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# Medicaid's Asset Transfer Rules

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To be eligible for Medicaid, you cannot have recently transferred assets. Congress does not want you to move into a nursing home on Monday, give all your money to someone on Tuesday, and qualify for Medicaid on Wednesday. So it imposed a penalty on people who transfer assets without receiving fair value in return. This penalty is a period of time during which the person transferring the assets will be ineligible for Medicaid. This period is determined by dividing the amount transferred by what Medicaid says is the average private pay cost of a nursing home in your state.

*For example, if your state's average monthly cost of care is \$5,000 and you give away property worth \$100,000, you'll be ineligible for benefits for 20 months (\$100,000/\$5,000 = 20).*

In other words, for every \$5,000 transferred, an applicant is ineligible for Medicaid nursing home benefits for one month. In theory, there's no limit on the number of months a person can be ineligible.

*For example, the period of ineligibility for the transfer of property worth \$400,000 would be 80 months (\$400,000/\$5,000 = 80).*

Medicaid applicants must disclose all financial transactions they were involved in during a set period of time—often called the “look-back period.” The state Medicaid agency then determines whether the applicant transferred any assets for less than fair market value during this period.

For transfers made prior to enactment of the Deficit Reduction Act of 2005 (DRA) on February 8, 2006, state

Medicaid officials looked only at transfers made within the 36 months prior to the Medicaid application (or 60 months if the transfer was made to or from certain kinds of trusts). But, for transfers made after the DRA's passage, the look-back period is 60 months. (The DRA's rules may take effect later in your state, depending on when it implemented the federal law; check with a local elder law attorney. California is still in the process of adopting the DRA, but, until it does, the look-back period for Medi-Cal applicants is 30 months.) Also, remember: because Medicaid is state-administered, your state's transfer rules may diverge from the national norm. For example, New York State does not apply the transfer rules to recipients of home care (aka community care).

The DRA also changed when the penalty period created by the transfer begins. Under the prior law, the above-mentioned 20-month penalty period created by a transfer of \$100,000 would begin either on the first day of the month during which the transfer occurred or on the first day of the following month, depending on the state. Under the DRA, the 20-month period will not begin until the person making the transfer has moved to a nursing home, spent down to the asset limit for Medicaid eligibility, applied for Medicaid coverage, and been approved for coverage but for the transfer.

For instance, if someone transferred \$100,000 on April 1, 2015, moved to a nursing home on April 1, 2016, and spent down to Medicaid eligibility on April 1, 2017,

that is when the 20-month penalty period will begin, and it will end December 1, 2018.

In other words, the penalty period would not begin until the nursing home resident was out of funds, meaning there would be no money to pay the nursing home for however long the penalty period lasts. In states that have so-called “filial responsibility laws,” nursing homes may seek reimbursement from the resident's children. These rarely enforced laws—on the books in 29 states—hold adult children responsible for financial support of indigent parents and, in some cases, medical and nursing home costs. In 2012, a Pennsylvania appeals court found a son liable for his mother's \$93,000 nursing home bill under the state's filial responsibility law.

### Exceptions

Transferring assets to certain recipients will not trigger a period of Medicaid ineligibility. These include:

- A spouse (or to anyone else as long as it is for the spouse's benefit)
- A blind or disabled child
- A trust benefitting a blind or disabled child
- A trust solely benefitting a disabled individual under age 65 (even if it is for the benefit of the Medicaid applicant, under certain circumstances).

In addition, special exceptions apply to the transfer of a home. Medicaid applicants may freely transfer their home to these individuals without incurring a transfer penalty:

- The applicant's spouse
- A child who is under age 21 or who is blind or disabled
- A trust solely benefitting a disabled individual under age 65 (even if it is for the benefit of the Medicaid applicant, under certain circumstances)
- A sibling who's lived in the home during the year preceding the applicant's institutionalization and who already holds an equity interest in the home
- A “caretaker child”—defined as an applicant's child who lived in the house for at least two years prior to the applicant's institutionalization and who during that period provided care that allowed the applicant to avoid a nursing home stay.

Congress has created a very important escape hatch from the transfer penalty: the penalty will be “cured” if the transferred asset is returned in its entirety, or it will be reduced if the transferred asset is partially returned. However, some states don't permit partial returns. Check with your elder law attorney.

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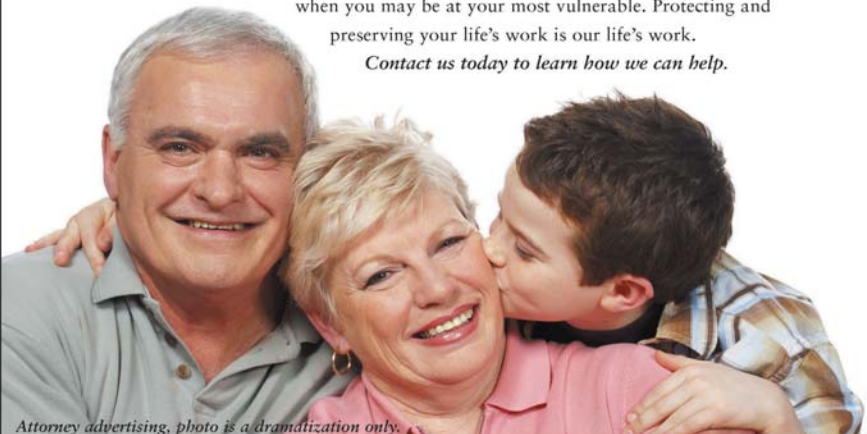
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