



# Scales Elder Law Newsletter

*"Caring for a loved one shouldn't cost a lifetime of savings."*



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## The Medicaid "Look-Back" Period and Gifting – Part I

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Most of the clients who come in to see me with concerns about how to pay for nursing-home care have heard of the Medicaid 5-year "look-back" period. Their basic understanding is this: If you make any gifts, you're going to be in trouble if you need to go into a nursing home in the next five years.

This simple statement is basically true, as far as it goes (although the problem comes not with the nursing home but with the Medicaid office). When you file an application for Medicaid to pay for nursing-home care, you are required to disclose any gifts you made in the past 60 months (that is, five years). All such gifts during that period (in excess of \$500 in any one calendar month) are added together, and that total is then divided by the current "average statewide daily cost of a nursing home" to come up with the number of days the applicant will have to wait before being eligible for Medicaid to pay the nursing home.

For example, if all of the gifts made within five years prior to filing the Medicaid application totaled \$75,000, this amount divided by the current daily rate of \$247.06<sup>1</sup> = 303.6 days or 10 months of ineligibility.

The principal problem this creates for folks is that the period of ineligibility does not begin to run until three things are true:

1. the Medicaid applicant needs a nursing-home level of care (in a nursing home or at home);
2. the applicant is "otherwise eligible for Medicaid" – that is, has countable resources less than the Medicaid threshold (either \$2,400 or \$8,000, depending upon the applicant's income); and
3. the applicant has filed a Medicaid application and the beginning date for the ineligibility period has been officially determined by the County Assistance Office (CAO).

So, for example, assume mom has \$50,000 of checking, savings and CDs when she goes into a nursing home on January 1, 2011. Assume also that she had made a total of \$75,000 of gifts in the past 60 months. She uses her \$50,000 to pay for her care in the nursing home. If the nursing home costs \$7,000 a month and mom has \$1,000 of Social Security income each month, she will go through \$42,000 in seven months. At that point, on August 1, 2011, she will be down to her allowable \$8,000, and so one of her children will file a Medicaid application. The CAO who reviews the application will do the calculation and then send

<sup>1</sup> This was the figure in December, 2010, when this article was written. An updated figure will come out in early January.

out a notice to the family stating that, because mom had made gifts totaling \$75,000 in the prior five years, she has a penalty period of 10 months. And because mom was not "otherwise eligible" for Medicaid until August 1, 2011, when her countable assets were down to \$8,000, this 10-month penalty will run from August 1, 2011 through May, 2012.

So mom now has a big problem. She needs to be in the nursing home. (After all, she didn't move into the nursing home because it's a nice place to be, but because she needed care that she could not get anyplace else.) But mom has only enough money to pay for one more month of care, and she cannot be eligible for Medicaid for another 10 months. This is not a good situation to be in.

Now readers of this newsletter know that if her family had contacted an experienced elder law attorney when mom first went into the nursing home, she might well have been eligible for Medicaid by this time. This is because the law allows people to take steps to speed up their eligibility for Medicaid while protecting a portion of their life savings that would otherwise have to be paid to the nursing home. And, contrary to popular belief, this can almost always be done even when the elderly person is already in a nursing home. That is, just because no planning was done five years earlier doesn't mean that it's too late now.

This is the basic background information about gifting and Medicaid. Our next newsletter will explain how good record keeping and the proper documents could have made some of mom's \$75,000 of gifts simply disappear.

*The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney.*

**Note:** *With the restrictions in the Medicaid Act, it is more true than ever that "time works against you" when planning for long-term care. Nevertheless, there remain opportunities for seniors to protect a significant portion of their life savings when facing an immediate crisis, even with no advance planning. But every day of delay represents a potential \$220 of irretrievable loss, so seek advice sooner rather than later.*

Kemp Scales, CELA,\* is an Elder Law Attorney who serves clients throughout northwest Pennsylvania from his offices in Erie and Titusville. If you would be interested in having attorney Scales speak to your group, please contact us at toll free at (888) 827-2788 or by e-mail at [Info@ScalesLawOffices.com](mailto:Info@ScalesLawOffices.com).

\*Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.

## The Colonel's Corner



*Items submitted by Attorney Scales' 93-year-old father, Col. J. Shelton Scales, USMCR-Retired, who lives in a senior retirement community in southern Virginia.*

### Proofreading is a dying art.

The following are actual newspaper headlines:

#### **Police Begin Campaign to Run Down Jaywalkers**

*Now that's taking things a bit far!*

#### **Panda Mating Fails; Veterinarian Takes Over**

*What a guy!*

#### **Juvenile Court to Try Shooting Defendant**

*See if that works any better than a fair trial!*

#### **Miners Refuse to Work after Death**

*Those good-for-nothing lazy bums!*

#### **Cold Wave Linked to Temperatures**

*Who would have thought?*

#### **Red Tape Hold Up New Bridges**

*You mean there's something stronger than duct tape?*

#### **New Study of Obesity Looks for Larger Test Group**

*Weren't they fat enough?!*

#### **Kids Make Nutritious Snacks**

*Do they taste like chicken?*

#### **Something Went Wrong in Jet Crash, Expert Says**

*No, really?*