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ELEVEN COMMON MISCONCEPTIONS IN MEDICAID PLANNING

By Thomas D. Begley, Jr.

1. **If I Don't Transfer Assets Three Years Before Entering a Nursing Home, I Can't Do it at All.** Not true. The three-year rule is a lookback rule. It has nothing to do with when a person enters a nursing home. It has to do with when a person applies for Medicaid. On the Medicaid application is a question "Have you transferred any assets to an individual in the last three years or to a trust in the last five years?" If a transfer has taken place during that period of time, there will be a penalty imposed. The penalty can be longer or shorter than three years or five years.

2. **I Can't Transfer Assets after I Am Already in a Nursing Home.** Again, the same rule applies. Neither the lookback nor the penalty have anything to do with when a person enters a nursing home. In the case of transfers to individuals, the lookback is the period of time three years prior to applying for Medicaid. The penalty is a completely different period of time. The more money a person gives away, the longer he will be ineligible for Medicaid. There are a number of Medicaid planning techniques to reduce the penalty period.

3. **To Protect My House I Should Give it to My Children Right Away.** This is almost always untrue. Before deciding to give a house to children a person should consider the tax and Medicaid ramifications. A common mistake is for a person to give a house to a child after the house is significantly appreciated in value. When the child sells the house, the child must pay the capital gains tax. If the parents sold the home, capital gains tax is usually voided. When the parent gives the child the home, the parent loses his homestead tax rebate, Veteran's deduction, senior citizen's deduction and the ability to deduct the real estate taxes on his income tax. Often the solution is to transfer the home from parent to child retaining a life estate for parent. Each case must be analyzed individually.

4. **I Should Do All of My Spend Down and Transfers Immediately.** In the case of a married couple where neither spouse has entered a nursing home, this may be untrue. While it is always good to begin the transfers immediately to start the clock running on the transfer penalty, it usually makes more sense to do the spend down *after* the institutionalized spouse enters a nursing home.

5. **You May Not Apply for Medicaid Within Three Years of Making a Gift.**

As indicated above, the three year lookback has nothing to do with the penalty. A penalty is calculated by dividing the value of the assets gifted by the State Medicaid Divisor. This calculation results in a number of months for which a person making a transfer is ineligible for Medicaid. In New Jersey and Pennsylvania, if a person gifts \$50,000, they are ineligible for Medicaid for nine months. They may apply for Medicaid in ten months.

6. **I Will Be Eligible for Medicaid the Day I Complete My Spend Down.**

Medicaid follows the first of the month rule. This means that a person must be eligible for Medicaid the first of the month if there are to receive Medicaid that month. A person who completes the spend down on the fifteen of the month is not eligible for Medicaid until the first day of the following month.

7. **There Is No Hurry to Begin Medicaid Transfers.**

One thing that is extremely time sensitive in Medicaid planning is transfers. The transfer penalty does not begin until the transfer is complete. Medicaid follows the first of the month rule. If a person in New Jersey or Pennsylvania transfers \$50,000 on September 15, they will be given credit for the full month of September on the penalty. The penalty is nine months. They will be eligible for Medicaid June 1 of the following year. If the person makes the same \$50,000 transfer on October 1, the penalty is still nine months, but does not expire until July 1 of the next calendar year. Even a short delay in making a transfer may result in an additional one month period of nursing home payment. Since nursing homes are currently averaging about \$7,000 a month, this is expensive procrastination.

8. **I Don't Need to Disclose Assets to Medicaid If I Am Not Reporting Income from Those Assets on My Income Tax Return.**

Failure to disclose assets to Medicaid such as annuities or EE bonds that do not produce current income is a crime subject to a term of imprisonment. ALWAYS DISCLOSE everything to Medicaid.

9. **If One Spouse Goes to a Nursing Home All of His or Her Income Goes to the Nursing Home.**

Actually, if one spouse goes to a nursing home, he or she is allowed to keep \$35.00 per month in New Jersey and \$30.00 per month in Pennsylvania as a personal needs allowance. In addition, the person may keep an amount necessary to pay for their private medical insurance. In many cases, monies may also be kept for the benefit of the spouse remaining at home.

10. **All Nursing Homes and Assisted Living Facilities Accept Medicaid.**

Probably 95 percent of nursing homes and 50 percent of assisted living facilities in New Jersey accept Medicaid. A person intending to go on Medicaid must determine at the time of admission if the facility accepts Medicaid.

11. **If a Facility Takes Medicaid, I Will Not Have to Private Pay If I Am Eligible for Medicaid.**

Unless a person enters a nursing home on Medicare, most facilities require a period of private pay before a person goes on Medicaid. At the time of admission, if the person cannot show that they have sufficient funds to satisfy this period of private pay, they will not be admitted. This private pay requirement or "key money" requirement varies from facility to facility. It can be anywhere from two months to two years.



Begley & Bookbinder, P.C. is a law firm that concentrates on Estate & Tax Planning, Elder Law, Estate Administration, Guardianship and Will Contests, Real Estate, as well as Medicaid Planning. We are based in Moorestown, NJ, with offices in Stone Harbor, Lawrenceville & Philadelphia, PA.

If you have any comments, e-mail us at ldickens@begleylawyer.com

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ldickens@begleylawyer.com