



## **ISSUE BACKGROUND**

### **Amendments to the Deficit Reduction Act (DRA)**

**NAELA urges the 111<sup>th</sup> Congress to revisit the entire DRA and make adjustments to protect older adults and individuals with special needs.**

- The Deficit Reduction Act of 2005 cut Medicaid funding significantly and tightened the eligibility rules for coverage in long-term care facilities for older adults and individuals with disabilities.
- The Senate was responsible for some of the provisions that made transfers of assets by seniors more restrictive (most of which NAELA suggested), but several very harsh provisions (which NAELA and more than 30 other national organizations opposed) from the DRA bill passed by the Energy and Commerce Committee were added in the conference committee.
- Last year, NAELA supported three amendments to the DRA. The amendments would not repeal DRA's provisions. Rather, they would help to clarify the less harmful intent of the provisions as described by the Republican leadership supporting the bill.
- Fixing some of DRA's harsh provisions and clarifying other provisions will prevent significant hardship for older adults and people with disabilities across the nation.
- This year, NAELA is working on possible legislative and regulatory approaches to correct as much of the harm that DRA causes as possible.

The three amendments mentioned above were drafted for Senator Kerry and Representative Pallone. In 2008, CBO provided scores for the amendments. The score for all three amendments was \$780 million over five years, with most of the costs coming from the first amendment and none from the third. **NAELA supports inclusion of these amendments to the DRA in a health care vehicle this year.**

**Amendment 1: NAELA supports a DRA technical amendment to clarify and strengthen the rule pertaining to allowable transfers.**

- The rule regarding allowable transfers made exclusively for purposes other than to qualify for Medicaid did not change under the DRA. CMS did not issue directives regarding this rule. The rule on allowable transfers is that transfers made exclusively for purposes other than to qualify for Medicaid are not subject to a Medicaid transfer penalty period.
- During the debate on the adoption of the DRA, several members, including Chairman Barton, voiced their opinions that these changes were not intended to apply to innocent transfers.
- Examples of innocent transfers include the help a parent provides to an adult child who has lost work and cannot pay for housing or health insurance premiums, or an individual who supports churches or charities, or a grandmother who helps a grandchild with college tuition.

- The amendment also protects victims of dementia who are not able to provide proper documentation, and victims of fraud who are not able to account for lost funds.

**Amendment 2: NAELA supports an amendment to the current law based on the stated intent of Congress which clarifies that, after an individual shows that an imposition of a transfer penalty would deprive the individual of needed medical care, food, clothing, shelter, or other necessities of life, the state must—without further evidence—provide for a hardship and not impose a Medicaid transfer penalty that would cause ineligibility.**

- Under the DRA, Congress codified a hardship provision to ensure that a person would not be deprived of needed care and necessities notwithstanding the penalties imposed by the DRA for uncompensated transfers. Despite the language of the statute and its legislative history, some states make access to the hardship provision more restrictive than contemplated by the statute.
- Chairman Barton (at the time) specifically stated, “seniors making transfers for a non-Medicaid purpose will not face a penalty nor have their access to Medicaid affected by these reforms...”
- This amendment also protects nursing homes from being forced to provide care without payment for that care.

**Amendment 3: NAELA supports technical correction language that clarifies that once a penalty period is imposed, a partial refund of the transferred assets will result in a reduction of the period of ineligibility.**

- Ambiguity in DRA’s statutory language on the “lookback period” and the start date of the period of ineligibility has resulted in confusion about how these provisions should be interpreted, with different state Medicaid programs adopting different interpretations.
- The amendment also clarifies that under DRA rules an individual does not need to be in a nursing home for a penalty period to begin running. Rather, the individual must be financially eligible and in need of such services and would be receiving them but for the penalty period. This prevents the necessity of an individual entering a nursing home solely to trigger a penalty period, instead of receiving care at home.
- The amendment further clarifies the rule that once a period of ineligibility begins, it will not be tolled if an individual leaves a nursing home or remains in the nursing home while his or her care is being paid for. This will prevent the untenable situation of periods of ineligibility only running while an individual is in a nursing home with no payment being made for his or her care.

For more information, contact Brian W. Lindberg, NAELA Public Policy Advisor, tel. 202-789-3606, email: [bwilind@erols.com](mailto:bwilind@erols.com).