Medicaid Makes it More Difficult for Seniors to Protect Assets

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on March 28, 2007.

The past several years have seen monumental changes in the nursing home Medicaid program. Nursing home costs are huge, and new law changes can cause your heirs to lose their legacy, unless action is taken to prevent that from occurring. Most of the changes have to do with the state implementing estate recovery and a new federal law known as the Deficit Reduction Act (DRA) of 2005 that became effective February 8, 2006.

The estate recovery program in Texas became effective March 1, 2005. The state may file a claim against the estates (including the homesteads) of deceased Medicaid recipients for the costs of nursing home care paid for them by Medicaid after the beneficiary reached the age of 55 years old. There are a few situations in which estate recovery does not apply, and it can be waived in cases of undue hardship. But for an exception to apply, you must be familiar with the rules and submit the required paperwork within very limited time frames.

Moreover, the DRA imposes restrictions on spending down assets in order to qualify for Medicaid. Since 1981, Medicaid has imposed a penalty for giving away assets in order to qualify. The length of the penalty period is based on the amount given away. Previously, Medicaid only considered gifts made within the past three years (except for certain gifts involving trusts). Now, Medicaid considers gifts made within the past five years. Also, the penalty period for making gifts previously began when the gift was made. Thus, it was possible to give away assets and have the penalty period end before Medicaid was needed. Under the new rules however, the penalty period does not begin until the individual needs Medicaid.

The new law also places restrictions on the amount of home equity a Medicaid recipient is allowed to have. Medicaid will not help with your nursing home costs if you are single and your home equity exceeds $500,000. In addition, it used to be possible to spend down assets and qualify immediately for Medicaid by buying a life estate interest in a relative's home. But now buying a life estate is penalized as a gift, unless you live in the relative's home for at least a year after making that purchase.

The new law tightens requirements regarding expansion of the spousal protected resource amount ("SPRA"). This is the portion of the couple's assets that is protected for the community spouse when the other spouse goes into a nursing home. Previously, expansion of the SPRA depended only upon the community spouse's income. Now, expansion of the SPRA depends upon the combined income of the couple. The result is fewer SPRA expansions, which means fewer assets can be protected for the community spouse using this method. Couples are forced to spend down assets on nursing home care, leaving less for the community spouse's living expenses.

Annuities and promissory notes are also affected by the new law. These must be actuarially sound and pay out in equal installments (no balloon payments). For annuities, the state must be named the

residual beneficiary in the first position for the amount of medical assistance received and in the second position after the community spouse.

Texas implemented many of the restrictions regarding the SPRA, annuities, and notes prior to enactment of the new federal law.

What does all this mean? It means that it is helpful to try and plan ahead as far in advance as possible if you want a spouse to keep from becoming impoverished when the other spouse enters the nursing home and for heirs to receive a legacy. Experienced elder law attorneys can help you make a plan for you that should increase your opportunities for preserving assets.