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LEGAL BRIEFS

Long-Term Care Planning with Medicaid Just Got Tougher

The Debt Reduction Act of 2005 ("DRA"), which became law on February 8, 2006, complicates the prospect of paying for long-term care costs, such as nursing home costs, enormously. This is because the DRA has significantly altered the tools available for disabled individuals to qualify for governmental benefits in any kind of planned manner.

Nationally, in 2004 over $100 billion was spent on long-term care for the elderly. In Maryland, that number was $1.69 billion. These substantial numbers drew the focus of the deficit hawks in Congress during the past year.

Prior to the DRA, the Medical Assistance Long-Term Care Program ("Medicaid") provided that gifts made within 36 months of application for Medicaid would be subject to a penalty. If the gifts were made to trusts, a 60-month period was employed.

The penalty was a period of time during which an applicant for Medicaid could not receive benefits under that program. The penalty period was computed by determining the value of any such gift at the time the gift was made, and then dividing that number by what is used by Maryland as the "average monthly cost for nursing home care" in Maryland. This number is $4300. The resulting number was the number of months of penalty that would be applied to any gift, starting from the date of the transfer.

For example, if a nursing home applicant made a gift of $43,000 on January 1, 2005, the length of the penalty period would have been 10 months from the date of the gift ($43,000/$4300 = 10). Therefore, the applicant would have been eligible to apply for Medicaid long-term care benefits on November 1, 2005, a period of 10 months after the gift.

The DRA has significantly changed two of the variables making such planning much more difficult. The first change is that there is now a maximum 60-month penalty period. This means that person may have to wait up to 60 months before applying for Medicaid benefits.

The second major change is what is creating the real challenge to the planning process. It used to be that the penalty period would run from the date of the transfer. Now, however, the penalty runs from the date of the application. Using the example above, an applicant would have to wait 10 months from the date of eligibility in order to apply.

The change in the date for applying the penalty period effectively removes the ability to make gifts in order to qualify for Medicaid, although this option is still be explored by some elder law attorneys. This was a key piece in every attorney's plan for any client who was anticipating prolonged long-term care.

All is not lost. Medicaid was but one of four funding sources available to pay for any nursing home level of care. The other three sources are private funds (personal savings), long term care insurance, and continuing care retirement communities.

The use of long-term care insurance will play an ever increasing role in providing the funds necessary to pay for long-term care. This means that individuals in their 50's and 60's should be discussing such coverage with their insurance agents now. Since premium costs will rise with the age of the applicant, and since any applicant for long-term care insurance must be healthy enough to be insurable, delay in obtaining such insurance could result in removing yet another very important tool for your long-term care planning.