



Pathfinders in Elder Law



***BREAKING NEWS - April
15, 2009 -Indiana Legislature
Prevents Harsh Federal
Medicaid Penalties***

By Jeffery D. Stinson

The Indiana will soon begin "looking-back" a full five years on transfers and gifts when a person applies for Medicaid to pay for a nursing home stay. However, for the next six (6) months, families can establish legal plans that will be safe from being voided retroactively, under legislation just passed by Indiana lawmakers.

The Indiana General Assembly voted overwhelmingly to restrict State officials from applying harsh new transfer restrictions retroactively. The law will also assure that legal planning done between passage and October 1, 2009, will not be disrupted later by rules that have not been written yet.

Senate Bill 301, authored by Sen. Pat Miller (R. Shelbyville), and sponsored by Charlie Brown (D. Gary) and Peggy Welch (D. Bloomington) in the Indiana House of Representatives now awaits Gov. Daniels' signature. Terms of the bill were negotiated between the Indiana Family and Social Services Administration (FSSA) and

representatives from the Indiana Chapter of the National Academy of Elder Law Attorneys (IN-NAELA) and a coalition of citizens' groups and long-term care providers who opposed the rules that FSSA had proposed in August, 2008. FSSA had drafted the rules in response to the federal Deficit Reduction Act of 2005.

However, the elder law group, citizens' groups and individuals who would be affected reacted strongly to the proposal, citing the unfair and arguably unconstitutional provisions that would harm seniors, their families and providers of health and long-term care services. Since FSSA approved the terms of the bill, Governor Daniels is expected to sign the legislation.

The 2005 federal Act, called for all states to change their policies in early 2006, but FSSA delayed action until 2008. FSSA's 2008 proposal was far more punitive than federal law required. It called for a Medicaid penalty for ordinary holiday gifts to family members and donations to charities that a nursing home resident had given up to 5 years earlier. In addition, FSSA's original proposal would have penalized all gifts, certain annuity purchases and various other transactions. When a transfer penalty is applied,

Medicaid withholds payment for the person in a nursing home.

The proposed rules would have applied penalties retroactively; that is, transactions that

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BREAKING NEWS

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were permitted under law when they were made would now result in penalty.

Under SB 301, FSSA will not use new rules until at least October 1, 2009 and will not apply the penalties to any gifts or other transactions made before the rule change.

"Since 2006, we have been working under a cloud of uncertainty, because the federal law appeared to allow the State to apply Medicaid penalties to ordinary estate planning and family transactions that were done after 2005," said Scott Severns, a member of IN-NAELA's Government and Public Affairs Committee. "We helped clients plan to under both the existing state law and the terms of the federal law that had not yet been adopted in Indiana, but FSSA's proposal went beyond both," he said.

The action of the General Assembly brought badly-needed clarity to this sensitive area. In addition, FSSA officials have pledged to work with the elder law attorneys and the citizens' groups to help assure that the final rules are fair.

As incoming President of IN-NAELA, I am very proud that our group helped bring these problems to public awareness and the many, many hours of work that our

members contributed to this successful legislative effort. We will continue to bring the voice of families who face long-term care challenges to the table as final rules are being hammered out.

Watch for more details about the new Indiana law and tips for planning in the next Elder Law News. ▲

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