

Medicaid Eligibility Under the Deficit Reduction Act of 2005

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Introduction

In this column, we will seek to address topics that directly affect *Medicare Patient Management (MPM)* physician readers in their practice. Occasionally, however, we will deal with subjects that directly affect their patients and, therefore, only indirectly affect physicians. We believe that such topics are important to physicians because:

- 1) They are issues that patients (in particular, patients of physicians whose practices focus on senior citizens) are likely to inquire of them; and
- 2) Such topics are important because they involve issues that provide opportunities for physicians to offer services to seniors that are not offered by most physicians.

In *MPM's* last issue, we addressed a topic that only indirectly affected its physician readership. That topic was the Medicare Part D prescription drug program. This time, we will review recent changes in Medicaid eligibility requirements for long-term care (LTC) services. Both topics are of great importance to millions of seniors. The difference between them is that Medicare Part D has received daily front-page coverage, while changes in Medicaid eligibility for LTC residents have largely gone unnoticed. Those changes, if not widely known to Medicare beneficiaries and other seniors, could lead to poorly informed choices with cata-

strophic results to their finances and well-being. Thus, it is a topic which, we believe, *MPM* readers should be well informed about and which, we also believe, our readers would be doing a great service to advise their patients about.

Medicaid: An Overview

Medicaid was enacted in 1965, following the inauguration of the Medicare program. Like the Medicare program, Medicaid provides health care benefits to millions of Americans. However, Medicaid was, and remains, unlike Medicare in several significant respects.

First, unlike Medicare, Medicaid is significantly "means-based." While Medicare is currently available to all Americans over the age of 65, Medicaid covers only those who are poor (or who meet certain other carefully defined criteria).

Second, also unlike Medicare, Medicaid is a State-operated program. Although funded and subject to parameters established by the federal government, the States have considerable freedom to vary the scope and level of benefits and eligibility criteria. Indeed, the various States have taken advantage of that freedom, and Medicaid programs differ markedly from State to State.

Medicaid and LTC

Although not originally envisioned as a program to assist seniors, today, Medicaid is extraordinarily important to those older than the age of 65 years. This is because Medicaid pays for the services of skilled nursing homes for those who meet the program's income and asset restrictions (Medicare pays for some nursing home care, but generally only for short transitional stays). Currently, a significant portion of the Medicaid budget goes toward the payment of nursing home costs for seniors, and a sizeable percentage of senior citizens in nursing homes are dependent on Medicaid to pay for those services.

Since Medicaid (unlike Medicare) is not age-related, but is means-based, only seniors who are "poor" or have become poor qualify for Medicaid payment of nursing home care costs. Since the inception of the program 40 years ago, seniors facing an extended nursing

home stay have sought means to transfer assets to family members or others to qualify for Medicaid, rather than see those assets depleted by nursing home payments, eventually being forced by poverty onto Medicaid's roles. Thus, Medicaid rules have long included provisions for the disallowance of certain below-market-value transfers.

The Deficit Reduction Act of 2005

With the recent enactment of the Deficit Reduction Act of 2005, the rules regarding the disallowance of transfers for less than fair market value have become significantly stricter. Seniors who are unaware of these new rules could find themselves caught in the trap

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of making transfers that were permissible under prior law, but which are now disallowed. Physicians who focus their practices on serving the needs of senior citizens would be providing a valuable service by ensuring that their patients are aware of the changes in Medicaid eligibility rules.

The “Look-Back Period”

Under Medicaid rules, the “look-back period” refers to the period in which Medicaid will examine, and potentially disallow, below-market transfers by an applicant. Under prior law, the look-back period was 36 months. The Deficit Reduction Act extends the look-back period to 60 months. Thus, if an individual makes a substantial gift today to his son or daughter and within the next 5 years becomes impoverished and seeks to qualify for Medicaid LTC cover-

age, he or she may be disqualified because that gift may be added back to his or her available assets.

