

The "Daily Plan-It"™

ESTATE & BUSINESS LAW GROUP, P.C.

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Massive Changes in Medicaid – Part Three

President Bush signed the Deficit Reduction Act of 2005 ("DRA 2005") into law on February 8, 2006, which included a sweeping overhaul of the Medicaid laws. A typographical error calls into question its legality. It is widely anticipated that the error will be corrected and the law will be effective. Here is part three of our analysis of the changes:

Income-First Rule. Under previous law, states could choose whether to apply the income of the institutionalized spouse to the community spouse before determining whether the community spouse met the Medicaid income limitations for qualification. If the community spouse had income below the federal minimum amount required, the community spouse could exempt excess assets that were used to produce income. Now, all states must use the income-first rule, which requires Medicaid to include the income of the institutionalized spouse with the community spouse in determining the community spouse's income eligibility.

Long Term Care Insurance. The new law permits a long term care partnership to be instituted in all 50 states. Under the new law, all states will be permitted to offer long term care partnership policies. In essence, a partnership policy permits an individual to buy long term care insurance that pays for three years coverage. At the end of this period, the individual will qualify for Medicaid *regardless* of the amount of assets they have. The caveat, however, is that any excess income of the individual or his spouse will still be required to be paid toward the cost of care, to the extent the income of the community spouse exceeds that the minimum monthly maintenance needs allowance.

Loans. The new law requires that loans made by the Medicaid applicant must be actuarially sound to avoid having them considered "available resources" when determining eligibility. It prohibits balloon payments, and requires payments under the loan to be "equal." The loan will be required to be paid out over the life expectancy of the applicant.

Our Conclusions

The states will have the option to adopt the new rules retroactively to the date of the president's signature. While the law is effective upon the date of the president's signature, the implementation from a practical standpoint could take years. While planning is affected immediately, applications for Medicaid benefits are not likely to be impacted for at least 6 to 12 months, depending upon your state's ability to implement these changes.

The burden will now fall on nursing homes and family members to ensure that they can provide documentation for the previous five years of a resident's financial transactions. This will likely see an increase in the number of claim denials, and reduce revenue for nursing homes with current residents who are unable to qualify for benefits.

The impact of DRA 2005 will take years to determine. The story is far from over.

Workshop Schedule

The Truth About Estate Planning Fundamentals of Proper Planning

Cost: no charge
Time: 7:00 to 9:00 p.m.
Dates: 4/11/06 Tuesday
5/9/06 Tuesday
6/13/06 Tuesday

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

The Truth about Estate Planning, LHS Adult Education

Cost: small fee
Time: 7:00 to 9:00 p.m.
Dates: 2/21/06 Tuesday

Registration: Adult Education Office at (847) 932-2176

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

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