

# Planning Partners Press<sup>TM</sup>

KETRA A. MYTICH, LTD.

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## New Medicaid Law Dramatically Changes Long-Term Care Planning

Part 5 of 10

In the first four issues of this series, we've been discussing the significant changes in Medicaid laws that have been brought about by the Deficit Reduction Act of 2005, enacted in February, 2006.

So far we have seen that the new law:

- Changes the "look-back" period to five years for all transfers
- Postpones the penalty start date for transfers within the five-year look-back, and
- Eliminates the "rounding-down" technique for monthly transfers

Last issue we began a discussion on the Act's impact for annuity planning which we continue below.

### 4. Restricts the use of annuities (continued)

In our last issue we discussed that one of the changes brought about in Medicaid law from the Deficit Reduction Act of 2005 is to make the use of balloon annuities ineffective for Medicaid planning. We stated that if the annuity is created on or after February 8, 2006, it will result in a period of ineligibility for the Medicaid applicant, based on the amount invested in the annuity.

It is important to remember, however, that although balloon annuities are abolished under the new law, traditional immediate annuity planning remains viable. If an immediate annuity makes equal periodic payments over the actuarial life expectancy (or less) of the annuitant, it will not be considered a transfer of assets. It will, however, be required to meet the new beneficiary designation requirements discussed below.

So, what about annuities (whether balloon or equal periodic payments) that were created PRIOR to February 8, 2006? Those annuities will generally be grandfathered in and will not be affected by the new law, with one caveat. Under the new law, all

immediate annuities created by the Medicaid applicant must name the state as the irrevocable beneficiary of the annuity to the extent Medicaid payments are made for the benefit of the individual. The only exception to this irrevocable beneficiary designation is when the Medicaid applicant is survived by a spouse, or a minor or disabled child.

If the annuity does not name the state as the irrevocable beneficiary, the annuity will be considered an **available asset** for Medicaid purposes.

Although we are not certain, it is anticipated that any annuity created prior to February 8, 2006 will have to verify at the next annual recertification of Medicaid benefits that the state is named the irrevocable primary beneficiary (unless one of the exceptions noted above is met), or the annuity will be considered an available asset.

Our next issue will consider the impact on the Medicaid applicant's homestead exemption.

## KETRA A. MYTICH, LTD.

*We know summer is a busy time for everyone. We hope you all take the time to have some fun this summer. We truly appreciate the opportunity to enhance your client relationships.*



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