

## Transferring Assets Becomes More Perilous

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A big concern of many older folks is how they will meet the expense of long term care services. At an average of cost of over \$75,000, this expense can quickly deplete the nest egg of anyone of moderate means. More and more people plan for this contingency by purchasing long term care insurance.

Long term care insurance, however, will never be the answer for everyone. For one thing, it is not inexpensive; after weighing the annual expense of thousands of dollars against the eventual benefit of coverage, many people decide they simply cannot afford such policies. And many who would opt to carry long term care insurance are declined by the insurance companies because they have health risks; the insurance companies carefully screen out anyone who they view as having certain risk factors pointing to the likelihood that they will need future long term care.

Consequently, planning, for a lot of people, has focused on transferring assets to family members-most commonly one's children-as a mechanism to preserve one's estate in the face of the looming specter of nursing home costs gobbling up one's entire life savings.

Such planning has not been without peril. Since 1993, transferring assets has been discouraged by Medicaid regulations that create a penalty period. MaineCare is the program that the vast majority of people receiving nursing home care in Maine rely upon to help with the cost. MaineCare is the state's Medicaid program, and Medicaid is a federal program which operates under federal laws, but which each state administers with their own internal regulations.

The federal Medicaid laws were amended in 1993 so that whenever a person applies for Medicaid, they must report every single financial transaction they have made for the 36 months preceding the application (the "look back period"). If any transfers of assets were made within that period, a penalty period would be imposed.

The penalty period is a period of ineligibility for long term care assistance, and it was calculated by dividing the value of the asset transferred by the state's figure

representing the average cost of nursing home care in Maine. The figure used for the past 12 years was \$3,917, but it has recently been updated to \$6,255.

The penalty period begins the calendar month in which the transfer was made. Thus, even though one made a transfer within the look back period, that did not necessarily mean that it would render them ineligible for assistance.

Take the example of a person who transferred \$62,255 to a daughter in January of 2005 and applied for MaineCare assistance in December of 2005. Although this person would have been required to report the transfer in their application, the calculation would have been made by the state ( $\$62,255 \div \$6,255$ ), and a penalty period of ten months would have been applied starting in January of 2005. This penalty period, however, would have expired on November 1, 2005, and thus would not have rendered the applicant ineligible for assistance upon his application on December 1, 2005.

This is no longer the case. In February of this year, the federal Deficit Reduction Act of 2005 was signed into law by the President. This legislation made massive cuts to the Medicaid program. Among them were changes to the Medicaid program for long term care assistance.

The two most drastic of these changes were an increase in the look back period from 36 months to five years, and even worse, a change in the timing of imposition of transfer penalties. Under the DRA, instead of the penalty period starting in the month that the transfer was made, the penalty period will not start to run until a person is otherwise eligible for MaineCare assistance and applies for assistance.

In other words, the trigger for starting the penalty period will be the date of application for benefits. Because the look back period was extended to five years, the effect of this is that anyone who has made a transfer of assets within the five year period preceding a MaineCare application for long term care assistance will be penalized by imposition of the transfer penalty starting from the date of the application.

Taking the example used above, if that person who made the \$62,255 gift in January of 2005 ran out of money and applied for long term care assistance in December of 2009, they would be denied assistance for 10 months following the application.

These changes have not yet been implemented in Maine, because the Department

of Health and Human Services must first go through the rule making process to put them into effect. DHHS, however, is mandated to do so in order to continue receiving federal Medicaid money, and the changes will most likely be made before the end of the summer. Until such time, the old rules remain in effect.

Although Medicaid is the program that most people in nursing homes in Maine rely upon for assistance, the program continues to face slashes and changes in the never-ending attempt by the government to contain costs. The old strategy of gifting to obtain long term care assistance is no longer viable.

Other planning mechanisms remain, however, wending one's way through the increasingly tangled rules has become more and more of a minefield. Consequently anyone who might be in need of long term care within five years and who wishes to transfer assets should seek professional guidance prior to doing so.