

Gifts and Medicaid: The Good, the Bad and the Ugly And Now the Ugliest (updated December 2005)

According to the State, the average cost of skilled nursing facilities in Connecticut is \$7905 per month. Here on the shoreline, one can expect that figure to be a little higher. With the costs of long-term care rising rapidly and the State and Federal governments attempting to balance their budgets by cutting Medicaid (Title 19), seniors are caught in the middle. Many seniors choose to preserve some of their hard-earned assets by gifting them to their children during their lifetime.

The Good

Some seniors were dissuaded from making large gifts because they would incur Connecticut gift tax. For example, a gift of a home valued at \$250,000 would require the senior to pay state gift taxes of \$10,000. In June, however, Governor Rell signed a law that drastically changes the gift tax in Connecticut for gifts made after January 1, 2005. Under the current law, each person is allowed to gift up to \$2 million in her lifetime. Each time a gift exceeding \$11,000 is made, the person making the gift must file a gift tax return with adequate valuation information, but no gift taxes are owed unless the person's total lifetime giving exceeds \$2 million.

The Bad

If the senior requires Medicaid to pay for her long-term care needs within three years of that gift, she will be penalized. Under the "3-year look back" rule, if a Medicaid applicant has made a gift in the three years prior to the date of her application, the state will divide the fair market value of the gift by the average monthly nursing home care cost (currently \$7,905). The result is the number of months that the senior cannot receive Medicaid to pay for her long-term care needs. For example, if she chooses to give that house valued at \$250,000, she would not be allowed to use Medicaid funds for 32 months after making that gift. Prudent gifting would require the senior to keep enough assets to pay for long-term care for her entire penalty period.

The Ugly

Until recently, the elder law community has been practicing under the cloud of the State's Waiver Application, which would have effectively increased the penalty period by causing the penalty to begin on the day that the applicant would otherwise be eligible for Medicaid (i.e., after she spent down all of her funds), rather than the day on which she made the gift. We all breathed a sigh of relief when Governor Rell withdrew the State's Waiver Application, however, just two short months later, she signed "Transferee Liability" into law. Under the Transferee Liability law, any gift made within three years of a Medicaid application will create a debt owed to the state by the senior or her gift recipients. Not only will the senior be penalized from receiving Medicaid, but now the state can sue the senior or her recipients for any Medicaid funds that the senior ends up receiving (up to the value of the gift). Accordingly, prudent gifting now requires the senior to keep enough assets to pay for the entire 3-year period following her gift.

The Ugliest

Those of you who read my last column "The Penalty of Generosity" (Clinton Recorder, December 17, 2005) will recall my description of the newly enacted gifting and Medicaid laws as the Good, the Bad and the Ugly. Here is the Ugliest.

This morning (December 21, 2005) in an extremely close vote (51-50, with Vice President Cheney flying back from the Middle East to cast the tie-breaking vote) the U. S. Senate passed the Budget Reconciliation Bill. The bill cuts welfare spending and makes significant changes to the Medicaid laws. Because of some amendments made on the Senate floor, the bill has to go back to the House sometime in January. Unless the Representatives change their previous votes, this bill will be enacted shortly thereafter. Those who have been contemplating gifts to their children may want to make them sooner rather than later. Here's why:

If the bill is enacted, the "look-back" period, which is currently 3 years, would increase to 5 years. If you make a gift during the "look-back" period, then the State determines the penalty period. The penalty period is the period of time that you may not receive Medicaid. It is calculated by dividing the fair market value of the gift by the average monthly cost of nursing home care (currently \$7905) and, under the current law, *begins on the date of the gift*. Even under the 5-year look-back, this alone is manageable. For example, a grandmother could choose to pay her grandson's \$25,000 college tuition bill and not have to worry that she may need state aid for her long-term care needs in the next five years, as long as she has enough to cover her long-term care needs during her penalty period—i.e., the 3 months immediately following her gift.

The bigger problem caused by the bill is that the starting date of the penalty period has been changed. If the bill is enacted, the penalty period would no longer begin on the date that the gift is made—it would *begin on the date that the Medicaid applicant otherwise qualifies for Medicaid*—i.e., when she has no money left. If she has no money left, it doesn't matter how short her penalty period is because she will not have the funds to pay for even one month. Accordingly, it appears that the only way to make gifts to your loved ones without risking your long-term care needs is to keep at least enough to cover your long-term care needs for five years. At approximately \$8000 per month, that means no one should make gifts if they have less than \$480,000 in assets.

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