

The Medicaid “Look-Back” Period and Gifting – Part I

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Many of the folks who come in to see us with concerns about how to pay for nursing-home care have heard of the Medicaid “look-back” period. Their basic understanding is this: If you make any gifts, you’re going to be in trouble if you need to go into a nursing home in the next five years. This simple statement is true as far as it goes. It just doesn’t go far enough to be very helpful. Let me explain.

The “trouble” that may arise is this: When you file an application for Medicaid to pay for nursing-home care, you are required to disclose any gifts you made in the past 60 months (that is, in the past five years). The Medicaid office totals all such gifts made during that period (in excess of \$500 in any one calendar month), and that total is then divided by the current “average statewide daily cost of a nursing home” to come up with the number of days the applicant will have to wait *after being spent down to the Medicaid eligibility level* (\$8,000, or \$2,400 for those with monthly incomes over \$2,199) before being eligible for Medicaid to pay the nursing home.

What this means is that there are TWO periods of time that matter where Medicaid gifting is concerned:

- the five-year “look-back” period for disclosure of gifts that were made; and
- the period of ineligibility for Medicaid that results from gifts having been made in the previous five years.

An example at this point should help. Alice Smith, age 80, has dementia that has become so pronounced that she can no longer remain safely at home and has to go into a nursing home. Let’s assume that in the past five years she made gifts totaling \$107,000. Well, this amount divided by 2015 “average daily cost of a nursing home” in Pennsylvania of \$293.15¹ = 365 days or 12 months of ineligibility.

The principal problem this creates for folks in Alice’s situation is that this period of ineligibility did not begin to run back when the gifts were made. (That is the way it used to be before a major change in the Medicaid law in 2006.) Under the current law, it only begins to run after:

1. Alice (the Medicaid applicant) is “otherwise eligible for Medicaid” – that is, her countable resources are under the Medicaid threshold (either \$2,400 or \$8,000, depending upon her income);
2. Alice has been determined to need a nursing-home level of care (whether in a nursing home or at home); and

¹ This was the figure in April, 2015, when this article was written. An updated figure will come out in January, 2016.

3. Alice has filed a Medicaid application and the beginning date for the ineligibility period has been officially determined by the County Assistance Office (CAO).

So, for example, assume Alice has \$65,000 in her bank accounts and CDs when she goes into a nursing home on January 1, 2015. Assume also that she had made a total of \$107,000 of gifts in the past 60 months. She uses her \$65,000 to pay for her care in the nursing home. If the nursing home costs \$8,000 a month and Alice has \$1,500 of Social Security and pension income each month, she will go through \$57,000 in ten months. At that point, on November 1, 2015, she will be down to her allowable \$8,000, and so one of her children will file a Medicaid application.²

The CAO caseworker who reviews her application will do the calculation and then send out a notice to the family stating that, because mom made \$107,000 of gifts in the prior five years, she has an ineligibility period of 12 months. Because Alice was not “otherwise eligible” for Medicaid until November 1, 2015, when her countable assets were down to \$8,000, this 12-month penalty will not start to run until November 1, 2015 and will expire on or about October 31, 2016.

So Alice now has a big problem. She cannot go back home; she needs to be in the nursing home. (After all, she didn’t move there because it’s a nice place to live, but because she needed care that she could not get anyplace else.) But now Alice has only enough money to pay for about one more month of care, and she cannot be eligible for Medicaid for another 12 months. So where is the money going to come from to pay for those 11 extra months? Obviously Alice (and her family) have a problem.

Now readers of this column know that if her family had contacted an experienced elder law attorney when their mother first went into the nursing home, she might well have been eligible for Medicaid by this time. This is because the law allows people to take steps to speed up their eligibility for Medicaid while protecting a portion of their life savings that would otherwise have to be paid to the nursing home. And, contrary to popular belief, this can almost always be done even when the elderly person is already in a nursing home. *That is, just because no planning was done five years earlier doesn’t usually mean that it’s too late now.*

This is basic background information about gifting and Medicaid. Next month’s article will explain how good record keeping and the proper documents could have made some of mom’s \$88,000 of gifts simply disappear.

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*The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney.*

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<sup>2</sup> Alice is allowed to have up to \$8,000 of “countable assets” and still be eligible for Medicaid because her gross monthly income is not more than \$2,163. Those with incomes above that amount are limited to \$2,400 of “countable assets.” (For single people, their countable assets – with a few exceptions – are everything they own except their residence and one motor vehicle.)

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**Note:** *After the changes in the Medicaid law a few years ago, it is more true than ever that “time works against you” when planning for long-term care. It is important that families who have a spouse, parent or other loved one needing long-term nursing care contact a knowledgeable and experienced elder law attorney for advice as soon as possible. While ideally this should be done prior to admission to a nursing home, families need to realize that even after the 2006 changes to the Medicaid law, there remain opportunities for seniors to protect a significant portion of their life savings, even when facing an immediate crisis, with no advance planning. But since every day of delay in a crisis can result in \$280 of irretrievable loss, don’t delay in seeking advice.*

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