Medicaid rules for elderly tightened

Shifting assets to qualify will be made more difficult

By DEAN OLSEN
STAFF WRITER
dean.olsen@sj-r.com

A federal law soon will make it harder for Illinoisans to protect their wealth and still qualify for Medicaid benefits to pay nursing-home costs.

Specialists in elder law say the 2006 law, which has been implemented in 48 states and could take effect in Illinois next year, will unfairly punish middle-class people for trying to pass on some assets to the next generation or preserve assets for a healthy spouse.

FIRST IN PRINT

Inside
A sample scenario of how the rules might work is on **PAGE 5**

Federal officials say the provisions discourage "Medicaid planning" techniques to artificially impoverish Medicaid applicants.

But elder-law attorneys said the Deficit Reduction Act of 2005 will lead to more financial and emotional stress for seniors and their families.

"A huge fear of a lot of seniors is going into a nursing home someday and never being able to give anything to their children," said Heather McPherson, a Freeport lawyer and former chairman of the Illinois State Bar Association's elder-law section council.

"These often are not wealthy people," she said. "These are people who have just worked hard and have been able to save a little bit."

States need to approve rules for carrying out the law before it can take effect, and Illinois and California are the last two states that have not implemented the law. Medicaid is funded by federal and state government.

'A huge change'

The Illinois Department of Healthcare and Family Services issued proposed rules for the law last week. The department plans to conduct a public hearing Sept. 13 in Chicago.

"In developing these proposed

See **MEDICAID** on page 5

MEDICAID

■ From page 1

changes, we have been mindful of the statutory mandate that the medical-assistance program, funded with taxpayer dollars, should be the payer of last resort for those individuals who have no other means to pay for the cost of their long-term care services," Healthcare and Family Services Director Julie Hamos said in a news release.

The Illinois General Assembly's Joint Committee on Administrative Rules needs to give the rules final approval before they can take effect, perhaps sometime next year, HFS spokesman Mike Claffey said.

The key provisions of the 2006 law can't be changed by state rules, according to Joshua Becker, a Springfield lawyer who is conducting seminars on the law and other long-term care issues.

"My clients are not people who have lived off the government their whole life," Becker said. "They've probably never had government assistance of any kind. They're just hard-working people who have a few hundred-thousand dollars."

The law, designed to save the Medicaid system $3.9 billion from 2006 through 2015, changes the "look back" period from three years to five years in calculating Medicaid eligibility.

If a Medicaid applicant gives away property or money during the longer "look back" period, the amount will be figured to into a formula that dictates how long applicants are ineligible for Medicaid coverage.

"It's a huge change," McPherson said. "It will really punish seniors for helping their families and children. If a senior gives away some assets when they are healthy, they shouldn't be punished when something happens to them within a five-year period. Five years is a huge period. A lot can happen."

Forced to give it back?

The federal law doesn't tamper with other laws that allow the spouses of nursing-home residents to keep their homes, as much as $109,000 in additional assets and up to $2,739 in monthly income, Becker said.

Another major change brought by the federal law involves the date when any penalty for making gifts of assets begins.

Because of the change, many more nursing-home residents applying for Medicaid benefits will be judged ineligible for those benefits for at least several months, even when their private assets have been exhausted, Becker said.

In those cases, the residents' families might have to try to give back the money they received earlier, he said.

If that's impossible, families might have to borrow money for a mother or grandmother's nursing-home care or risk that person being evicted from the facility, Becker and McPherson said.

Conversely, nursing homes may might have to lose revenue for a period of time or evict someone.

"That could be one of the unintended consequences of the law," said Terry Sullivan, regulatory coordinator for the Health Care Council of Illinois, a group representing the nursing-home industry.

The council has taken no stand on the federal law and believes the state's proposed rules are reasonable, he said.

Hardship waivers

Dave Vinkler, associate state director of AARP Illinois, said AARP opposed the original law because it "kind of puts money before people."

But Vinkler said AARP believes Illinois' proposed rules represent a "fairly balanced approach," and AARP likes the language proposed by state officials for dealing with seniors and disabled people requesting hardship waivers.

Kerry Peck, a Chicago lawyer, said he hopes Illinois officials also make hardship waivers available to seniors who have helped their adult children weather layoffs and other effects of the economic downturn.

McPherson agreed, saying the federal law is "trying to resolve the deficit on the backs of the middle class. This isn't a problem for the very poor, and it isn't a problem for the very rich. It's a problem for the hard-working middle class."

The extent to which the new law would exclude seniors from Medicaid nationwide was unclear in a 2007 report by the U.S. Government Accountability Office.

The GAO study looked at Medicaid nursing-home applications in three states, not including Illinois, and found that apparent asset transfers occurred in 10 percent of cases over the previous three years.

Dean Olsen can be reached at 788-1543.

An illustration of the change

The Deficit Reduction Act of 2005 will make a significant change in when the penalty period begins for people trying to qualify for Medicaid for nursing-home care.

Here's a scenario that illustrates the change:

■ The "penalty period" is the period of time in which the person transferring assets within the "look back" period will be ineligible for Medicaid. The penalty period is determined by dividing the amount transferred by what Medicaid officials determine to be the average private-pay cost of a nursing home. The "look back" period will change to five years under the federal law, compared with the current three-year period.

■ The average cost of private-pay nursing-home care is $5,000 per month in the Springfield area. So, for every $5,000 transferred, a Medicaid applicant would be ineligible for Medicaid for one month.

■ Under the current system, the penalty starts based on the date the money was transferred. So if a senior citizen gave $20,000 to one of her adult children this month and didn't need nursing-home care until 2011, that four-month penalty would have run its course by the time she entered a nursing home.

■ Once the federal law takes effect, the penalty period won't begin until a person already is a nursing-home resident and has spent almost all of her assets. Then, the person will have to go without Medicaid for four months. He or she might have to get the money from her family or some other source or potentially face eviction.

Source: Joshua Becker of Edwards Group LLC