

## The Dangers of the Impending Medicaid Legislation

On February 8<sup>th</sup>, the President signed a budget bill which purports to reduce the deficit by limiting federal health care spending. Unfortunately, it does so on the backs of vulnerable seniors and individuals with disabilities who need long-term care. This law makes it more difficult to secure Medicaid coverage for nursing home stays.

Medicaid is a program that was originally meant to provide care for low-income individuals. However, because Medicare and traditional insurance provide very limited coverage for nursing home stays, most residents are forced to resort to Medicaid at some point. Medicaid is the only “safety net” to pay the costs of nursing home care for middle class seniors who do not have long term care insurance. Since nursing home care in our area costs \$80,000 to 120,000 a year, only the most wealthy can pay privately for more than a couple of years. Therefore, most residents are faced with the prospect of paying 100% of the cost of their care and becoming completely impoverished, at which point they qualify for Medicaid.

The legislation is aimed at preventing wealthy individuals from transferring their assets in order to qualify for Medicaid. From recent press coverage, you might think this was a widespread problem. However, it is not. Truly wealthy individuals do not want to enter nursing homes and pay for private care at home to avoid it. A recent GAO study found that the great majority of “Medicaid planning” involved spending resources on allowable expenses such as burial arrangements and home repairs. In fact, the GAO recommended that Congress negotiate a Medicaid drug purchase program which would save more than twice as much as the “reforms” which Congress has embraced. Of course, that would require the Congressmen to confront the powerful drug lobby, instead of adopting these changes which are being billed as “closing loopholes”.

Unfortunately, this legislation addresses an almost nonexistent issue—millionaires taking advantage of Medicaid—and instead creates a whole host of new problems. The GAO found that a small percentage of nursing home residents make gifts prior to applying for Medicaid, but that they do so predominantly for non-Medicaid purposes such as to help pay for a family member’s college or for charitable donations. Moreover, the transfers averaged less than \$10,000. In my practice, I have found that most families considering transfers are doing so to provide for the spouse who will remain in the community or to pay for the little extras which are not covered by Medicaid like getting your hair done or occasionally buying new clothes and personal items.

The new law penalizes all gifts made within five years of Medicaid application. This would result in seniors unwittingly being found ineligible for Medicaid because of gifts made years ago and at a time when the individual may have been healthy and had no intention of needing Medicaid. For example, Grandma has been frugal and healthy and is able to contribute to her grandchild’s college education. One year later, she suffers a debilitating stroke which requires she move into a nursing home at a cost of \$8,000 per month (nearly \$100,000 a year). Over the next three years, she spends down her remaining \$400,000 lifetime savings on the nursing home and medications. Since the college fund contribution was within the 5 year look back, under the new law Grandma’s ineligibility period begins to run at the time she has expended all her resources and is applying for Medicaid. The transfer four years ago results in ineligibility for care now. However, Grandma Grace no longer has the money she gave to her grandchild. So, Grandma faces an uncertain future and will be forced to rely on family members or charity care.

This legislation penalizes middle-class individuals who want to make modest gifts to their families or keep their house or business in their family. This approach is particularly ironic at a time when the President is decrying the “death tax” which would reduce the amount that wealthy individuals can pass to their families as unfair, and supporting further tax cuts for the rich.