Medicaid Changes Are Here

On February 8th, 2006, President Bush signed into law the Deficit Reduction Act of 2005 (the "DRA"). Embedded in the DRA were provisions that dramatically affected the ability of seniors to qualify for Medicaid programs dealing with long term care. These programs consist of the Institutional Care Program (for nursing home care) and the Nursing Home Diversion Waiver Program (for care at home or in an assisted living facility). In short, the DRA made qualification a much harder. Florida has been slow on the actual enforcement of the provisions of the DRA legislation. However, on or about November 1, 2007, Florida will implement some of the DRA provisions with a formal rule change to the administrative code. The highlights of these changes are as follows:

First, any gift in the "look back" period (currently three years) will create a disqualification period from the date of application in which benefits will not be available. All gifts made in the "look back" period will be added together and then divided by $5,000. The resulting number is the number of months that a person is ineligible from the date of application. The prior rule was that minimum gifts could be made (under $5,000) with no impact, that disqualification periods were rounded down, and that the disqualification period started from the date of the gift. So if you do not have long term care insurance and will need Medicaid benefits, then you should not make any gifts. Gifts are transfers of assets for which fair market value is not received. This includes any gifts of cash!

Second, the principal in annuities may not count toward the asset limits [$2,000 for the applicant and $101,640 (2007) for a spouse at home] if the annuity names a spouse as the first beneficiary and the State of Florida as the second beneficiary. Should there be no spouse, the annuity must name the State of Florida as the first beneficiary. Balloon annuities have been outlawed. This is in addition to the other requirements that the annuity be annuitized and pay back principal within life expectancy if purchased within the "look back" period. Obviously, an annuity may still be an option for an applicant that is married.

Third, the unlimited exemption of the homestead from being counted as an asset is now limited to the first $500,000 of equity. Thus, any equity over the limit counts as an asset.

Fourth, the new rules do not extend the "look back" period to five years as was stated in the DRA. However, this change probably is not far behind.

In sum, while it just got harder to qualify for benefits, it is not impossible to protect assets from the "spend down" through the use of annuities for married persons, personal service contracts, investment real estate, pooled trusts, and the "half a loaf" strategy. The critical thing here is not to gift anything! This includes donations to religious organizations or charities. There are no exceptions!