

Can You Give Away All Assets Before Moving into Nursing Home?

Giving away even a small amount of assets could jeopardize your chances of getting approved for Medicaid eligibility. Many people assume that modest gifts to family or charitable donations do not affect future eligibility for Medicaid benefits because such gifts either qualify for the annual gift tax exclusion or as a charitable donation.

Since many people do not plan on moving into a nursing facility, they are not aware of the costly implications of giving away gifts preceding the nursing home stay. Costs of full-time care, whether at home or in a facility, can drain one's life savings quickly. At an average of \$60,000 per year for a single person, it's easy to see why so many people must apply for government assistance to help finance such care. In applying for Medicaid benefits, an applicant must disclose all transfers (or gifts) made by the applicant during the 60-month "Look-back Period," prior to the filing of the application. The disclosure of all transfers is required by federal law, and caseworkers have the ability to search financial records, as well as real property records, using the applicant's Social Security Number. Additionally, documentation related to any checks or debits over \$200 appearing on a bank statement will be requested by the Medicaid caseworker during the approval process.

Any transfers, including gifts to charities or religious organizations, for less than fair market value can result in a penalty period assessed to the applicant; the length of the penalty period is determined based on the total value of assets transferred. This "penalty period" is determined by dividing the uncompensated value of all assets transferred by the average monthly cost of nursing home care.

Currently, the divisor used by Medicaid in determining the length of a penalty period is \$157.34. For example, if an individual transferred his home valued at \$100,000 to his daughter, and no exemptions applied, the resulting penalty period would be 635 days (\$100,000 divided by \$157.34, and rounded down). This penalty period begins after the applicant files a Medicaid application and would otherwise be eligible for Medicaid benefits, but for the imposition of the penalty period.

After the expiration of the penalty period, Medicaid would begin to pay for nursing home services. During the penalty period, the applicant (or most likely the applicant's family) would be responsible for the payment of the nursing home charges.

While most transfers for less than fair market value result in a transfer of assets penalty, there are some allowable transfers to certain individuals that do not result in a penalty. Therefore, if an allowable transfer occurs, the individual may apply for Medicaid benefits immediately after the transfer and not have to wait out the 60-month look-back period or have a penalty assessed. These excluded transfers include gifts between spouses, gifts for the benefit of a disabled child, certain transfers to a trust for the benefit of a disabled child or transfers to a trust for the benefit of an individual under the age of 65, gifts of the homestead to a caregiving child who has provided care preventing nursing home entry for a certain period of time, as well as gifts of the homestead to a sibling who has equity interest in the homestead. Though exempt, these transfers still must be fully disclosed on the Medicaid application.

It is important to note that charitable donations and gifts to religious organizations are not considered exempt transfers and could result in a penalty period. Additionally, gifts to a non-disabled child for living expenses or other necessities are not an exempt transfer and could result in a penalty period. If you or a loved one has made transfers subject to the penalty period, steps may be taken to reduce or erase the penalty you would have received. However, this can be complicated and is best left in the hands of an experienced elder law attorney.

Whenever you are faced with the reality of losing thousands of dollars that could otherwise be preserved, seeking advice from an experienced elder law attorney who knows the intricacies of Medicaid rules is the most prudent step to take before making gifts or transferring assets.