

Transfer Rules for Medicaid Different Than IRS

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on January 1, 2002.

Entry into the nursing home frequently causes families to begin wondering how long their loved ones' assets will last before they are consumed. With nursing home costs averaging \$3,500 in Harris and surrounding counties, the prospect of losing all of the assets becomes very real. Many families become interested in gifting cash or other property out of the estate thereby reducing the assets that Medicaid will count against the potential beneficiary. However, they frequently confuse Medicaid rules with rules promulgated by the IRS regarding gifting.

The person who wishes to reduce an estate by gifting must not only be acquainted with IRS gifting rules but must also be acquainted with Medicaid gifting rules. The rules are significantly different -- and Medicaid gifting rules are usually far more liberal than what a person would think. Therefore, in many cases, the informed person will be able to gift out far more than originally thought had he or she only used the knowledge pertaining to the annual exclusion under the Internal Revenue Code. This type of planning should be done with the guidance of an experienced elder law attorney.

Another concept which confuses consumers is the Medicaid "look-back" rule for transfers made from an estate. The client will ask the question, "I had to have done something 36 months ago to effectively deal with the assets of an estate when seeking eligibility for Medicaid, right?" The answer is no. Although time is your enemy in Medicaid planning, and more time is usually better, most people can be assisted with preserving some, all or a significant amount of assets even if the family member has been in the nursing home for years.

A client came in a few months ago. Her husband had been in the nursing home for five years and when he entered the facility they had \$600,000 in cash. Now, five years later, and with \$300,000 left, she wanted to know if anything could be done to get her husband on Medicaid. After reviewing the file, there was good as well as bad news to deliver to her. The good? Her husband was eligible for Medicaid immediately, subject only to the time it would take to go through the process, and the remaining \$300,000 would be preserved for her use. The bad? The entire \$600,000 could have been preserved under federal law and the husband could have received Medicaid five years ago if they had just known to seek help at that time.