## Gifting: The Grinch Who Stole Medicaid

Between Hanukah and Christmas more gifts are given in the United States than any time throughout the year. It is important to understand the impact gifting may have on long term care planning.

Gifting away assets can cause serious problems when attempting to qualify for long-term care Medicaid. An improper transfer can cause serious penalties that can leave a patient's family scrambling to figure out how to cover the cost of long-term care.

**IMPROPER TRANSFERS**

Improper gifting can come in a number of different ways:

- Giving away an asset to someone who is not an exempt recipient (generally a spouse or disabled child);
- Selling an asset for less than its fair-market value;
- Adding a person's name to an asset (For example: adding your children as joint owners on your property deed);
- Paying a child for home care or assistance without a valid personal service contract;
- Making a loan to a friend or family member with a promissory note that is not Medicaid compliant; or
- Refusing to take an inheritance that is left to you through a will or a trust.

**GIFT TAX EXCLUSIONS DON'T APPLY**

Many people get confused and think that the $14,000 per person, per year gift tax exclusion is the allowable gifting limit for Medicaid transfers. Under Medicaid rules there is no permissible gift limit. All improper transfers within the look back period (except for de minimus gifts) are added up and used to determine the penalty period. The look back period is the five years prior to an application for Medicaid.

**For example:** A grandmother decides to gift each of her four grandchildren $14,000 a year. She has been doing this for the last five years and now needs long-term care. Once she is eligible to apply for Medicaid, the state will ask for disclosure of all transfers within the look back period. In this case, she's gifted $56,000 a year in each of the look back years, for a total of $280,000. She would be ineligible for Medicaid for well over three years.

## PENALTY PERIODS

Penalty periods start when the patient is otherwise eligible for Medicaid. They are calculated by adding up all the gifts within the last five years prior to the Medicaid application. The total gifts are then divided by the average care of nursing home care as determined by the State of Ohio. This is roughly $6,000.00. So for example, if $36,000 is given away an individual is ineligible for Medicaid for six months.

## UNDUE HARDSHIP WAIVERS

If someone has given away money that cannot be recovered they can ask the state for an undue hardship waiver so that Medicaid will waive the penalty period.

An undue hardship waiver is very difficult to obtain. The state will require that all legal options be fully pursued to recover the improperly transferred assets. By legal remedies, that usually means that the patient (or the patient's agent) must legally pursue a claim against any person who received the moneys and attempt to get them back. In the example above, the grandmother would have to sue each of her grandchildren to try to get the money back before the state will even consider granting her an undue hardship waiver.

As you consider gifts this holiday season, please make sure you fully consider the implications for the long term. If you have any questions, please contact me.

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