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Groups await effect of the Medicaid cuts

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SPRINGFIELD — For some lawmakers who supported it and estate planning attorneys who fear its impact, waiting to see the results of major Medicaid cuts becomes a challenge.

House and Senate Republicans expressed concern last week that a significant component of Medicaid legislation approved in May — removing ineligible individuals from the rolls — may not begin until January, six months into the state's fiscal year.

Giving a contractor hired by the state too much time to begin the process, they warned, could place additional pressure on an already burdened program.

Estate planning attorneys, meanwhile, also hang in limbo as they anticipate the new law's implementation, said Steven H. Peck, owner of the Law Offices of Steven H. Peck Ltd. in Riverwoods and a member of the Illinois State Forum of Estate Planning Attorneys.

The legislation alters the way people prepare for possible long-term medical care, he said, but attorneys must wait months to see how the state applies the changes.

"It's going to be really hard to advise a client," Peck said, "because this is what the law officially says, but the question is how they're going to interpret it."

Lawmakers aimed to account for a $2.7 billion Medicaid funding shortfall in several ways, including a set of new eligibility restrictions.

The Illinois State Bar Association opposed the legislation, noting that the changes targeted traditional estate planning methods used to financially protect a person's spouse and family.

State Sen. Dale A. Righter, R-Mattoon, who helped negotiate the Medicaid cuts package, agreed that some of the changes appear uncomfortable.

But in the end, he said, the reductions in eligibility help ensure the long-term viability of the Medicaid system.

"A little bit of tough medicine now," he said, "is better than not having a program later."

Peck, though, said the changes add a great deal of uncertainty to the estate planning process.

In addition to eliminating a technique that allowed a person to hide certain assets held only in his or her name from Medicaid, the legislation also altered the way Medicaid views various other assets.

When a person develops a financial plan for entering a nursing home, Peck said, he or she often gives away money or places it in a trust, leaving only enough cash to cover living expenses. Then, when long-term medical care becomes necessary, he or she applies for Medicaid.

Previously, he said, Medicaid would include any such transfers made within the last three years in an eligibility determination. The new law, though, increases that "penalty" clock to five years — and it now begins not when the transfer gets made, but when a person applies for Medicaid.

As a result, Peck said, a person needs to retain more assets or risk being denied entry into a nursing home.

And additional questions exist, Peck said, over whether the law applies only to new transfers or includes those made previously.

Ultimately, he said, those changes and others could lead elderly individuals to seek divorce or avoid marrying late in life.

"Most people won't want to do it," Peck said. "But if you're not married to that person, you don't have any financial obligations."

State Rep. Patti Bellock, R-Hinsdale, also a member of the group that developed the Medicaid cuts, said the system grew to an unsustainable level in recent years.

As lawmakers examined programs, she said, they saw examples of individuals with $1 million or more in assets who got Medicaid to cover nursing home expenses.

"We were directing Medicaid to make sure it goes to the most vulnerable who need it," she said. "And to try and limit some that might be sheltering assets and asking Medicaid to pay for their long-term care."