

Texas Elder Law FaxLetter

From Michael B. Cohen & Associates



Member, National
Academy of Elder
Law Attorneys, Inc.

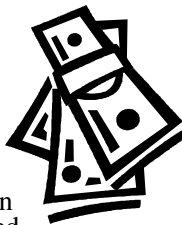
700 North Pearl Street, Suite 1650
Plaza of the Americas, LB 314
Dallas, Texas 75201

Telephone (214) 754-0025 • Direct Line (214) 720-0102
Facsimile (214) 754-0936 • E-Mail coeldlaw@flash.net • www.dallaselderlawyer.com

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

STATE STORIES

Texas Soon to Become "Income First" State



The Texas Department of Human Services Board voted on August 6, 2004 to change the rule on the way the Protected Resource Amount ("PRA") could be expanded. This will dramatically affect the lives of many seniors in Texas. The new rule must be published in the Texas Register, and 20 days after publication, the new "income-first" rule should become effective. It is anticipated that the new rule will be effective sometime in September.

As reported in the July issue of the *Texas Elder Law FaxLetter*, under the present rules (Texas is presently a "resource first" state), if the spouse who lives at home (the "community spouse") has low (lower than the monthly maintenance needs allowance of \$2319) non-countable resource income (i.e. Social Security, pension, etc.), then such spouse could often keep resources well beyond the maximum protected resource allowance ("PRA") of \$92,760 (plus \$2000 for the institutionalized spouse) or beyond what their PRA would have otherwise been. Presently, only \$1 of the institutionalized spouse's income need be considered prior to expansion.

Since interest rates have been near historical lows and since the formula for expansion is interest rate sensitive, the amount of assets that could be retained by the community spouse by expansion has reached record levels. At the August 6 meeting, it was reported that community spouses asked for an increase in the PRA in 10% of all Medicaid applications. Of those, 6 out of 10 had countable resources of less than \$150,000, 3 out of 10 had countable resources of between \$150,000 and \$350,000 and 1 out of 10 had countable resources of more than \$350,000. Although the Department stated that one of the reasons for the suggested change was due to the concern over the possible use of balloon annuities, in all probability the reason why the law was changed was due to the fear of millionaires being

eligible for Medicaid. (It should be noted that even with the new rule change, millionaires can still obtain Medicaid eligibility by converting their assets into certain non-countable resources.)

Under the new rule, the total non-countable resource incomes of both spouses must be below the monthly maintenance needs allowance (MMNA) before expansion could even be considered. Thus, under the new rule, many community spouses will have to "spend down" to the PRA prior to eligibility. This rule change will likely leave the community spouse vulnerable to a large drop in income at the death of the institutionalized spouse. It is likely that community spouses will consider divestments of their resources, divorces (although that is not recommended), and the purchase of non-countable resources (homes, certain type of annuities, etc.) to obtain Medicaid eligibility. Notwithstanding the same, if one is eligible for expansion under the current rules and if they wouldn't be under the new rules, they should probably act immediately and apply for Medicaid within the next couple of weeks.

MEDI- MINUTES

CMS Publishes Proposed Rules for Medicare Prescription Drug Benefit



The Centers for Medicare & Medicaid Services (CMS) has published proposed rules to implement the new Medicare Prescription Drug Benefit (Part D). This new voluntary prescription drug benefit program is part of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) and will become available to beneficiaries on January 1, 2006.

Generally, coverage for the prescription drug benefit will be provided under private prescription drug plans (PDPs), which will offer only prescription drug coverage, or through Medicare Advantage prescription drug plans (MA-PDs), which will offer prescription drug coverage that

is integrated with the health care coverage they provide to Medicare beneficiaries under Part C of Medicare.

To view the proposed rule, visit

www.cms.hhs.gov/medicarereform/mmregions/CMS4068P.pdf.

Source: CMS, 7-26-04

WASHINGTON WATCH

Retirement Savings Accounts Introduced in Congress

President Bush's Retirement Savings Accounts (RSAs) proposal was introduced in both the House and Senate on Friday, June 25, 2004. The bills would consolidate the three types of IRAs into a single account. After-tax annual contributions of up to \$5,000 per person would be permitted with no income caps. Earnings on these RSAs would grow tax free, and distributions after age 58 would be tax free as well. However, all withdrawals prior to age 58 would be subject to a 10% penalty.

As with current-law Roth IRAs, no minimum distribution rules would force individuals to withdraw funds during the account owner's lifetime. Traditional and non-deductible IRAs could be converted into RSAs by paying tax on interest already earned. Such conversions would not be subject to an income cap, as Roth conversions are.

Source: www.samjohnson.house.gov, 6-25-04

OUT & ABOUT

Michael B. Cohen will be speaking on Medicaid and Medicaid Planning in Texas (including the new estate recovery rules and the new income-first rule) on September 14, 2004 at the Radisson Hotel, 2330 W Northwest Highway, Dallas, Texas 75220 at a seminar sponsored by MEDS-PDN. Registration can be achieved by calling them at (715) 836-9900 or through their website at www.meds-pdn.com.