

The "Daily Plan-It"™

ESTATE & BUSINESS LAW GROUP, P.C.

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Changes in Medicaid Eligibility – Part One

On February 1, 2006, Congress passed the Deficit Reduction Act of 2005, which included a sweeping overhaul of the Medicaid laws. The last change to the Medicaid laws occurred in 1993 with the Omnibus Reconciliation Act ("OBRA 93).

Explanation of Changes

Home. Under previous law, the home of the Medicaid applicant was exempt, regardless of value. If an applicant was single, an "intent to return home" had to be established to exempt the home. The new law limits the equity of an applicant's home to \$500,000, but permits states to increase the limit to as much as \$750,000. Any equity in a home in excess of the limit will be considered an "available resource" and must be liquidated to pay toward the cost of care. One exception: The home may be transferred to a spouse, disabled child, or minor child, without affecting eligibility for Medicaid.

Annuity. Previous law provided that annuities that were "actuarially sound" would not be considered a "resource" in determining eligibility for Medicaid benefits. To be actuarially sound, an annuity must pay out in full over the actuarial life expectancy of the annuitant. Several states had authorized "balloon" annuities, which paid interest and a nominal amount of principal each month over the life expectancy of the annuitant, with a large final payment in the last month of the annuitant's original life expectancy. Under the new law, balloon annuities are no longer allowed. For an annuity to be eligible under the new law, it must name the state as the *irrevocable* beneficiary. The only exception is if the Medicaid applicant has a spouse or disabled or minor child who may be named primary beneficiary. In such cases, the state must be named irrevocable contingent beneficiary for it to be eligible.

The Look-Back Period. Under previous law, when an individual applied for Medicaid, three years worth of all financial records of the Medicaid applicant had to be provided to Medicaid. This included all financial transactions and assets owned at any time during the three-year period prior to applying for

benefits. The look-back period for transfers to trusts was 60 months. That is, all transfers to trusts within the previous 60 months had been required to be disclosed. The new law requires that all applicants provide five years of financial records regardless of whether it was transferred to a trust or otherwise. This will create havoc with record keeping. The IRS only requires three years of retained financial records, but individuals will now have to retain five years to ensure compliance with Medicaid application disclosure requirements.

Life Estate. The new law permits individuals to purchase a life estate in the home of another individual (presumably a family member). For example, an applicant can purchase a life estate in the family member's home for the actuarial value of the life estate. The individual, however, must reside in the home for at least one year after the purchase for it to qualify.

Stay tuned for parts two and three.

Workshop Schedule

The Truth About Estate Planning Fundamentals of Proper Planning

Cost: no charge
Time: 7:00 to 9:00 p.m.
usually on a Tuesday night

Dates & Registration: Contact Mary Lang at (847) 367-4460

The Truth about Estate Planning, LHS Adult Education

Cost: small fee
Time: Tuesdays 7:00 to 9:00 p.m.
usually on a Tuesday night

Dates & Registration: Contact Mary Lang at (847) 367-4460

For online information about Estate Planning,
please encourage your clients to visit us at
<http://eblawgroup.com>

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