

Texas Elder Law FaxLetter

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A FREE BUSINESS AND LEGAL UPDATE OF CURRENT EVENTS AFFECTING THE ELDERLY ♦ JUNE 2004 EDITION

STATE STORIES

DHS Exploring Options to Limit Medicaid Eligibility

In light of increasing demands for long-term care Medicaid and limited funds budgeted by the state, the Department of Human Services (DHS) is looking at many ways to limit eligibility for long-term care Medicaid (which are in addition to the proposed new estate recovery rules whereby the estate can make claims against the probate estates of long-term care Medicaid recipients).

First, DHS is exploring ways to limit the amount of resources one can have and still qualify for long-term care Medicaid. Under the present rules, if the applicant has a spouse that lives in the community (the "community spouse") and has low non-countable resource income, you can often expand the amount of resources that can be kept well beyond the protected resource amount published by DHS as the maximum amount of countable resources that can be kept by the community spouse (presently \$92,760).

One proposal is to cap the amount to which the protected resource amount can be expanded at \$250,000. Since expansion depends on the non-countable resource income of the community spouse and the expansion formula is interest rate sensitive, the protected resource amount can presently be expanded well beyond \$250,000 if the income of the community spouse is low enough.

Another proposal is to permanently establish the interest rate to be used in the formula at 6%. Presently, interest rates are about 1.5% (or 1/4 of that amount). Therefore, the community spouse would only be able to expand the protected resource amount to 1/4 of what they could under the present rules at current interest rates. For example, if a Medicaid applicant could expand the amount to \$400,000 under present rules, this proposal would limit the expansion to protect only \$100,000. A stakeholders meeting on this topic is presently scheduled for June 9, 2004 in Austin.

Another topic being reviewed by DHS is a change in the transfer penalty calculation.

Presently, in determining the amount of the transfer penalty (if one makes an uncompensated transfer within 3 years, or 5 years for transfers from most trusts, prior to applying for Medicaid), the amount of the uncompensated transfer is divided by the average cost of a nursing home in the state (presently \$2908) and that amount is rounded down to determine the amount of months of ineligibility from the month of the uncompensated transfer. Thus, if one gave \$10,000 in June 2004, then you would divide that amount by \$2908 and it would come to 3.4 (rounded down to 3) months of ineligibility – June, July, and August 2004. One proposal being explored is to change this so that there are partial-month penalties. Thus, 3.4 months of ineligibility would be 3 months, 12 days instead of just 3 months. This change would probably not be implemented for at least 18 months.

Finally, since the new estate recovery rules are on the horizon (scheduled to be effective September 1, 2004) whereby the state will make claims against many Medicaid recipients' homesteads, and since many are discussing the preparation of certain revocable trusts to avoid such estate recovery claims, it is reported in at least one region of the state that DHS is considering treating the transfer of the homestead as an uncompensated transfer subject to the transfer penalty rules. This appears to be contrary to the federal law as well as most case law, so it is unlikely that DHS will be successful in implementing such a proposal.

MONEY MATTERS

The Reverse Mortgage Boom

Reverse mortgages are becoming increasingly popular. In the fiscal year that ended September 30, 2003, nearly 18,097 reverse mortgages were issued, compared to 157 in 1990.

In a reverse mortgage, the lender makes payments to the homeowner in exchange for part of the equity in the property. Seniors typically are richer in assets than in income, and the home is often the senior's most valuable asset. A reverse mortgage can help income-strapped seniors use their home's equity to generate cash flow.

As with all financial tools, reverse mortgages have benefits and risks to weigh. One major benefit is that the borrower receives the money tax-free, and it does not count against any Medicare or Social Security benefits. However, a reverse mortgage could affect Medicaid eligibility. Depending on the homeowner's reasons for borrowing, other tools or benefit programs could accomplish the same goal without the risks and upfront cost. For instance, if the homeowner needs extra cash to pay real estate taxes, a community tax-deferral program could help.

As of April 26, 2004, homeowners who have taken out a reverse mortgage on their homes no longer have to pay another origination fee if they want to refinance.

Source: *Investor's Business Dailey*, 4-26-04

NATIONAL NOTES

CBO Releases Report on Future of Long-term Care Financing



Over the next several decades, the U.S. senior population—people aged 65 and older—is expected to grow rapidly, more than doubling by 2040 while the population as a whole grows by about one-third. That surge will probably produce a similar increase in the demand for long-term care (LTC) services—the personal assistance that enables people who are impaired to perform daily routines such as eating, bathing, and dressing. Today, seniors finance such services from a variety of sources, including personal savings, care donated by friends and family, private insurance, and public programs such as Medicaid and Medicare. You can find the report online at www.cbo.gov.

Source: *CBO*, 4-2004

OUT & ABOUT

Michael B. Cohen will be speaking on June 11 on the use of advance directives and powers of attorney at a seminar sponsored by the Community Council of Greater Dallas.