

# Accettura & Hurwitz

*Estate & Elder Law*

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SPRING 2022  
**UPDATE**

Medicare. Since at least 90% of rehab facilities accept both Medicare and Medicaid, it would be a shame to accept a discharge to a facility that you will have to leave when your Medicare days (potentially up to 100 days) run out. **Also, please call us if we haven't seen you since 2016.**

## Please Say Nice Things About Us!

If you are unhappy with our service please contact our office and speak with our office manager, Kim Rapp, and we will do our best to remedy the issue. If you are happy with our service, please visit our Facebook page called "Accettura & Hurwitz: Estate and Elder Law" and/or Google Review and give us a good review so others will know of our good work.

This Newsletter is considered general information and is not intended to constitute individual legal advice. Please contact us if you think the information herein impacts you directly. We look forward to speaking with you soon. Please visit our website [www.elderlawmi.com](http://www.elderlawmi.com)

Very truly yours,  
ACCETTURA & HURWITZ

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## SPRING 2022 UPDATE

As is our custom, this semiannual correspondence is intended to keep you abreast of developments in estate and elder law. The following is a brief summary of noteworthy developments since our last communication:

### **BREAKING NEWS: Treasury issues Proposed IRA Distribution Regulations**

One of the key provisions of the SECURE Act, passed December 20, 2019, was to limit deferral of IRA distributions after the death of the owner. Distributions must be completed within ten years of the owner's death unless the distribution is to an "eligible designated beneficiary," - the owner's surviving spouse, a minor child, a disabled beneficiary, a chronically ill beneficiary or a beneficiary that is not more than ten years younger than the owner. Tax professionals around the country were under the belief that annual distributions were not required as long as all beneficiaries received their entire distribution by the end of the period. Turns out, we were wrong!

The proposed rules basically state that if the owner had reached his or her Required Beginning Date (age 72) prior to death, then annual Required Minimum Distributions (RMDs) must be made *each* year of the ten-year period. In fact, an RMD is required even in the year of the owner's death if not take by the decedent prior to death.

While the Proposed Regulations, issued February 24, 2022, are not final and are subject to change, they are a good indication of the IRS's thinking on these issues. The proposed rules affect essentially all qualified retirement accounts, including IRAs, 401ks and 403bs. The Proposed Regs do not offer any guidance for beneficiaries who were required to but did not take RMDs in 2021 and 2022.

Different rules apply depending on whether the owner died before or after age 72. The following is a summary of the rules followed by a chart for quick reference.

### **If an owner dies before age 72:**

**Surviving Spouse:** If the surviving spouse does not roll over the deceased spouses' interest (which we generally recommend), the surviving spouse must begin taking RMDs in the year following their spouse's death calculated using the surviving spouse's life expectancy, and continue to do so for up to ten years after the surviving spouse's death.

**Minor children** must begin taking RMDs the year following the decedent's death using the child's life expectancy. Distributions can continue at the same rate for up to ten years after the child's 21<sup>st</sup> birthday.

**Disabled beneficiaries and beneficiaries not more than ten years younger than the decedent:** must begin taking RMDs the year following the decedent's death using the beneficiary's life expectancy. Distributions can continue at the same rate for up to ten years after the beneficiary's death.

**If an owner dies after age 72:**

**Surviving Spouse:** If the surviving spouse does not roll over the deceased spouses' interest, the surviving spouse must take their spouse's RMD for the year of death (if not taken by the deceased spouse). Following the decedent's death, the survivor must take RMDs over the longer of the surviving spouse or deceased spouse's life expectancy beginning the year following their spouse's death. RMDs can continue using the same calculation for up to ten years after the surviving spouse's death.

**Minor children** must take their deceased parent's RMD for the year of death if not taken by the deceased parent. Minor children must continue taking RMD in the years that follow the decedent's death using the child's life expectancy. Distributions can continue at the same rate for up to ten years after the child's 21<sup>st</sup> birthday.

**Post Death RMDs**

Beneficiary	Death before age 72	Death after age 72
Surviving spouse	<b>Year of death: No</b> <b>After:</b> Annually over surviving spouse's life expectancy ending 10 years after surviving spouse's death	<b>Yes, if not taken</b> <b>After:</b> Same as pre age 72, but can use owner's life if longer
Minor child	<b>Year of death: No</b> <b>After:</b> Annually over beneficiary's life expectancy and all out within 10 years of beneficiary reaching age 21	<b>Yes, if not taken</b> <b>After:</b> same as pre age 72
Disabled, ill, or not 10-years younger than IRA owner	<b>Year of death: No</b> <b>After:</b> Annually over beneficiary's life expectancy with all distributed within 10 years of beneficiary's death	<b>Yes, if not taken</b> <b>After:</b> Same as pre age 72, but can use owner's life if longer than beneficiary's
"Regular" beneficiaries	<b>Year of death: No</b> <b>After: Not annually,</b> but all must be distributed within 10 years of owner's death	<b>Yes, if not taken</b> <b>After: Annually</b> over beneficiary's life expectancy with all distributed within 10 years of beneficiary's death (can use owner's life if longer)

**Non-spouse, non-disabled age 21 or older beneficiaries "regular beneficiaries"** (for example, children of the decedent) are *not* required to take annual distributions but must take their entire share within ten years of the owner's death.

