Transferring Assets to Qualify for Medicaid
Doing it Right With an Elder Law Attorney

Congress has established a period of ineligibility for Medicaid for those who transfer assets. Since February 8, 2006, the so-called "look-back" period for all transfers is 60 months.

While the look-back period determines what transfers will be penalties, the length of the penalty depends on the amount transferred. The penalty period is determined by dividing the amount transferred by the average monthly cost of nursing home care in Pennsylvania. For instance, if the nursing home resident transferred $100,000 and the average monthly cost of care is $8,916.00 the penalty period would be 11 months (100,000/8,916 = 11). The 11-month period will not begin until (1) the transferor 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. Therefore, if an individual transfers $100,000 on April 1, 2011, moves to a nursing home on April 1, 2012, and spends down to Medicaid eligibility on October 1, 2012, that is when the 11-month penalty period will begin, and it will not end until August 1, 2013.

Transfers must be made carefully, and with an understanding of all the consequences. People who make transfers must be careful not to apply for Medicaid before the five-year look-back period elapses without first consulting with an elder law attorney, as the result could be devastating. Transferring assets is often part of a comprehensive Elder Law Plan, but it must be done right.

Be very, very careful before making transfers. Bear in mind that if you give money to your children, it belongs to them and you should not rely on them to hold the money for your benefit. However well-intentioned they may be, your children could lose the funds due to bankruptcy, divorce, lawsuit or other situation. Any of these occurrences would jeopardize the savings you spent a lifetime accumulating. Do not give away your savings unless you are ready for these risks.

In addition, be aware of the fact that having your children hold your funds in their names could jeopardize your grandchildren's eligibility for financial aid in college. Transfers can also have bad tax consequences for your children. This is especially true of assets that have appreciated in value, such as real estate and stocks. If you give these to your children, they will not get the tax advantages they would get if they were to receive them through your estate. The result is that when they sell the property they will have to pay a much higher tax on capital gains than they would have if they had inherited it.

Even though a nursing home resident may receive Medicaid while owning a home, if the resident is married it is essential to transfer the home to the community spouse. This gives the community spouse control over the asset, protects the asset, and allows the spouse to sell it after the nursing home spouse becomes eligible for Medicaid. In addition, the community spouse should change his or her will to bypass the nursing home spouse. Otherwise, at the community spouse's death, the home and other assets of the community spouse will go to the nursing home spouse and have to be spent down.

While most transfers are penalized with a period of Medicaid ineligibility of up to five years, certain transfers are exempt from this penalty. Even after entering a nursing home, the following transfers are permissible and won't cause a period of Medicaid ineligibility: to your spouse (but this may not help you become eligible since the same limit on both spouses' assets will apply); and/or to your child who is blind or permanently disabled. In addition to the aforementioned, you may transfer your home to: your child who is under the age of 21; your child who has lived in your home for at least two years prior to your moving to a nursing home and who provided you with care that allowed you to stay at home during that time; or a sibling who already has an equity interest in the house and who lived there for at least a year before you moved to a nursing home.

As a rule, never transfer assets for Medicaid planning unless you discuss this planning with an Elder Law attorney — the results can be catastrophic.

This **Industry Insight** was written by Christine Brown Murphy. Christine Brown Murphy is a partner with the elder law firm of Zacharia & Brown, PC. Zacharia & Brown is one of the oldest, most established elder law firms in Western Pennsylvania. Their practice includes life care planning for seniors, elder law, Medicaid & Veterans Benefits eligibility, nursing home asset protection, care review and advocacy, and estate planning and administration. Contact information: www.PittsburghElderLaw.com,724.942.6200, 111 West McMurray Road, McMurray, PA 15317.