

The Medicaid five-year look back: *The gift that keeps giving*

By Linda T. Cammuso

As an attorney, I'm pleased to know that most people have heard about the Medicaid five-year look back period. However, there continues to be a great deal of confusion and misunderstanding surrounding this term. The following information and example should help clarify what the Medicaid five-year look back means for you.



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The look back period refers to the five-year period before a person applies for Medicaid, usually in an institutional/nursing home situation. The Medicaid application asks if you have made any gifts or transfers of property within the past five years. Medicaid will analyze any such gifts or transfers to determine if they are “dis-

qualifying transfers.” If a gift is considered a disqualifying transfer, then Medicaid will assess a “penalty period” based on the value of the gift, which is a period of time during which you will not be able to receive Medicaid. Here is a common example of how the lookback period works: In 2007, Mary gifted \$15,000 to her grandson for college, and \$10,000 to her granddaughter to help pay for her wedding. In 2008, Mary put her house, which was worth \$200,000 at the time, in the name of her three children. At the time of these gifts, Mary was in good health.

In 2010, Mary suffered a stroke and needed nursing home care. After spending her remaining savings, Mary ran out of money and needed to apply for Medicaid. Because Mary's gifts were made within the prior five years, she had to report them on the application. Based on the value of the gifts, Medicaid assessed a penalty period of 821 days — or a little over two years. Mary will not be able to qualify for Medicaid benefits during that period.

The look back period is supposed to discourage seniors from giving away their assets to protect them from nursing home expenses. Although the law says that gifts made with a purpose other than qualifying for Medicaid will not be considered “disqualifying transfers,” the reality is that Medicaid assesses a penalty on most gifts, regardless of the motive behind the gift.

Take Mary, for example: the gifts to her grandchildren were clearly to help cover specific expenses, and grandparents make these types of gifts every day. Yet in this current economic climate, with state budget deficits and skyrocketing health care costs, these types of gifts are routinely penalized in the Medicaid application process. While Medicaid's decision can be challenged, the appeal process is lengthy, costly and very often unsuccessful.

So what exactly constitutes a “gift” for Medicaid purposes? It can be anything from adding another person's name to your asset (such as a house or bank account), removing your name from an

asset, selling someone an asset for less than its fair market value, or writing a check to a relative on a birthday or holiday. Some people have even been penalized for routine contributions to their church.

The bottom line is that estate planning and routine gifting is more challenging than ever in the current climate. Seniors, like anyone else, should have the right to do what they wish with their assets, but it is crucial to work with a qualified estate and elder law attorney to ensure that today's well-meaning gifts do not lead to future financial and medical plights for you or for your loved ones.

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