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ROBERT POWELL

Rush job

New Medicaid rules will alter long-term-care planning

*By Robert Powell, MarketWatch**Last Update: 11:05 PM ET Jan.**25, 2006*

BOSTON (MarketWatch) -- They call it the Deficit Reduction Act of 2005 or DRA for short. But elder care attorneys refer to it by three other names -- DRA-t, DRA-stic and DRA-conian

A bevy of attorneys and advisers say the proposed law will make it tougher for people to make themselves eligible for Medicaid in order to cover the cost of long-term care in a nursing home.

The new law will, among other things, tighten Medicaid eligibility rules, limit nursing-home aid and, in some cases, even spark a wave of lawsuits involving adult children.

"It's an ill-conceived law that's an attack on seniors," says Bernard Krooks, editor of Steve Leimberg's Elder Care Law Planning newsletter and founding member of Littman Krooks in New York. "My initial reaction is that the substantial DRA changes to the Medicaid rules will make it much more difficult for seniors and those with disabilities to access much-needed long-term health care. Without proper planning, many seniors will be forced to sell their homes or take out reverse mortgages in order to receive long-term care."

Krooks also says the new law will require extensive record-keeping and documentation that is far beyond normal practices, especially for victims of Alzheimer's disease or dementia. And Harry Margolis, founder and president of ElderLawAnswers, says adult children of elderly parents in many states could be held liable for their parents' nursing-home bills and that children could even be subject to criminal penalties. "It could be a horror show," says Margolis.

And if all that wasn't bad enough, Krooks says there are many other provisions in the DRA that just simply limit a person's ability to do any advance planning. To wit: The House of Representatives is set to vote on the bill on Feb. 1 and President Bush is expected to sign it shortly thereafter. The effective date for most of the provisions in the bill is the date of enactment, the day the President signs the bill. In other words, you've got -- if you are of the mindset to do this sort of planning for Medicaid -- just a few days to transfer assets around.

"Transfers made before the law is enacted will not be subject to the new penalty-period rules and other new provisions," said Krooks. "So, it's critical that seniors get their affairs in order immediately -- while they still have the opportunity."

Seniors and their loved ones must first examine whether they want to transfer assets so that they can become eligible for Medicaid, a program that Margolis calls the middle-class' long-term-care-insurance program. Generally, though the exact rules vary from state to state, a person under current law must use up or spend down all but \$2,000 in cash and investments to become eligible for Medicaid. A house and car are excepted.

In some cases, seniors who want to pass money down to heirs and loved ones will want to

transfer their assets so that they become eligible for Medicaid. In other cases, seniors will buy long-term-care insurance to pay for all or some of long-term-care costs, such as a nursing home. And in still other cases, seniors will simply spend down their life savings and assets to pay for nursing home costs.

For those trying to sort through the changes and plan while they have a chance, here's a look at the current law and the three major changes to the Medicaid eligibility rules.

First, the so-called look-back period will be 60 months (five years) for all asset transfers. Under current law, Krooks says outright transfers (a house, mutual funds and the like) were subject to a 36-month look-back period.

Krooks says transfers made outside the look-back period need not be disclosed to Medicaid. But all transfers made within the look-back period will have to be documented and explained to Medicaid authorities. For his part, Margolis says there are two planning opportunities. One is to make any and all transfers now, before the law goes into effect. The other is to buy "short-term" long-term-care insurance that will cover the five-year look-back period.

Second, the start of Medicaid eligibility -- or what some call the "disqualification period" -- is being changed. Under current law, the disqualification period starts at the date that assets were given away, says Steve Weisman, author of "A Guide to Elder Planning." But under the proposed law, the disqualification period will not start to run until the later date that the person enters the nursing home and applies for Medicaid.

"That essentially means that the penalty period will not even begin until the nursing-home resident has run out of money," Weisman. "This will place a tremendous burden upon the families of nursing-home residents." He says seemingly innocuous gifts made to family members by healthy elders could come back to haunt them as long as five years later when entering a nursing home.

For his part, Krooks says the planning opportunities for seniors who transfer assets after Feb. 1 are few and far between. For instance, he says it's possible under the new law that seniors who give money away to a relative after Feb. 1 may find themselves in a nursing home several years later asking that relative for the money back to pay for nursing-home costs.

And third, under current law a person's home is exempt from Medicaid-eligibility limits regardless of value, if certain conditions are met, says Krooks. Under the proposed law, the equity in a Medicaid applicant's otherwise exempt home will be counted as an asset to the extent it exceeds \$500,000. "In other words a person with equity in a home of more than \$500,000 would not be eligible for Medicaid," says Krooks.

Margolis says this change may force widows or widowers to sell their homes and then ultimately use the proceeds to pay for long-term care costs.

The bottom line? Now, not Feb. 1 is a good time to check in with a good elder law attorney to get a handle on the changes to Medicaid and whether any asset transfers are right for you. Come Feb. 1, you won't have many options to move assets around as you do.

By the way, a good place to find a qualified elder law attorney in your area is through the National Academy of Elder Law Attorneys (visit that [site](#)) or ElderLawAnswers (visit the [site](#)).

Robert Powell is editor of Retirement Weekly -- a service of MarketWatch -- author "20 Tips for Retirement Investors" and co-author of "Decoding Wall Street." He is also developing a personal finance series for public television.

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