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Medicaid Law Changes Enacted

On February 1, 2006 the House of Representatives passed the 776 page Deficit Reduction Act of 2005. President Bush signed the legislation on February 8, 2006 thus making these changes the law of the land.

As with any major legislative initiative, the full ramifications of these changes won't be known for several months. For that reason we will be devoting the next several months' issues of Elder Law Today to these changes. We will dissect them one by one and point out the major changes and planning opportunities under the new law.

In the meantime, certain aspects of the bill are clear at this time. The first is that the Medicaid gifting or asset transfer rules have been changed so that the "look-back" period for all asset transfers is now 5 years. This includes any transfers made on or after February 8, 2006. Under the old rules, transfers which did not involve a trust resulted in asset transfer penalties of no more than 3 years. Now, under the new legislation, all asset transfers will have a lookback period of 5 years.

In addition, the start of the penalty period won't begin until the Medicaid applicant is already spent down. For instance, under the old rules a gift of $30,000 would create a 6 month penalty period in Michigan from the date of the gift.

Under the new law, that period of ineligibility will not begin until the gift has been made and the spend down has been completed. Only then will the penalty period begin, meaning that the gifted funds may have to be given back to pay for care. You can imagine the nightmares this may cause for unsuspecting nursing home residents and their families! (We will have much more discussion on this in coming issues).

In addition, the new law makes any individual with home equity of more than $500,000 (or if the states elect, they can raise this to $750,000) ineligible for Medicaid. In other words, under the old law the home was an exempt asset. Under the new law the home may be exempt asset, but only so long as the home equity is not greater than $500,000.

The new law also changes the annuity rules. Annuities will be treated differently under the new law. In addition, the law will require the State to be named as the remainder beneficiary on annuities.

The bottom line, as we will explain in coming months, is that the new laws will greatly complicate the Medicaid application process. Individuals may find that inadvertent transfers may prevent them from qualifying for Medicaid. The advice of an experienced elder law attorney will now become more important than ever under these new rules.