The Law and You
Big Medicaid Changes for Long Term Care

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005. While it has many provisions, I will treat in this column only the changes affecting Medicaid assistance for long term care.

First, an overview of the Medicaid program as it relates to long term care is appropriate.

Unlike Medicare, which is a medical assistance program for most everyone who is 65 years and older, Medicaid is basically a welfare program.

To qualify for Medicaid's long term care program, a person cannot have more than $2,000. A home is an exempt asset and certain other assets are also exempt.

To deter a person from gifting their estate to children and then having Medicaid (which comes from the taxes we all pay) pay for their long term care, certain protections have been in place for many years. In particular, there is a "look back" period during which any gifts must be reported when applying for Medicaid.

This look back period has been 3 years (except 5 years for trusts). The Deficit Reduction Action of 2005 (the "Act") changes this look back period to 5 years for all gifts or transfers for less than fair market value.

For Medicaid Planners, this is a significant change. It can have a profound effect on how much of a person's estate can be passed to children or other heirs.

For example, assume a person has $500,000 in savings or in retirement accounts. That person could gift to children $350,000 and still have $150,000 to pay for private care in a long term facility for 3 years, assuming $50,000 per year. In other words, a person would have to keep enough money to pay for long term care for 3 years before applying for Medicaid. At that point, the "gift" would not have to be reported on the application for Medicaid.

Under the new Act, however, a person will have to retain another 2 years' worth of long term care, or about another $100,000. That $100,000 cannot be gifted to children, since the gift will have to be made at least 5 years prior to applying for Medicaid.

A person's home is considered sacred to most seniors. And Medicaid has long considered a home as an exempt asset. This is generally true under the new Act. But if the home's equity is more than $500,000, it will not be considered exempt.

There is a provision allowing states to raise this limit to $750,000. It is too early to know what Utah will do, but this is the first time that the amount of equity in a home will be a factor in determining eligibility.

There is also another new wrinkle. Prior to the new Act, if a gift was made within 3 years prior to application, a sanction was imposed.

Based on the amount of the gift and the Penalty Divestment Divisor, a sanction period was calculated. This "period" was stated in months. A gift of $50,000 would yield a sanction of 13 months from the date of the gift. If the gift had been made more than 13 months prior to application, there would be no delay in eligibility.

Under the new Act, the same sanction period applies, but it begins at the time the person enters the long term care facility or when he or she would otherwise be eligible for Medicaid. In the foregoing example, benefits would not be available until 13 months after entering the care facility.

Several other changes are significant. Without going into detail here, there is a requirement that the State be a primary beneficiary of any annuities.

There is also a restriction on purchasing life estates. It now requires the purchaser to reside in the property for at least 1 year after purchase.

To better understand your rights and to better plan for your long term care, you should consult with an Elder Law Attorney who specializes in Medicaid matters. Check the National Academy of Elder Law Attorneys at (520) 881-4005, or the Yellow Pages under the heading of "Elder Law."