**Disabled beneficiaries and beneficiaries not more than ten years younger than the decedent:** Must take the decedent's RMD for the year of death if not taken by the decedent. RMDs for succeeding years must be taken annually using the longer of the decedent's or beneficiary's life expectancy. Distributions can continue at the same rate for up to ten years after the beneficiary's death.

**"Regular" beneficiaries (non-spouse, non-disabled age 21 or older beneficiaries (for example, children of the decedent):** Regular beneficiaries ARE required to take the decedent's RMD for the year of death if not taken, AND MUST take annual distributions over the greater of the decedent's or the beneficiary's life expectancy. Final distribution must be made by the 10<sup>th</sup> anniversary of the decedent's death.

**Lesser-Known Government Programs**

Past newsletters have focused on the government programs of Medicaid and VA Aid and Attendance. The following is a summary of lesser-known government programs that provide assistance to elderly who are in need.

**MI Choice Waiver Program (aka Medicaid Waiver)**

The Waiver program provides financial assistance for non-nursing home care such as home care and assisted living through the Area Agencies on Aging (AAAs). There is no set benefit amount. Instead, the amount of benefit is negotiated with the agency.

To be eligible, an applicant must be age 65 or older (or age 18 to 64 if disabled), require nursing facility level of care, have gross income of not one dollar more than \$2,523/month (a spouse's income is not counted), and have limited assets (Medicaid asset limits apply: applicants are allowed a home, car, prepaid funeral and limited financial assets). Applicants that are eligible for VA benefits must apply for those benefits prior to applying for the Waiver program.

To start, the AAA sends a team to the home to assess need and then recommends a plan of support. While an attractive benefit, the Waiver program is a capitated program meaning that there is a set dollar amount that must be spread among all eligible beneficiary applicants. There is often a waiting list. Even when approved, the available benefit may cover only a portion of the cost of necessary services.

**PACE (Program of All-Inclusive Care for the Elderly)**

PACE provides comprehensive managed care to seniors. It takes over the individual's care plan and provides coordinated services. Eligible participants must be at least age 55 and require nursing facility level of care. Often initiated by the patient's physician, participants may not have more than \$2,523 of monthly gross income. Medicaid asset limits apply but there is no penalty period for divestment/gifts (however, divestment may later affect Medicaid eligibility for nursing home care).

**Medicaid Adult Home Help Program**

As the name implies, the program provides for help in the home. To be eligible applicants must be at least age 18, have active Medicaid, have income less than \$1,133/month for a single applicant, and \$1,526 for a married applicant (100% of Federal Poverty Level), and require physical assistance to perform at least one activity of daily living (ADL). Note that for this program, income is *reduced* by other eligible medical expenses. The applicant must also meet the Medicaid asset rules. The program provides assistance with ADLs (feeding or eating, bathing, dressing, grooming, moving throughout the home, toileting and transferring). Assistance is also available for meal preparation, light housework and administering of medicines. The program pays for personal care and chore services in a client's home (cannot hire a spouse) through Michigan Department of Health and Human Services (MDHHS). For more information see [www.Michigan.gov/homehelp](http://www.Michigan.gov/homehelp) [www.Michigan.gov/adultservices](http://www.Michigan.gov/adultservices) and [www.Michigan.gov/contactMDHHS](http://www.Michigan.gov/contactMDHHS)

**Healthy Michigan Plan**

The Healthy Michigan Plan is health insurance for low-income individuals aged 19 to 64 who are not on Medicare. It is an expansion of Medicaid under the Affordable Care Act (Obamacare). *There is no asset limit* for eligibility but an income limit of \$1,506/month for single applicant, and \$2,029 for married applicants (geared to 133% of Federal Poverty Level).

**Call Us Immediately When...**

Call us from the hospital *before* you are discharged to "rehab." While hospital discharge planners may suggest a facility, it is ultimately your right to choose the nursing home (nursing homes provide both rehabilitation and long-term care services) where you wish to continue your recovery. Hospital discharge planners often choose facilities that only accept