Deficit Reduction Act of 2005

Overview by Mark Randall

GoldenCare USA

July 1, 2006

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Notice

- This presentation contains information about the Deficit Reduction Act of 2005 as it was signed into law on February 8, 2006.
- There are still potential legal issues that could change the scope of some areas of this law.
- You should not consider this information as legal advice. Rather, consult with your own legal advisor before using this information.

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Deficit Reduction Act of 2005

- Signed on February 8 by President Bush
- Broad law covering many areas
- This presentation will cover the Medicaid Asset Transfer and Partnership portions of the law only

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President Bush At Bill Signing

"…without reforms to entitlement programs, "spending for Medicare, Medicaid and Social Security alone will be almost 60% of the entire federal budget" by 2030.

That will leave future generations with impossible choices -- staggering tax increases, immense deficits or deep cuts in every category of spending"

Pickler, AP/Houston Chronicle, 2/8/06

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Savings Under DRA 2005

- Reduce federal Medicaid spending by:

  $11.5 billion over the five years

  $43.2 billion over the next ten years.

- Net reductions in Medicaid spending of:

  $4.8 billion over the next five years

  $26.1 billion over the next ten years

February, 2006, Deficit Reduction Act Of 2005: Implications For Medicaid, The Kaiser Commission on Medicaid and the Uninsured These reductions are offset by some provisions that increase spending so net reductions and spending is lower

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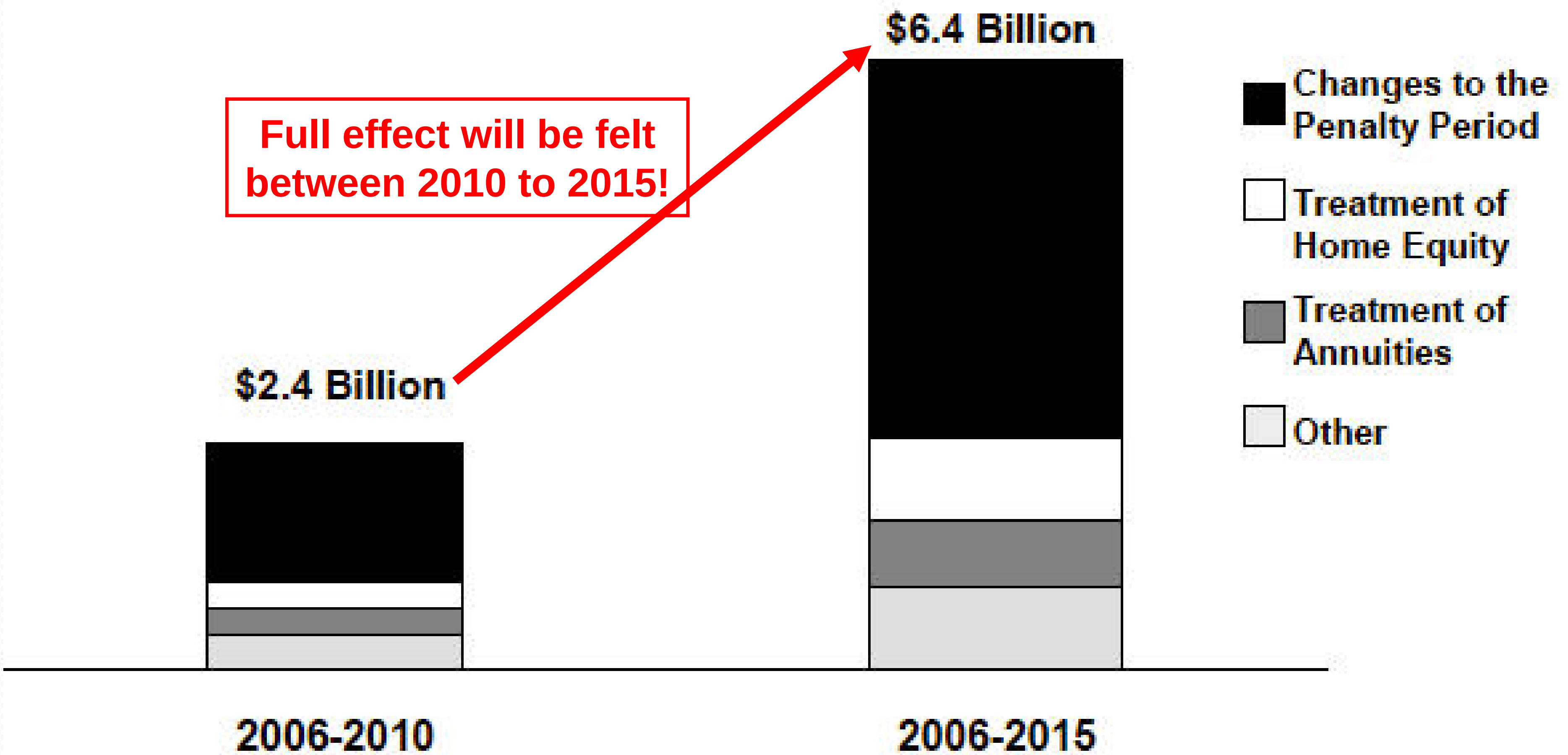
Figure 8

