

A BRIEF HISTORY LEADING TO DRA

The Deficit Reduction Act of 2005 is the most comprehensive change in the Medicaid laws since 1993. In 1993, with an aging U.S. population and rising nursing home costs, Congress passed the Omnibus Budget Reconciliation Act of 1993 (OBRA 93). OBRA 93 contained provisions which required states to try to recover the cost of Medicaid benefits paid, creating a new set of laws mandating estate recovery and liens on homes.¹

OBRA 93 also extended the look-back period from 30 to 36 months, or 60 month in the case of payments involving a trust. OBRA 93 created some positive changes, by expanding certain exemptions, specifically supplemental needs trusts and pooled income trusts; OBRA 93 also did away with the old Medicaid qualifying trust.

In 1996, HIPPA of 1996, better known as the "Granny goes to Jail" Laws, was an attempt to criminalize people who had transferred assets in order to qualify for Medicaid. The Legislation was heavily criticized by the press and the public, and was later repealed. The Balanced Budget Act of 1997 was follow-up legislation, which purported to impose criminal penalties on those who assist or counsel others to transfer assets to obtain Medicaid eligibility. In 1998 Attorney General Janet Reno announced that the Department of Justice would not enforce the Legislation, as it appeared plainly unconstitutional, and the law was later repealed.²

The critics who oppose Medicaid Planning regularly argue and assume that wealthy people are impoverishing themselves in order to qualify for Medicaid. However, time and time again, the statistics prove otherwise. For example a GAO (U.S. General Accounting Office) study of practices in Massachusetts found that about 90% of Medicaid planning involved merely the conversion of countable assets into exempt assets. The GAO study also found that most common was to fix up or improve assets, such as a home, already exempt under Medicaid Law.

In 1993, the GAO study found that less than 10% of the cases they reviewed involved asset transfers. The average transfer per case was about \$4,600.00.³ Similarly, in February, 2006, the independent Kaiser Foundation reported that its research "shows a low incidence of asset transfers and limited cost savings from tightening such rules." The Gerontologist Journal, in February 2006 reported similar findings, concluding that less than 12% of Medical Assistance recipients had transferred assets, with an average transfer of \$4,112.00; these figures were remarkably similar to the GAO study in 1993.

Government analysts testified at hearings contemplating the DRA changes. The Government analysts concluded that people who engage in Medicaid Estate Planning do so because of "the absence of a nationwide social insurance program covering long term care services for the elderly. In addition...Medicaid's generally low allowable asset

¹ Medicaid Estate Recovery for Long Term Care Under OBRA 93, AARP Public Policy Institute, September, 1996.

² Letter from Janet Reno to House Speaker Newt Gingrich dated March 11, 1998.

³ U.S. General Accounting Office Medicaid Estate Planning 2, GOA/HRD-93-12R (July 20, 1993).