

# LK Alert

LITTMAN KROOKS  
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February 2006

## CHANGES IN MEDICAID LAWS DEFICIT REDUCTION ACT OF 2005

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005 ("DRA"). The DRA includes the following changes in federal law, which could significantly impact the Medicaid eligibility of many nursing home residents:

- **Look Back Period** - extended from 3 years to 5 years.
- **Start Date of Penalty Period** - the penalty period for uncompensated asset transfers now commences when the individual is admitted to a nursing home, applies for Medicaid and is otherwise eligible for Medicaid but for the imposition of the penalty period (i.e., the spend down has been completed). Under the old law, the penalty period would start running at the time of the asset transfer. This new law is particularly onerous, since the nursing home resident who has made asset transfers will be in a penalty period at a time when he/she has insufficient funds to privately pay for his/her cost of care. Nursing homes may apply for an **undue hardship waiver** in certain cases. Medicaid may pay the nursing home for up to 30 days while the undue hardship waiver application is pending.
- **Limitation on exemption for an individual's home** - the exemption (previously unlimited) is now limited to \$500,000 in equity, although states may raise this threshold as high as \$750,000.
- **Proof of Citizenship** - an applicant/recipient must provide one of the following documents:
  - United States Passport;
  - Form N-550 or N-570 (Certificate of Naturalization)
  - Form N-560 or N-561 (Certificate of United States Citizenship)
  - Valid state-issued driver's license or other identity document described in §274A(b)(1)(D) of the Immigration and Nationality Act ("INA"), but only if the state issuing the license or other identity document requires proof of United States citizenship before issuing such license or other identity document or obtains a social security number from the applicant and verifies before certification that the social security number is valid and assigned to the applicant who is a citizen; and

- Such other document as the Secretary of Health and Human Services (the "Secretary") may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

If an applicant/recipient cannot provide any of the above documents, then he/she can provide one document from each of the following two groups:

### Group 1

- Certificate of birth in the United States;
- Form FS-545 or Form DS-1350 (Certificate of Birth Abroad);
- Form I-97 (United States Citizen Identification Card);
- Form FS-240 (Report of Birth Abroad of a Citizen of the United States); and
- Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality.

### Group 2

- Any identity document described in §274A(b)(1)(D) of the INA; and
- Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

In view of these new Medicaid regulations, it is critical that nursing homes identify now those residents who may be affected by these changes, so as to minimize the potential negative impact on nursing home receivables by referring the residents to competent elder law counsel. We are available to assist with these issues.

### **Speakers**

Please contact Nicole Garcia at (212) 490-2020 or (914) 684-2100 if you are interested in having an attorney from Littman Krooks LLP speak at your facility.

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