

The Brave New Medicaid World?

New Medicaid Rules Effective July 1, 2007



by Jim Schuster Certified Elder Law Attorney

Major change is infrequent with the Medicaid rules and now is one of those times. On July 1st the Department of Human Services announced the first major change since 1993. These are the result of the changes signed into law by President Bush on February 8, 2006 in the law called “the Deficit Reduction Act of 2005.”

As with any major change uncertainty about the rules take over. There have been some reports from different parts of the state that some offices are challenging actions under the unchanged portion of the rules. For example, we’ve heard of challenges to expenditures for modification or improvement of a home, over and above repair; and, claims that adjacent lots are not part of a homestead just because they have a separate tax bill. Care contracts are now called divestment. That leads us to wonder, “how will they interpret the *new* rules?”

These are uncertain times.

Here we go with a summary of the recent changes to Medicaid.

Rental Property – \$6,000 Cap

The new rule effective April 1, 2007 is that *only* \$6,000 of equity in income-producing real estate is exempt. The old rule was that income-producing real estate producing a 6% net return was 100% exempt. The new rule is consistent with existing SSI law and has been used in other states. There will be no grandfathering of previously exempt income-producing real estate. This will be problem on annual redetermination of Medicaid eligibility for unmarried clients and for married clients who did not transfer the property to the at home spouse.

This change will make it very difficult for a person who has any rental properties to receive Medicaid assistance. It may be possible to qualify the property as an “employment asset.” However this rule requires active management of the business that means being on the job during working hours. That is hard to do from a nursing home.

Elimination of Retro-Active Funeral Planning

Michigan had a rule of mercy that allowed over asset applicants to qualify by using the excess assets

to purchase funeral arrangements. Those funds would not be counted for the application including up to three months prior to the application for retroactive eligibility. The new rule is that excess assets spent on funeral arrangements are treated as any other asset, i.e., available until actually spent.

\$500,000 Cap on Equity Value of Homestead

The old rule was that the Homestead (and adjoining property) was exempt – no limit. The new rule is that equity in homestead (and adjoining property) is not exempt to the extent it exceeds \$500,000. The DRA 2005 waives this limit if a spouse, child under age 21, blind or permanently disabled resides in the home. The new Michigan rule does not include this waiver, but we are informed that a technical correction to the rule will be issued October 1st.

Divestment

5 Year Look-Back: The three year look-back is gone. The new rule is a five year lookback after February 8, 2006. Any made prior to this date are covered under the old three year rule.

Aggregation of Divestment: All divestment of assets, by gifts, transfers or otherwise, made during the look-back period are combined and the penalty period is calculated based on aggregated amount. For example if Mr. Smith made \$8,000 in gifts for weddings, graduations and birthdays, during the five years before he applied for Medicaid those would be considered the same as one gift of \$8000.

Penalty Period Enlarged: Under the old rule, small amounts of divestment did not count. Penalty periods were not calculated in periods smaller than a month. Transfers of less than \$5,900 did not matter. Now periods are calculated to the day and that means amounts small as \$198 will cause a penalty period of one day.

Penalty Period Start Date: Under the old rule the penalty period began running in the month in which the transfer occurred. Under the new law the penalty period will run when the person applies for Medicaid and is “otherwise eligible.” For example suppose Mr. Smith had a stroke, entered the nursing home four months ago and now applies for Medicaid. Suppose further he gave away \$20,000 two years ago. Michigan’s newly published rule creates confusion. It states that the penalty period starts when the applicant “enters the nursing facility.” The DHS has announced a clarification of the rule in its October 1st revised policy statement. We may expect that DHS would treat his penalty period starting only when he applies for Medicaid and not before.

Annuities

DRA 2005 authorized the state to contact the issuing company and make the state the beneficiary after any spouse or disabled child. The July 1st changes did not address this issue. The DHS announced it would implement this provision by the October 1st rule clarification.

Estate Recovery

We have reported before that the threat of estate recovery - government gets the homes of Medicaid recipients - was high under SB 374. After vigorous advocacy to legislators the threat went down, but, it has not gone away. Several versions of estate recovery legislation have been circulated in the legislature. Reports are that the Governor is still in favor of it. The issue may yet be considered in the legislature. Estate Recovery is obviously a small matter in the much bigger problem of balancing the budget. Whether, and in what form, it may be enacted remains speculative.