New Rules Regarding Assets, Medicaid Assistance

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on May 23, 2007.

Recently, Congress has taken drastic action that severely limits one's ability to give away assets and still qualify for Medicaid to help pay for long-term care. The legislation containing these more stringent requirements is the federal Deficit Reduction Act of 2005 ("DRA 2005"), which became effective February 8, 2006. Among other requirements, this law mandates that the period of ineligibility for Medicaid that results from giving away assets does not begin until the individual enters a nursing home and applies for Medicaid, if the gift occurred within the last five years. This means that people needing nursing home care may be penalized for gifts they made months or even years before entering a nursing home.

But despite the stringent requirements of this new law, Congress continues to recognize the need for the blind or disabled child of a Medicaid applicant to be cared for. Accordingly, a previous law allowing for the creation of a special type of trust to care for such a child remains in place. Since 1993, Congress has allowed individuals who need Medicaid to help them with nursing home costs to transfer assets to a trust for the sole benefit of their blind or disabled child. The child may be of any age, but he or she must be blind or disabled, as defined by the Social Security Act.

In order for assets diverted to such a trust to be exempt from gifting penalties, the trust must meet certain requirements. It must be set up so that no one but the Medicaid applicant's blind or disabled child will benefit from the trust, either now or at any time in the future. To ensure that this requirement is met, the trust must be actuarially sound. This means simply that the trust document must require that its entire assets are paid to (or for the benefit of) the blind or disabled child over that child's life expectancy based on actuarial tables.

For example, a mother needing nursing home care gifts $100,000 to a trust for the benefit of her 52-year-old blind/disabled son. According to the Social Security Administration's life expectancy tables, a 52-year-old male has 26.24 years of remaining life. Therefore, the trust must pay at least $317.58 per month to (or for the benefit of) the son ($100,000 ÷ 26.24 years = $3,810.98 ÷ 12 months = $317.58). Thus, the mother qualifies for Medicaid and the son has income for life.

There are, however, some situations where such a trust may not be appropriate. One such situation might be if the blind or disabled child receives means-tested government benefits, and the required payments from the trust are likely to disqualify that child for such benefits. Nevertheless, under federal law there are certain types of trust payments that will not disqualify the blind or disabled child for public benefits, and it may be possible to set up the trust so that it makes only these types of payments.

A distinct advantage of sole-benefit trusts is that the assets used to fund them are removed from the reach of the Medicaid estate recovery program. That is, Medicaid cannot seek repayment from such assets for the costs of long-term care services paid by Medicaid on behalf of the individual who set up the trust. In fact, upon the death of the parent who set up the trust and the disabled beneficiary of the trust, the remaining trust assets can be distributed to anyone the parent wishes.

The important point to remember is that no two situations are exactly alike. What is right for one person may not be right for another. For this reason, it is important to consult an experienced elder law attorney before making any decisions regarding Medicaid, other public benefits, or trusts for disabled individuals.