

Nursing Home Medicaid Program Changed

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On February 8, 2006 President Bush signed the Deficit Reduction Act of 2005 (DRA 2005), which included one of the most sweeping amendments to the nursing home portion of the Medicaid program in many years. This act will significantly affect the eligibility of older persons for nursing home Medicaid, and in general, will greatly increase the likelihood that nursing home residents will have to spend a large portion of their assets before qualifying for payment of their nursing home expenses through the Medicaid program.

Particularly hard hit by the new law will be single persons whose planning measures include gifting to children or other family members. At this point, many of the provisions currently in the Medicaid law for married couples, such as the community spouse resource allowance, monthly maintenance needs allowance, and transfers between spouses, among other things, can still be used. As a result, the impact upon married persons is likely to be somewhat less devastating.

Among the major changes are the following:

- The “look back” period has been changed from three years to five years for all transfers occurring on or after February 8, 2006. As a practical matter, this means that transactions older than three years will not have to be reported until February 8, 2009.
- The date when a penalty period resulting from gifts or asset transfers will begin to run has been changed to the date when the nursing home Medicaid recipient is eligible for Medicaid but for the disqualifying effect of the transfer. As a practical matter, this means only at a time when the Medicaid recipients resources are less than \$2,000.00, among other things.
- Partial month disqualifications can no longer be disregarded which will mean that a transfer of more than \$148.00 but less than \$4473.00, will result in a disqualification period of part of a month.
- Annuities purchased for the purpose of Medicaid qualification will have to list DHHS as first beneficiary after the annuitant to the extent of payments made by the South Carolina Medicaid program for the benefit of the annuitant or spouse, according to a recent DHHS ruling. There is dispute about this point, though, and it is possible that this point will eventually be litigated.
- The value of a home is still excluded but only if the equity of the homeowner in the home does not exceed \$500,000.00.
- Purchase of life estate in a home is considered a disqualifying transfer unless the purchaser actually resides in the home for at least one year after the date of purchase.

New planning techniques are beginning to be used, and the next couple of years may see the emergence of more “safe harbors” and proven techniques. In the meantime, there is much uncertainty about interpretation of the new law.

There are quite a number of other changes and anyone with existing Medicaid plans may wish to review their existing arrangements in light of the new provisions. For more information on the new provisions and particularly, their application to your individual situation, consult an elder law attorney.