Medicaid Spending Reductions Attributable to Asset Transfer Changes



SOURCE: CBO, January 27, 2006

KAISER COMMISSION ON
Medicaid and the Uninsured

Affect On LTCi Industry

“Will double the number of long-term care insurance policies to 14 million in five years, the "most significant" impact of anything that's come down the pike in years for long-term care insurers.”

Jesse Slome

Director of the American Association for Long-Term Care Insurance

Newsday.com, February 9, 2006, “Remaking the Medicaid rules - New law governing coverage and those eligible is expected to steer more adults to long-term care policies.”

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Affect May Be Greater

"With what you learn today, if your LTCi or HEC sales don't double in five weeks, you're letting your clients, your company, and yourself down."

Steven Moses

Center for Long-Term Care Reform

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EFFECTIVE DATES

- If not indicated on a slide – effective date is the date of enactment (February 8, 2006)
- Exception is if state legislation required, then…
  - "the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act."

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Major Transfer Changes

- Look-back Period
  - Old Law: 36 months
  - New Law: 60 months
- Penalty Period
  - Old Law: From date of transfer
  - New Law: From date of eligibility
- Effective for transfers after date of enactment

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Example – John And Mary

- March 1, 2006:
  - They transfer $200,000 to their son(s) and/or daughter(s)
- April 1, 2009:
  - John goes into Nursing Home. He applies for Medicaid immediately

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Look-back Period

- Old Law: 36 months
- New Law: 60 months

Transfer Date: 03/01/06

Old Law

Review for any transfer made for under fair market value back to 04/01/06	Medicaid Application Date: 04/01/09

New Law

Review for any transfer made for under fair market value back to 04/01/04	Medicaid Application Date: 04/01/09

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Calculating The Penalty Period

- Penalty: Divide amount of transfer[1] by the average cost of SNF in state
- Example: (Assume average cost is $3,888)
  - Transfer is $200,000 in March, 2006
  - $200,000 / $3,888 = 51.44 months
    (Under old law, normally rounded down to 51 mos.)

1 Only transfers made for "under fair market value"

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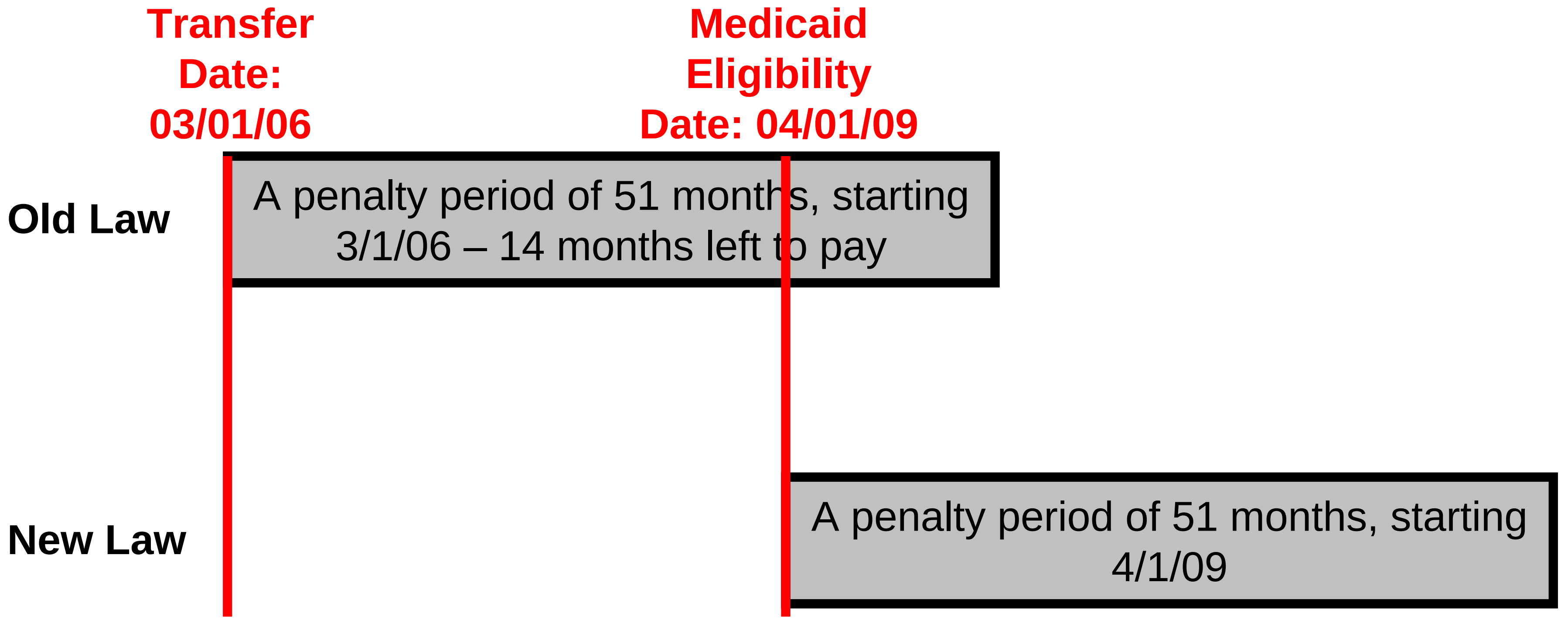
Beginning Date of Penalty Period

