The Estate Planning Advisor

Exempt Transfers for Medicaid Eligibility

By Richard J. Shapiro, J.D.

Under the Medicaid "look back" rules, gifts made by a nursing home resident within the five-year period preceding a Medicaid application are scrutinized by the Department of Social Services to determine the impact of those gifts on the applicant's Medicaid eligibility. Contrary to common perception, however, not all asset transfers made during the look back period will result in the imposition of a period of Medicaid ineligibility. Rather, there exist a number of transfers that are "exempt" from the imposition of a Medicaid "penalty."

The most common exempt transfer is a gift of assets from one spouse to another. Such spouse-to-spouse gifts – regardless of the amounts transferred – are completely exempt from the imposition of any period of Medicaid ineligibility. I typically recommend the transfer of virtually all assets into the name of the "well" spouse to enable the "ill" spouse to become immediately eligible for nursing home Medicaid coverage. The only requirement in spousal cases is that the spouse residing in the nursing home cannot retain assets in excess of $13,800. Often the only asset that will remain in the name of the nursing home resident is the bank account into which his or her Social Security and pension checks are deposited.

In addition to the exempt spousal transfers, there are a number of exempt transfers that apply to the family home. A home can be transferred *without Medicaid penalty* to any of the following:

- A spouse
- A child under the age of 21
- A blind or disabled child of any age
- A sibling who has an "equity interest" in the home (which can include payment for taxes and household expenses) and who has lived in the home for at least a year prior to the filing of the Medicaid application
- A "caretaker" child who has lived in the parent's home for at least two years prior to the filing of the Medicaid application

Besides transferring a home to a spouse, the most common exempt transfer of a residence is to the "caretaker" child. To qualify for the exemption, the child does not need to have any credentials as a health-care provider. Rather, the child who has lived with a parent for at least the two-year period must establish to the Department of Social Service's satisfaction that the child has provided needed assistance to the parent. Such assistance will usually include: cooking; dispensing medication; shopping for the parent; assistance with dressing, bathing, and similar daily tasks.

Another exempt transfer is the funding of a Medicaid applicant's assets into a Supplemental Needs Trust for the *sole benefit* of disabled family member, provided that such disabled person is under the age of 65 at the time the transfer is made. This exemption is permitted under the law

on public policy grounds. The federal government recognizes that absent the use of assets from a parent or grandparent to help support the disabled child or grandchild, the disabled person will likely need to rely on governmental programs to provide for their daily needs. Allowing an elderly parent's or grandparent's assets to fund a Supplemental Needs Trust for a younger disabled child or grandchild can help reduce that person's reliance on public assistance. Note that upon the disabled beneficiary's death, any assets remaining in this type of Supplemental Needs Trust must vest in the disabled beneficiary's estate, and are therefore subject to recovery by the state to recoup the cost of public benefits paid to or for the disabled beneficiary during his or her lifetime.

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