beneficiaries that will not require Part D are those with "creditable cov-

erage" through a former employer or other private insurance. Creditable coverage means coverage that is as good as or better than the standard Medicare prescription drug benefit. Medicare beneficiaries have received notices from their health plans indicating whether they have creditable coverage. If coverage is creditable, beneficiaries should compare their plans to the Medicare Part D plans to determine which plan is the best choice. Beneficiaries may keep the coverage they have or enroll in a Medicare Part D plan. If they decide to enroll into a Medicare Part D plan, they must do so during the initial enrollment period to avoid any penalties discussed below.

Though enrollment in a Medicare Part D

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## ✓ CHECKLIST

### How to Make A Strong Will

Executing a will is one of the most important steps in estate planning. However, wills need to be reviewed periodically to ensure that the wishes expressed in the document comply with your present financial and family situation. The following is a checklist of some of the questions that should be asked to determine if you should revise your will or add a codicil or amendment to it:

- Has a beneficiary died, taken ill or become disabled?
- Has the structure of your assets changed?
- Have you retired?
- Have you married or divorced?
- Have you welcomed a new child or children to the family?
- Is there a supplemental needs trust included with your will?
- Have the tax laws changed?
- Have you ensured that you have listed the beneficiaries to whom you want assets left?
- Have children predeceased?
- Is your executor living and are they in good health?

Once those questions are answered, you should also:

- Review your assets to avoid probate litigation.
- Make sure your affairs are efficiently organized.



Reviewing your will periodically is a necessary part of your estate plan.

## Take Control Of Your Medical Wishes

The Supreme Court has held that an individual has a constitutional right to make decisions regarding his or her own medical treatment, including the right to refuse life sustaining treatment.

In New York State, two types of advance directives have become extremely valuable tools in planning for possible incapacity: The health care proxy and the living will.

### HEALTH CARE PROXY

New York State has codified the right of an individual to designate an agent to make medical decisions on his or her behalf in article 29-C of the N.Y. Public Health Law. The health care proxy is defined as a document which delegates the authority to another adult known as a health care agent to make health care decisions on behalf of the adult when that adult is incapacitated. The document must be executed when a person is competent. An agent's authority is valid only during periods of temporary or permanent decisional incapacity of the principal. The health care agent "stands in the shoes of the principal" and exercises the principal's right to grant or refuse consent to medical treatment. If the principal's wishes are known, either through written directions in the health care proxy or a separate living will, or from conversations with the agent, then the agent's actions

must be consistent with those wishes, including the principal's religious and moral beliefs. If the agent does not have a reasonable idea as to the principal's wishes on a particular issue, and cannot with reasonable effort discover them, then the agent must attempt to make health care decisions based on the principal's best interest." The health care proxy should state wishes regarding artificial nutrition and hydration.

### LIVING WILL

In New York State there is no statutory authority supporting the use of a living will. The Court of Appeals of New York though has strongly endorsed its use. The rationale for the Court's decision is that verbal statements are often too general and do not provide adequate proof to outweigh the state's interest in preserving the rights of individuals who are unable to make decisions for themselves.

With the enactment of the health care proxy statute, the living will has been relegated to somewhat second choice. However, a well drafted Living Will is still recommended in conjunction with a health care proxy. It gives the agent named in the health care proxy guidance and in the event the agents are unavailable, it will have the "clear and convincing evidence" required by the Court of Appeals to make sure your wishes are followed.

## Plan B is Part D in Medicare Drug Coverage

*Continued from Page 1*

program is voluntary, those Medicare beneficiaries without creditable coverage who fail to enroll in a Part D plan within the appropriate enrollment period will likely not have Medicare prescription drug coverage for a period of time. Additionally, they will incur a late enrollment penalty for each month that they do not have creditable coverage. This penalty is equal to 1% of the base premium for each month without creditable drug coverage. Thus, Medicare beneficiaries without creditable coverage should review the Medicare plans to determine which plan fits their needs. Those with creditable coverage may decide to later enroll in a Medicare prescription plan and will not

pay a penalty if they hold creditable coverage more than 63 days before they enroll in a Medicare Part D Plan.

Medicare beneficiaries who also receive Medicaid will have their existing Medicaid drug coverage replaced by Medicare Part D plans. These individuals were assigned to a random Part D plan in October 2005. If these beneficiaries did not switch to another Medicare Part D plan by December 31, 2005, the assignment became enrollment.

Medicare Part D provides prescription drug coverage to millions of Americans who did not have benefits, however it is necessary for beneficiaries to carefully review the alternatives and decide which plan best fits their medical needs.

# David R. Okrent

David R. Okrent, an attorney and certified public accountant, is the principal owner of the Law Offices of David R. Okrent, a firm that concentrates in the areas of Elder Law, Tax, Estate Planning, Children with Special Needs, Estate Administration, and Asset Protection.

