

CONGRESS PASSES NEW MEDICAID LAW

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By a vote of 216-214, the U.S. House of Representatives has passed new legislation which imposes punitive restrictions on the ability of the elderly to transfer assets before qualifying for Medicaid coverage for nursing home care. The legislation was signed by President Bush on February 8, 2006.

The new law will extend Medicaid's "lookback" for all asset transfers from three to five years, and changes the start of the penalty period for transferred assets from the date of transfer to the date when the individual transferring the assets enters a nursing home and would otherwise be eligible for Medicaid coverage. In other words, the penalty period does not begin until the nursing home resident is out of funds, meaning he or she cannot afford to pay the nursing home. The change in the penalty period start date will make it much more difficult for individuals to qualify for Medicaid.

Because of the new legislation, nursing homes may be flooded with residents who need care, but have no way to pay for it. In cases where nursing home residents have transferred assets, nursing homes may seek reimbursement from the residents' children. Other highlights of the new legislation include the following:

- Individuals with home equity above \$500,000 will be ineligible for Medicaid nursing home care, although states may raise this threshold as high as \$750,000;
- New rules will apply to the treatment of annuities, including a requirement that the State be named as a remainder beneficiary; and
- Continuing Care Retirement Communities can require residents to spend down their declared resources before applying for medical assistance. Also, the legislation sets forth rules under which an individual's entrance fee to a Continuing Care Retirement Community may be an available resource.

In addition, the legislation incorporates provisions which will close certain asset transfer "loopholes", among them

- The purchase of a life estate will be included in the definition of "assets" unless the purchaser resides in the home for at least one (1) year after the date of purchase.

- States will be barred from “rounding down” fractional periods of ineligibility when determining ineligibility periods resulting from asset transfers.
- States will be permitted to treat multiple transfers of assets as a single transfer and begin any penalty period on the earliest date that would apply to such transfers.

The new rules should apply to all transfers made on or after February 8, 2006. However, each state should receive a grace period to come into compliance. It is possible that the old rules may apply to transfers if a Medicaid application is filed before the State of New Jersey modifies its Medicaid laws. If you have a loved one in a nursing home or about to enter a nursing home, you should immediately contact a qualified elder law attorney.