**Medicaid's Asset Transfer Rules**

In order to be eligible for Medicaid, you cannot have recently transferred assets. Congress does not want you to move into a nursing home on Monday, give all your money to your children (or whomever) on Tuesday, and qualify for Medicaid on Wednesday. So it has imposed a penalty on people who transfer assets without receiving fair value in return.

This penalty is a period of time during which the person transferring the assets will be ineligible for Medicaid. The penalty period is determined by dividing the amount transferred by what Medicaid determines to be the average private pay cost of a nursing home in your state.

**Example*:*** For example, if you live in a state where the average monthly cost of care has been determined to be $5,000, and you give away property worth $100,000, you will be ineligible for benefits for 20 months ($100,000 / $5,000 = 20).

Another way to look at the above example is that for every $5,000 transferred, an applicant would be ineligible for Medicaid nursing home benefits for one month. In theory, there is no limit on the number of months a person can be ineligible.

**Example*:*** The period of ineligibility for the transfer of property worth $400,000 would be 80 months ($400,000 / $5,000 = 80).

A person applying for Medicaid must disclose all financial transactions he or she was involved in during a set period of time -- frequently called the "look-back period." The state Medicaid agency then determines whether the Medicaid applicant transferred any assets for less than fair market value during this period. For transfers made prior to enactment of the Deficit Reduction Act of 2005 (DRA) on February 8, 2006, state Medicaid officials looked only at transfers made within the 36 months prior to the Medicaid application (or 60 months if the transfer was made to or from certain kinds of trusts). But for transfers made after passage of the DRA, the look-back period for all transfers is 60 months.  (The DRA's rules may take effect later in your state, depending on when the state implemented the federal law; check with a local elder law attorney. California is still in the process of adopting the DRA, but until it does, the look-back period for Medi-Cal applicants is 30 months.)  Also, keep in mind that because the Medicaid program is administered by the states, your state's transfer rules may diverge from the national norm.  To take just one important example, New York State does not apply the transfer rules to recipients of home care (also called community care).

The DRA also changed when the penalty period created by the transfer begins. Under the prior law, in the example described above the 20-month penalty period created by a transfer of $100,000 would begin either on the first day of the month during which the transfer occurred, or on the first day of the following month, depending on the state. Under the DRA, the 20-month period will not begin until (1) the person making the transfer has moved to a nursing home, (2) he has spent down to the asset limit for Medicaid eligibility, (3) has applied for Medicaid coverage, and (4) has been approved for coverage but for the transfer.

For instance, if an individual transfers $100,000 on April 1, 2014, moves to a nursing home on April 1, 2015, and spends down to Medicaid eligibility on April 1, 2016, that is when the 20-month penalty period will begin, and it will not end until December 1, 2017.

In other words, the penalty period would not begin until the nursing home resident was out of funds, meaning there would be no money to pay the nursing home for however long the penalty period lasts.  In states that have so-called "filial responsibility laws," nursing homes may seek reimbursement from the residents' children. These rarely-enforced laws, which are on the books in 29 states, hold adult children responsible for financial support of indigent parents and, in some cases, medical and nursing home costs.  In 2012, a Pennsylvania appeals court [found a son liable](http://elderlawanswers.com/son-liable-for-moms-93000-nursing-home-bill-under-filial-responsibility-law-9873) for his mother's $93,000 nursing home bill under the state's filial responsibility law.

**Exceptions**

Transferring assets to certain recipients will not trigger a period of Medicaid ineligibility. These exempt recipients include the following:

* A spouse (or a transfer to anyone else as long as it is for the spouse's benefit)
* A blind or disabled child
* A trust for the benefit of a blind or disabled child
* A trust for the sole benefit of a disabled individual under age 65 (even if the trust is for the benefit of the Medicaid applicant, under certain circumstances).

In addition, special exceptions apply to the transfer of a home. The Medicaid applicant may freely transfer his or her home to the following individuals without incurring a transfer penalty:

* The applicant's spouse
* A child who is under age 21 or who is blind or disabled
* Into a trust for the sole benefit of a disabled individual under age 65 (even if the trust is for the benefit of the Medicaid applicant, under certain circumstances)
* A sibling who has lived in the home during the year preceding the applicant's institutionalization and who already holds an equity interest in the home
* A "caretaker child," who is defined as a child of the applicant who lived in the house for at least two years prior to the applicant's institutionalization and who during that period provided care that allowed the applicant to avoid a nursing home stay.

Congress has created a very important escape hatch from the transfer penalty: the penalty will be "cured" if the transferred asset is returned in its entirety, or it will be reduced if the transferred asset is partially returned. However, some states are not permitting partial returns. Check with your elder law attorney.