Lampertius, Richards & Associates, PLC

In Focus

"Responsive Today, Prepared for Tomorrow"

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Welcome to *In Focus*, our quarterly newsletter addressing important issues in light of current legal trends. This publication will serve to update you on areas of most concern to yourself and your family. At Lampertius, Richards & Associates, PLC, our goal is to respond proactively to your needs, help prepare you for the future and provide up-to-date information on important topics.

MEDICAID

Reprinted from "Elder Law Weekly" of Elderlawanswers.com, of which our firm is a member

President Bush on February 8, 2006 signed into law the Deficit Reduction Act of 2005, which among other provisions places severe new restrictions on the ability of the elderly to transfer assets before qualifying for Medicaid coverage of nursing home care.

The law extends Medicaid's "lookback" period 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 she cannot afford to pay the nursing home.

The law also makes any individual with home equity above $500,000 ineligible for Medicaid nursing home care, although states may raise this threshold as high as $750,000.

The new federal law applies to all transfers made on or after the date of enactment, February 8, 2006. However, the law gives states that must pass legislation to meet the new requirements more time to come into compliance. This gives many people in most states a little time to plan. The deadline for states to enact their own laws varies from state to state, but generally it is the first day of the first calendar quarter beginning after the end of the next full legislative session.

Any transfer made before February 8 falls under the old transfer rules. But what about someone who transfers assets after that date but before his state comes into compliance with it? In all probability, this will depend on the date of the application for Medicaid. If the application is filed before enactment of the state law, it will

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probably come under the old transfer rules. If it is filed after the enactment of the state law, it will come under the new transfer rules.

The bottom line: if you have considered protecting some assets for your loved ones in case you later require long-term care, you should contact a qualified elder law attorney now.

The new law also:

- Establishes new rules for the treatment of annuities, including a requirement that the state be named as the remainder beneficiary.
- Allows Continuing Care Retirement Communities (CCRCs) to require residents to spend down their declared resources before applying for medical assistance.
- Sets forth rules under which an individual's CCRC entrance fee is considered an available resource.
- Requires all states to apply the so-called “income-first” rule to community spouses who appeal for an increased resource allowance based on their need for more funds invested to meet their minimum income requirements.
- Extends long-term care partnership programs to any state.
- Authorizes states to include home and community-based services as an optional Medicaid benefit. (Previously, states had to obtain a waiver to provide such services.)

In addition, the law incorporates provisions in the original budget bill passed by the Senate closing 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 year after the date of purchase.
- Funds to purchase a promissory note, loan or mortgage will be included among assets unless the repayment terms are actuarially sound, provide for equal payments and prohibit the cancellation of the balance upon the death of the lender.
- 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 current 2005-2006 Medicaid asset income and divestment penalty numbers are as follows:

Minimum Community Spouse Resource Allowance:
$19,920.00

Maximum Community Spouse Resource Allowance:
$99,600.00

Resource Allowance for an Individual:
$2,000.00

Minimum Monthly Maintenance Needs Allowance:
$1,604.00

Maximum Monthly Maintenance Needs Allowance:
$2,490.00

Divestment Penalty Divisor:
$5,549.00

ESTATE RECOVERY IN THE MICHIGAN SENATE

On October 19, 2005, State Senator Michael Switalski of Macomb County introduced bills to establish estate recovery in Michigan. Estate recovery is the process by which the state may impose liens or make claims against the property of an individual who has received benefits under the Medicaid system. Normally this is done after the death of the person who has received benefits, with special consideration for spouses and minor or disabled children of Medicaid recipient. While the introduction of these bills brings the debate of estate recovery to the Senate floor, it is still difficult to know what estate recovery will look like in Michigan, and doubtful that the bills in their current form will be enacted.

The bills, as introduced, create a system to track assets of an individual, track benefits received, and create a system for placing liens and claims on assets. The bills do not specifically how these systems will operate. It is most likely that the names of Medicaid recipients will be affected by estate recovery. It is important for Medicaid recipients to know that a bill has been introduced. There will be significant debate in the Michigan legislature, especially considering Michigan's significant budgetary deficit. The days of estate recovery in Michigan are fast approaching and it is time to consider its effects upon one's long term care plan.

RETIREMENT PLANNING

Traditional IRA Contribution	2006	$4,000.00 + $1,000.00 catch-up for individuals over 50
Roth Conversion from Traditional IRA	2006	Unlimited provided Adjusted Gross Income is $100,000.00 or less for single or joint filers
Roth IRA Contribution Limit	2006	$4,000.00 + $1,000.00 catch-up for individuals over 50
Simple IRA	2006	$10,000.00 + $2,500.00 catch-up for individuals over 50
401(k)	2006	$15,000.00 of salary deferral + 25% of pay for employer profit sharing or 20% for self-employed for a total of $4,200.00. Catch-up for individuals 50 or older$5,000.00

Beginning in 2006, a 401(k) plan may allow employees to designate some or all of their elective contributions as Roth contributions. Unlike traditional contributions (which are excluded from the employee's taxable income), any designated Roth contributions are currently includible in gross income. [IRC §402A(a)(1)] However, a qualified distribution of designated Roth contributions (and related earnings) is free of federal income tax.

