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MAJOR MEDICAID LAW CHANGES!

By: Jennifer R. Howell
Florida Bar Board Certified Elder Law Attorney

With the passage of the Deficit Reduction Act of 2005 on February 8, 2006, came major changes in our Medicaid laws. Medicaid's Institutionalized Care Program is a governmental program that helps pay for an individual's nursing home stay.

The Look-Back Period

Under the old law, Medicaid was allowed to question your financial circumstances, or look-back, for a period of 3 years prior to the date of your application for benefits. If there had been any transfers involving a trust, then the look-back period was 5 years.

NEW: All applicants are subject to a 5 year look-back period.

Beginning Date for Penalty Period

Medicaid looks at uncompensated transfers or gifts, that were made during the look-back period, to determine if they will impose any penalties. A penalty period is a time where you will not be eligible to receive benefits even if you meet the income and asset requirements. Under the old law, the penalty period began running in the month the gift was made.

NEW: The penalty period does not start until the applicant would otherwise have been eligible for Medicaid benefits had they not made the transfer. (See example below)

Calculating the Penalty Period

Under prior law, Medicaid would treat each gift separately unless they occurred within the same penalty period. In addition, penalties were rounded down.

NEW: All gifts made within the 5 year look-back period will be added together to calculate the penalty period. In addition, penalty periods will not be rounded down. (See example below)

Example of Beginning Date for Penalty

Mrs. Howell gave her son $42,000 when she sold her home in January 2005. Under the old law, the $42,000 gift resulted in a penalty period of 8.4 months rounded down to 8 months. Starting in January 2005, Mrs. Howell would be in a Medicaid penalty period, ineligible to receive benefits, for the next 8 months. If Mrs. Howell had needed Medicaid benefits in January 2006 she would have had to disclose the $42,000 gift because it was within the 3 year look back period. However, the penalty would have expired in August 2005. Therefore, Mrs. Howell could receive benefits if she were otherwise qualified 8 months from the date of the gift.

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NEW: Mrs. Howell gives her son $42,000 in March 2006. In January 2010, Mrs. Howell goes into a nursing home and applies for Medicaid benefits because she only has $2,000 and can no longer afford to pay for her own care. Medicaid looks back at the $42,000 that was given in March 2006 and calculates a 8.4 month penalty period. The penalty period starts ticking in January 2010 and therefore Mrs. Howell can not receive Medicaid benefits until midway thru September 2010. The penalty period does not start to run until the applicant would otherwise be eligible for Medicaid benefits had they not made the gift. This means that Mrs. Howell has only $2,000 but is expected to privately pay her nursing home bills for her first 8.4 months in the facility.

Example of Calculating the Penalty Period

Mr. Sunter gave his grandson $9,000 in March 2005, his granddaughter $13,000 in June 2005, and his daughter $3,000 in December 2005. Under the old law, each gift was looked at separately. The $9,000 gift in March 2005 resulted in a 1.8 month penalty period rounded down to 1 month. So Mr. Sunter would be in a penalty period, ineligible to receive Medicaid benefits, for March 2005. The $13,000 gift in June 2005 resulted in a 2.6 month penalty period rounded down to 2 months. Accordingly, Mr. Sunter would be in a penalty period for 2 months, June and July of 2005. The $3,000 gift in December 2005 resulted in a 0.6 month penalty period rounded down to zero, so there is no penalty period. If Mr. Sunter needed Medicaid benefits in January 2006 he would have to disclose the gifts because they were within the 3 year look back period. However, the penalty periods have all expired. Therefore, Mr. Sunter could receive benefits if he met the income and asset tests for Medicaid eligibility.

NEW: Assuming the same facts but the gifting took place in 2006, all of the gifts would be added together to calculate the penalty period. The gifts result in a penalty period of 5 months. As discussed in the above example, the penalty clock does not start ticking until Mr. Sunter would be otherwise eligible for Medicaid had he not made the gifts. So when Mr. Sunter goes into a nursing home and applies for Medicaid benefits in 2010 he will have to privately pay for the 5 month penalty period even though he only has $2,000.

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Home Equity

Your home was an exempt asset, regardless of its value, under the old law.

NEW: Only $500,000 of equity in your home is exempt. States are given the option to increase this to $750,000. The Florida legislature has not yet addressed the issue. However, the good news is that the limit on home equity does not apply if your spouse, minor, blind or disabled child resides in the home.

Annuity for the Well Spouse

Spouses previously were allowed to convert countable assets into an annuity for themselves, with their children as beneficiaries, in order to qualify an institutionalized spouse for Medicaid.

NEW: While the well spouse may still utilize an annuity, the state must be named as the beneficiary after the well spouse, up to the amount of assistance Medicaid has paid for the institutionalized individual. Further, balloon annuities are no longer allowed.

These represent just a few of the key Medicaid provisions of the Deficit Reduction Act of 2005. There are many uncertainties under the new law as well as apparently conflicting provisions. It is more important than ever to consult a qualified Elder Law attorney before taking any action.

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