



Leadership Council of Aging Organizations

Barbara B. Kennelly, Chair

May 31, 2006

The Honorable Mark McClellan
Administrator
Centers for Medicare & Medicaid Services
Hubert Humphrey Building, Room 314-G
200 Independence Ave., SW
Washington, DC 20201

Via Fax and Mail

Dear Dr. McClellan:

The undersigned members of the Leadership Council of Aging Organizations (LCAO) urge you to carefully consider the intent of Congress when issuing regulations and communications to states regarding the asset transfer provisions included in the Deficit Reduction Act of 2005 (DRA). While we opposed the asset transfer restrictions in the House bill, we recognize that the congressional intent was to discourage higher income seniors from inappropriately using the Medicaid program. Congress clearly stated that it did not want to punish the many truly generous and charitable seniors who help families and charities nor did it intend to deny Medicaid coverage for the truly needy.

Unfortunately, it is possible that congressional intent, which was evident in numerous statements by Members, will be lost in the reading of the statute. To clarify this intent, we encourage CMS to issue clear and explicit regulations and communications to the states to avoid penalizing charitable and needy seniors, and the nursing homes that serve them.

The following are examples of the clarifications that are needed. We would appreciate an opportunity to discuss these and other concerns with you at your earliest convenience.

Hardship Exceptions

The DRA mandates a process for granting hardship exceptions for people who could be denied needed long-term care services because of changes in asset transfer rules. To clarify congressional intent, CMS should set minimum standards for the exceptions process.

First, regulations should stipulate types of transfers that should be presumed to be legitimate and not subject to penalty unless the state can demonstrate intent to improperly qualify for Medicaid. This would include donations to churches, charities, or family members for such things as education and medical expenses. This is critical to prevent unnecessary concern and expense for innocent or unsuspecting seniors. Further, individuals with dementia must not be penalized for their inability to document assets, income, and expenses within the lookback period.

These guidelines could be part of hardship guidelines or part of guidelines addressing “transfers made exclusively for purposes other than to qualify for Medicaid.” The latter exception is either largely ignored by states or has been implemented with great inconsistency.

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In addition, CMS should establish uniform criteria for evaluating whether a penalty will cause hardship (e.g., depriving someone of food, clothing, shelter, etc., or whether health would be endangered). These criteria need to be evaluated in the context of the risks and strengths of the likely alternative care setting of the person, which in many instances will be less than adequate, compared to the nursing home setting. Also needed are standards for communicating information about hardship exceptions and rules stating that eligibility must be presumed until final decisions are provided. A standardized appeals process needs to be developed for people whose hardship exception requests are denied.

Home Equity

It should also be clear in regulations or communications to states that a state may not deny eligibility under the home equity rules if the senior is not eligible for a reverse mortgage or is either not eligible for a home equity loan or could not pay it back. Home equity should be defined as the assessed value of the home for property tax purposes minus outstaying debt on the home. Seniors should be able to appeal denials of eligibility based on home equity, as well. Congress did not intend to force every senior with excess home equity to liquidate their equity and spend it all down to the state's Medicaid asset limit. If that is the outcome, then it is a cynical act of disrespect to seniors who just happen to live in urban areas where home prices have escalated. The hardship exemption should also clearly apply to home equity denials.

Time Frame for State Implementation

CMS should clarify that if a state legislature was in session on February 8, 2006 (as most states were), then the extended deadline for implementation should NOT be measured from the end of the current session, but rather from the end of the next regular session, which for most states will begin in 2007.

One Penalty per Person

CMS should clarify that a patient with multiple nursing home admissions should not be penalized more than once by the penalty period provisions. It should be clear that once a penalty is triggered by a transfer, a second penalty is not permitted on the same transfer at a later time. In addition, upon reapplication, the applicant should only have to provide new information for the period of time since the first application and should not have to document five years' worth of financial transactions again.

To implement this principle, Medicaid offices should be instructed to accept and process applications that disclose a disqualifying transfer and make a determination that, but for the transfer, the individual would be eligible for nursing home care. Otherwise, there is no trigger date for the penalty. Moreover, states should be reminded that these applicants are nevertheless eligible for other Medicaid services besides nursing home care.

We seek to ensure clarity in the regulations and communications so that elderly Americans who transferred assets with a charitable intent will not be put in jeopardy. We believe that most seniors have good intentions and that charitable giving should be encouraged, and nursing homes should not be penalized by these new rules.

In addition, with regard to cost sharing, which is another concern of the LCAO, we ask that you ensure that states do not change cost sharing for those below the poverty level and that the previous cost sharing rules remain in effect for beneficiaries below the poverty level.

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Please feel free to contact Scott Frey of the National Committee to Preserve Social Security and Medicare with any questions and to set up a meeting. We look forward to meeting with you on this important matter.

Sincerely,

AFL-CIO
AFSCME Retiree Program
Alzheimer's Association
American Association for International Aging
American Federation of Teachers Program on Retirement & Retirees
American Foundation for the Blind
American Geriatrics Society
American Society of Consultant Pharmacists
American Society on Aging
Asociacion Nacional Pro Personas Mayores
Association for Gerontology and Human Development in Historically Black Colleges and Universities
B'nai B'rith International
Catholic Health Association of the United States
Families USA
International Union, United Auto Workers
Military Officers Association of America
NARFE
National Academy of Elder Law Attorneys
National Association for Home Care and Hospice
National Association of Nutrition and Aging Services Programs
National Association of Professional Geriatric Care Managers
National Association of Retired and Senior Volunteer Program Directors, Inc.
National Association of Senior Companion Project Directors
National Association of Social Workers
National Association of State Long-Term Care Ombudsman Programs
National Citizens' Coalition for Nursing Home Reform
National Committee to Preserve Social Security and Medicare
National Hispanic Council on Aging
National Senior Citizens Law Center
OWL, The Voice of Midlife and Older Women
Service Employees International Union