Roth 401(k) accounts will generally be more advantageous than Roth IRAs:

- There is no income limit that would restrict a plan participant from making a Roth 401(k) deferral, which would make them attractive to higher income individuals.
- Larger contributions can be made to a Roth 401(k) [up to $15,000.00 for all Roth 401(k) contributions and regular 401(k) elective deferrals in 2006; $20,000.00 if age 50 or over], which is advantageous to both higher and lower income individuals.

ESTATE, GIFT & GENERATION SKIPPING TAX CHANGES

We still await whether Congress will permanently repeal the (GST) set forth in 2001 Estate Tax and Generation Skipping Tax. Due to rising war costs and back to back hurricanes, the subject of permanent repeal has been tabled. Following is a current table showing the increase in the Estate Tax and GST exemption and the decrease in rates. Note these figures are not indexed to inflation. Please note as well the Gift Tax Exemption does **not** change.

Year	Top Estate and Gift Tax Rate	Estate Tax Exemption Amount	Gift Tax Exemption Amount
2006	46%	$2 million	$1 million
2007	45%	$2 million	$1 million
2008	45%	$2 million	$1 million
2009	45%	$3.5 million	$1 million
2010	N/A – Estate Tax and GST Tax repealed; Gift Tax: top individual income tax rate; Carryover basis for capital gains	N/A	$1 million
2011 and beyond	55%	(?) Sunset provisions	(?) Sunset Provisions

The annual gift tax exclusion is indexed to inflation. The 2006 amount is $12,000.00 per person, per year. Please note the gift must clear the account before 12/31/05. Direct payment of qualified health and education expenses remain unlimited.

SPECIAL NEEDS PLANNING

Our firm has taken a proactive role in linking community resources and parents to enable better understanding of the planning for independent living, higher education and housing needs for children with disabilities under the 2004 amendments to Individuals with Disabilities Education Act ("IDEA") mandated expansive goals under special education for children and parents on such life planning issues. Further information about such plan will be featured in greater detail in upcoming issues. For more information, contact Janine Mauck at our office at (248) 538-5480.

SPECIAL CONCERNS WHEN FUNDING LIVING TRUSTS WITH REAL ESTATE

A recent Michigan Court of Appeals decision has raised concerns about funding a living trust with real estate using a Quit Claim Deed. It is common for family members to use Quit Claim Deeds when transferring property to other family members or to a living trust. However, using a Quit Claim Deed can result in the owner's policy of title insurance to terminate or not cover the transfer. In order for title insurance to continue, it is necessary to use a Warranty Deed, because the property owner must have a continued liability by reason of covenants of warranty. A Quit Claim Deed does

not provide covenants of warranty and therefore a Quit Claim Deed will not meet the requirements for continued coverage under an owner's title policy. In the case of *Marion Jenkins Trust v Elsie Smith*, the Michigan Court of Appeals held that a trust funded with the settlers property by Quit Claim Deed could not sue the original owner of the property. The trust did not have warranties to enforce since no warranties where conveyed through the Quit Claim Deed.

If you have already transferred real estate to a living trust by Quit Claim Deed, you should do one of two things. First, buy an endorsement to your existing title policy naming the trust as an additional insured. Second, buy a 1998 ALTA Homeowner's Policy of Title Insurance that has many extended coverages. This type of policy includes coverage for post-policy transfers to an insured's trust. If you are planning to transfer real estate to a trust then you should instruct the deed preparer to use a Warranty Deed. You will be able to avoid real estate transfer taxes because the consideration will be for less than $100.00.

UPCOMING SEMINARS OF INTEREST

May 25, 2006 - "Handling Estate Planning for Dementia," James P. Lampertius, Esq. from 6:00 p.m. – 7:00 p.m. at Alterra located in Troy, Michigan.

June 2, 2006 - "Trust Administration in Michigan," Norman E. Richards, Esq. from 8:30 a.m. – 4:30 p.m at Lorman Education Service located in Dearborn, Michigan (Continuing Education credits for accountants, financial planners, bankers and insurance agents).

June 22, 2006 - "Estate and Financial Planning for Elderly Disabled," James P. Lampertius, Esq. from 8:30 a.m. – 4:30 p.m. at the State Bar Institute of Continuing Legal Education located at MSU Management Center in Troy, Michigan (Continuing Education for estate plan attorneys).

Please contact us if you are interested in registering for any of these seminars.

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