Medicaid And The Deficit Reduction Act Of 2005

(Contributed by Molly M. Wood – 05/2006)

On February 8, 2006, President Bush signed the Deficit Reduction Act of 2006 (DRA). Although relatively few of the DRA's 700+ pages deal with Medicaid, and the harshest changes will impact the 62 million Medicaid recipients who are not residing in long-term care facilities, the DRA contains significant eligibility rules changes which will have an impact on elderly and disabled Kansans who need assistance with the cost of nursing facility care.

1. For residents of nursing facilities who are already receiving some Medicaid assistance with the cost of their care, the DRA will generally not have an impact; most of the changes will be applied prospectively only. So folks who are already eligible and, consequently, have limited resources and income, are "grandfathered" in under the old rules.

2. The "lookback period" is longer. Prospectively, any gifts one makes for 5 years before application for Medicaid assistance, even gifts to a church or a charity, will incur a transfer penalty.

3. Under the old rules, the penalty began to run at the time of the gift. A relatively small gift made well before application, therefore, would not impair eligibility. Under the new law, however, the penalty will be applied at the time of application for Medicaid assistance. So a gift today of $3,000 to a grand-child for college would incur a transfer penalty if the donor applies for Medicaid in the next 60 months.

4. In the past, ineligibility penalties have been calculated in months and rounded down. This provided a convenient way to deal with smaller gifts. As an example, a gift of $500 produced no ineligibility under the round-down approach ($500 divided by a $3,000 monthly cost of care equals 0.1666 months, rounded down to 0.0 months of ineligibility). Under the DRA, penalties will be calculated in days - so a $500 gift makes the donor ineligible for 5± days.

5. There is no minimum amount of gift allowed; as the law is written, even an accumulated gift of $500 ($100 to your grandson for his birthday each year) over 5 years will incur a penalty. Any gift has the potential of producing disproportionately harsh results.

6. The appropriateness of term annuities in Medicaid planning is approved, but one must list the State of Kansas as the primary beneficiary (or the secondary beneficiary, if the annuitant is married) if the Medicaid recipient dies before the annuity payments terminate.

7. Equity in the home and contiguous acreage is capped at $500,000. Unless the property is exempt for another reason, the Medicaid applicant must reduce the value (sell part of it or get a mortgage to reduce the equity), unless a spouse or disabled child resides in the home.

8. What you say when you apply to a continuing care or life care community can and will be used against you. Under the DRA, the community can limit what residents do with the money they tell them about in their applications. And any deposit (if refundable at death) will be counted against Medicaid resource limits and must be spent down before eligibility.