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NURSING HOMES AND THE NEW MEDICAID ELIGIBILITY RULES (Or, Why the Nursing Home Industry Thinks That the Deficit Reduction Act of 2005 Should Really Be Called the "Nursing Home Bankruptcy Act of 2006")

In two previous issues of this newsletter, we outlined some of the major changes in the Medicaid long-term care eligibility rules included in the Deficit Reduction Act of 2005. We explained that because of these changes and the difficulty in figuring out whether, and if so for how long, people who have given away any money or property within 5 years will be declared ineligible, many nursing home residents who run out of money and then apply for Medicaid are going to be shocked to learn that their applications will be rejected.

The most common financial outcome for nursing home residents is that they start out paying privately for their care, then sooner or later run out of money and apply for Medicaid. Every nursing home resident to whom that description applies – and even some who enter the nursing home "Medicaid pending," with no money to pay for their care – may be greatly affected by the changes in the rules.

Any nursing home that accepts Medicaid as a payment source – most do, although the number of "Medicaid beds" varies among nursing homes – will also be affected, in some cases to the point of financial devastation, by the changes in the rules. That's why the nursing home industry lobbied hard against a law they believe, with good cause, will end up bankrupting many nursing homes.

Contrary to popular (not to mention skeptical) belief, most nursing homes do not make boatloads of money. Staying in a nursing home isn't like staying at a motel,

where all that your room rate buys you is the room, a few amenities, and maybe a continental breakfast.

It takes a lot of effort and expense to feed, bathe, provide nursing care and schedule activities for, attend to the personal needs of, and otherwise take care of residents who aren't able to take care of themselves. Nursing home room rates are actually a lot more of a bargain than most people could ever imagine.

When a resident runs out of money and applies for Medicaid, but is rejected and ruled ineligible for benefits for some amount of

time, nursing homes are going to face a horribly tough choice. They can either let the resident stay free of charge until the "penalty period" runs out (at which point the resident will then be eligible for Medicaid), initiate proceedings to discharge the resident for non-payment, or ask the nursing home resident's family to please pick up the bill. (With the resident's permission, a nursing home can also initiate a "hardship exception" hearing, which may or may not change the outcome. We'll cover those in the next issue of this Newsletter.)

WANT TO LEARN MORE? ATTEND OUR *FREE* TELEPHONE WORKSHOP!

You can learn more about the changes in the Medicaid Eligibility rules under the Deficit Reduction Act of 2005 by attending our *free* telephone workshop:

Medicaid Eligibility and The New Rules: What You Need to Learn *Now* to Help Innocent Seniors Avoid Having Their Applications Denied

This *free* one-hour workshop will be held on Thursday, June 15, 2006, starting at 12:00 p.m. (noon). To register, call us at (314) 567-9292 or (618) 659-9292, or send an e-mail to kelli@coulsonlawgroup.com. When you register, we will furnish you with the toll-free number to call, and the "conference code" you will need to furnish, to attend the workshop. Please have handy an e-mail address or fax number to which we can send your written workshop materials. To attend, you must register before noon on Wednesday, June 14.

Each choice has a major potential downside for the nursing home.

Just eating the expense will raise serious financial concerns. Like any other business, customers need to pay for a nursing home to make money and avoid cash flow problems. Unlike most businesses, a nursing home can't really respond by "tightening the belt."

Reductions in staff would jeopardize both resident safety and the quality of care, which would be a sure recipe for complaints, lawsuits and even potential loss of certification.

Further, even if a nursing home decided to excuse payment by some residents, "where to draw the line" would be a difficult to impossible decision. The nursing home would set itself up for all sorts of claims of unfairness and discrimination.

Discharging a patient for non-payment cannot, as a matter of law, be done immediately or automatically. The resident must be given notice and an opportunity to appear at a hearing to contest the discharge. Further, a nursing home cannot legally discharge a resident unless there is a safe place that will meet the resident's needs. If discharge is sought, the resident's family may object on the basis that the nursing home profited from having the resident pay during spend-down and assisted in filing the Medicaid application, without warning the resident's family of the risk that the application would be denied and that they may then be asked to subsidize the cost of the resident's care to avoid discharge. Finally, even a "successful" discharge hearing may amount to a public relations nightmare.

Asking the resident's family to pay will likely involve similar problems. In some cases, family members will simply be unable to pay. In others, family squabbles over "who should pay how much for how long" may end up with nobody being willing to pay, even if they could.

And, family members can be expected to raise the "Why should I have to pay to fix a problem you never warned me about, and that you could and should have prevented?" argument.

There's only one real answer to the dilemma. The only good way a nursing home can avoid the potential financial devastation this problem will cause is to do all it can to keep it from happening in the first place.

That will be much easier said than done. **Nursing homes that accept Medicaid as a payment source will have to be willing and able to make a major paradigm shift.**

It won't work any more to wait until the resident runs out of money and then help that resident fill out a Medicaid application. Too often, that's going to produce a bad outcome.

Instead, the potential problem will need to be addressed soon enough to allow time to develop and carry out a plan toward enabling the resident's application to be approved as and when filed. With skillful planning under the direction of a good elder law attorney experienced in Medicaid planning, potential problems can be successfully addressed, and that outcome achieved, in many instances.

If, in a given case, a penalty period will be impossible to avoid, the goal of the plan will be to minimize the period of ineligibility and assure that the resident's care can be paid for during that time. The timing of the filing of the Medicaid application will be of critical importance, as will the way that various issues are dealt with in the application process.

Developing planning strategies to enable nursing home residents to successfully apply for Medicaid, and skillfully handling Medicaid applications that "could go either way," are skills mastered by a capable elder law attorney with substantial experience in "Medicaid planning."

The smart nursing homes – the ones that will successfully confront the major financial challenge the new law will present – will realize this, and will make it a routine practice to refer their residents to a good elder law attorney soon enough to prevent the problem.

Our "Myths and Facts" brochure has been updated to reflect the new changes in the Medicaid eligibility rules. Call today to order your free copies of this helpful brochure!

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 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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