

Elder Law

Georgia Nursing Home Medicaid Update

A number of changes have been made to nursing home Medicaid law at both the federal and state level recently, all of which affect how resources owned by an individual applying for Medicaid benefits will be treated when determining his eligibility for those benefits. Current eligibility criteria allows for an individual who is aged, blind, or disabled, to have countable resources of no more than \$2,000; if he is married, his spouse living in the community can have an additional \$104,400 in countable resources.

At the federal level, the Deficit Reduction Act of 2005 ("DRA") was implemented with a goal of reducing federal spending on domestic programs, and particularly Medicaid long term care costs. It became federal law when it was signed by the President on February 8, 2006, and Georgia later applied the DRA retroactively to that same date.

While under prior law an individual's home place was an exempt resource for purposes of determining eligibility for Medicaid benefits, under the DRA there is a \$500,000 equity cap on the value of such property. There is an exception to this rule; if the Medicaid applicant's spouse, or his minor, blind, or disabled child is living in the home, then the equity cap does not apply.

Another significant change is regarding the look-back period for transfers that the Medicaid applicant has made to someone other than his spouse. Prior to the DRA, most transfers of assets were subject to a 36-month look-back period, while transfers to a trust were subject to a 60-month look-back. Under the DRA, all transfers made on or after February 8, 2006 are subject to a 60-month look-back period.

If a transfer is made during the look-back period, Medicaid imposes a "penalty period," or a period of time during which the applicant will not be eligible for benefits because he made the transfer. The prior law provided for penalty periods to begin running on the date that the transfer was made. Under the DRA, the penalty period commences on the date on which an individual would otherwise be eligible to receive Medicaid benefits for institutional level care but for the imposition of the penalty period. The result is that it can be much more difficult to become eligible for Medicaid benefits if transfers have been made during the look-



BY RUTHANN P. LACEY

back period.

Other changes that have been made in Georgia recently include how Medicaid treats vehicles. Prior to January 2007, automobiles were exempt resources for Medicaid purposes, regardless of value and regardless how many vehicles were owned. This is no longer the case. The rule now is that the value of one vehicle is excluded if it is used for the transportation of the individual or a member of his household. The value of additional vehicles is counted toward the applicant's resource limit.

Funds set aside for burial expenses which can be excluded from the resource limit are now limited to \$10,000. This includes the face value of life insurance policies, funds set aside for burial, and

the equity value of burial contracts. Certain burial space items, such as the burial plot, crypt, mausoleum, casket, vault, headstone, marker, plaque, arrangements for opening and closing the grave site, and contracts for the care and maintenance of the grave site, will be excluded above the \$10,000 limit.

If an individual who is applying for Medicaid benefits owns rental property, effective February 2007 the treatment of that property has changed such that up to \$6,000 of equity in the rental property is excluded, but equity above \$6,000 is a countable resource.

Finally, in August 1993 Congress directed all of the states to establish an Estate Recovery program. On May 3, 2006 Georgia became the 47th state to implement Estate Recovery. Under Estate Recovery, the state recovers against the estate of an individual who received certain Medicaid services during his lifetime, for the value of those services. Estate Recovery is delayed if the deceased Medicaid recipient has a surviving spouse, minor or disabled child, or has a sibling or child who resided in the home and cared for the recipient prior to his admission to a nursing home. Estates having a value of less than \$25,000 are exempt from Estate Recovery.

Ruthann P. Lacey is a Certified Elder Law Attorney practicing in Tucker. She can be reached at (770) 939-4616, rlacey@elderlaw-lacey.com, or visit www.elderlaw-lacey.com.