

**NEW REVISIONS TO  
THE MEDICAID LAWS**  
PART II IN A SERIES OF ARTICLES,  
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Last month, Congress passed, with very little fanfare or public attention, sweeping changes to the Medicaid Laws. The new laws will have three likely major impacts:

- First, the "look-back" period has been expanded from three years to five years
- Second, there will be a delayed "penalty period", in the event that an individual makes gifts
- Third, the nursing homes themselves may suffer the biggest harm, as a result of the new law

The supposed justification or need for the change in laws was the **myth** that there are thousands or millions of people deliberately impoverishing themselves, in order to qualify for Medical Assistance, to pay for their nursing homes. I say **myth**, because study after study and year after year, the statistics have shown that nationwide, very few people are transferring substantial amounts of money, to qualify for Medicaid. In fact, a recent study conducted by the Gerontologist Journal showed that less than 12% of Medical Assistance recipients had transferred assets, with an average transfer of \$4,112.00.

In practicing law for more than 25 years, there has NEVER been a person come in and say that they wanted to transfer all their money to qualify for Medicaid; in the typical case, people say that it isn't that they don't want to pay anything; rather, they tell me they don't want to lose everything.

The biggest change in the new law isn't the expansion of the look-back from three years to five years. Rather, it's the fact that a penalty period now doesn't start until a person is in a nursing home, and otherwise Medicaid eligible.

For example, under the old law, if a person gave away property, you could calculate how long it would be before they would otherwise be eligible for Medical Assistance. This was based in large part on a formula, centered on what is essentially the average cost of nursing home care, paid by Medicaid and the State. Last year, the amount was \$5,096.00 per month. So in other words, if a person gave away \$20,000.00, you would divide \$20,000.00 by \$5,096.00, and you come up with a penalty period of 3.9 Months. This system would then round down, so you would be ineligible for Medical Assistance for three months. Under the new law, assuming that the monthly amount stays the same, the penalty period wouldn't start until that person is in the nursing home, and otherwise eligible for Medical Assistance; in the case of a single person, for example, their assets would have to be below \$2000.00.

The problem, obviously, is that if the person is down below \$2,000.00, they won't have the ability to pay the nursing home, at all. This law will likely have it's intended effect of preventing or discouraging people from making any gifts, prior to going to a nursing home. However, the law makes no distinction between gifts made with the intent of becoming eligible for Medical Assistance, and gifts made for any other purpose. So for example, for the person who simply made Christmas gifts, or may have paid a grandchild's college tuition, or have helped out a son or daughter with a down payment of a home, they can easily find themselves trapped by the new law.

Similarly, especially given the lengthened look back period, people may find that they've made gift years before they had any thought that a nursing home was in their future. Yet, the penalties are pretty harsh, and pretty absolute.

So in the end, **one must ask** who may have to absorb the costs. **Will it be the nursing homes?**

Say, for example, where a person has made some gifts, and then find themselves in a nursing home. Assuming that they have some money where they can continue to privately pay for a while, but eventually that money runs out. At that point in time, they're now otherwise Medicaid eligible, except they made some gifts. Now, they no longer have cash or other funds to pay for the nursing home; yet they're not going to be eligible for Medical Assistance, because of the gifts. The nursing homes are going to find **themselves dealing with** a lot of those non-payment months. Additionally, the law also eliminated the "rounding down" explained above. We're going to find people who are ineligible for just fractions of a month.

**Just how are the nursing homes going to handle non-payment;** Medical Assistance won't pay, so **are the nursing homes going to have to absorb those costs? Or will they file bankruptcy and tell your loved one to find a new place to live? It is a complex issue with no seemingly upside.**