



BEWARE OF THE MEDICAID TRAP

By: Louis W. Pierro, Esq.

Qualifying for Medicaid is tricky business. Although reform of Health Care is ongoing through the Affordable Care Act, there is no real solution for **Long-Term Care**, including the payment of nursing home and home health care costs. Due to exploding costs and budget deficits, federal and state laws designed to limit access to Medicaid present challenges that require careful planning.

Targeting middle class seniors and people with disabilities, Medicaid rules attempt to force all but the most affluent who suffer from chronic illness and who have failed to plan, to spend their **entire life savings** before Medicaid, the only government program that pays for long-term care, steps in. Controversial provisions enacted through the Federal Deficit Reduction Act of 2005 (DRA), eliminate access to Medicaid for chronically ill and disabled applicants who are “unaware” of the rules, and prevent eligibility for benefits until their entire life savings is spent down to a mere \$14,850.00.

The DRA expanded the “look back period” for transfers of assets prior to applying for chronic care Medicaid from 3 years to 5 years. New York’s seniors and disabled persons bear the increased burden of providing all financial documentation for the **previous 5 years** with their Medicaid applications for nursing home benefits. In many cases it is difficult for clients to obtain even 3 years of statements, and financial institutions may be asked to provide a customer’s monthly statements (including deposit slips and cancelled checks) for 5 years. Any transfer within the past 5 years is penalized.

Far more devastating is the way a “**penalty period**” (the number of months of ineligibility for Medicaid) is imposed. The DRA rules do not begin the penalty period until the applicant is already in a nursing home; has spent-down to \$14,850.00 in total remaining assets; and files a Medicaid application. The penalty period **does not start** on the date an asset was transferred. For transfers made prior to February 8, 2006, the penalty period commenced on the first day of the month following the month of transfer, which allowed Medicaid applicants to make gifts (i.e., to family members, charities, religious institutions) and qualify for Medicaid, as long as the individual retains sufficient funds to privately pay for care (or wait out) the resulting penalty period. Such a statutory system was fair and, most times, not harmful to our seniors and disabled clients when properly applied.

Under the DRA, however, the government penalizes seniors when they are most frail and vulnerable - when they are already receiving care in nursing home, have spent their entire life savings, and seek help from Medicaid. Since the current system does not run the penalty until after all other assets are spent, families have very few options and no money to pay during the waiting period. In Northeastern New York, the Medicaid penalty for any transfers of assets in the previous 5 years is one month of ineligibility for every \$8,540.00 gifted. This rate can be higher or lower depending on what part of New York State

the individual resides, and the impact can best be understood through an example:

EXAMPLE OF THE MEDICAID PENALTY:

Assume that in May of 2014 Mrs. Smith, a widow, transferred her home worth \$235,000.00 to her 3 children. She still had \$302,850.00 of assets (savings accounts, stocks, bonds, CDs, etc.), and was receiving Social Security. In 2016, Mrs. Smith suffers a stroke and needs nursing home care, which costs \$12,000.00 per month (\$144,000.00 per year). Mrs. Smith uses her life savings to private pay for care for 2 years, and by 2016 spends \$288,000.00, down to \$14,850.00, the Medicaid eligibility level. Although already on Medicare, and even with Medicare Supplement insurance costing \$250.00 per month, Mrs. Smith's nursing care is uncovered. Once she runs out of money she must apply for Medicaid.

Under the DRA, even after spending her entire life savings, Mrs. Smith will be ineligible for Medicaid for **2 more years**, or until 2018, because of the transfer of her family home to her children in 2014! The penalty for deeding the home is 24 months ($\$235,000.00$ value of transfer \div $\$9,806.00$ Medicaid Regional Rate = **24 month penalty**). Now that her entire life savings is spent, who pays for Mrs. Smith's care for the next 2 years (another \$288,000.00) while the Medicaid penalty runs? The children? If no one can pay, what will the nursing home do?

Given the changes brought on by the DRA, and the budget deficits that are crippling state governments, consumers and providers alike should seek the guidance of experienced elder law attorneys knowledgeable in the complex and burdensome Medicaid eligibility rules to navigate the minefield created by complex and onerous rules.

The DRA rules have been followed by state laws, and the truth is that the new laws were put in place not to solve the long-term care crisis, merely to cut the Medicaid budget. It is now up to each individual and family to plan for long-term care, and to do it as far in advance of the need as possible. The purchase of private long-term care insurance, creative financial planning, and legal planning using trusts are all options – but under the new rules, waiting to plan is **NOT**. In a crisis, a five year wait may not be possible, but other emergency Medicaid planning options still exist and must quickly be done through a qualified Elder Law Attorney. To avoid the **"Medicaid Trap"**, however, the time to act upon is **NOW**.



Louis W. Pierro, Esq. is the founder and principal of Pierro Law Group LLC, and concentrates his practice in the areas of Estate Planning, Estate and Trust Administration, Business Succession Planning and Elder Law. Mr. Pierro has been selected to the "Best Lawyers in America", the "Best Lawyers in New York", "Super Lawyers of the Hudson Valley", and maintains an AV Preeminent attorney rating from Martindale-Hubbell. Mr. Pierro has served as Chair of the Estate Planning Committee, the Committee on Taxation and the Elder Law Section of the NYS Bar Association, and he currently serves as Chair of the Long-Term Care Reform Committee. He regularly educates the public and other advisors on Estate Planning and Elder Law, including Medicaid and Long-Term Care Planning.

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