Family gifts are not the only types of transfers that may be disqualified. Charitable contributions may likewise be disallowed. The American Association of Retired Professionals (AARP's) CEO, Bill Novelli, put it well, if dramatically: “This would mean that a lower income stroke patient could be prevented from entering a nursing home, even if there were no alternatives, simply because she had helped a grandson with college tuition years earlier. A private-pay nursing home resident could be forced out of the home for a period of time, even after all her assets were exhausted because she contributed to a hurricane victim.”

One may debate the fairness of the look-back provision or its extension in the Deficit Reduction Act. However, what is not debatable is that seniors need to know of these changes. Unlike the Medicare prescription drug program, these new rules have received little publicity.

The “Penalty Period”

An even more obscure and perhaps insidious provision affects the so-called “penalty period”—ie, the period during which a disallowed transfer will be added back for the purpose of determining Medicaid eligibility. Federal law does not place any outside limit on the length of the penalty period, but it does establish the start date for the penalty period. Prior law provided that the penalty period would begin on the date of the disallowed transfer. The Deficit Reduction Act changes that. The penalty period will now begin on the latter of:

- 1) The first day of the month after the disallowed transfer, or
- 2) The date on which the individual applies for and would otherwise be eligible for Medicaid benefits.

Thus, a disallowed transfer made 5 years ago and which, under State law establishing penalty periods would no longer have any impact on the applicant, could disqualify the applicant for Medicaid nursing home benefits.

Other Provisions of the Deficit Reduction Act Affecting Medicaid Eligibility

Several other provisions of the Deficit Reduction Act of 2005 affect Medicaid eligibility for senior citizens. Among the more significant are the following:

Home Equity

Prior law excluded the value of a Medicaid applicant's home from computations affecting the applicant's eligibility. The Deficit Reduction Act changes that. Now an equity interest in excess of \$500,000 (or up to \$750,000 at a State's option) will be included as an available asset in determining an individual's Medicaid eligibility. This provision may affect senior cit-

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izens more than others because with longer holding periods, they may have greater amounts in the appreciation of the value of their homes. Again, as AARP CEO Bill Novelli noted, "In cities and states across the country, older Americans may be watching their property values increase, while watching their health security fade away."

Trusts and Annuities

Applicants or potential applicants for Medicaid have long sought to use transfers in trust or the purchase of annuities to avoid the disallowance of transfers. The Deficit Reduction Act makes that tougher. Prior law provided that annuities were disallowed only to the extent that regulations approved by the Secretary of the Department of Health and Human Services specified. The Deficit Reduction Act is significantly more explicit in its requirements and required, upon application, full disclosure of all annuity interests. Moreover, the Deficit

Reduction Act specifies several requirements in order that an annuity cannot be considered to be an available asset to the applicant. Among those requirements are that:

- 1) The State be designated as a remainder beneficiary to the extent of medical assistance furnished under the Medicaid program,
- 2) The annuity be actuarially sound (as determined under regulations), and
- 3) The annuity be irrevocable and nonassignable.

"Community Spouse" Income Rules

Prior law contained provisions exempting income of the "community spouse" from being available to the institutionalized spouse in determining the Medicaid eligibility of the institutionalized spouse. Further, for a community spouse with a more limited income, prior law allowed the institutionalized spouse to transfer income to the community spouse without penalty up to certain thresholds. The Deficit Reduction Act removes some of those allowances.

Hardship Waivers

Previously, the law required that States establish procedures for "hardship waivers" from unintended consequences of the asset transfer provisions. Over the years, the Centers for Medicare and Medicaid Services (CMS) has provided "guidance" with respect to parameters for hardship waivers. The Deficit Reduction Act substantially codifies prior CMS guidance for such waivers.

Conclusion

The Deficit Reduction Act of 2005 makes significant changes in Medicaid eligibility requirements for LTC coverage that have a disproportionate impact on senior citizens. Physicians who focus their practices on senior citizens, including *MPM* readers, would provide a valuable service to their patients by alerting them to these changes. *MPM*

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