- Old Law: Penalty applied from date of transfer
- New Law: Penalty applied at date of eligibility



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New Law Effects On John & Mary

- So, when John becomes eligible, after April, 2009, the family will have to pay 51 months of care!
- Remember, the penalty could cost more than what was transferred. Example:
  - Actual NH cost is $4,350 a month
  - 51 months was calculated using $3,888 ave. cost
  - 51 months at $4,350 will cost $221,850

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CBO's Estimate

Moving the start of the penalty period from the date of the asset transfer to the date of application for Medicaid would result in an average delay of 3 months for Medicaid eligibility for 130,000 by 2015 (or 15 percent of new Medicaid nursing home beneficiaries annually).

February, 2006, Deficit Reduction Act Of 2005: Implications For Medicaid,
The Kaiser Commission on Medicaid and the Uninsured

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ElderLawAnswers has dubbed the bill[1]

"The Nursing Home Bankruptcy Act of 2005."

"Nursing homes will likely be flooded with residents who need care but have no way to pay for it. In states that have so-called "filial responsibility laws," the nursing homes *may seek reimbursement from the residents' children."*

1 "Congress Passes Bill Containing Punitive New Medicaid Transfer Rules" ElderLawAnswers.com 2/2/2006

Note: Red coloring and Italics were added to highlight areas this author desired to discuss.

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NATIONAL CENTER FOR POLICY ANALYSIS

Following slides are sourced from:

The Legal Responsibility of Adult Children to Care for Indigent Parents

Brief Analysis
No. 521
Tuesday, July 12, 2005

by Matthew Pakula

Matthew Pakula is a recent graduate of Michigan State University College of Law. This brief analysis is based on Pakula's academic study, "A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly."

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Elizabethan Poor Relief Act of 1601[1] Required

"father and grandfather and the mother and grandmother, and the children of every poor, blind, lame, and impotent person" to support that individual to the extent they were able.

1. July 12, 2005, "The Legal Responsibility of Adult Children to Care for Indigent Parents" National Center For Policy Analysis Brief Analysis, by Matthew Pakula

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Transplanted to American

- Transplanted to the American colonies, this duty is a *purely statutorily created duty* that does not exist in common law.
  - Prior to this legal duty, supporting poor family members was considered a *moral duty*
  - Moral duty receded as our society has evolved. Mobility changed our families.
  - More important, both federal and state programs help to meet the needs of the poor.

