



THE COULSON  
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# MEDICAID PLANNING TODAY

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## **MEDICAID ELIGIBILITY AND THE NEW RULES: (Or, Why Many Nursing Home Residents Who Run Out of Money and Then Apply for Medicaid Will Have Their Applications Rejected )**

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005. The new law makes some major changes in the eligibility rules for Medicaid nursing home benefits. One of the intended purposes of the new rules was to make it more difficult for people to achieve eligibility by transferring assets – in other words, to make “Medicaid planning” more difficult and less effective.

To an extent, the law will achieve that objective, although we believe that people can still protect a significant portion of their assets through wise planning. However, the new rules will also affect many nursing home residents who have never consulted with an elder law attorney and never done anything that they would understand or recognize as “Medicaid planning.”

This, we believe, is going to cause a major shift in the way “things usually happen.” Most nursing home residents either enter the nursing home unable to pay for their care, or use up their life savings paying for their care and then become unable to pay for it. Under the old rules, those people would then apply for Medicaid nursing home assistance (in many or most cases, the nursing home would help them fill out the application), and 99 times out of 100, their applications would be approved. That’s about to change, in a major way.

Under the new rules, unless the application process has been carefully managed and the filing of the application has been carefully timed, there will be a very substantial risk that the application

will be denied, leaving the nursing home resident with no means of paying for his or her care, unless family members are able and willing to foot the bill.

This newsletter, and a series of newsletters that will follow, will discuss the changes in the laws, how we believe they will affect nursing home residents and nursing homes (Hint: The nursing home industry believes that the new law will force many nursing homes into bankruptcy), and what people can do to prevent the disastrous outcome the new rules will cause for many.

In this issue, we’ll take a look at the biggest changes in the rules.

First, the “look-back” period – the length of time prior to application for which gifts or other transfers of property must be disclosed and may cause ineligibility – has been increased from three years to five. Next, as to any gifts or transfers made on or after February 8, 2006, the “penalty period” – the number of months for which a person who applies for Medicaid nursing home benefits will be ruled ineligible on account of gifts or other property transfers – will not start until the month when a person applies for benefits and would otherwise be eligible. Under the old rules, it started in the month when the gift or transfer was made. Finally, gift and transfer amounts will be accumulated, and Medicaid agencies will no longer be permitted to “round down” in calculating penalty periods.

In the past, most penalty periods caused by gifts and transfers have expired long before the person applied for Medicaid, and people were not even aware of the "problem" they might otherwise have faced. Not any more!

The best way of seeing how things will change is by looking at a couple typical situations, and comparing how they play out under the old rules to how they will play out under the new rules.

### **Example One: The Kind Grandma**

Facts: Betty had eight grandchildren, of whom she was very proud. A retired teacher and a strong believer in education, Betty started a holiday tradition of giving \$1,000.00 to each of her grandchildren to help pay for their future college expenses, and of donating \$2,000.00 to her alma mater toward a scholarship fund for underprivileged students. She spent about \$2,000.00 more each year on other gifts and donations. Although her means were fairly modest, she lived simply within the budget of her teacher's retirement. She made the gifts to experience the joy of helping others. That was just the way she had always been. Then Betty has a stroke. After 20 months in a nursing home, she runs out of money and applies for Medicaid.

Result: *Under the old rules*, the transfer penalties would have expired within a few months after Betty made the gifts each year, and by the time she applied for Medicaid, they would not cause any problem. Her application would be approved. *Under the new rules*, the \$36,000.00 in gifts and contributions Betty made with five years before applying for Medicaid will cause her application to be denied. Betty will then be expected to pay out of pocket for her care for as long as a year. How she would be able to do this is anyone's guess.

### **Example Two: The Dad You Could Always Count On**

Facts: Charlie and his family were never blessed with a lot of money. His three kids had low-paying jobs and lived from paycheck to paycheck. If something broke or went wrong, they had trouble paying for it. Charlie was a good dad, and he'd help them out whenever he could, the best he could. During the four years before we went into the nursing home, Charlie's kids helped take care of him, so that he could stay home as long

as possible. During that time, Charlie helped out his kids financially to the tune of around \$9,000.00, all told. Just three months after entering the nursing home, Charlie runs out of money and applies for Medicaid.

Result: *Under the old rules*, Charlie's application would be approved without a hitch. *Under the new rules*, Charlie's \$9,000.00 in transfers, if made after February 8, 2006, will cause him to be ineligible for benefits for about three months after applying. How he will pay for his care during that time is, again, anyone's guess.

By the way, if part of Betty's or Charlie's gifts were made before February 8, 2006 and part after, both sets of rules will partly apply. We'll cover the confusion that will cause in our next newsletter.

In upcoming newsletters, we will examine other changes in the rules under the new law. We'll take a look at how we believe these changes will impact the relationship between nursing homes and residents. We will examine the expanded "hardship exception" written into the new rules and discuss whether it will really be of help. We'll discuss ways in which people can, with proper legal assistance and guidance, avoid the problems that many others will experience.

#### ***In Service Training Available:***

The Coulson Law Group offers in-service training on topics related to:

- \* Medicaid Eligibility and the Deficit Reduction Act of 2005
- \* An Introduction to Medicaid Planning and Division of Assets
- \* Guardianship/Conservatorship and Powers of Attorney
- \* Other Elder Law Issues

We can cater presentations to meet your time requirements. For more information contact our Director of Community Education and Outreach, Beth Frame, at (314) 567-9292 or (618) 659-9292.

Medicaid Planning Today is written by the attorneys of The Coulson Law Group, Wesley J. Coulson and Joseph G. Ilges, and is published as a service of The Coulson Law Group, 1001 Craig Road, Suite 224, St. Louis, Missouri 63146; 107 Southpointe Drive, Suite 2, Edwardsville, Illinois 62025. This is for general informational purposes only and does not constitute legal advice. For specific questions, you should consult a qualified attorney.

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