Giving Away Assets, Applying for Medicaid Can Produce Bad Results

Costs of full-time care can quickly drain one's life savings. At an average of $66,000 per year in a nursing home for a single person, it's easy to see why so many people must apply for government assistance to help finance such care. Most Americans just can't afford the extra costs long term. When 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 Medicaid caseworkers can search financial records, tax records, and real property records, using the applicant's name, social security number and other information they receive to do so. 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.

Transferring even a small amount of assets could potentially jeopardize your chances of getting approved for Medicaid. Many people assume that modest gifts to family or charity will not affect future eligibility for Medicaid benefits because such gifts either qualify for the annual gift tax exclusion of $15,000 per year or as a charitable donation. Or, perhaps, they didn't see the life circumstances ahead that ultimately result in their entry into a nursing home. Since many people have no plan to move into a nursing facility in the future, they are not aware of the perilous implications of giving away their property preceding a nursing home stay.

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 $213.71. For example, if an individual transferred his home valued at $200,000 to his daughter, and no exemptions applied, the resulting penalty period would be 935 days ($200,000 divided by $213.71, and rounded down). That's about 2.5 years in which Medicaid would not be provided to the person. This penalty period begins after the applicant files a Medicaid application and would otherwise be eligible for Medicaid benefits, but for 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. If an allowable transfer occurs, the individual may apply for Medicaid benefits immediately after the transfers and does 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 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 potentially 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 have made transfers subject to the penalty period, steps may be taken to reduce or nullify the penalty you would have received. This can be complicated and is best done with the guidance 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 is knowledgeable about the intricacies of Medicaid rules is a prudent step to take before making gifts or transferring assets.

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