1. July 12, 2005, "The Legal Responsibility of Adult Children to Care for Indigent Parents" National Center For Policy Analysis Brief Analysis, by Matthew Pakula

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Filial Responsibility Statutes[1]

- Establishes a duty for adult children to care for their parents - 30 states have laws
- Can require adult children to reimburse Medicaid or institutions
- May be a one-time contribution or installment payments

1. July 12, 2005, "The Legal Responsibility of Adult Children to Care for Indigent Parents" National Center For Policy Analysis Brief Analysis, by Matthew Pakula

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States With Filial Responsibility Laws

- Alaska
Connecticut
Idaho
Kentucky
Massachusetts
Nevada
North Carolina
Oregon
South Dakota
Vermont
Arkansas
Delaware
Indiana
Louisiana
Mississippi
New Hampshire
North Dakota
Pennsylvania
Tennessee
Virginia
California
Georgia
Iowa
Maryland
Montana
New Jersey
Ohio
Rhode Island
Utah
West Virginia

Most passed between 1996-2005

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Enforcement Varies In States[1]

- 21 allow civil court action for financial support or cost recovery
- 12 specify a criminal penalty for filial nonsupport
- Many limit liability:
  - Based on Adult Child's income
  - If their financial situation changes
  - If their parent abandoned or deserted them

1. July 12, 2005, "The Legal Responsibility of Adult Children to Care for Indigent Parents" National Center For Policy Analysis Brief Analysis, by Matthew Pakula
2. Three states allow both civil and criminal actions

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Why Rarely Invoked (Hidden)

- Indigent or sick parents may have few resources to fight, but others push them if child disliked for some cultural or religious or sexual reasons
- Many regard filial responsibility laws to be potentially unconstitutional. The arguments raised include equal protection, due process, and violation of the takings clause of the 14th Amendment. An enforcement action that considered the ability of the adult child to pay might be more likely to withstand legal challenge.
- Federal law [United States Code Title 42, §1396a(a)(17)(D)] prohibits states from excluding an person from Medicaid or other social services based on the financial responsibility of any other person except a legal (opposite sex in federal law!) spouse.

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An Alternative Approach[1]

- Allow Adult Children to not pay if they file a public notice that:
  - They are not responsible for the debts of the parent
  - They foreswear any inheritance rights, and,
  - They revocation any trust set up by their parents for their benefit

1. July 12, 2005, "The Legal Responsibility of Adult Children to Care for Indigent Parents" National Center For Policy Analysis Brief Analysis, by Matthew Pakula,

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Basic Argument For Filial Laws

"The Center for Long-Term Care Financing estimates that one-third of Medicaid long-term care costs – $20 billion annually – are for seniors who could have purchased their own insurance to pay for their care, but did not."

End of Filial Discussion – Back to DRA

July 12, 2005, "The Legal Responsibility of Adult Children to Care for Indigent Parents" National Center For Policy Analysis Brief Analysis, by Matthew Pakula,

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Home Equity Limited

- Old Law: The value of the home is not used to determine eligibility for Medicaid[1]
- New Law: Individuals with more than \$500,000[2] in home equity are ineligible
  - Doesn't apply if spouse, minor or disabled child lives in the house (exemptions in the case of hardship)
- Applies for Medicaid applications filed on or after January 1, 2006

1 The home is normally exempt for the first 6 mos. 2. States can increase to \$750,000

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Treatment of Annuities

- Old law: Loop-holes included:
  - Medicaid annuities
  - Annuities bypassed probate
- New law: Requires Medicaid applicants
  - Annuity must meet conditions or could be penalized
  - Name state as remainder beneficiary for amount they paid
  - Second position if community spouse, minor or disabled child
- Effective at enactment

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Requirement States Impose Partial Months Of Ineligibility

- Old law: Many states rounded down
  - If penalty calculation is 1.5 months, rounded to one month. This encouraged monthly transfers
  - If penalty calculation is based on $3,888, client would pay NH cost, then transfer $7,775
  - Penalty calculation would arrive at 1.99 mos., round down to one month penalty. Since applied from date of transfer, the payment to NH for the month satisfied the penalty period
- New law: Apply partial month penalty

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Multiple Transfers Will Be Accumulated Into One Penalty Period[1]

- Old law: Transfers penalized individually

- New law: All transfers after the look-back date treated as one
  - Applies to people who make transfers in more than one month within the look-back period

1. States may determine to do this.

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Income First Rule

- Old law: Some states allowed assets to be moved to spouse to generate the income needed for Community Spouse MMA (Monthly Maintenance Allowance)
- New law: Must move income first
- Effective at enactment

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Certain Notes And Loans

- Old Law: Fairly open
- New Law: Transfers Include funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage:
  - Repayment term must be actuarially sound
  - Payments must be equal amounts - no deferral and no balloon payments
  - Prohibits cancellation of the balance upon death

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Purchase Of Life Estates

- Old Law: Fairly open
- New Law: Can be penalized for the purchase of a life estate interest in another individual's home
  - Unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase

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Admission Contracts[1]

- Old Law: Loop-hole
- New Law: If the admission fee can be
  - used for care,
  - refunded to the individual or heirs, or,
  - does not confer an ownership interest to an individual,
  - It will be considered an available resource

1 Affects admission fees paid to Life Care Community and Community Care Retirement Communities

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The Prize!

