

Deficit Reduction Act of 2006 Long Term Care Clients

Asset Transfers

All asset transfers are now subject to a 60 month look back period. In addition, the disqualification effective date for applications is now extended to the month of transfer (or the following month) OR the date Medicaid eligibility is met - whichever is later. Finally, the penalty period cannot be rounded to a month but must be imposed down to the day.

Impact: There is less chance that asset transfers will be a part of the estate planning process or that they will be unpenalized.

Purchase of Loans, Mortgages, and Promissory Notes

Must have a repayment plan that is actuarially sound, with payments of equal amounts, and no cancellation upon the death of the lender. Otherwise the balance of funds owing is a disqualifying transfer of assets.

Impact: This closes the loophole that enables a client to, in essence, “give away” monies without full compensation.

Life Estates

If a client or spouse buys a life estate in another’s home and does not live there for 12 consecutive months after the purchase date, then the purchase price is a disqualifying transfer of assets.

Impact: This change addresses this type of “give-away” without any benefit ever being received. It has little impact on those states that presently recover from a life estate owned by the client, because this practice is not utilized as an estate planning technique there.

Annuities

Clients & spouses as annuitants:

- **The annuity must be irrevocable and unassignable.**
- **It must pay out in equal installments over the annuitant's actuarial lifetime.**
- **The state in which the annuity is purchased must license and approve the business to issue commercial annuities.**
- **The state must be first remainder beneficiary for total medical assistance paid or the second remainder beneficiary, if there is a community spouse or minor/disabled child as the first remainder beneficiary.**

Unless all requirements are met, the annuity is a countable resource and if the client is still eligible, there may be a disqualifying transfer of assets imposed depending upon who the annuitant is and the requirements not met.

Impact: It may delay Medicaid eligibility, may prevent the transfer of annuity beneficiary funds, and creates a mechanism to recoup monies even from annuities created by a community spouse.

Hardship Waiver Process

Each state must provide for a hardship waiver process to allow Medicaid eligibility if imposition of a transfer of assets penalty period would deprive a client either of food, clothing, shelter, or necessities of life OR of medical care which would endanger the individual's health or life. The process must include a provision for notice about the waiver's existence, a "timely" procedure to determine whether to grant a waiver, and an appeal method.

Facilities may represent a client in this process.

Impact: This provision grants leniency to those clients in need of help who meet the applicable criteria. It also provides an opportunity for estate recovery units to work with Medicaid eligibility staff by providing feedback on the process, as well as a voice in suggesting options to pursue for recoupment of transferred assets through legal means, if possible, during the client's lifetime.

Home Exemptions

With DEFRA 2006, if equity in a home is greater than \$500,000, the equity will count as a resource to the client. The home can still be excluded if it meets the definition of income-producing property (such as a farm) or a spouse or minor/disabled child reside in it.

Impact: This provision has little effect on estate recovery, but it could delay Medicaid for those affected few, who may take out loans to reduce equity and spend resulting monies for private care.

Wrap- Up:

There is little immediate impact on estate recovery, but DEFRA could, over time, increase the availability of recoverable estate assets. In some instances, property might not be transferred and therefore may be subject to recovery. Annuities may provide some additional recovery. Even if estate assets are not significantly affected, at the least, certain loopholes have now been closed delaying Medicaid eligibility and reducing the total assistance paid. Since these changes are implemented through the Medicaid eligibility staff, developing and/or maintaining relationships at the state level may allow for an exchange of information between estate recovery and eligibility staff, and present an opportunity to provide feedback on

procedures which may potentially lead to greater estate recoveries.