

Eye on elder issues

EYE on ELDER ISSUES
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Medicaid Reforms Will Have Many Unintended Results

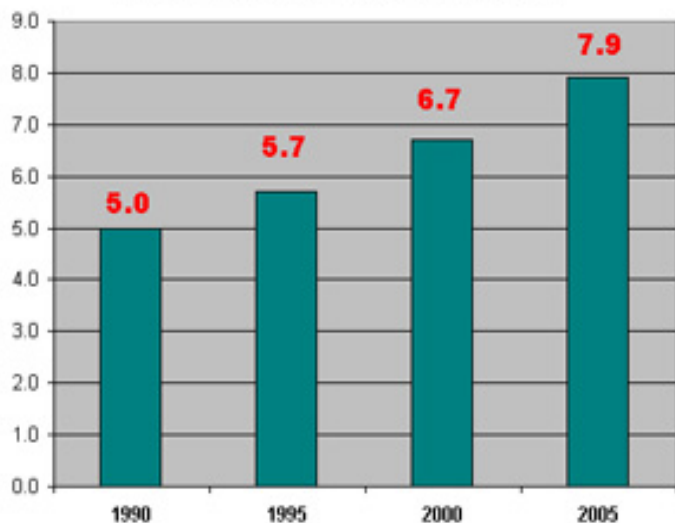
Divorces Amongst The Elderly Will Become More Common

This is the fifth in a series of articles that will analyze the impact of the recent Medicaid Reforms as set forth in the Deficit Reduction Act of 2005 (DRA) signed by President Bush on February 8, 2006. This new legislation repealed a section of the Medicare Catastrophic Coverage Act passed in 1988 under President Reagan that provided very meaningful protections to a spouse living at home if their spouse required nursing home care. The 1988 law was designed to "end spousal impoverishment" by allowing the spouse at home to keep a minimum amount of the couple's assets and income to live on while the spouse in the nursing home qualified for Medicaid assistance to help pay for the nursing home.

Without this protection, almost all of the couple's assets would have to be spent on the nursing home care, leaving the spouse at home impoverished. The change made by the DRA will impoverish many elderly couples for the sole purpose of reducing Medicaid expenditures.



Divorce rate among those over 65 has skyrocketed 60% in 15 years



Source: U.S. Census Bureau

The impact of this new legislation is best described by an example. For approximately five years, Mr. Seymour cared for his wife in their home while she had Alzheimer's and Parkinson's. As her health deteriorated, and as his physical strength began to ebb, Mr. Seymour had to place his wife in a nursing home. The Seymours lived in a midwestern suburb and their home was worth approximately \$70,000. In addition, they had a Ford Escort and approximately \$60,000 in cash assets. Mr. Seymour received \$800 in monthly Social Security, while his wife received approximately \$850 per month in fixed income. The cost of Mrs. Seymour's nursing home care was \$4,500 per month.

Under the 1988 law, many states allowed couples in the Seymour's situation to use the "Resource First" rule in order to escape impoverishment. Under this rule, Mr.

Seymour would be permitted to keep all of their assets, all of his income and most of his wife's income, and Medicaid would help pay for most of Mrs. Seymour's nursing home expenses. The DRA repealed this rule and requires the states to now use the "Income First" rule. Under this rule Mr. Seymour will still be able to keep the house and car, along with his income and most of Mrs. Seymour's income. However, he will only be allowed to

keep half of their cash assets. The other \$30,000 of their assets will have to be spent on Mrs. Seymour's care. Only after it is gone will she be able to apply for Medicaid assistance.

Based upon the "Income First" rule mandated by the DRA, Mrs. Seymour will not be eligible for Medicaid until their cash assets are cut in half. If Mrs. Seymour dies after Medicaid eligibility is established, Mr. Seymour will no longer be able to receive her income. This will cause his income to drop from \$1,650 per month to \$800 per month. Most likely this will not be enough to live on and Mr. Seymour will start to deplete the \$30,000 of cash reserves in order to pay his bills. And if Mr. Seymour ever needs nursing home care, he will run through his money and be dependent on Medicaid more quickly. Under the Resource First rule, Mr. Seymour would have had \$60,000 of assets to supplement his income and help provide for his needs.

Also, if Mr. Seymour outlives his wife and dies with any assets left, the remaining assets will first have to be used to repay the state for the Medicaid assistance paid to Mrs. Seymour. If, on the other hand, the Seymours divorced, Mr. Seymour would most likely be able to keep most of their assets and all of his income and his estate would not have to repay the state for the Medicaid assistance Mrs. Seymour received. This is exactly what the 1988 spousal impoverishment law was trying to prevent.

As Margaret Atwood once said, " A divorce is like an amputation; you survive, but there's less of you."

The emotional impact of divorce is significant. A University of Washington study ranked the top forty-two stress-causing events and found the top four to be:

1. Death of a spouse
2. Divorce
3. Marital separation
4. Death of a close family member

Divorce was found to be even more traumatic than the death of a close family member. The trauma experienced by divorce often leads to depression and sometimes even suicidal thoughts.

Divorce and suicide are increasing among older Americans who are often more vulnerable to stress due to existing health conditions or isolation. According to the National Institute of Mental Health, older Americans are more likely to commit suicide. While this age group comprises only about 13 percent of the U.S. population, statistics show those 65 or older accounted for 18 percent of all suicides in 2000.



Divorce is difficult for almost everyone, but seems particularly unfair when an attorney advises an older person that divorcing a nursing home-bound spouse may be necessary in order to help preserve financial independence.

Statistics indicate that the overwhelming majority of senior citizens in our country resemble the Seymour family. They have a home and modest savings.

\$26,036

Median income for those 65 and over
Source: U.S. Census, 2005.

The spousal impoverishment provisions of the Medicare Catastrophic Coverage Act signed by President Reagan in 1988 were intended to ensure that the spouse living at home was allowed to live with "independence and dignity." The 2006 "Medicaid reforms" in the DRA will deprive many middle-class older Americans of their independence, and perhaps their dignity.

Members of the National Academy of Elder Law Attorneys (NAELA) in Ohio, New Jersey, and Colorado have already seen an increase in divorce cases due to policies in those states that rob senior citizens of their retirement savings. Unfortunately, it is a trend that is expanding across the country.

NAELA members believe that "family values" are more than a campaign slogan, and assist families in dealing with health care crises. NAELA encourages government leaders to consider the harmful impact of legislation that forces vulnerable seniors to choose between financial survival and their marriage vows.



For more information about elder law attorneys and the National Academy of Elder Law Attorneys, visit 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.*

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