



LAW TIPS

One of the pleasures of practicing law is helping people resolve legal questions they come face to face with in their lives. Some of these situations are pleasant – such as selling your house for a profit or buying your dream house – while others cause various levels of anxiety – such as when someone owes you money or when you have been charged with a crime. We hope these law tips will entertain as well as enlighten you. **PLEASE REMEMBER** these are only tips and no legal decision should be made without first obtaining advice specific to your particular situation.

DOES CONGRESS WANT TO PUT GRANDMA IN JAIL?

Not only grandma, but her son and daughter, lawyers and accountants, social workers and hospital personnel, brokers and financial advisors and bankers, if they assist grandma in transferring assets that result in the imposition of a period of ineligibility under the Medicaid rules. How is this possible? Read on.

As of January 1, 1997, anyone who "knowingly and willfully disposes of assets (including by any transfer in trust) in order for an individual to become eligible for medical assistance" has committed a crime if the transfer results in the imposition of a period of ineligibility for medical assistance under the Medicaid rules.

Transfers of assets for less than fair market value (gifts, for example) can result in the applicant being denied Medicaid benefits if the transfer was made during a three year period prior to the application for Medicaid assistance. (The look-back period is five years for trusts.) For example, if grandma gives away a \$9,000 car within three years of her application for assistance, Medicaid could refuse to pay for her first \$9,000 of expenses. If the grandma's nursing home costs \$3,000 per month, Medicaid might not help out until three months have gone by. This is called a period of ineligibility. The theory is that relatives will be forced to disgorge the money grandma gave them to become eligible for assistance.

What the law does is criminalize attempts to save assets for grandma's heirs. The penalty for violating this provision is up to one year in jail, a maximum of \$10,000 in fines, and loss of Medicaid eligibility for one year. Does it apply to every transfer within the look-back period? Does it apply to those that have already been made? Some worry that a presumption been created that any transfer that results in grandma's assets declining before application is a potential criminal act, so that grandma and her advisors better be able to show a purpose other than lowering grandma's assets before she applies? No one knows. Except you better be careful while this is being worked out. If you think a transfer will make grandma ineligible for benefits (something no one can usually predict), take time to think carefully before the transfer is finally carried out.

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