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THE MEDICAID LOOK BACK PERIOD

Gifting assets can cause problems if you later need to apply for Medicaid to cover costs for a stay at a long-term care community. Basically, the government wants to make sure that the senior in need and their family are not trying to hide or insulate assets that should, from the point of view of "fairness", be used to help pay for care. Because of this, there is a five-year period that precedes the date of a Medicaid application known as the "Medicaid Lookback Period."

It doesn't matter how many gifts or transfers were made during the look back period, or to whom they were given; all gifts made during the five-year lookback period will be tallied, and the grand total divided by the "penalty divisor" for the state in which benefits are sought, to come up with the number of months of the "Penalty Period."

When a senior wants Medicaid to help pay for their long term care, the cash value of all gifts of virtually any amount within the 5-year period preceding the date that the senior applies for help are added together to determine the disqualification penalty period. The clock for the penalty period begins running the day the senior applies for Medicaid coverage. The length of the "penalty" period, the period during which no Medicaid funds will be available, depends on the total amount of the gifts made and the "penalty divisor" used by the state where they apply for Medicaid.

For example, if a senior sells their home and uses the resulting cash equity to write a check to their daughter for $100,000, and then they apply for Medicaid within five years from the date on the check in a state with a $5000 penalty divisor, then Medicaid will delay covering long term care expenses for a number months calculated by dividing $100,000 by $5,000, which is 20 months.

The penalty divisor is determined by the approximate average cost of nursing home care in the state or region within the state in which Medicaid coverage of long term care is sought. The divisor is published annually by each state's Medicaid department. In states with a generally low cost of living, and in regions of larger states with a generally low cost of living, the penalty divisor will be around $5,000. In states with a generally high cost of living, and in regions of larger states with a generally high cost of living, the penalty divisor will be range up to $12,000. Again, this is based on the average monthly cost of nursing home care. The $100,000 gift mentioned in the example above would cause a 20-month penalty period in Alabama, but only a penalty of around 8 months in San Francisco.

It gets even more complicated. For example, a senior may be made ineligible for benefits if he or she sold their home or other assets for less than fair market value during a five-year look-back period. If an asset was liquidated for less than market value and then transferred within the look-back period, then a period of ineligibility is imposed based on the uncompensated value of the transfer. Seniors considering making gifts or other transfers of assets in order to protect and pass some of their net worth to their family well before they need to move into long term care community should hire an elder law attorney for guidance.

An individual's children are often liable for the costs of care during the penalty period. In many cases, the law requires adult children to pay support for an aging parent during the penalty period even after the spend down requirement for Medicaid eligibility has been met.

A state mails a transfer penalty letter when the case reviewer has determined that a transfer was likely made in order to protect assets from spend down. This is by its very nature a somewhat subjective call. So your state's style of management of its Medicaid program, the amount and type of transfer penalty being considered, and the type of long term care to be provided to the senior all factor into the case reviewer's decision. Some states allow the family to appeal after they receive a penalty letter, but this should not be done without the assistance of an elder law attorney.

The most important thing to know and plan for is that gifts, no matter how large, will no longer count after 5 years. Again, the Medicaid look back period is five years from the date of application for Medicaid benefits, and any gifts or transfers made within that five year period are subject to penalty. Assets that have been transferred outside of the 5-year period are not subject to scrutiny. Only assets that have been transferred inside of the 5-year period are subject to scrutiny.

A Medicaid planning strategy should be put in place long before a potential need arises. While you cannot "plan" for the unforeseen, as life expectancies increase it is fairly safe to assume most people will eventually require some form of long-term healthcare. It can easily be well worth the expense of hiring someone with extensive experience with and knowledge of all applicable Medicaid rules and planning strategies. Hiring an elder law attorney can ensure that the gifting strategy intended to pass net worth onto other family members will not end up doing more harm than good.

So a senior who has a health issue that may get much worse over the next five years, or a predisposition to such a health issue, should sell their house and all other assets and move everything into a trust so that nothing is left in the senior's name for at least 5 years. After five years, a home and other hard assets that were transferred, with or without liquidation, and all liquid cash assets transferred, will not be a factor in qualification for Medicaid coverage of long term care.