

THE NEW MEDICAID ELIGIBILITY RULES

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On February 1, 2006 Congress passed the Deficit Reduction Act of 2005 (“DRA”), which dramatically changed the rules about nursing home Medicaid eligibility. The new law became effective on February 8, 2006 (“effective date”) and makes significant changes regarding the effects of transferring assets and whether certain assets are counted for eligibility purposes.

HOME. Under prior law, the home equity of the Medicaid applicant was an “exempt resource” (not counted as an asset), regardless of value. “Home” is defined as the applicant’s residence and all adjacent land on which it is located. The new law limits the exempt equity of an applicant’s home to \$500,000. States may increase the limit to as much as \$750,000. Any equity in excess of the limit will be considered an “available resource” and must be liquidated to pay toward the cost of care. There are exceptions. Generally, a home may be transferred to a spouse, disabled child or minor child living in the home, without affecting eligibility for Medicaid.

LOOK-BACK PERIOD. Under previous law, when an individual applied for Medicaid, any transfers of money or property (without value in return) made within three (3) years prior to the date of Medicaid application had to be disclosed to Medicaid. The “look-back period” for such transfers to or from certain trusts was five (5) years. The new law requires all applicants to disclose all transfers made on or after the effective date and within *five (5) years* prior to Medicaid application, whether they were transferred to a trust or otherwise. (Transfers made prior to February 8, 2006 remain subject to the 3-year look-back.) This means individuals may have to retain five years of financial records to ensure they comply with Medicaid application disclosure requirements.

TRANSFER PENALTY PERIOD. The change under the new law that may have the greatest impact on individuals is the change in the “transfer penalty” period. Under prior law, a gift of assets (with nothing of value or something of less value in return) constituted an uncompensated transfer. If an uncompensated transfer occurred during the look-back period, an individual would be “penalized” and be ineligible for Medicaid benefits. The period of ineligibility, or “penalty period,” is calculated by dividing the amount of the uncompensated transfer by the state average monthly cost of nursing home care in Mississippi (\$3,100 prior to February 8, 2006). Therefore, if an applicant made a \$31,000 gift transfer, she would be ineligible for Medicaid for ten months ($\$31,000 \div \$3,100 = 10$). Further, the penalty period began to run in the month the uncompensated transfer was made. For example, if an applicant gave away \$31,000 on January 1, 2005 and entered a nursing home and applied for Medicaid on December 1, 2005, she would be eligible for Medicaid because the ten-month penalty would have begun in January 2005 (the month of transfer) and would have expired in October 2005.

Under the new law, the penalty period for transfers made on or after the effective date does not begin to run until the Medicaid Applicant has **both** entered a nursing home **and** is “otherwise eligible” for Medicaid based on an approved application, but for the implementation of a transfer penalty. Also, the average monthly cost of nursing home

care was raised to \$4,600 on February 8, 2006. Therefore, if the applicant gave away \$46,000 on March 1, 2006 and goes into a nursing home and applies for Medicaid February 1, 2010, he will not qualify. In fact, the penalty may not even begin at February 1, 2010. The penalty will not begin to run until the applicant is residing in a nursing home and has depleted his assets to the qualifying levels for Medicaid. Assuming the applicant has countable assets of \$40,000 in February 2010 when he enters the nursing home, and the \$40,000 would pay for ten additional months in the nursing home (assuming \$4,000 per month private pay cost), the applicant's assets will be spent down to the Medicaid limit in November of 2010 (ten months after he went into a nursing home). At that point (November 2010), the penalty period for the \$46,000 transfer in March of 2006 would begin, thereby making the applicant ineligible until September 2011.

These changes will have a drastic impact on many people. Paying for a family member's education, wedding, or a down payment on a first home could adversely impact Medicaid eligibility for five years afterward. However, there are legal methods and techniques that may permit transfers without adverse impact on Medicaid eligibility, and you should consult with an experienced elder law attorney about these.

ROUND-DOWN. Under previous law, states were permitted to (and Mississippi did) round down the penalty period to the whole number. For example, if an individual transferred \$6,100 prior to the effective date, the transfer penalty would be 1.97 months ($\$6,100 \div \$3,100 = 1.97$). In Mississippi, the penalty would be only one month. The new law prohibits rounding down and provides that all transfers that result in less than a one-month penalty over any 12-month period must combined, thereby eliminating the ability to round down.

ANNUITIES. Previous law provided that special annuities that were "Medicaid-qualified" (that is, irrevocable, non-assignable, non-transferable, immediate, and "actuarially sound") would not be counted as a "resource" in determining eligibility for Medicaid benefits. To be actuarially sound, an annuity must pay out in full over the life expectancy of the annuitant as determined by the Social Security Administration. In addition, for an annuity on the life of the Medicaid applicant to be exempt under the new law, it must name the State of Mississippi as the primary beneficiary. The exception is if the Medicaid applicant has a spouse or disabled or minor child. A spouse, disabled or minor child may be named primary beneficiary, but the State must be named as secondary beneficiary for the annuity to qualify.

ASSET TRANSFER RULE. The new law applies all asset transfer rules and penalties currently used for institutionalized (nursing home) care to those applying for home-based Medicaid services.

LIFE ESTATE. The new law permits individuals to purchase a life estate in the home of some other individual (such as an adult child) without the life estate being counted as an asset for Medicaid purposes. The individual, however, must reside in the home for at least one year after the purchase for it to qualify as exempt.

LONG-TERM CARE INSURANCE. The new law promotes “long-term care partnership” policies of long-term care insurance in all 50 states. In essence, a partnership policy permits an individual to buy long-term care insurance that pays for nursing home care, and at the end of the coverage period the individual will qualify for Medicaid even if she has significant assets. (The individual may still have to pay some or all of her income toward the cost of care, but a community spouse may be entitled to keep part or all of the nursing home spouse’s income.)

LOANS. The new law requires loans made by the Medicaid applicant to be “actuarially sound” (that is, must be paid out over a period no longer than the life expectancy of the applicant) to avoid having them be considered “available resources” when determining eligibility. The law requires the “payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments made.” The DRA also prohibits the cancellation of the balance of the note upon death.

CONCLUSION. While the DRA has imposed severe limits on eligibility for nursing home Medicaid benefits, there are strategies which may be used to lessen the financial impact on family members. None of these strategies should be undertaken without consultation and assistance by an elder law attorney with expertise in the laws and regulations of the Medicaid program.

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