State LTCi Partnership Program

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State LTCi Partnership Program

- Allows states to pass Partnership Program laws to help their Medicaid programs
- But, recognized the problems with current partnership state programs
- So, changed the format of the new plans…

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States Limited In Ability To Change

- Any tax qualified plan may be used
- States may not require specific terms or benefits of policies unless they require the same for all LTCi policies sold in their state
  - Reason?
    - Goal is for reciprocal recognition among States
    - Avoid states pricing plans beyond reach of lower income residents

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State LTCi Partnership Program

- State will disregard an amount of assets equal to the insurance benefit payments
- Example:
  - If an individual's policy pays $100,000 in benefits
  - Medicaid will set aside $100,000 of assets

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Inflation Requirements

- Based on the individuals age when purchased the policy:[1]
  - Age 60 and under: Must have compound inflation coverage
  - Age 61-75: Must have some level of inflation coverage
  - Age 76 and above: No inflation coverage is required

1 Even if policy is re-issued, this requirement is based on the age of original sale

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Expectations…

- Most think that all states will pass this new legislation as it can help solve their Medicaid budget problems
- Most companies will rush to get their products certified to stay competitive in the market

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So, What Do We Do For Now?

- AHIA expects most companies to re-issue policies to allow clients to take advantage of the new law
- Companies are shying away from guaranteeing re-issue because they want to see some states pass laws to make sure there policies will be compliant and verify no benefits will have minimums or mandated
- However, if federal law holds – most policies will be certified as long as agent follows inflation guidelines
- So, if we assume
  - Your state will pass the new partnership law
  - Your law will follow federal law
  - Even if your company does not offer a re-issue option…

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Can We Force A Company To Re-issue Following Passage?

- Check your underwriting guide. How does company deal with lowering the daily benefit?
- Most will reissue new contract effective the date of the change reflecting new DB with all else the same!
- Result: New contract issued after the date the Partnership Plan begins

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Forcing A Company To Re-issue…

- Example:
  - Write a policy May 18, 2006 with correct inflation option
  - States passes Partnership Plan with an effective date of January 1, 2007
  - Company submits plan for certification and becomes certified February 1, 2007
  - Agent/Client submit a change form on February 2^{nd} requesting that the daily benefit be reduced by $10
  - The new policy should be a partnership plan…

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Be Careful When Discussing Partnership Plans With Clients!

- You don’t know if your state will pass a Partnership Plan
- If they do pass, you don’t know if the Plan they pass will follow federal law
- You don’t know if your LTCi policy will be certified under your state’s plan
- So make sure you share all this with the clients if you discuss partnership laws

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What Can We Tell Prospects?

DRA is law, so what we can tell them is:

- DRA allows states to pass this legislation, but does not mandate they pass it, so it's possible your state may not pass. Or, your state may mandate benefits or inflation options and apply to all policies sold in the state. So, it's possible that this plan may not qualify…
- On the other hand, if the state passes under DRA, the plan you're considering could very well become a partnership plan offering you the full benefits under the law! Why not lock in your insurability NOW!

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What Does The Future Hold?

- Entire bill cuts only ½% of the $14.3T in spending over the next 5 years
- Estimated to cut 60,000+ from Medicaid
- And, this is only the beginning of change…

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Bush's Proposed FY2007 Budget

- The proposal includes
  - $36B in spending cuts for Medicare over 5 years
  - $5B in Medicaid spending reductions over 5 years[1]
- Medicare cuts, the largest single reduction in the proposal, include
  - Lower hospital reimbursement – est. savings >$8B
  - Reduce NH reimbursements – est. savings >$5B
  - Reduce HHC reimbursements - savings of $3.5B[2]

1 2/8/06 Kaiser Daily Health Report
2 2/7/06 Kaiser Daily Health Report

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Thank You!

- Thanks for attending this training session.
- If you have any questions, please feel to email me at: markr@goldencareusa.com (please enter GCAgent in the subject line so that my spam filter does not block your email)
- I try to respond timely. However, with my traveling, I sometimes get behind. Please understand.

Mark Randall

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