

# Deficit Reduction Act is a wake-up call



**Estate-Plan Edge**  
By CURT FERGUSON

**W**HO could possibly oppose a bill called the Deficit Reduction Act? By a close vote, Congress passed this legislation and President Bush signed it into law last February.

A lawsuit has been filed challenging the act's validity, but I believe it is more for show than substance, and the law will survive.

One of the most dramatic implications of the Deficit Reduction Act of 2005 will undoubtedly affect some farm families. The larger your estate, the less you should be concerned. However, anyone with a small farm and modest income should beware and consider some very specialized estate planning.

### Fear of losing farm

Many people have expressed the fear of having their farm wiped out by nursing-home costs. Medicaid is an alternative. Medicaid is a joint federal and state program that pays medical bills and nursing-home costs for people who can't afford it.

Elder law attorneys figured out ways clients could give their land or savings to children and within a short time get the government to pay their nursing-home

### Key Points

- The new Deficit Reduction Act will affect some Illinois farm families.
- Those with small estates may want to consider specialized estate planning.
- Planning strategies available in January are no longer possible.

bill. By giving their assets away, they would position themselves to look like they could not afford to pay their own way. Then the children keep the assets while the taxpayers pay the nursing-home bill. Like it or not, Medicaid planning has been entirely legal.

Prior to the Deficit Reduction Act, if your nursing home costs you \$4,500 per month, you could give away over \$300,000 in savings, but be disqualified from Medicaid for less than three years. If the asset given was real estate and the transfer was correctly structured, an individual age 70 could give nearly twice that much, keep the farm income for life, but still qualify for government assistant within three years.

### Disqualification now extended

The disqualification period was based on the amount being given: After giving away \$200,000 (or \$400,000 in land), you'd be disqualified for about two years; giving \$400,000 (\$800,000 land)

would disqualify you for only four years.

The Deficit Reduction Act changed everything. Say Bob is in a nursing home on Jan. 31, 2012, and applies for Medicaid. His nursing home costs \$4,500 per month. Any transfers Bob made after Jan. 31, 2007, will create a problem. If he gave \$200,000 away during those five years, and spent the rest of his money down to nothing on nursing-home residence, he will still be disqualified until October 2015.

What can still be done? For a small estate (up to around \$500,000), there remain limited alternatives that might allow Bob to give about one-third to one-half of his assets to his children and qualify for Medicaid when he runs out of money.

For a larger estate, when Bob goes to the nursing home his best bet is to make a single gift right then, pay his own way for five years (around \$270,000), then apply for Medicaid when his money runs out — ideally in the 61st month. No matter what amount he gave more than 60 months before applying — say a \$2,000,000 farm — that gift does not cause any disqualification; he is eligible for Medicaid immediately in the 61st month if he is out of money and made no gifts during the prior 60 months.

As with any planning that focuses too narrowly on one issue, giving away

your estate to avoid paying the nursing home can cause worse problems. You might create capital-gain taxes for your heirs that would have been avoided. Gift techniques that avoid the capital-gain tax can end up costing you more in estate tax.

Estate- and gift-tax law is very uncertain at this time, with the current estate-tax exemption scheduled to expire in 2011.

Purchasing adequate long-term care insurance is certainly the best option. Having at least five years of coverage will provide you a buffer to give you time for gifting. Let the insurance company pay the \$270,000 for you.

If you are putting off estate planning, the Deficit Reduction Act should serve as a wake-up call. Favorable planning strategies available in January are no longer possible. What will change next month? Don't procrastinate.

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