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CHANGES IN MEDICAID LAW
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The Deficit Reduction Act of 2005 (DRA) made significant changes to the Medicaid laws. Alabama recently introduced revised provisions in response to that law, which almost create more questions than they answer. The purpose of this article is to give you a brief overview of the major changes in the application of the law.

You should know that the DRA has been challenged in court as unconstitutional, but is effective law until a final ruling is made which will be years away.

Medicaid is for those with insufficient resources and income to pay for their medical costs. Medicaid is financed by the State of Alabama, which pays approximately 30% of the costs, and the Federal government which pays the balance. Upon qualification for Medicaid, a patient is eligible for skilled nursing care.

Changes in Resource Requirements. DRA has made some changes to the resource test which restricts the kind and amount of assets you can own:

1. Personal Effects and Household Goods are no longer considered assets;
2. Only the first \$500,000 in equity of your real estate is excluded.

Changes in Look-Back Period. The look-back period for reviewing transfers has been expanded from 36 to 60 months for all transfers prior to the date of application. Alabama has interpreted this by introducing a phase-in period so that the 60-month period does not begin to be effective until 2009 for transfers prior to February 2006.

When the Penalty Period Begins. The commencement of the penalty period used to calculate whether a person is eligible for Medicaid Benefits previously began on the date the transfer of an asset began. Now, it begins on the date you apply for Medicaid Benefits. The impact of this could be devastating for many families for whom nursing home care comes as a surprise. For instance, Mom and Dad give Granddaughter \$15,000 for college. Dad has a stroke a year later. It used to be that the penalty ran from the date of the gift. Now it runs from the date the Medicaid Application is made. So Dad will have to pay for his own nursing home benefits for about four months.

Annuities. An annuity acquired prior to the 60-month look back period will not be considered a transfer for Medicaid purposes. The DRA has expanded the use of annuities,

but Alabama law currently does not exempt annuities unless they are actuarially sound. If Alabama revises its position on this, it could have a significant impact on the use of annuities here. Currently, where one spouse is in a nursing home and the other is in the community, they may try to get more income to the community spouse by taking assets in excess of the community spouse's resource allowance (between \$25,000 and \$99,540 depending on total assets) to purchase an annuity for the community spouse. Such an annuity cannot exceed the life expectancy of the individual; you cannot use deferred annuities; and the annuity terms cannot provide that it can be surrendered for its cash surrender value.
