

MEDICAID CHANGES ARE ON THE HORIZON

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MEDICAID CHANGES (AND CHALLENGES) COMING SOON!!!

It isn't too often that I report on major changes in Medicaid for people of modest means. Now I must. Congress and the President are about to make the most significant changes in Medicaid since 1993.

Congress is at the doorstep of making salutary changes to Medicaid and the way lawyers will now need to advise clients about how to protect assets. I would like to give you a few changes in store unless some miracle comes along to alter things:

(1) There will be now a 60 month (5 year) look -back on transfers of assets; understand that this does not mean that there will be a five year waiting period; it does mean that all gifts (a key word) made during the five year period before a person applied for Medicaid in a Nursing Home or its equivalent will be counted in determining the period of time Medicaid will NOT pay for the person's care in a nursing home. Thus the three year rule will be out. The law will apply only to transfers made after the law goes into effect; thus prior transfers are protected by the old law.

(2) The penalty period, meaning the period that Medicaid was NOT going to pay for a person's care in a Nursing Home, currently begins to run in New York on the first day of the calendar month after the gift was made. No more. When the President signs the law, the penalty period will be begin to run at the time the person would be eligible for Medicaid in a Nursing Home but for the gift of assets. This means that the person must not only be poor but also must wait out the period of ineligibility. Who will pay the nursing home if the recipient of the gift refuses to return the assets gifted? The old rule which allowed attorneys to advise clients how protect 50% of the assets, sometimes referred as the half a loaf rule, is finished. So unless a potential Medicaid applicant is prepared to wait out the 5 year period (a heck of a long time), gifting in the future will become a problem that must be avoided.

(3) The purchase of a life estate in a home requires the Medicaid applicant to live in the home for at least a year. This is a situation where a potential Medicaid applicant seeking to protect funds would buy, say, a life estate in her daughter's home. That purchase would protect the funds because it was a purchase not a gift. Now for it to be a purchase the mother must reside in the home with the daughter for a one year period. That presents a difficult hurdle to overcome.

(4) Equity in a home of any value was once protected. Not any more. Now unless NY helps

out by raising the limit to up to \$750,000, equity in excess of \$500,000 will be considered an available resource to pay for long term care in a Nursing Home. Thus it appears that if Community Medicaid is sought (not Institutional Medicaid), the equity limit does not apply. But say you need a nursing home and have a substantial equity in your home, you may need to borrow some funds (by reverse mortgages or a home equity loan) to reduce your home equity. But what do you do with the cash that's just been borrowed?

(5) In the past, Bress Law Firm has recommended the use of immediate self-amortizing Annuities for a spouse living at home while the ill spouse was in a nursing home. The new law will require that any excess amount be paid to the State unless the annuitant is survived by a spouse or disabled or minor child. In most cases, the annuity is for the benefit of the community spouse and requires that the annuity ends with the death of the community spouse. Thus there is no remainder to go to the State. This may still be a viable assets protection tool.

Now these are just some of the matters that will be changing. These are other changes in store for people which involve:

- * Funds deposited in a Continuing Care Community;
 - * Annuities and Large Transactions which will require disclosure not previously required;
 - * New Hardship Provisions where a person cannot not for some reason qualify for long term care services;
 - * Bed Hold Policies and Undue Hardship Cases;
 - * Concept of Being Actuarially Sound will apply to loans, annuities and other investments;
- and
- * Long term care Insurance becomes more important than ever.

Bress Law Firm is developing plans for dealing with the proposed changes. New ways of planning will be needed and applications for Medicaid will be more complicated. Yet we will be there to help you by advising about what options will be available.