LEGAL EASE

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Truths and myths about the Medicaid look back period

Many people are aware of the Medicaid "look back" period but have many misconceptions on exactly what it is and who is affected. Seniors and their loved ones should have some basic understanding of what the "look back" period is and why it exists in order to avoid costly mistakes.

Medicaid, unlike Medicare, is a "means tested" insurance program. In other words, you must meet certain asset (very limited) and income standards to qualify for Medicaid. On the date that someone enters a nursing facility or applies for a Medicaid waiver program at home, the Department of Human Services (DHS) who administers Medicaid in Pennsylvania will look at the total amount of the applicant's assets (for both spouses if married) and the gross income of the applicant. This is generally known as the "snapshot date." But that is just part of the picture and the eligibility requirements. Since DHS must follow federal government guidelines to continue to receive federal funding, the applicant's financial transactions must be examined for the five years prior to application to determine if any funds were given away. This is the basis of the five year "look back" period.

The purpose of this rule is to avoid having persons applying for limited Medicaid dollars by giving away their money in order to qualify. If significant gifts were made in the five years prior to the application date and/or entry date into a long term care facility, a penalty can be imposed at the point that the individual "otherwise qualifies for Medicaid." In 2016, the penalty is determined by dividing the known gift amounts by the average private pay daily rate or $302.42. For example, gifts during the five years prior to a nursing home admission for long term care totaling $10,000 results in a penalty of approximately 33 days. In other words, for about one month, the applicant must pay privately for his or her nursing home costs, at the point when he or she has no more money. The gifts often cannot be returned as the recipient may not have the money any longer. No exceptions are made for gifts to charities, or to grandchildren, or to those in need of a helping hand temporarily but unable to return the cash later.

A gift is something given without receiving fair consideration in return. If you buy a car, that it not a gift as you receive a vehicle for your money. However, if you buy a car for a child or grandchild, that is a gift since you did not benefit from the car. You received less than fair market value for your money. Love and affection are not considered fair market value or fair consideration.

In Pennsylvania, it is acceptable to give $500 per month *in total* and avoid the gifting penalty. However, if you give $1,000 in any month, there is not a "carve out" for the $500 acceptable gift. Informal payments to a caregiver without a *written* contract are considered gifts. There are exceptions to the rules for gifting, but they are very specific. It is up to the Medicaid applicant to prove that the gifts were exclusively for a purpose other than to qualify for Medicaid.

If you are considering giving money away, including transferring the title of your home to anyone other than a spouse, be sure to consult with an elder law attorney as to the wisdom of doing this.