LEGAL EASE

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Generous seniors hurting chances for Medicaid

Seniors often want to provide for their adult children and grandchildren, and may not want to wait until they die to do so. They might want to thank an adult child or children for helping them as they age. Additionally, in a misguided effort to make sure that their money "does not go to the nursing home," some seniors sign over their real estate, or give away the proceeds from a sale of real estate, to adult children or other relatives, not realizing that they are setting themselves up for failure if they need to apply for Medicaid.

A recent New York case was reported on Elder Law Answers (www.elderlawanswers.com) involving a woman who transferred $78,236.74 to her daughter. The daughter then used some of the money ($41,600) to pay for the assisted living facility for her mother's care. Mother then entered a nursing home and applied for Medicaid. The State imposed a penalty period of 6.84 months for transferring the funds, meaning that Medicaid was denied until the penalty period expired. Mother appealed this decision, stating that daughter used mother's funds that were gifted to her to pay for the assisted living facility. The appeal was dismissed since the *gifted money* should have been used to pay for the nursing home. If mother had retained the funds and not given them to her daughter, there would have been no penalty period since mother would have used her own funds to pay for her care, and the "spend down" amount would have been fairly minimal.

Since the Deficit Reduction Act of 2006 was passed, the rules for gifting and then applying for Medicaid changed dramatically. Instead of being able to pay through a penalty period (otherwise known as half-a-loaf gifting), now any gifts made to anyone other than a spouse in the five year period prior to entering a skilled nursing facility for long term care results in a penalty being imposed when the applicant is "otherwise eligible for Medicaid *but for* the gift." The Pennsylvania penalty divisor for 2014 is $288.21 per day. If this case were in Pennsylvania, the result would have been similar except the penalty period would have been longer (about 9 months).

Proper planning could have resulted in a much different outcome. Seniors should be very careful of gifts to children or other relatives if there is a possibility of requiring nursing home care within five years from the gift. Planning can avoid a penalty period if the gifting is done properly, if it is feasible to do it at all. Giving the primary real estate to a child or children is a common gift. Besides the gift aspect with the resulting penalty period, there are many other reasons to carefully consider such a move. Be sure to speak to an elder law attorney before giving away your house for $1.00, or selling your home and giving away the proceeds.

Another common pitfall is having a parent or other relative pay a child or someone in the family for caregiving. There is nothing wrong with doing this, but it must be done under the terms of a written caregiver agreement, or all of funds transferred to the related caregiver will be considered a gift. A family caregiver agreement is an excellent way to compensate your caregiver for his or her care of you, while protecting more assets for the family, and avoiding the appearance of gifting. If the woman in New York had retained her assets and paid for the assisted living facility herself, then she would have qualified for Medicaid much sooner.

We all might want to save our money for children or other relatives, but in reality the best thing we can do for our children is pay our own way when care is needed. Do not fall into the trap of protecting money from the nursing home bills when you might just be sentencing your children to responsibility for your care costs because you gave them money without planning fully.