

Medicaid Look-back Changes in the Deficit Reduction Act of 2005

The Deficit Reduction Act of 2005 (S.1932) (“DRA”) was signed by President Bush on Feb. 8, 2006. This act includes several changes to the transfer of assets to qualify for Medicaid coverage. The following chart summarizes¹ the changes:

Provision	Old Law	New Law	Notes
Lengthened Look-Back Period	Look-back period is 36 or 60 months, depending on whether assets were transferred to an individual (invoking the shorter look-back period) or to or from certain trusts (invoking the longer period).	Look-back period is 60 months for ALL transfers. (This period is gradually phased-in).	Effective date:* Applies to transfers made on or after February 8 th .
Penalty Period Increased	Penalty period is determined by individual states and usually begins in the month when the asset was transferred or the following month.	Penalty period begins on date the person begins receiving eligible care and is eligible for Medicaid except for the imposed penalty period.	Effective Date:* Applies to transfers made on or after February 8 th . Note: Penalty periods are state-specific. To start the penalty period, the individual must have less than the Medicaid allowable limits at the time they receive institutional level

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			care and apply for assistance.
Home Equity Cap	Home equity is not counted as an available asset.	Homesteads with equity above \$500,000 (indexed for inflation beginning in 2011) would render an applicant ineligible.	<p>Effective Date:*</p> <p>Applies to individuals who are determined eligible for nursing home care based on an application filed on or after January 1, 2006.</p> <p>Exceptions: It would not apply if a spouse, child under 21, or child who is blind or disabled resides in the home. States are given the authority to increase the home equity amount up to \$750,000.</p>
Annuities	In an annuity that was actuarially sound over a time period not exceeding the Medicaid life expectancy, then the income stream is always available as a resource but the principle of the annuity is not considered a resource.	<p>Purchasing an annuity by or on behalf of an annuitant who has applied for Medicaid-covered nursing facility or other long term care services is treated as an asset transfer.</p> <p>There are a few exceptions to this rule. The annuity will not be treated as an asset transfer if:</p> <ul style="list-style-type: none"> - The state is named as the remainder beneficiary for the amount equal to the value of the medical assistance paid for the 	<p>Effective date:*</p> <p>If the annuity was purchased prior to Feb. 7, 2006, the annuity is grandfathered under the old law, but this provision will be state-specific.</p>

		<p>annuity owner. (Exception: If the annuity owner has a community spouse or a minor or disabled child, then the state can be the second remainder beneficiary).</p> <p>-Annuities are purchased inside a retirement account and the owner outlives his or her retirement assets; then the state is not required to be named as the remainder beneficiary.</p> <p>- The annuity must be irrevocable, non-assignable, actuarially sound, and pay out in equal installments during the term of the annuity. Balloon and deferred annuities are still considered a transfer of assets if payment is not level during term of annuity.</p>	
Loans	The value of the loan is not considered an available resource.	Loan and/or mortgage is treated as a transfer of assets unless the repayment terms are actuarially sound, payments are made in equal amounts during the term of the loan (without a deferral or balloon payments), and the indebtedness is not cancelled upon death.	Note: SCINs are eliminated.
Life Estates		The funds used to purchase a life estate are	

		considered a transfer of assets unless the purchaser lives in the house for at least one year after the date of purchase.	
State Long-Term Care Partnership Program	Partnership insurance is not available in all states (only available in four states: New York, Connecticut, Indiana and California).	All states can now adopt a qualified state LTC Partnership program under their individual Medicaid programs.	Effective date:* The provisions regarding state long term care partnerships take effect on October 1, 2007, and apply to long-term care insurance policies sold on or after that date. Note: A "qualified state Long-Term Care Partnership program" is defined as an approved state plan amendment that protects the Medicaid applicant's assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy. Several requirements must be met.
Other Rules	States may round the penalty period down to the lowest whole number	-Penalty period is a per diem penalty (cannot round down or disregard fractional periods of ineligibility) -Multiple transfers are aggregated	

*Note on Effective Date: Some sections of the DRA are effective February 8, 2006. However, each state legislature must adopt conforming changes (or less restrictive variations) in its own law. FPA recommends that you speak with an elder care attorney in your particular state regarding application of this law in your state.

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