

SPECIAL BULLETIN

2004 NEW YORK MEDICAID ALERT

Governor Pataki's 2004 Budget contains some draconian changes to the Medicaid eligibility laws in New York State. Under his proposal the lookback period regarding transfers when applying for Medicaid is increased from three years to five years.

Worse yet, the penalty period on transfers would start to run from the date upon which a person applies for Medicaid, rather than from the date upon which the transfer is made. How would that work?

Let's say you made a gift of \$56,000 and four years later you had used up all of your other assets and applied for Medicaid. Under this proposal you would be ineligible for Medicaid for 10 months unless you got the \$56,000 back and spent it on your care. Under the law which is currently in effect the penalty period would have expired 10 months after you made the gift, even if you were still within the 36-month lookback when you applied for assistance.

This change will force people to apply for Medicaid while they still have sufficient assets to offset the penalty period. It will inhibit the strategy of giving away part of the assets and retaining just enough to get past the penalty period before applying for assistance.

Under current law if you are applying for home care Medicaid, there is no lookback period for gifts. Thus, you can give everything away, and apply for home care Medicaid the next day. We don't usually suggest such a strategy, because if home care does not work out there is still a penalty on the gift if Medicaid assistance is needed for nursing home care.

Further, the spouse who is not applying for Medicaid can refuse to pay for the ill spouse, and the assets of the well spouse are not counted in determining whether the ill spouse qualifies for home care Medicaid.

However, the Governor's budget proposal the assets of both spouses will be considered, there is no Community Spouse Resource Allowance for the well spouse, and the well spouse cannot refuse to pay for the ill spouse. Thus, the couple will have to be totally impoverished in order to qualify for home care Medicaid. This will force

some couples to choose nursing home care so that the well spouse can retain some assets.

Currently, in a nursing home situation the spouse in the community can refuse to pay for the care of the spouse in the nursing home. Often such "spousal refusal" is used if the minimum monthly income allowance is inadequate for the spouse in the community to get along on. The spouse in the nursing home receives Medicaid, then DSS sues the community spouse for support and the matter is resolved, usually by negotiation, in Family Court.

Under the Pataki proposal spousal refusal to provide support for a spouse in a nursing home will also result in the institutionalized spouse being denied Medicaid, with no relief for the community spouse in Family Court.

If these revisions to the Medicaid laws are enacted they will put a premium on early gifting to so that you get past the 5-year lookback. Further, nursing home insurance will be more attractive as a means of getting past the lookback period.

Obviously, these Medicaid changes will have the greatest impact upon those people who are of modest means and who cannot afford either gifting or nursing home insurance. It seems like the people of modest means never get a break.

Most nursing home contracts require that some "responsible party" other than the patient sign. The contracts often require that the responsible party will seek Medicaid on behalf of the patient and cooperate in trying to obtain Medicaid. If these law changes go into effect no family member will want to act as "responsible party", since the nursing home contract could make that family member contractually bound to pay back gifts she has received from the patient. If these changes are enacted no family should sign any nursing home contract unless a knowledgeable lawyer reviews it first.

If you are oppose these changes you need to get in touch with your State Senator and State Assembly person right away. I understand that AARP has a toll free number (1-800-869-5861) which will connect you directly with your state Assembly person and/or your State Senator.