



EPIC

Elder Planning Income Concepts, LLC

Text of New Medicaid Law (S.B. 1932), (2/1/2006)

S.1932

Deficit Reduction Act of 2005 (Engrossed Amendment as Agreed to by Senate)

CHAPTER 2--LONG-TERM CARE UNDER MEDICAID

Subchapter A--Reform of Asset Transfer Rules

SEC. 6011. LENGTHENING LOOK-BACK PERIOD; CHANGE IN BEGINNING DATE FOR PERIOD OF INELIGIBILITY.

(a) *Lengthening Look-Back Period for All Disposals to 5 Years-* Section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C. 1396p(c)(1)(B)(i)) is amended by inserting `or in the case of any other disposal of assets made on or after the date of the enactment of the Deficit Reduction Act of 2005' before `, 60 months'.

(b) *Change in Beginning Date for Period of Ineligibility-* Section 1917(c)(1)(D) of such Act (42 U.S.C. 1396p(c)(1)(D)) is amended--

(1) by striking `(D) The date' and inserting `(D)(i) In the case of a transfer of asset made before the date of the enactment of the Deficit Reduction Act of 2005, the date'; and

(2) by adding at the end the following new clause:

(ii) *In the case of a transfer of asset made on or after the date of the enactment of the Deficit Reduction Act of 2005, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.'*

(c) *Effective Date-* The amendments made by this section shall apply to transfers made on or after the date of the enactment of this Act.

(d) *Availability of Hardship Waivers-* Each State shall provide for a hardship waiver process in accordance with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C. 1396p(c)(2)(D))--

(1) *under which an undue hardship exists when application of the transfer of assets provision would deprive the individual--*

(A) *of medical care such that the individual's health or life would be endangered; or*

(B) *of food, clothing, shelter, or other necessities of life; and*

(2) *which provides for--*

(A) *notice to recipients that an undue hardship exception exists;*

(B) *a timely process for determining whether an undue hardship waiver will be granted; and*

(C) *a process under which an adverse determination can be appealed.*

(e) *Additional Provisions on Hardship Waivers-*

(1) *APPLICATION BY FACILITY-* Section 1917(c)(2) of the Social Security Act (42 U.S.C. 1396p(c)(2)) is amended--

(A) by striking the semicolon at the end of subparagraph (D) and inserting a period; and

(B) by adding after and below such subparagraph the following:

'The procedures established under subparagraph (D) shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.'

(2) Authority to make bed hold payments for hardship applicants- Such section is further amended by adding at the end the following: *'While an application for an undue hardship waiver is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.'*

SEC. 6012. DISCLOSURE AND TREATMENT OF ANNUITIES.

(a) In General- Section 1917 of the Social Security Act (42 U.S.C. 1396p) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

'(e)(1) In order to meet the requirements of this section for purposes of section 1902(a)(18), a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose a description of any interest the individual or community spouse has in an annuity (or similar financial instrument, as may be specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that under paragraph (2) the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.'

'(2)(A) In the case of disclosure concerning an annuity under subsection (c)(1)(F), the State shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State's remainder interest under such subsection.'

'(B) In the case of such an issuer receiving notice under subparagraph (A), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1). A State shall take such information into account in determining the amount of the State's obligations for medical assistance or in the individual's eligibility for such assistance.'

'(3) The Secretary may provide guidance to States on categories of transactions that may be treated as a transfer of asset for less than fair market value.'

'(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1).'

(b) REQUIREMENT FOR STATE TO BE NAMED AS A REMAINDER BENEFICIARY- Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), is amended by adding at the end the following:

'(F) For purposes of this paragraph, the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless--

'(i) the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant under this title; or

'(ii) the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.'

(c) INCLUSION OF TRANSFERS TO PURCHASE BALLOON ANNUITIES- Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (b), is amended by adding at the end the following:

'(G) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this title unless--

'(i) the annuity is--

'(I) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

'(II) purchased with proceeds from--

`(4) The Secretary shall establish a process whereby paragraph (1) is waived in the case of a demonstrated hardship.'

(b) Effective Date- The amendment made by subsection (a) shall apply to individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services based on an application filed on or after January 1, 2006.

SEC. 6015. ENFORCEABILITY OF CONTINUING CARE RETIREMENT COMMUNITIES (CCRC) AND LIFE CARE COMMUNITY ADMISSION CONTRACTS.

(a) Admission Policies of Nursing Facilities- Section 1919(c)(5) of the Social Security Act (42 U.S.C. 1396r(c)(5)) is amended--

(1) in subparagraph (A)(i)(II), by inserting 'subject to clause (v),' after '(II)'; and

(2) by adding at the end of subparagraph (B) the following new clause:

`(v) TREATMENT OF CONTINUING CARE RETIREMENT COMMUNITIES ADMISSION CONTRACTS- Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1924, contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.'

(b) Treatment of Entrance Fees- Section 1917 of such Act (42 U.S.C. 1396p), as amended by sections 6012(a) and 6014(a), is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

`(g) Treatment of Entrance Fees of Individuals Residing in Continuing Care Retirement Communities-

`(1) IN GENERAL- For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this title, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

`(2) TREATMENT OF ENTRANCE FEE- For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that--

`(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

`(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

`(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.'

SEC. 6016. ADDITIONAL REFORMS OF MEDICAID ASSET TRANSFER RULES.

(a) REQUIREMENT TO IMPOSE PARTIAL MONTHS OF INELIGIBILITY- Section 1917(c)(1)(E) of the Social Security Act (42 U.S.C. 1396p(c)(1)(E)) is amended by adding at the end the following:

`(iv) A State shall not round down, or otherwise disregard any fractional period of ineligibility determined under clause (i) or (ii) with respect to the disposal of assets.'

