

## **Serious Changes have been made to Medicaid Laws**

Two years ago, Congress made changes to Medicaid laws that became effective across the nation on February 8, 2006. However, in Illinois, the implementation of these laws has been a bit difficult.

**These changes substantially alter Medicaid eligibility rules and may affect you and your family if you even *think* you might need long-term care in the future.**

As you may know, Medicaid is our government's 40 year old program that provides medical benefits to the elderly, poor, and disabled, and pays for approximately 48% of nursing home care in the United States today. Due to nursing home costs in northern Illinois now averaging \$72,000 per year (and even higher in other parts of the nation), Medicaid has become the long-term care safety net for seniors who, before retirement, were hard-working middle-income citizens who worked their whole lives to have a small nest egg on which to retire.

Two years ago, the Deficit Reduction Act of 2005 (the "DRA") became effective. The DRA drastically increases the complexity of confusing and unwarranted Medicaid eligibility rules. Although the DRA became effective in February 2006, each State must adopt rules to comply with the DRA and as a result the DRA may not have become effective immediately nationwide.

Federal law required the State of Illinois to implement the new laws by June 30, 2007. Illinois has not followed Federal law and has still not implemented the DRA. Based on informal discussions with State officials, when Illinois does implement the DRA, it may apply retroactively to all transactions made after February 8, 2006. There are also conflicting reports about when Illinois actually will implement its new DRA rules ... some say the new legislation is being reviewed right now; some say it will not be reviewed until after the 2008 elections. Until this is all figured out, we recommend that our clients exercise caution in their planning and obtain expert advice prior to applying for Medicaid assistance.

For an overview of the changes, keep reading.

## THE DEFICIT REDUCTION ACT MAKES THE FOLLOWING CHANGES:

### 1. Lengthening the “look-back period” from three years to five years.

If a Medicaid applicant or spouse has made any transfers for less than fair market value (that is, gifts) during the “look-back period,” there will be a penalty period during which Medicaid will not pay for the applicant’s nursing home costs. This means anyone who may need Medicaid assistance must keep and provide five years of detailed financial records and make no gifts during that period (unless they can affirmatively prove at the time of nursing home admission and Medicaid application that the gifts were not Medicaid-planning related). Sometimes, if a Medicaid applicant cannot provide these records, they will not receive Medicaid benefits at all.

**OUR RECOMMENDATION: Individuals who may need Medicaid to pay for long-term care in the future should keep detailed paper financial records (including copies of all checks) for all of their accounts for at least five years.**

### 2. Changing the Start of the Penalty Period to the Date of Medicaid Application.

Under the DRA, the penalty period for any transfer made in the previous five years (starting with the date the DRA was enacted, February 8, 2006) will start on the date you submit a Medicaid application. This means that any gift – even holiday, birthday and wedding gifts – could count against you or a loved one for the NEXT five years.

**OUR RECOMMENDATION: If any gifts are made (by check, in cash or otherwise), make a written note of the date and purpose of the gift. A Medicaid applicant must be able to prove that gifts were not in contemplation of Medicaid planning. This includes gifts to churches, schools, and other charitable organizations.**

### 3. Requiring disclosure of any annuity and requires that the State be a remainder beneficiary on most annuities purchased on or after February 8, 2006 (that means that the State gets its money before your family does). If the State is not a remainder beneficiary, Medicaid may not cover long-term care.

### 4. Limiting Home Equity to \$500,000 if your spouse does not stay at home (some States may increase this amount to \$750,000).

### 5. Preventing Many Annuity Purchases of more than \$100,000 within five years of Medicaid application.

### 6. Making it Legal for Caregiving Facilities Admission Contracts to Require Residents to Spend All Resources declared for the purposes of admission on their care before applying for medical assistance through the Medicaid program.

YOU CAN STILL DO PLANNING UNDER THE OLD RULES FOR A WHILE, AND A CERTAIN AMOUNT OF PLANNING UNDER THE NEW RULES, TOO.

If you think long-term care is in your future, or the future of a close friend or family member, NOW is the time to start planning. Before it’s too late. Call us to arrange a free phone consultation or to schedule an appointment. Let us help you with your personal situation, while time and the laws are still on our side.

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