Okrent has more than 21 years of experience in the legal and accounting fields and has received the Man of Spirit Award from the Long Island Coalition for the Aging for his commitment to the field of aging.

He has lectured to the bar associations in Suffolk and Nassau counties and New York state, the Practicing Law Institute, the New York Society of CPAs, the National Conference of CPAs, the Association of Professional Financial Planners, the Suffolk County Estate Planning Council, the Tax Institute of the School of Professional Accountancy at Long Island University and Nassau County Life Underwriters.

In addition, he has lectured for the Long Island Alzheimer's Foundation, the Alzheimer's Association, Senior Law Day with Assemblyman Steve Englebright, St. John's University, Long Island University, Good Samaritan Hospital and the Veteran's Administration Hospital in Northport.

Okrent has also lectured for many local senior groups, charities and libraries. He has appeared on the News 12 television program *Best Years* and was the long-time co-host of the WEVD-AM morning program *Elder Law and Senior Forum*.

Okrent is a past co-chair of the Suffolk County Bar Association Elder Law Committee and is an Advisory Member of the Bar Association's Academy of Law, which is responsible for educating its members. He is a past chair of the Bar Association's tax committee and is a member of the New York State Bar Association and the Na-



David Okrent, Esq., CPA

tional Academy of Elder Law Attorneys. Okrent is also a past member of the Nassau and American Bar Associations. He serves on the Tax and Elder Law Committees for the Suffolk and New York State Bar Associations.

Okrent is the current chair of the Legal Advisory Board of the Long Island Alzheimer's Foundation, a past member of the former Planned Giving Council of Good Samaritan Hospital in West Islip, a member of the Advisory Board of Friends of Karen, a past vice president and education co-chair of the Long Island Eastern Chapter of the National Conference of CPAs, a past officer of the Association of Professional Financial Consultants and a past alumnus liaison for the Tax Institute of the School of Professional Accountancy at Long Island University. He is a member of the New York Society of CPAs and its Estate Planning Committee and is a past member of the American Institute of CPAs. He was recently appointed to the National Republican Congressional Committee's Business Advisory Council, the Local Early Intervention Coordinating Council for Suffolk County and the Steering Committee for the Senior

Law Day with Englebright.

Okrent was formerly associated with a leading elder law firm. Previously, he worked as a revenue agent with the Internal Revenue Service, where he was responsible for litigation support and audit examinations of individuals, corporations and partnerships. Before joining the IRS, Okrent worked as an accountant with KPMG.

Okrent received his Juris Doctorate from St. John's University School of Law. He graduated Cum Laude, in the top fifth percentile of his class. He received his Bachelor of Science degree in Accounting and graduated Cum Laude from the School of Professional Accountancy at Long Island University, C.W. Post Campus and earned the faculty award for Academic Excellence in Accounting.

During law school, he interned with Judge Cecelia H. Goetz at Bankruptcy Court in Hauppauge and Judge Raymond C. Radigan at Nassau County Surrogate's Court.

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## PRACTICE AREAS

**ELDER LAW** | Elder Law focuses on protecting your assets. From catastrophic medical expenses, taxes, probate, medicaid and the handling of medical and financial decisions, should you become disabled, an elder law plan can help you keep what you've earned.

**CHILDREN WITH SPECIAL NEEDS** | Protecting the rights and ensuring that our children and young disabled have access to every available resource is critical.

**ESTATE PLANNING** | Estate planning deals with probate and tax issues involved in leaving an estate. For example, the use of life insurance to lower estate taxes, revocable living trusts, family limited partnerships, and charitable giving techniques.

**BUSINESS SUCCESSION** | Business owners have special considera-



tions when planning for their futures, including concerns like: who will manage the business in the event of death or incapacity and how can it be ensured that your family will be supported by business income, after retirement? The office handles the formation, dissolution, purchase or sale of businesses as part of estate planning or as separate proceedings.

**ESTATE ADMINISTRATION** | An Estate Administration begins upon the

death of an individual. It refers to the manner and procedures necessary to resolve the decedent's affairs in a proper and timely manner.

### SUBCONCENTRATIONS

**REAL ESTATE** | The Law Offices of David Okrent handle the sale or purchase of properties as part of estate planning or as separate transactions.

**GUARDIANSHIP** | A court appoints an individual to assist an incapacitated person. The powers given to the guardian can be tailored to meet the needs of the incapacitated person.

**ADOPTION** | Adoption of a child can bring great joy to a family, but it can also bring a myriad of court filings and legal proceedings.

**IMMIGRATION** | Becoming a citizen can be a legal struggle. The firm also handles business and work related visas.



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