



Scales Elder Law Newsletter

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



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Medicaid's "Five-Year Rule" for Transfers of Assets

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There are certain questions I am frequently asked regarding long-term care planning and Medicaid. I will be sharing answers to some of these common questions, as these may be of interest to many of our readers.

Q: My wife says that if you give anything away you will be ineligible for Medicaid to pay for nursing home care for three years. I say it is five years. Which one of us is right?

A: Well, the answer is not as simple as you might think. You are correct in that the Medicaid laws were changed a few years ago to extend the "look-back" period from 36 months (three years) to 60 months (five years). However, the "look-back" period simply means that you have to disclose any transfers made within the past five years when you apply for Medicaid for long-term care. This does not necessarily mean that you are ineligible for that long. (In other words, it's a five-year "look-back" period, not a five-year "take-back" period.)

The period of ineligibility depends on how much you have given away, and that calculation changes each year. In 2011, there is a one-month period of ineligibility for every \$7,900 you give away. The tricky part is that this period of ineligibility does not start to run until you are already in the nursing home (or in need of a nursing-home level of care) and "otherwise eligible for Medicaid" (meaning you're down to

only a few thousand dollars). This obviously makes things complicated for covering the cost of your care until you can start getting Medicaid, and the law does not provide a clear answer.

While it's important to remember the five-year "look-back" period, how transfers of assets will affect your eligibility is complicated. But even in a crisis situation, when you or your spouse or parent is already in a nursing home, there are legal ways to protect a significant portion of your assets that would otherwise have to be spent paying for your care. A qualified elder law attorney can advise you regarding your specific case.

Q: When my aunt went into a nursing home back in 2005, she started getting Medicaid right away, even though she had given away almost \$25,000 six months before. My husband's mother, however, was just admitted to a nursing home and even though she hardly has any money, they are saying she cannot get Medicaid because she gave \$20,000 to her children two years ago! What's going on here?

A: The reason why your aunt and your mother-in-law are treated differently for Medicaid eligibility purposes is because of changes in the law by the Deficit Reduction Act (DRA), which went into effect in February of 2006. Prior to the DRA, the period of ineligibility started to run in

the month that a gift was made. So when your aunt gave away \$25,000 and needed Medicaid to pay for her nursing home care 6 months later, the 3.5-month period of ineligibility for the transfer had already expired and she could get Medicaid right away. (The period of ineligibility is equal to the amount of the gift divided by the average monthly nursing home cost in PA – in 2005 it was \$7,236 a month. So $\$25,000 \div \$7,236 = 3.5$ months.)

After the DRA, however, the period of Medicaid ineligibility does not even start until the person is “otherwise eligible” for Medicaid. That means it doesn’t start to run until he or she is already in the nursing home and out of money! So who is going to pay? And this rule applies to any gifts within the past five years, even if there was no thought at the time of nursing homes or Medicaid (for example, birthday or Christmas gifts, money to a child to help with the down payment on a home, or to fix a car, or to help a grandchild with college). It also creates problems for the nursing home, which still needs to be paid until Medicaid payments starts. Unfortunately, the law does not provide a clear answer on how these problems are to be resolved. This makes it more important than ever that any gifts or transfers of assets (in excess of \$500) are done carefully and with a good understanding of the Medicaid eligibility rules. A qualified elder law attorney can provide guidance on these matters to avoid problems down the road.

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*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.*

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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’ 94-year-old father, Col. J. Shelton Scales, USMCR-Retired, who lives in a senior retirement community in southern Virginia.*

Col. Shelton Scales, while at 94 not as lean, is still a Marine and a great believer in regular exercise. He told me about an exercise program he uses and recommends it for other seniors who want to stay fit. It goes like this:

Begin by standing on a comfortable surface, where you have plenty of room at each side. With a 5-pound potato sack in each hand, extend your arms straight out from your sides and hold them there as long as you can. Try to reach 30 seconds, then relax.

Each day you will find that you can hold this position just a little longer. When you can do it for a full minute, move up to 10-pound potato sacks.

Then try 20-pound potato sacks and keep moving up until you get to where you can lift a 50-pound potato sack in each hand and hold your arms out straight for a full minute. (My father says he is at this level.)

When you’re confident that you can handle this and are ready to move to the final level, put a potato in each sack.