



Deficit Reduction Act Forces Major Revisions to Medicaid Eligibility Rules

By Cora A. Alsante, Esquire

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005, which revises, among other things, the rules for Medicaid eligibility for long-term care coverage. The Act narrowly passed in the House of Representatives by a 216 to 214 vote and in the Senate by a vote of 51 to 50. This is the first major revision of the Medicaid program since the Omnibus Budget Reconciliation Act of 1993. The revisions became effective on February 8, 2006, the day the Act was signed by the president.

FIVE-YEAR LOOK-BACK PERIOD

Under the new Act, all transfers will be subject to a five-year look-back period, rather than the former three-year look-back period for individuals and a five-year look-back period for trusts. This will certainly make the application process more difficult, since applicants will be required to supply five years of records. Any transfers made prior to the enactment will still be subject to a three-year look-back.

PENALTY PERIOD START DATE

Under the previous law, the penalty period commenced on the first day of the month following the month in which an asset transfer was made. The new law shifts the start date, so that the penalty period does not begin until the person is receiving institutional care and would be eligible for Medicaid. In other words, the penalty period does not begin until the resident is out of funds and is unable to pay the nursing home. This raises serious concerns for nursing homes, which will have residents on extended penalty periods that cannot qualify for Medicaid coverage and have already exhausted their own resources.

HARDSHIP WAIVERS

To offset the severity of the new revisions, Congress is requiring that each state establish a process for seeking a hardship waiver when the application of the transfer penalty period would result in deprivation of "food, clothing, shelter or other necessities of life," or deprivation of medical care that would endanger the applicant's health or life. The new law permits nursing homes to apply on behalf of the individual for such a waiver upon receipt of consent from the resident or his or her personal representative. States have the option of covering the cost of care for up to 30 days while the application for a hardship waiver is pending. Although one purpose for the waiver is to protect nursing homes if a transfer penalty is applied and the resident has no means of paying the nursing home, the hardship must be that of the resident, not the facility.

ADDITIONAL CHANGES

Valuable House Rule: Applicants who own homesteads with equity above \$500,000 are ineligible. This provision would not apply if a spouse or child under 21 or child who is blind or disabled resides in the home. States have the authority to increase the home equity amount up to \$750,000. It will be up to the New York State Legislature to increase the homestead value.

Annuities: The new law does not consider non-balloon annuities a countable asset, but the Medicaid recipient must name the state as the primary beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant. Balloon payment annuities remain a countable asset.

Although the changes set forth in the new legislation are federal, it is expected that New York State will implement these changes and possibly others including extending the transfer penalty rules to home care and expanding the definition of "estates" for estate recovery purposes.

Ms. Alsante, a partner at Hancock & Estabrook, LLP, concentrates in the areas of planning for the elderly and disabled, estate planning and trust and estate administration and heads the firm's Elder Law Practice Group. She is a past chair of the Elder Law Section of the New York State Bar Association. Ms. Alsante is a former adjunct professor at Syracuse University College of Law and is a frequent lecturer. She is a member of the Trusts and Estates Section of the New York State Bar Association and the National Academy of Elder Law Attorneys. Ms. Alsante can be reached at 471-3151. ■

MEDICAL EMERGENCY

PROSHRED
SECURITY DOCUMENT DESTRUCTION AT YOUR DOOR

Private medical information in the wrong hands could be extremely painful. Medical records contain confidential information that should not be publicized. Have you taken the necessary steps to ensure your patients' privacy?

Call **PROSHRED®** today for secure document destruction at your door.

1-87-PROSHRED