**Major Changes in Both Medicaid and Medicare Affecting Your Clients**
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## The Importance of Medicare and Medicaid

Medicare is the primary health insurer for virtually all of our clients 65+ years old and for many of those who are younger with disabilities. By contrast, Medicaid is the health insurance welfare program that provides coverage as a last resort for those who are indigent. Michigan administers its Medicaid program through the Department of Community Health, with funding support from the federal government. At the federal level, both Medicare and Medicaid are administered by the Centers for Medicare and Medicaid Services (CMS). Recently, there have been many changes in law and policy that vastly affect basic health care, catastrophic medical, rehabilitation and long-term care for elders and persons with disabilities.

With the cost of medical and related long-term care costs soaring to well over 16% of our gross domestic product[1], all of our clients are affected by these changes. Accordingly, professional advisors who are aware of these changes and the impact they will have on their clients and client families will help be better able to provide them the guidance they need. Advisors who possess a practical knowledge of the Medicare and Medicaid programs and keep current with the respective changes to both will be best able to serve their older clients and those with disabilities. Similarly, younger clients who are aware of their financial advisor's knowledge will have added confidence regarding whom to turn to as their trusted and expert counsel if and when they are challenged with these issues.

## Michigan's Department of Community Health Issues New Policy

Michigan's Medicaid policy has now been changed to reflect changes in federal law under the Deficit Reduction Act of 2005 (DRA). The DRA includes net budgetary reductions of $4.8 billion (projected for the time period from 2006 – 2011) and $26.1 billion (from 2006 – 2016) from Medicaid. Additionally, many of the policy changes in the DRA shift costs to beneficiaries and have the effect of limiting health care coverage and access to services for low-income beneficiaries.[2]

It is not necessary for most financial professionals to become expert in Medicaid rules and policy to provide valuable advice and guidance to their clients. However, a basic awareness will help avoid confusion and misinformation. Recent policy changes will have greatest affect on prospective Medicaid recipients. These include lengthening the look-back period to five-years for all transfers of assets for less than fair market value (divestment); cumulative calculation of all transfers made within the look-back; and delaying the imposition of the divestment penalty (resulting in Medicaid ineligibility) to

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[1] CBO TESTIMONY, Statement of Peter R. Orszag, Director, Health Care and the Budget: Issues and Challenges for Reform before the Committee on the Budget United States Senate, June 21, 2007 noting that total health care spending consumed about 8 percent of the U.S. economy in 1975 and currently accounts for about 16 percent of GDP, is projected to reach nearly 20 percent by 2016. Further, about half of the spending is publicly financed, and half is privately financed.

[2] "Medicaid and the Uninsured - Deficit Reduction Act of 2005: Implications for Medicaid", Kaiser Family Foundation Report dated February 2006.

the point at which the applicant is in need of Medicaid coverage. These changes will result in making it harder for people to receive Medicaid simply because of the documentation requirements alone. Medicaid beneficiary rights advocacy is rapidly becoming a sub-specialty of the field of elder law as practitioners around the state are confronting inconsistent application of policy and expecting a proliferation of undue hardship claims.[3]

**Changing Landscape of Medicare**

The Medicare program, which has been stable and effective for almost 40 years, has also been subject to major and sweeping changes starting with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). These changes include growing fragmentation of the Medicare program itself resulting in increased cost of premiums and/or co-payments for Medicare beneficiaries, reduction of appeal rights and remedies when and Medicaid eligibility requirements, the scope of benefits provided to Medicare beneficiaries. The first such change most of us became aware of was the Medicare D Prescription Drug benefit that became effective January 1, 2006. Part D was a major change in the structure of Medicare and for the first time a portion of the program became privatized as CMS contracted out to drug and insurance companies.

At least one commentator has referred to the MMA as "misleadingly labeled as "modernization" and widely misunderstood as only prescription drug coverage."[4] The consumer advocate organization, Center for Medicare Advocacy, states, "The stable, reliable, and effective traditional Medicare program [is now] subject to draconian cuts and more privatization. This is a terrible irony, since traditional Medicare was enacted precisely because private insurance failed our nation's older people."[5]

Problems with the Prescription Drug (Part D) program continue in many ways. Chief among these are enrollment and disenrollment problems leaving beneficiaries at risk. Other problems include confusion regarding coverage (drug formularies), coverage appeals, paying for the gap in coverage (the "doughnut hole"), coordination of coverage for dually eligible Medicare / Medicaid beneficiaries, and automatic enrollment of those with otherwise creditable private coverage. Most recently, a class action lawsuit was filed on behalf of Social Security recipients. The lawsuit seeks recovery of automatic deductions wrongfully withheld by the Social Security Administration for payment of the Part D premium.[6]

The above changes to Medicare should be disconcerting. However, according to Judy Stein, Executive Director of the Center for Medicare Advocacy, "Medicare privatization will cost taxpayers approximately $150 billion over the next ten years, while it hurts

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[3] For example see *Ball v Rogers*, No. 04-16963, D.C. No. CV-00-00067-EHC, United States District Court for the District of Arizona.

[4] "Congress, fix Medicare 'reform' flaws first" by Theodore R. Marmor and Sidney J Socolar, July 24, 2007, Newsday.com. Theodore R. Marmor is the author of "Fads, Fallacies and Foolishness in Medical Care Management and Policy." Sidney J. Socolar is a co-convener of Rekindling Reform.

[5] Center for Medicare Advocacy, Inc., CMA Weekly Alert, May 3, 2007

[6] See *Machado v. Leavitt*, No. 07-30111-MAP (D. Mass.), filed June 19, 2007

many people with Medicare and strangles the traditional Medicare program."[7] Nationally, we are now beginning to recognize other effects of the MMA with the proliferation of Medicare Advantage (Part C) plans. Ms. Stein goes on to say; "Medicare Advantage is starving the successful traditional Medicare program and hurting beneficiaries. Studies by MedPAC, the Congressional Budget Office, and the Commonwealth Fund and numerous scholars confirm that taxpayers are spending between 12 – 19% more on private plans than it would cost to serve the same people in the traditional Medicare program."[8]

**Summary**

As our clients age and costs of medical and long-term care continues to rise, financial professionals and allied colleagues will increasingly be relied upon to assist in navigating through the process. While quality of care is a paramount planning concern for our elders, our care system is strained and payment sources (Medicare, Medicaid, private insurances, employer benefits) are changing and becoming more restrictive. Consequently, we must strive to identify and access any and all resources – financial and otherwise. Working with elder clients and their families has become a universal phenomenon. All of us have, or will have clients who will be challenged by the changes they need to face as they or their loved ones age. Practitioners who accept the challenge to provide guidance and counsel when their clients face these issues will be rewarded. On the other hand, if we are not prepared to provide needed services and counsel when needed, someone (with or without the requisite expertise or integrity) will fill that void.

7 "The Private Medicare Train is Already Out of the Station", Judy Stein, Esq.., July 16, 2007

8 id.