



Pathfinders in Elder Law



***Asset Protection Opportunity
Opens for Seniors, Disabled
Until October 1, 2009***

Seniors who fear losing their homes and life savings to nursing home costs should consider taking action now, during a rare “window of opportunity” before new Medicaid restrictions are enacted. Under legislation just passed in Indiana, for the first time in over three years, clients who make gifts, purchase real estate or annuities or create trusts that comply with current Medicaid rules will be safe from being denied Medicaid in the future, even though new, more restrictive transfer of assets rules may go into effect at that time.

This is particularly good news for seniors whose retirement savings have shrunk during the current recession. For the next 4 ½ months, they will be able to plan to protect assets before new federally-mandated transfer of asset restrictions go into effect.

“SB 301 also upholds the principle of the rule of law,” said Scott Severns, who worked with the national Elder Law task force that attempted to blunt, and then interpret, the troublesome 2006 federal law that called for harsh new transfer penalties to be applied retroactively. Now, older and


disabled Hoosiers will know that they can rely on what the law says today without fear of being punished under new Medicaid restrictions that will take effect sometime after October 1, 2009.

Since 2006, many people who thought that they would never need to consider Medicaid help have seen their retirement security plummet with the stock market. Meanwhile, nursing home costs continue to climb, now typically \$5,000 per month in Central Indiana and in some facilities, approaching \$7,000 per month. Since about 7 out of 10 Hoosiers in nursing homes have to rely on Medicaid to help pay for care, certainty about the Medicaid rules is very important.

In Senate Bill 301, the 2009 Indiana General Assembly responded to a public outcry about the State’s proposal to implement the 2006 federal law. In addition to giving people time to learn what the new rules will be before they go into effect, the new state law prohibits state officials from applying the new restrictions to transactions before October 1, 2009 or the date new rules are finalized, whatever is later.

Key provisions of Indiana Senate Bill 301 in a nutshell:

Prohibits new Medicaid restrictions on transfers of assets from going into effect before October 1, 2009.



“Seniors who fear losing their homes and life savings to nursing home costs should consider taking action now, during a rare ‘window of opportunity’ before new Medicaid restrictions are enacted.”

Continued on next page...



Pathfinders in Elder Law



Asset Protection Opportunity *(continued from previous page)*


- New rules to create a 5-year look-back on all transfers, will be phased-in after October 1, 2009. The current 3-year look-back period will continue to apply to transfers not involving trusts before that date.
- Rules enacted on or after October 1, 2009 cannot be applied to estate planning and asset protection transactions taken by people in reliance on current law, even when their Medicaid application is made after new rules are in effect.
- Most clients will automatically be protected from harsh penalties resulting from small gifts to charities and family members, when those are less than \$1,200 per year.
- State officials will not be permitted to penalize the portions of transferred assets that have been returned to the Medicaid beneficiary.

proposed the most punitive transfer of assets provisions in the country. Indiana's AARP Chapter, United Senior Action of Indiana and the Indiana Chapter of the National Academy of Elder Law Attorneys and many other concerned citizens and groups responded strongly to object to the harsh punishment that would fall to people who made ordinary gifts to family members, purchased annuities or created trusts, even though they met the requirements of the law at the time they were done. The elder law group and citizens' groups worked with legislators and officials of Governor Daniels' Administration to enact protections for Hoosiers from the harshest consequences of the 2005 federal Deficit Reduction Act.

Indiana's 2008 proposed rule change to meet the requirements of the Federal Deficit Reduction Act of 2005 ("DRA"). The ill-conceived federal law appeared to require that each state sweep all annuities, trusts and gifts made after February 8, 2006, under its harsh provisions. That date was the date President Bush signed the federal DRA law.

Yet, no one knew exactly what transactions would create longer penalties, since each state had to write new rules to implement the restrictions into its own Medicaid program.

In August, 2008, the Indiana Family and Social Services Administration (FSSA)



“Seniors who fear losing their homes and life savings to nursing home costs should consider taking action now, during a rare 'window of opportunity' before new Medicaid restrictions are enacted.”



Pathfinders in Elder Law



“Seniors who fear losing their homes and life savings to nursing home costs should consider taking action now, during a rare ‘window of opportunity’ before new Medicaid restrictions are enacted.”

Asset Protection Opportunity

(continued from previous page)

Transfer example illustrating effect of SB 301:

Mary gave her grandson \$10,000 on May 1, 2009 as he graduated from high school and prepared to enter college. She also gave daughter \$16,500 to prevent foreclosure on her daughter’s home. Six months later she had a stroke and had to enter a nursing home. By March, 2010, her other assets were exhausted, including \$5,000 that her daughter had been able to return to her. Here’s the difference that SB 301 makes: Transfer Analysis According to “worst case” DRA Rules, as Proposed in Indiana, August, 2008:

Mary made a total uncompensated transfer \$26,500. Under Indiana’s proposed DRA rules, Medicaid officials could deny Medicaid help for the first six months after Mary had exhausted all of her funds. The nursing home would have either had to take care of her without payment or discharge her. Medicaid help would have also been denied to her for in-home services if she were discharged.

Transfer analysis

Because Mary’s transfers were before October 1, 2009, the current Medicaid rules apply. Any penalty period from the transfer begins with June, 2009, the month after the gift. The penalty period does not “lay in wait” for her until she is impoverished and in a nursing home, as under DRA rules. The penalty period is also “rounded down” to 4 months and would have expired by

the time she needs Medicaid help, even if the new rules are in effect by then. SB 301 also ensures that even if Mary had made these gifts after October 1, 2009 when new rules may be effective, her penalty period would be reduced by at least one month because of the \$5,000 reimbursement from her daughter and she would not be disqualified for Medicaid in-home services during any nursing home penalty period.

“Since February, 2006 until this month, we were only able to give clients “best-case” and “worst-case” opinions based on reading the federal law, knowing that Indiana might write “worst case” rules and apply them retroactively.” said Scott R. Severns. This was particularly difficult for many of our senior citizen clients to understand. “Many just froze,” Severns said.

When Indiana officials proposed “DRA implementation rules” last August, they not only used all of the “worst case” points from the federal law, but made up some ambiguities and punitive provisions of their own. SB 301 stopped that. We are most grateful to many legislators and members of Governor Daniels’ administration who stepped up to protect seniors in these troubled times. We must also acknowledge many clients and members of the Indiana Chapter of the



Pathfinders in Elder Law



Asset Protection Opportunity
(continued from previous page)

National Academy of Elder Law
Attorneys who contributed countless
hours to formulate an effective response
to the proposed new rules. SB 301
stopped a proposal that would have
made Indiana the most punitive state to
its middle-class elders and made Indiana
a leader in fairness and adherence to the
rule of law. 🏹

Information and articles from our website are presented as a public service by Severns & Stinson. We help our clients protect their assets and their rights to health care and long-term care. This article is general in nature and is not to be taken as legal advice to any particular person. Consult an attorney for specific legal advice for your circumstance.

Severns & Stinson is an Indianapolis Elder Law firm that helps older adults, persons with disabilities and their families plan for long term care needs, protect assets and get the care they need. For up-to-the-minute information about elder law issues and to sign up for our electronic newsletter, visit our website, www.severns.com.



“Seniors who fear losing their homes and life savings to nursing home costs should consider taking action now, during a rare ‘window of opportunity’ before new Medicaid restrictions are enacted”