

# Eye on elder issues

**EYE on ELDER ISSUES**  
December 2005, Vol. 2, Issue 7

## **PROPOSED CHANGES TO MEDICAID TRANSFER OF ASSET RULES FROM THE BUDGET RECONCILIATION CONFERENCE REPORT**

The Budget Reconciliation Conference Report released today includes all of the dreaded transfer of assets changes as proposed by the U.S. House of Representatives Energy & Commerce Committee with a couple insignificant revisions and several of the less damaging U.S. Senate Finance Committee provisions. AARP, the Alzheimer's Association, the Leadership Council of Aging Organizations, and more than thirty-five other national organizations strongly oppose these changes that will severely harm our nation's most vulnerable older adults and individuals with disabilities who need long term care. Savings under the current conference report transfer of asset provisions are 11 percent larger than the original House bill, and seven times larger than recommendations from the Senate bill.

### **House Provisions in the Report – Punitive and Unworkable Rules Changes:**

- **Change in the Start of the Penalty Period**

This changes the start of the penalty period for someone who has transferred assets from the date of when the transfer was made (current law) to the date when one applies for Medicaid. This proposal will result in individuals not receiving necessary long-term care because they do not have the funds to pay for such care. This makes the penalties harsher and will leave nursing homes to provide uncompensated care.

**A few of the likely victims of this proposal:**

- A woman who helped her granddaughter by paying \$15,000 for her college tuition, a year before applying for Medicaid.
- A widow with Alzheimer's who can't account for expenditures four years ago by her now deceased husband.
- A widower who sends money to his daughter, a single parent with two underage children who loses her job due to chronic fatigue syndrome, a year before suffering a heart attack and debilitating stroke that result in the need for long-term care.
- The caring sister who gives \$20,000 of her savings to help a needy sister remain in her home.

- **Increasing the Lookback Period**

This would increase the lookback period from three years to five years. This would punish seniors for everyday family transactions or poor record keeping. The vulnerable, frail elderly would be unable to get care because the proposal would require record keeping and documentation that is far beyond normal practices, especially for victims of Alzheimer's disease or dementia.

**A few of the likely victims of this proposal:**

- A woman who helped her granddaughter by paying \$15,000 for her college tuition, a year before applying for Medicaid.
- A farmer in the Midwest who passed on the family farm to his son four years before he applied for Medicaid.
- A man who sold his home for \$150,000 and donated 10% of the proceeds, or \$15,000, to his local church four years before he applied for Medicaid.



- The elderly couple who live in their own home and pay most of their day-to-day expenses with cash keeping little or no records of their expenditures.
- **Requires an applicant to disclose:**
  - Any interest in annuities; All transfers within the past 5 years; A statement as to the remainder beneficiary status of the State under the annuities (the provision of medical services makes the State a priority remainder beneficiary under the annuity for the total amount paid on his or her behalf).
- Requires an applicant to make the state the remainder beneficiary for the total amount of medical assistance paid.
- Mandates the Income First Rule, which requires the institutional spouse's monthly income to be contributed to the community spouse's monthly income in order to meet the minimum monthly maintenance needs allowance (MMMNA).
- Home Equity - Individuals with \$500,000 or more in equity in a home will be ineligible for Medicaid long-term care services. States may increase this to \$750,000.
- Requires individuals to spend their entrance deposits to the CCRCs prior to being allowed to qualify for Medicaid.
- Establishes undue hardship procedures but under a standard that will be difficult for anyone to meet.
- Expands the Long-Term Care Partnership program to all states.

These proposals would punish people who have been law-abiding citizens. They will severely hurt the elderly and individuals with disabilities who act in good faith. If these proposals are implemented, more seniors will go without necessary care because they will not be able to afford it, or they will receive poor care in substandard facilities or they will get into nursing homes, spend down their remaining assets and shift the burden of paying on to the nursing home.

#### **Senate Provisions in the Report – Reasonable Solutions to Tighten Up Eligibility Rules:**

- Requires states to eliminate rounding down when determining the penalty period.
- Allows the state to view many transfers in different months as one, large transfer, on which to base its calculations.
- Requires that the purchase of an annuity be treated as the disposal of an asset unless the state is named as the remainder beneficiary for at least the total amount of Medicaid expenditures paid on behalf of the annuitant.
- Requires the following be treated as assets when determining the penalty period: funds used to purchase promissory notes; loans or mortgages; and payments made on those loans, unless the repayment terms are actuarially sound, provide for payments to be made in equal amounts with no deferral nor balloon payments, and a prohibition of cancellation of the balance upon the death of the lender.
- Includes as an asset the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for at least one year after the date of purchase.

#### **The Hardship Waiver is not a Solution**

The Conference Report includes a so-called hardship waiver. Current Medicaid Law permits states to excuse the imposition of a penalty based on Hardship—that is, if the penalty would endanger the health or life of the individual or the person will lack necessities of life. This hardship waiver is supposedly a safety net to protect those who are unfairly penalized by these rule changes. It does not work. This is why:

- The burden of claiming and establishing hardship placed on the shoulders of the individual who is, at the time the issue would arise, already seriously and chronically impaired physically and possibly cognitively.
- The hardship exemption, which already exists in the law, is virtually never used or applied. The proposed budget amendment somewhat strengthens the notice requirements for the waiver, but that provides no assurance that it would be used any more in the future than it has been in the past.
- An assessment of whether the individual's health or life will be endangered or whether they will lack necessities of life as a practical matter depends on evaluation of, not only the person's physical condition, but also that person's whole social support system for however many months into the future a penalty will apply. That means that someone must do a pretty sophisticated assessment of the availability of family members to care for the individual, and the adequacy of available shelter and

other support services in the community for some future period of time. Neither the expertise nor resources are in place to do that kind of evaluation.

In determining whether a hardship waiver should be applied, these provisions give no recognition to the potential harm to the health or well-being of the family caregivers of the individual faced with a penalty period. Yet, the negative impact on family caregivers is a very likely consequence of such a penalty.

---



For more information about elder law attorneys and the National Academy of Elder Law Attorneys, visit [www.naela.org](http://www.naela.org). Established in 1987, NAELA provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with legal services to the elderly and people with special needs.

---

**Note to Our Readers:** *This e-newsletter, **Eye on Elder Issues**, is presented as a public service by the National Academy of Elder Law Attorneys (NAELA). We are pleased to send you this issue and welcome your comments. You can expect to receive this newsletter monthly as NAELA explores, reports and provides insight on timely topics affecting our nation's seniors and their families. In addition, the growing population of Baby Boomers is addressing issues for themselves and their families that are new and unique. This publication is intended to explore those issues from all sides and to educate consumers, aging network professionals, law makers, and members of the media.*

---

*Please feel free to forward this e-newsletter or suggest additional recipients to us (use the "opt-in" below). **Eye on Elder Issues** is for your free and unrestricted use; permission to reprint in whole or part is granted provided appropriate credit is given to NAELA.*

---

Would you like to add someone to our newsletter list? [click here!](#)

 [Forward!](#) To forward this newsletter to a colleague, [click here](#)

To be removed from the mailing list, [click here](#)