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PRACTICING EXCLUSIVELY IN:

ELDER LAW
ASSET PROTECTION
MEDICAID & NURSING HOME PLANNING
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ESTATE ADMINISTRATION

ELA Alert

August 2, 2006

Please deliver to the:

Admissions Director, Administrator, Social Work Department, and Medicaid Coordinator

The Centers for Medicare and Medicaid Services (CMS) has issued to state Medicaid directors two guidance documents on provisions of the Deficit Reduction Act (DRA), including the extension of the lookback period, the start date of the penalty period, and the treatment of annuities.

The following are some of the guidelines provided in the documents:

- The lookback period is 60 months for any transfer of assets made on or after the date of enactment of the DRA (February 8, 2006).
- The period of ineligibility will begin with the later of the first day of a month during or the month after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the state plan and is receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by Medicaid.
- Once a penalty period is imposed, it is not tolled but instead will continue to run if an individual subsequently stops receiving long-term care.
- The state must be named as a remainder beneficiary on an annuity purchased on or after February 8, 2006. CMS states that the provisions of 1917(c)(1)(G), which set forth required criteria if an annuity purchased by or on behalf of an annuitant who has applied for medical assistance is not to be treated as a transfer of assets, are **"in addition to those specified in 1917(c)(1)(F) pertaining to the State's position as remainder beneficiary."** [boldface in original]
- If the state is not named as a remainder beneficiary, the purchase of the annuity will be considered a transfer for less than fair market value. CMS interprets the statute to mean that the full purchase value of the annuity will be considered the amount transferred.
- Any transaction that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity (including additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract and similar actions) taken on or after February 8, 2006, will cause all transfer provisions of the DRA to apply to the annuity.

*** More on Page 2 ***

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The guidelines also cover the following topics:

- The application of the income first rule under spousal impoverishment.
- Disqualification for long-term care coverage for individuals with more than \$500,000 in equity in their house.
- The treatment of continuing care retirement community entrance fees.
- The expansion of state long-term care insurance partnerships.

Elder Law Associates, P.A. – Your Legal Resource

Need help deciphering how these changes will impact your facility and your residents?

Join us for a free teleconference this **Friday, August 11, at 10:00 am.** We will review and clarify the latest provisions and give you a “roadmap” of the new Medicaid landscape, making it easier for you to navigate. Have your questions ready for the live Question and Answer Session held before the conclusion of the call.

No need to pre-register.

To join the call on August 11:

1. Call the Dial-in Number: 1-620-782-2200

2. Dial the Participant Access Code: 78567

(You will have to pay normal long-distance charges from your long-distance carrier for the call.)

Call Leslie Lautin Davis at (561) 750-3850 with any questions.

If you are interested in having an attorney from Elder Law Associates speak at your facility about the impact of these new guidance documents, please call Leslie Lautin Davis at (561) 750-3850 or 1-800-ELDER-LAW (800-353-3752).

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