

ALBANY

AMSTERDAM

ATLANTA

BOCA RATON

BOSTON

CHICAGO

DALLAS

DELAWARE

DENVER

FORT LAUDERDALE

HOUSTON

LAS VEGAS

LOS ANGELES

MIAMI

NEW JERSEY

NEW YORK

ORANGE COUNTY

ORLANDO

PHILADELPHIA

PHOENIX

SACRAMENTO

SILICON VALLEY

TALLAHASSEE

TOKYO

TYSONS CORNER

WASHINGTON, DC

WEST PALM BEACH

ZURICH

S. 1932, The Deficit Reduction Act of 2005 and Skilled Nursing Facilities

Today, the House approved S. 1932, The Deficit Reduction Act of 2005. Today's action clears the \$38.8 billion budget reconciliation measure for signature by the President. Included within S. 1932 are several provisions related to therapy caps, durable medical equipment ("DME"), and asset transfers which will impact the operations of Skilled Nursing Facilities ("SNFs") in 2006.

Therapy Cap, Section 5107

Current Law – The Balanced Budget Act of 1997 established annual per beneficiary payment limits on all outpatient therapy services provided by non-hospital providers beginning in 1999. Later, a series of Public Laws suspended application of the limits through December 31, 2005. Caps were slated to go into effect beginning January 1, 2006. In November 2005, CMS announced that the 2006 caps would be \$1,740.

Change – S. 1932 does not extend the therapy cap moratorium. However, the Secretary would be required to implement an exceptions process for expenses incurred in 2006. Under the process, a Part B enrollee, or a person acting on behalf of the enrollee, may request an exception from the physical therapy/speech language pathology and occupational therapy caps. The provision would be retroactive to January 1, 2006. CMS has indicated that it is exploring various ways of implementing the DRA requirements including granting automatic exceptions for certain documented medical conditions. S. 1932 also requires, by July 1, 2006, the implementation of clinically appropriate coding edits for physical therapy services, occupational therapy services, and speech language pathology services. The edits are designed to identify and eliminate improper payments.

DME, Section 5101

Current Law – Medicare Part B pays for certain items of durable medical equipment ("DME") such as hospital beds, nebulizers and power-driven wheelchairs under the capped rental category. Most items in this category are provided on a rental basis for a period that cannot exceed fifteen months. After using the equipment for ten months, beneficiaries must be given the option of purchasing it effective thirteen months after the start of the rental period. If they choose the purchase option, the title to the equipment is transferred to beneficiaries. If the purchase option is not chosen, the supplier retains ownership of the equipment. Beneficiaries can continue to use it, but Medicare rental payments to the supplier are terminated.

Change – S. 1932 will require the supplier to transfer the title of DME in the capped rental category to the beneficiary after a thirteen month rental period. The option for a fifteen month rental period with the supplier retaining ownership of the item would be eliminated. However, the option for beneficiaries to purchase power-driven wheelchairs when initially furnished would be retained. S. 1932 also provides that rental payments for oxygen equipment are converted to ownership at 36 months. The supplier would be required to transfer the title of the equipment to the beneficiary after a 36 month rental period. After transfer of the title, monthly payments for oxygen contents (in the case of gaseous and liquid oxygen) will continue to be made, as provided for under current law, for the period of medical need.

Asset Transfers, Title VI

Current Law – Federal law requires states to impose penalties on individuals who transfer assets (all income and resources of the individual and of the individual's spouse) for less than fair market value in order to qualify for Medicaid.

Change – S. 1932 tightens Medicaid asset transfer rules to make it more difficult for people to qualify for Medicaid by improperly transferring assets. This is accomplished by: lengthening the “look-back period” to five years, for all income and assets disposed of by the individual after enactment;

changing the beginning date for period of ineligibility; adding requirements for state approval of hardship waivers; increasing annuity disclosure requirements for individuals applying for Medicaid-covered LTC services; applying new requirements to the “Income First” rule; excluding from Medicaid eligibility for nursing facility or other long-term care services, certain individuals with an equity interest in their home of greater than \$500,000; and, providing a number of provisions related to state enforcement of asset transfers.

PRACTICE AREAS

ADA, Accessibility, Building and Life Safety Codes
Antitrust and Trade Regulation
Appellate
Aviation and Aircraft Finance
Business Immigration
Business Reorganization and Bankruptcy
Corporate and Securities
Energy and Natural Resources
Entertainment
Environmental
Executive Compensation and Employee Benefits
Federal Marketing
Financial Institutions
Franchising
Global Trade
Government Contracts
Governmental Affairs
Health Business
Hotel, Resort and Club
Intellectual Property
International
Investment Funds
Labor and Employment
Land Development
Life Sciences
Litigation
Public Finance
Public Infrastructure
Public Utility
Real Estate
Real Estate Investment Trusts
Real Estate Operations
Retail Industry Group
Structured Finance and Derivatives
Tax
Technology, Media and Telecommunications
Trusts and Estates

This Alert was written by Nancy Taylor, Bob Charrow, and Bill Eck of the Health Business practice in Washington, D.C. Please contact the Washington, D.C. Health Business practice or your Greenberg Traurig liaison if you have any questions regarding the subject matter of this GT Alert.

Albany

518.689.1400

Amsterdam

+ 31 20 301 7300

Atlanta

678.553.2100

Boca Raton

561.955.7600

Boston

617.310.6000

Chicago

312.456.8400

Dallas

972.419.1250

Delaware

302.661.7000

Denver

303.572.6500

Fort Lauderdale

954.765.0500

Houston

713.374.3500

Las Vegas

702.792.3773

Los Angeles

310.586.7700

Miami

305.579.0500

New Jersey

973.360.7900

New York

212.801.9200

Orange County

714.708.6500

Orlando

407.420.1000

Philadelphia

215.988.7800

Phoenix

602.445.8000

Sacramento

916.442.1111

Silicon Valley

650.328.8500

Tallahassee

850.222.6891

Tokyo

+ 81 3 3264 0671

Tysons Corner

703.749.1300

Washington, D.C.

202.331.3100

West Palm Beach

561.650.7900

Zurich

+ 41 1 364 26 00

This Greenberg Traurig ALERT is issued for informational purposes only and is not intended to be construed or used as general legal advice. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ©2005 Greenberg Traurig, LLP. All rights reserved.