

Congress Changes Medicaid Eligibility Rules

The rules governing Medicaid eligibility have remained relatively stable since 1993. However, in February of 2005, Congress changed those rules dramatically with the Deficit Reduction Act of 2005, which was signed into law by President Bush on February 8, 2006. The goal of the Medicaid provisions in this budget-oriented bill was to restrict the use of various strategies designed to preserve assets from complete spend-down for long term care. Unfortunately, the Act may have several consequences which harm individuals and the nursing homes that care for them.

The most significant changes to Medicaid eligibility under DRA are the extension of the look-back period to 60 months and the maximum ineligibility period to 60 months, rather than the prior 36-month period for individuals. The real impact of these changes can be found in the shift of the start of the period of ineligibility for a transfer of assets from the first day of the month of the transfer to the later of that date or “the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care...but for the application of the penalty period.

Translation: in order for the penalty period to begin, a person must be in the nursing home and have spent down to \$2,000 in countable assets. If the penalty is imposed at that time, then the resident will be out of funds, ineligible for Medicaid, and awaiting eviction by the nursing home. If the amount transferred by grandmother to family is substantial (such as her home place or life savings), she could be ineligible for up to 5 years for Medicaid payment of nursing care. This scenario will no doubt lead to dilemmas and disagreements in the family as to the sources of funds to pay for care in the interim.

Transfers made prior to February 8, 2006 will continue to be treated under the former rules (date of transfer starts period of ineligibility), while those made thereafter will likely be penalized under the new rules. It is not yet clear whether Virginia legislation will need to be enacted in order to come into compliance, in which case a grace period would apply to delay until April 1 of 2007 the effective date of the new rules. The safer course is to assume that any uncompensated transfers after February 8 will result in ineligibility starting with the application date.

Several other restrictions found in the DRA include a limitation on the home exemption to \$500,000 for individuals, and the elimination of “balloon” annuities and self-canceling installment notes (“SCINs”) as asset transfer techniques. On the positive side, the purchase

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of a life estate in a child's home is permitted, and caregiver compensation agreements, which provide for payments by parent to a caregiver-child, were not affected by the new law. Likewise, special needs trusts remain valid under DRA.

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