

Texas Elder Law FaxLetter

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A FREE BUSINESS AND LEGAL UPDATE OF CURRENT EVENTS AFFECTING THE ELDERLY ♦ DECEMBER 2005 EDITION

NATIONAL NOTES



Vote on Budget Bill May Be Delayed Until Next Year

On December 12, 2005, Michael B. Cohen (in his capacity as president of the Texas chapter of the National Academy of Elder Law Attorneys) met with Congressman Joe Barton, Chairman of the House Energy and Commerce Committee, which was responsible for the House version of the budget bill. During the meeting, Mr. Cohen was advised it is likely that passage of the budget bill (presently in conference committee) may be delayed until early next year unless agreement can be attained by December 17, 2005. Reaching agreement has been challenging as a result of huge differences between the House and Senate regarding Medicaid changes.

House and Senate negotiators are presently battling over the future of Medicaid and legislation that would allow states to cut benefits and increase charges for millions of low-income people, including many children and disabled people of all ages. Democrats, who are generally opposed to the House and Senate budget bills, are excluded from the current negotiations. The chief negotiators are Congressman Barton and Iowa Senator Grassley.

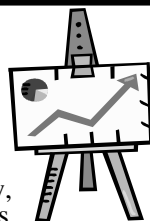
As indicated in the October and November issues of the *Texas Elder Law Faxletter*, the biggest affect on many seniors who apply for long-term care Medicaid would be the House bill provision which would change the start date of any transfer penalty for uncompensated transfers from the date of the transfer to the date one would otherwise qualify for Medicaid. In addition, the "lookback" period for uncompensated transfers would be changed from three to five years. (See the November issue for further

details). Furthermore, there are several other provisions that will affect Medicaid eligibility for seniors.

The House bill trims \$50 billion from various federal programs while the Senate version makes milder cuts of \$35 billion.

MEDI-MINUTES

Protected Resource Amount Increased



As many of you know, when one spouse applies for nursing home Medicaid (the "institutionalized spouse") and one spouse stays at home (the "community spouse"), the Texas Health and Human Services Commission (HHSC) takes a snapshot of the couple's countable resources (some examples of excluded items are pre-need funeral arrangements with waiver, homestead, one car, etc.) as of the first day of the first month in which the institutionalized spouse receives at least 30 days of continuous skilled care. That date determines the protected resource amount (PRA) for the community spouse, i.e., the amount of countable resources that can be kept by the community spouse if there is no expansion as explained below.

The maximum PRA in Texas will increase from \$95,100 to \$99,540 as of January 1, 2006. However, as explained in previous issues of the *Texas Elder Law Faxletter*, the community spouse can often expand the PRA if the non-countable resource income of the couple is less than the minimum monthly maintenance needs allowance (MMMNA)¹ if nursing home or hospital entry was on or after September 1, 2004.² Thus, if entry into the hospital or nursing home was on or after September 1, 2004, the non-countable resource income of both spouses must be below the MMMNA for there to be a possibility of expansion. (On January 1, 2006, the minimum PRA will increase from \$19,020 to \$19,908.)

To determine the PRA, calculate the couple's countable resources and divide

that number by two. The result is the PRA unless it is above the maximum PRA (\$99,540 as of January 1, 2006) or below the minimum PRA (\$19,908 as of January 1, 2006). Thus, HHSC would allow the community spouse half of the couple's countable resources as of the snapshot date unless it is above the maximum PRA or below the minimum PRA.

For example, if the couple has \$30,000 of countable resources, since $\$30,000/2 = \$15,000$ is less than the minimum PRA, the PRA that could be kept by the community spouse would be \$19,908 in addition to the \$2,000 that could be kept by the institutionalized spouse for a total of \$21,908. The remaining \$8,092 would have to "spent down" by paying debts, buying non-countable resources, or making limited gifts (depending on the law Congress passes as mentioned in the prior article). However, the PRA could be expanded, which is permitted due to spousal prevention for impoverishment laws, possibly allowing all countable resources to be kept by the community spouse without any change to such resources.

Similarly, if a couple has \$500,000 of countable resources, since $\$500,000/2 = \$250,000$ which is greater than the maximum PRA of \$99,540, then the PRA would be \$99,540 and \$398,460 ($\$500,000 - \$99,540 - \$2,000$) would need to be "spent down" prior to Medicaid eligibility - unless the PRA is expanded.

The PRA can often be expanded in Texas if the non-investment or non-countable resource income of the spouses is less than the MMMNA. Expansion is based upon a formula which is interest rate sensitive. Thus, the lower the interest rate and the lower the non-countable resource income of the spouses below the MMMNA, then the more the PRA could be expanded without the necessity of any "spend down" as a result of spousal prevention of impoverishment laws.

Footnotes:

¹MMMNA is presently \$2,377.50 and is scheduled to increase to \$2,488.50 as of January 1, 2006.

²Texas is an "income first" state as of September 1, 2004.