

Moses & Moses, P.C.  
3500 Blue Lake Drive, #495  
Birmingham, AL 35243  
Phone: 205-967-0901

Winter 2006 Edition of Your Law

### ***POTENTIAL CHANGES IN ELDER LAW***

*Anne R. Moses*  
*January 10, 2006*

Unless swift action is taken, Congress and the President are about to enact The Budget Reconciliation Act reducing the federal deficit by \$39.7 billion. One way they will reduce the deficit is by cutting back on federal entitlement and welfare programs. Pharmacies and the managed care industry are protected. Medicaid and Medicare beneficiaries pay the price. If this law passes, Medicaid qualification will become more difficult, Part B Premiums for Medicare will rise, and low-income Medicaid recipients may be denied care entirely.

The more egregious provisions for those seeking Medicaid benefits include the following:

1. The ***penalty period*** for transfers will effectively begin on the date you apply for Medicaid, and not, as under current law, on the date the transfer was actually made. If Grandma gave her granddaughter \$5,000 to help with college in 2005, and must apply for Medicaid on January 1, 2010, Medicaid will treat the \$5,000 gift as having been made on January 1, 2010, and Grandma will not be able to qualify for Medicaid benefits until the penalty period expires. Under current law, the \$5,000 gift would not be considered and Grandma would qualify for Medicaid immediately.
2. A ***church supporter*** who has given money to church as part of their regular expenses will be ineligible for Medicaid benefits for some period.
3. Currently the ***look back period***, which is the period of time that Medicaid considers in determining whether transfers by the applicant were for fair market value, is three years (for transfers not in trust). Under the pending act, the look back period, whether the transfer is in trust or not, will be five years. Poor record-keeping and a failure to anticipate that you may need Medicaid in five years can prevent you from receiving Medicaid benefits for some period if you make gifts to children or charities.
4. No Medicaid benefits will be available to an individual who has ***\$500,000 in equity in their home***, regardless of their income. This is particularly onerous for

applicants who may have a home that has appreciated substantially over many years, although income has declined.

The law does provide some relief by requiring states to provide *hardship waivers*. This “relief,” however, would apply only if the individual would be deprived of either medical care such that the individual’s health or life would be endangered, or of food, clothing, shelter, or other necessities of life. It also includes a timely process to make this determination, but permits a state to provide for payments for nursing facility services to hold the bed for the individual at the facility for a maximum of 30 days.

The treatment of *Annuities* is also revised by the law, so that the state must effectively be named as the remainder beneficiary after the spouse, or as the primary beneficiary, if there is no spouse.

Finally, the act expands the state *Long-Term Care Partnership Program* to all states. Currently 4 states (not including Alabama) have partnership programs that qualify under the new law that disregards any assets in an amount equal to the insurance benefit payments made to or for an individual who is a beneficiary under a long-term care insurance policy (LTCI) if the following requirements are met:

1. The LTCI covers a resident of the state at the time coverage first becomes effective;
2. The LTCI meets the IRS requirements for a qualified long term care policy;
3. The LTCI meets certain requirements approved by the state’s insurance commissioner;
4. The LTCI provides for compound annual inflation protection for certain individuals;
5. The State Medicaid Agency must provide information and assistance to the insurance department to assure that individuals who sell such policies receive training and demonstrate an understanding of such policies;
6. The insurer provides regular reports to the government; and
7. The state does not impose requirements on these policies that it does not impose on all long term care policies.

If you object to these provisions, please contact your member of Congress quickly.

\*\*\*