

New Medicaid Rules Cap Homestead Value and Extend Look-Back Period

Michigan Medicaid eligibility rules for nursing home residents and other long term care programs changed dramatically as of July 1, 2007. The changes reflect Michigan's implementation of the Deficit Reduction Act of 2005, a bill which was adopted nationally more than a year earlier.

Key changes include:

- **Cap on Value of Exempt Homestead.** The value of an exempt homestead is capped at \$500,000. While the homestead has always been an exempt asset for the purpose of determining Medicaid eligibility, prior to July 1, there had been no limit on the value of this exempt asset.
- **Divestment Look-back Period Extended to Five Years.** The period of time prior to filing a Medicaid application that a person must disclose whether they have given away assets (or sold assets for less than the fair market value) has been extended to five years. Prior to July 1, the so-called "look-back period" was three years for most transfers.
- **Divestment Penalty Period Start Date Delayed.** When a divestment (asset transfer) is disclosed, the resulting penalty period (period during which the applicant is ineligible for benefits) will now begin only after the applicant has met the other spend down requirements and is in a nursing home, or eligible for the MI Choice Waiver program. Previously the penalty began to run in the month in which the transfer occurred.



- Daily Divestment Penalty Periods. Under the new rules, there is no minimum for the amount of a transfer that will need to be reported, and penalties will not be rounded down to the nearest month. The new rules require that all transfers reported during the five-year look-back period be combined and that the resulting period of ineligibility be calculated to reflect a penalty based on that total. In the past, because the penalty period was rounded down to the nearest month, certain nominal gifts were disregarded. However, it should be understood that common gifts, such as donations to a church, mosque or synagogue or small gifts to family members, while they must now be reported, should not result in penalties if it can be established that they were not made in anticipation of applying for Medicaid and were consistent with an established pattern of giving.

Some of the changes mandated by the Deficit Reduction Act which are not implemented by these new rules may be implemented in further rule revisions in the fall. This is expected to include further restrictions on the use of commercial annuities used in Medicaid planning.

Meanwhile the Michigan legislature continues to wrestle with the issue of whether to adopt an “**estate recovery**” law. An estate recovery law would allow the state to place a lien on the exempt homestead of a Medicaid beneficiary. Various versions of such a bill have been floated around the capital in recent months.