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New Medicaid Legislation - the Deficit Reduction Act of 2005

On February 1, 2006, Congress passed the Deficit Reduction Act of 2005 ("DRA") which contains provisions that will drastically affect Medicaid asset protection planning and, in fact, the entire application process. The DRA was signed into law by President Bush on February 8, 2006.

While Medicaid reform has long been on the agenda, the changes dictated by the provisions of the new DRA are more Draconian that the former proposals. First, the "look-back" period, during which applicant's must disclose all records reflecting financial assets, transfers and transactions, has been extended from three (3) to five (5) years. This change was anticipated. Now, however, the period that an applicant will be ineligible for Medicaid benefits as a result of the transfer of assets during the "look-back" period will begin only when the applicant is otherwise eligible for institutional benefits. Thus, it appears that the new law requires that, for the penalty period to commence, the applicant must be in a nursing home or other approved facility, must have less than the applicable resource allowance, currently $4,150, and must have actually applied for Medicaid benefits. In contrast, under the prior rules, the ineligibility period began on the first day of the month following the transfer.

Former "rule of halves" planning, by which practitioners counseled clients to protect half of the available assets while "spending down" the balance, will no longer be effective. Opponents of the DRA argued, unsuccessfully, that this will not only adversely affect our seniors and other Medicaid recipients but will administratively hamper the application process, create an enormous backlog in applications and also ultimately affect the service providers, nursing homes which have extended care to applicant's whose applications are subsequently denied.

Another provision of the law renders ineligible those whose equity interest in their homes exceeds $500,000. Because current New York State law regarding this issue is more generous than the DRA, New York State has a limited period of time within which to enact "enabling legislation" if it is to continue receiving federal funding. Property values in New York are generally higher than elsewhere in the country. For this reason, it is hoped that New York will take advantage of the option available to the states to increase the threshold from $500,000 to $750,000. We will continue to report on this issue as information is available.

The DRA requires annuities that are owned by an applicant to be actuarially sound, irrevocable and non-assignable. More pertinently, it requires the state to be named as a beneficiary to the extent of payments made on behalf of a Medicaid recipient.

While this new law will have a profound affect on our seniors and on the Medicaid application

process, one thing is clear - true asset protection planning must now be undertaken as early as possible. If you believe that Medicaid may one day assist you or a family member in paying for long term care, make an appointment today. If care is already being provided with activities such as feeding, bathing, dressing or toiletting, let's review the circumstances NOW to determine whether a Medicaid application is or will be warranted, and when.