

# *LKR Alert*

August 15, 2002

**Littman Krooks & Roth P.C.**

**Elder Law and Medicaid**

## **DISPOSITION OF RESIDENT FUNDS UPON DEATH**

A nursing facility that holds a resident's funds (e.g., funds held in the resident's personal incidental allowance or "PIA" account) has an obligation to see that those assets are disposed of properly upon the resident's death.

In cases where there is a duly appointed estate representative (i.e., Executor or Administrator), the nursing facility can release the PIA funds to the estate representative upon receipt of a certified copy of Letters Testamentary or Letters of Administration. In cases where there is a small estate, defined in §1301 of the Surrogate's Court Procedure Act ("SCPA") as an estate without real property and with personal property having a gross value of \$20,000 or less (exclusive of the value of certain exempt property), the nursing facility can release the PIA funds to the Voluntary Administrator upon receipt of a certified copy of the affidavit (also known as a "short form certificate of authority") that was filed with, and certified by, the Clerk of the Surrogate's Court. Prior to releasing the PIA funds to the Executor, Administrator or Voluntary Administrator, the nursing facility should arrange for the estate representative sign a form acknowledging receipt of the funds.

In cases where there is no Executor, Administrator or Voluntary Administrator, and the estate qualifies as a small estate, the nursing facility may release the PIA funds to one or more of the following parties:

**Payment to Surviving Spouse** - At any time after the resident's death, the nursing facility may pay up to \$30,000 of the resident's funds to the surviving spouse (see SCPA §1310(2)). The nursing facility must first secure an Affidavit from the surviving spouse which states a) that he or she is the resident's surviving spouse; b) the date of the resident's death; c) the amount of the payment requested; and d) that such payment, and all other payments received by the spouse under this provision, do not in the aggregate exceed \$30,000.

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**Payment to Family Members** - Thirty days or more after a resident's death, a nursing facility may pay up to \$15,000 of the resident's funds to: a) the surviving spouse; b) one or more children 18 years of age or older; c) the father or mother; d) the brothers or sisters; e) the nieces or nephews; or f) creditors or persons who have paid or incurred funeral expenses for the resident, upon receipt of a written request from the surviving spouse or one of the above relatives (see SCPA §1310(3)). The nursing facility must first secure an Affidavit from the person requesting payment which states a) the date of the resident's death; b) the relationship of the person making the Affidavit to the resident; c) that more than thirty days has elapsed since the resident's death; d) that no fiduciary has been appointed; e) the names and addresses of persons that will be paid; and f) that such payment, and all other payments made under SCPA §1310 which are known to the facility (except payments made to spouses under §1310(2)), do not in the aggregate exceed \$15,000.

**Payments to Creditors and Others** - Six months or more after a resident's death, a nursing facility may pay up to \$5,000 of the resident's funds to a distributee of the resident or (to the extent that the funds are not exempt from creditor claims) to a creditor or person who paid or incurred funeral expenses for the resident (see SCPA §1310(4)). The nursing facility must first secure an Affidavit from the person requesting payment which states a) the date of the resident's death; b) that more than six months has elapsed since the resident's death; c) that no fiduciary has been appointed; d) that the resident was not survived by a spouse or minor child; e) that the person requesting payment is entitled to the payment; and f) that such payment, and all other payments made under SCPA §1310 which are known to the facility, do not in the aggregate exceed \$5,000.

**Payments to Social Services Districts** - Six months or more after a resident's death, a nursing facility may pay up to \$5,000 of the resident's funds to the Department of Social Services ("DSS") (see SCPA §1310(8)). DSS must first provide the nursing facility with an Affidavit which states a) the date of the resident's death; b) that no fiduciary has been appointed; c) that the resident was not survived by a spouse or minor child; d) that DSS is entitled to the payment on account of Medical Assistance provided to the resident; and e) that such payment, and all other payments made under SCPA §1310 which are known to DSS after diligent inquiry, do not in the aggregate exceed \$5,000.

**Note:** Any payment made in good faith by the nursing facility pursuant to any of the above provisions of SCPA §1310 shall be a complete discharge of the nursing facility's responsibility for the disbursed funds.

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**Speakers**

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Littman Krooks & Roth P.C. offers legal services in several areas of law, including Medicaid, Health Care, Guardianship, Elder Law, Estate and Tax planning, Estate Administration/Probate, and Trusts and Estates. Our offices are located conveniently in Midtown Manhattan at 655 Third Avenue, and in White Plains, New York at 81 Main Street.

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