

RECENT CHANGES IN MEDICAID LAW CREATE PROBLEMS FOR INDIVIDUALS LOOKING TO UTILIZE TRADITIONAL ELDER PLANS

The cost of government subsidized long term nursing home care, known as Medicaid, increasingly consumes a greater and greater portion of state budgets. Pennsylvania is no exception to this rule. In recent years many individuals have been consulting financial planners and/or attorneys to administer “Elder Planning” to preserve assets for the next generation and later filing for Medicaid. The rapidly rising cost of skilled nursing care, combined with individuals increasing use of asset sheltering strategies, have prompted state legislatures to further tighten the requirements one must meet in order to qualify for Medicaid. The Deficit Reduction Act of 2005 (DRA) was the legislative result of this tightening.

Medicaid is a federal program that each state can elect to administer. All states have a Medicaid program and most states have generally the same laws, however, each state is free to “opt into” the program and is also free to make certain rules specific to their state. In Pennsylvania, lawmakers have yet to “opt into” the program but sources in Harrisburg and the Department of Revenue have made it be known they will be adopting the rules of the DRA on January 1, 2007 and make the rules effective retroactively to the day the bill was signed into law (February 28, 2006). What these facts mean to citizens of Pennsylvania is that they should consider the DRA as law and do any planning in consideration of the rules and regulations of the DRA.

Pennsylvania’s adoption of the substance of the DRA will result in the following key changes:

- The “lookback” period to determine ineligibility on any grounds (including gifting) will be expanded.
- Partial gifting within the “lookback” period, to shelter at least some of an individual’s assets, while still qualifying for Medicaid has become much more complicated and in many instances unfeasible.
- The primary residence of an applicant is no longer fully exempt. The exemption will be “capped” at \$500,000.
- Individuals who pay for Long Term Care Insurance will be allowed to preserve assets under the “spend down” provisions.
- All states will become Income Based for determination of Minimum Monthly Needs Allowance.

Due to the changes in the Medicaid laws individuals are cautioned to not engage in planning without first consulting a professional to review all the rules and analyze each individual’s financial status to determine what, if any, planning will be available. Otherwise, if an individual tries to do planning or consults help from someone not fully up to date with the new rules they could make themselves ineligible from Medicaid indefinitely and be left “out in the cold” when needing admittance to a Skilled Nursing Facility.

NOTE: The contents of this article constitute a brief survey of the recent changes affecting Elder Law Planning. The contents are for educational purposes only and are not to be deemed as legal advice. Eligibility rules for Medicaid change frequently, and often with little notice. Having properly updated Estate Planning Documents (Wills, Powers of Attorney, etc) is necessary to fully effectuate a proper Elder Law Plan. An Individual should consult their attorney for specific advice if they wish to engage in the Elder Law Planning techniques discussed in this article.

This article was co-authored by Stephen A. Strack and Keith W. Strohl, associate attorneys of Steckel & Stopp Law Firm with offices at Main Street and Walnut Street, Slatington; Schnecksville and Northampton which has been serving the estate and elder law planning needs of the Lehigh Valley areas for sixty years.