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Deficit Reduction Act Means Big Changes In Planning For Mass Health Long Term Care

By Frederick M. Misilo, Jr., Esq.

On Wednesday, February 8, 2006, President George W. Bush signed the Deficit Reduction Act of 2005 ("the DRA"). This new law may change the way individuals will plan for their retirement and long-term care needs. Also, decisions that individuals make now may have a significant impact on their future eligibility for long-term care financing through Mass Health. For example, if you make contributions or gifts to charities, churches or family members, you may be ineligible for Mass Health long-term care services for up to five years after you gave the gifts, even if you had no intention of using Mass Health at the time. If you have already transferred assets in the past before the effective date of the DRA, you are grandfathered in under the prior law.

Here is a snapshot of some of the major changes in Mass Health long-term care eligibility:

1. **All transfers are now subject to a 60 month look-back period.** The look-back period is like a rear view mirror on a motor vehicle. It is the period of time within which Mass Health is permitted to review financial transactions of the applicant to determine whether any of those actions would result in disqualification from Mass Health eligibility. The look-back period begins on the date of application and goes backward in time. Financial transactions outside the look-back period (e.g. more than 60 months ago) are not part of the application process and cannot be a basis for disqualification for Mass Health eligibility.
2. **Change in beginning date for period of ineligibility.** Prior to the enactment of the DRA, the period of ineligibility for Mass Health long-term care benefits began on the date of the disqualifying transfer and continued based on the fair market value of the asset transferred. This has meant that gifts and other uncompensated transfers have immediately triggered a period of ineligibility which would end depending on the value of the transfer. This planning strategy, sometimes called half-a-loaf planning or 50-50 planning, enabled families to retain a portion of their assets while reserving another portion to privately pay for long-term care during the period of ineligibility. This strategy now appears to be lost under the DRA. The period of ineligibility now begins when the applicant is financially eligible or when they would have been financially eligible but for the transfer. In other words, the DRA begins the period of ineligibility at the time of application for Mass Health long-term care benefits. So, if an applicant gave their grandchild a gift of $25,000 within five years of applying for Mass Health long-term care benefits, the transfer will trigger a period of disqualification of approximately three and a half months at the time of application. At that point, the applicant would have to be prepared to pay privately for long-term care services during this period of ineligibility.
3. **State now becomes a remainder beneficiary in Medicaid annuities.** One common planning technique has been for the nursing home spouse to purchase an annuity with excess assets, that is, assets above what is allowed for the community spouse and the nursing home spouse. This annuity provides income for the benefit of the community spouse. This has protected the community spouse from the loss of income and resources due the incapacity of her spouse who has moved to a nursing home. In the past, if the community spouse died prior to the annuity being fully paid out, she could name her children or other individuals to receive the stream of annuity payments after her death. Under the DRA, the state must be named as the remainder beneficiary now before the children. The state will now be entitled to be reimbursed for all payments made on behalf of the nursing home spouse. At the time of this writing, it appears that this rule may not apply, however, to annuities purchased by the community spouse. Therefore, annuities may remain a viable planning option for married persons in most situations.
4. **Home equity is limited to $500,000 under the DRA**. Individuals cannot establish eligibility for Mass Health if the individual's equity interest in the home exceeds $500,000. Fortunately, the DRA does permit individual states to increase this to $750,000 and it is widely expected that Massachusetts will adopt this larger amount. 5. Entrance fees for and assets declared on applications to Continuing Care Retirement Communities (CCRC) and Life Care Communities may be resources which can be required to be spent down prior to applying for Mass Health. If an entrance fee can be used for the individual's care if it can be refunded or does not confer an ownership interest in the community, the entrance fee will be considered an asset for purposes of establishing financial eligibility for Mass Health.

There are several strategies that individuals and families may be well advised to consider in light of the changes brought on by the DRA. For example, the DRA permits the use of conventional financing on the principal residence in order to reduce the value of the home equity. This might result in consideration of a home equity loan or reverse mortgage when in the past these options may not have been favorably considered. The use of the funds from a home equity loan or a reverse mortgage can fund personal care contracts to encourage seniors to remain at home. Also, large transfers for younger and/or healthier people may now seem more favorable while, in the past, such transfers might have been considered too a ggressive.

The DRA rules encourage the purchase of long-term insurance contracts - at least for the five year disqualification period. As with all estate planning decisions, these choices, among others, must only be made after a careful review of each individual and family's objectives and goals.

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