

Joint Legislative Audit and Review Commission



**Recent Federal Changes
Affecting Asset Sheltering for
Medicaid Long-Term Care**

Commission Briefing

November 13, 2006



JLARC

Study Mandate

- HJR 97 and SJR 122 (2006) direct JLARC and DMAS to monitor recent federal changes affecting sheltering of assets to qualify for Medicaid long-term care
- Collaborative effort between JLARC and DMAS

In This Presentation

- Background
- DRA Changes Affecting Asset Sheltering
- State Regulatory Changes Needed to Implement DRA
- Methods of Sheltering Assets Not Affected by DRA
- Summary



Sheltering of Assets to Qualify for Medicaid Long-Term Care (LTC) Is a Concern

- State bears cost of LTC when individuals could have paid
- Resource limit for Medicaid LTC applicants is \$2,000 (both married and single)
 - Home exempt for first 6 months unless other exemptions apply
- Federal Deficit Reduction Act of 2005 (DRA) signed February 8, 2006
 - Provisions to limit sheltering of assets for Medicaid LTC

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Findings

- DRA provisions expected to have most impact in Virginia
 - (1) Lengthening look-back period and changing calculation of penalty period
 - (2) Requiring Commonwealth be named remainder beneficiary on annuities
 - (3) Evaluating purchase of life estates as uncompensated transfer
- Virginia already implemented several other provisions at State level prior to DRA

Timing Mechanisms and Penalty Avoidance Used to Shelter Assets

- Transfer assets before the look-back period
- Wait out the penalty period
- Transfer assets in series of small transfers rather than one large transfer

Prior Policy and DRA Changes Affecting Timing of Transfers and Penalty Avoidance

■ Look-back period

- Prior policy: 36 months (5 years for trusts)
- DRA requirement: 5 years for all asset transfers

■ Start date for penalty periods

- Prior policy: date asset was transferred
- DRA requirement: date eligible for Medicaid payment of LTC

Prior Policy and DRA Changes Affecting Timing of Transfers and Penalty Avoidance (cont.)

- Partial month penalties
 - Prior policy: round down to nearest whole month
 - DRA requirement: impose partial month penalties
- Multiple uncompensated transfers
 - Prior policy: count separately unless penalty periods overlapped
 - DRA *option*: to count all multiple transfers as one

Use of Annuities to Shelter Assets

- Convert countable assets into income, which may allow Medicaid eligibility
- Two ways to shelter assets
 - If annuitant died before end of annuity term, beneficiary receives remainder payments
 - Non-institutionalized spouse can convert assets (which would be pooled) into income (counted separately for each spouse)

Prior Policy and DRA Changes Affecting Annuities

- Prior policy
 - Must be disclosed and be actuarially sound
 - No requirement for remainder beneficiary or rule against balloon payments
- DRA requirements & *option*
 - Must name Commonwealth as remainder beneficiary
 - No deferrals or balloon payments allowed
 - *Option* to require issuers inform State of elective changes

Recommendation

The General Assembly may wish to consider requiring issuers of annuities to inform the State when annuitants make an elective change to their annuity pursuant to Section 3012(b) of the 2005 Deficit Reduction Act.

Use of Life Estates to Shelter Assets

- Used to shelter largest assets – home and property
- Right to occupy property during lifetime
- Two ways to shelter assets
 - Transfer property and retain a life estate
 - Purchase a life estate
- Frequently use both methods simultaneously

Retaining and Purchasing Life Estates to Shelter Assets: Hypothetical Example

*Dad transfers his \$60,000 home to his daughter, retaining a life estate valued at \$15,000 & leaving a remainder value of \$45,000. **If Dad receives cash compensation for the remainder value, he is not eligible for Medicaid LTC. If he doesn't receive compensation, the remainder value is considered an uncompensated transfer.***

*In exchange for the remainder value, the daughter gives Dad a life estate in her \$250,000 home, a life estate valued at \$48,000. **Because Va. hasn't counted life estates for Medicaid eligibility, no asset is a "countable resource."** Because Dad received a life estate in exchange for the remainder value, there is no uncompensated transfer & he is eligible for Medicaid LTC.*

Prior Policy and DRA Change Affecting Life Estates

- Prior policy

- State option to count life estates for Medicaid eligibility but not pursued in Virginia

- DRA requirement

- Resources used to **purchase** life estate must be evaluated as an uncompensated transfer unless purchaser resides in home for at least 12 months

Recommendation

The General Assembly may wish to direct the Department of Medical Assistance Services to pursue authority to consider all life estates as a countable resource for determining Medicaid eligibility.

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Mandatory and Optional Regulatory Changes

- DMAS implemented regulatory and State Plan changes needed for mandatory DRA provisions
- Optional DRA provisions where DMAS pursuing regulatory changes
 - Counting multiple transfers as one for determining penalty period
 - Establishing LTC partnership program

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Finding

- DRA did not affect some methods used to shelter assets for Medicaid LTC
 - U.S. Savings Bonds
 - Transferring homes to family members in certain circumstances
 - Payment for care provided by friends/family
 - Failure to disclose assets

Use of U.S. Savings Bonds to Shelter Assets

- U.S. Savings Bonds not counted as a resource during mandatory retention period
- Some individuals apply for Medicaid during retention period
- Can maintain non-countable status of bonds
 - Not countable if co-owner will not relinquish
 - Ability to roll funds over into bonds after retention period
- DRA did not address but DMAS investigating authority to count bonds in some circumstances

Transferring Homes to Family Members to Shelter Assets

- Can transfer homes to sibling if sibling . . .
 - Lived in home for at least 1 year prior to individual becoming institutionalized, and
 - Has equity interest in home
- Can transfer homes to adult child if child . . .
 - Lived in home for at least 2 years prior to individual becoming institutionalized, and
 - Provided care during this period which delayed nursing facility placement
- DRA did not address but State may want to investigate lien authority

Sheltering Assets by Paying Family/Friends for Care Provided and Failing to Disclose Assets

- Individuals can pay family or friends for care provided (for example, shopping and cleaning)
- 1998 JLARC study found some individuals seeking LTC did not report full assets
- DRA did not address

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Summary and Key Findings

- DRA restricts many methods used to shelter assets and qualify for Medicaid LTC (*but those methods still available to a limited extent*)
 - Lengthens the look-back period and changes method of calculating the penalty period
 - Requires the Commonwealth be named remainder beneficiary on annuities
 - Requires purchase of life estates be evaluated as uncompensated transfers
- General Assembly may want to provide additional direction to complement several DRA provisions

Summary and Key Findings (cont.)

- DRA did not address other methods for sheltering assets
 - Purchasing U.S. Savings Bonds
 - Transferring homes to family members in certain circumstances
 - Paying family/friends for care provided
 - Failing to disclose assets
- Use of these methods may increase to qualify for Medicaid LTC

DMAS Staff for This Review

Steve Ford, Director of Policy and Research

Cindy Olson, Eligibility Section Manager

Karen Packer, Senior Policy Analyst

JLARC Staff for This Review

Hal Greer, Division Chief

Kimberly Sarte, Team Leader

For More Information

<http://jlarc.state.va.us>

(804) 786-1258

