DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Liggett	5-16-14

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 000383	[ ] Prepare reply for the Director's signature DATE DUE ______
2. DATE SIGNED BY DIRECTOR cc: Mr. Keck, Hustto, Day, Roberts	[ ] Prepare reply for appropriate signature DATE DUE ______ [ ] FOIA DATE DUE ______ [X] Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

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May 12, 2014

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MAY 15 2014

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Tony Keck
Director
State of South Carolina, Department of Health & Human Services
1801 Main Street PO Box 8206
Columbia, SC 29201-8206

Re: Meeting the Challenge of Long Term Care Reform – 2013

Dear Mr. Keck:

I just reviewed the publication entitled, "America's Long-Term Care Crisis: Challenges in Financing and Delivery, " dated April of 2014, which prompted me to take a second look at the Commission on Long-Term Care's Final Report ("Report") to Congress dated September 30, 2013.

After 25+ years of experience as an elder law attorney, insurance agent, and financial advisor, focusing in the area of government entitlement benefits, it's my opinion that the current Medicaid program works quite well, but for one major loophole – the primary residence. The primary residence is currently a totally protected resource for a community spouse – despite its value, and is also a protected resource for an individual Medicaid recipient when certain criteria are met – the property has a value of less than $750,000, and/or the person intends to return to the property, and/or it is currently listed for sale, etc. Rather than protecting the primary residence for the next generation by way of advanced estate and elder law planning strategies, it is my opinion that the value of the residence should be used to offset Medicaid expenses.

To perpetuate my plan, which would reduce government spending, and encourage community spouse's to purchase long-term care insurance, the following Medicaid rule changes must occur:

1. **Look-Back Period.** The look-back period for uncompensated transfers related to the primary residence must be extended from five to ten years.

2. **Primary Residence to be Encumbered with Medicaid Lien.** At the time that Medicaid benefits are approved, the primary residence shall be immediately encumbered with a Medicaid lien to the extent of Medicaid benefits provided to the Medicaid recipient.

3. **Sale of Primary Residence - Individual.** In the event the Medicaid recipient sells their primary residence, the sales proceeds shall be applied towards the Medicaid lien accrued up to the date of the closing. If sales proceeds remain, they shall be invested in single premium immediate annuity for the institutionalized individual that meets the requirements of the Deficit Reduction Act of 2005 ("DRA") for the person, to-wit:

    - It must be irrevocable and non-assignable;
    - It must provide for payments in equal amounts with no deferral or balloon payments;
    - It must return at least the premium investment within the individual Medicaid life expectancy – actuarially sound; and
    - It must designate the State Medicaid agency as the primary beneficiary.

    Under the current Medicaid rules, the monthly payments received from the annuity, shall become part of the Medicaid recipient's monthly Medicaid co-pay – share of costs.

4. **Sale of Residence - Community Spouse.** In the event that the community spouse sells their primary residence and immediately purchases another primary residence, the Medicaid lien shall follow to the new primary residence. If sales proceeds remain, and a new residence is not purchased or long-term care insurance is not purchased, then the sales proceeds shall be used to satisfy the Medicaid lien accrued through the date of the closing. If long-term care insurance is not purchased, then once the Medicaid lien is satisfied, all remaining sales proceeds shall be invested in a single premium DRA compliant immediate annuity for the benefit of the community spouse (see requirements noted above). Additionally, the community spouse shall have six months to finalize the purchase of the long-term care insurance. The six month time period is a strict limit, which shall not be extended for any reason.

By implementing the aforementioned rules, the federal government will experience a huge savings in Medicaid expenses, while also encouraging community spouses to purchase long term care insurance – yet another governmental savings. Should you have any questions or would like to discuss my plan in more detail, please do not hesitate to get in touch with me.

Sincerely,

Krause Financial Services

Dale M. Krause

DMK/stf

KRAUSE
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