(b) Authority for States To Accumulate Multiple Transfers Into One Penalty Period- Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsections (b) and (c) of section 6012, is amended by adding at the end the following:

`(H) Notwithstanding the preceding provisions of this paragraph, in the case of an individual (or individual's spouse) who makes multiple fractional transfers of assets in more than 1 month for less than fair market value on or after the applicable look-back date specified in subparagraph (B), a State may determine the period of ineligibility applicable to such individual under this paragraph by--

`(i) treating the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) during all months on or after the look-back date specified in subparagraph (B) as 1 transfer for purposes of clause (i) or (ii) (as the case may be) of subparagraph (E); and

`(ii) beginning such period on the earliest date which would apply under subparagraph (D) to any of such transfers.'

(c) INCLUSION OF TRANSFER OF CERTAIN NOTES AND LOANS ASSETS- Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (b), is amended by adding at the end the following:

`(I) For purposes of this paragraph with respect to a transfer of assets, the term `assets' includes funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage--

`(i) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

`(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

`(iii) prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of clauses (i) through (iii), the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance for services described in subparagraph (C).'

(d) INCLUSION OF TRANSFERS TO PURCHASE LIFE ESTATES- Section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)), as amended by subsection (c), is amended by adding at the end the following:

`(J) For purposes of this paragraph with respect to a transfer of assets, the term `assets' includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase.'

(e) EFFECTIVE DATES-

(1) IN GENERAL- Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to payments under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for calendar quarters beginning on or after the date of enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) EXCEPTIONS- The amendments made by this section shall not apply--

(A) to medical assistance provided for services furnished before the date of enactment;

(B) with respect to assets disposed of on or before the date of enactment of this Act; or

(C) with respect to trusts established on or before the date of enactment of this Act.

(3) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT- In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

Subchapter B--Expanded Access to Certain Benefits

SEC. 6021. EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM.

(a) EXPANSION AUTHORITY-

(1) IN GENERAL- Section 1917(b) of the Social Security Act (42 U.S.C. 1396p(b)) is amended--

(A) in paragraph (1)(C)--

(i) in clause (ii), by inserting `and which satisfies clause (iv), or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii))' after `1993,'; and

(ii) by adding at the end the following new clauses:

`(iii) For purposes of this paragraph, the term `qualified State long-term care insurance partnership' means an approved State plan amendment under this title that provides for the disregard of any 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 if the following requirements are met:

- `(I) The policy covers an insured who was a resident of such State when coverage first became effective under the policy.
- `(II) The policy is a qualified long-term care insurance policy (as defined in section 7702B(b) of the Internal Revenue Code of 1986) issued not earlier than the effective date of the State plan amendment.
- `(III) The policy meets the model regulations and the requirements of the model Act specified in paragraph (5).
- `(IV) If the policy is sold to an individual who--
 - `(aa) has not attained age 61 as of the date of purchase, the policy provides compound annual inflation protection;
 - `(bb) has attained age 61 but has not attained age 76 as of such date, the policy provides some level of inflation protection; and
 - `(cc) has attained age 76 as of such date, the policy may (but is not required to) provide some level of inflation protection.
- `(V) The State Medicaid agency under section 1902(a)(5) provides information and technical assistance to the State insurance department on the insurance department's role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.
- `(VI) The issuer of the policy provides regular reports to the Secretary, in accordance with regulations of the Secretary, that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.
- `(VII) The State does not impose any requirement affecting the terms or benefits of such a policy unless the State imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

In the case of a long-term care insurance policy which is exchanged for another such policy, subclause (I) shall be applied based on the coverage of the first such policy that was exchanged. For purposes of this clause and paragraph (5), the term 'long-term care insurance policy' includes a certificate issued under a group insurance contract.

`(iv) With respect to a State which had a State plan amendment approved as of May 14, 1993, such a State satisfies this clause for purposes of clause (ii) if the Secretary determines that the State plan amendment provides for consumer protection standards which are no less stringent than the consumer protection standards which applied under such State plan amendment as of December 31, 2005.

`(v) The regulations of the Secretary required under clause (iii)(VI) shall be promulgated after consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, and shall specify the type and format of the data and information to be reported and the frequency with which such reports are to be made. The Secretary, as appropriate, shall provide copies of the reports provided in accordance with that clause to the State involved.

`(vi) The Secretary, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, the National Association of Insurance Commissioners, State insurance commissioners, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, shall develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified State long-term care insurance partnerships to a secure, centralized electronic query and report-generating mechanism that the State, the Secretary, and other Federal agencies can access.'; and

(B) by adding at the end the following:

`(5)(A) For purposes of clause (iii)(III), the model regulations and the requirements of the model Act specified in this paragraph are:

- `(i) In the case of the model regulation, the following requirements:
 - `(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the model Act relating to such section 6A.
 - `(II) Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.
 - `(III) Section 6C (relating to extension of benefits).
 - `(IV) Section 6D (relating to continuation or conversion of coverage).
 - `(V) Section 6E (relating to discontinuance and replacement of policies).
 - `(VI) Section 7 (relating to unintentional lapse).

*(1) benefits paid under such policies will be treated the same by all such States; and
(2) States with such partnerships shall be subject to such standards unless the State notifies the Secretary in writing of the State's election to be exempt from such standards.*

(c) ANNUAL REPORTS TO CONGRESS-

(1) IN GENERAL- The Secretary of Health and Human Services shall annually report to Congress on the long-term care insurance partnerships established in accordance with section 1917(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(ii)) (as amended by subsection (a)(1)).