DUKE DEMENTIA FAMILY SUPPORT PROGRAM

Caregiver Connections

An Educational Webinar Series With The Experts

The presentation will begin shortly.
Thank you for your patience!

dukefamilysupport.org

919-660-7510

clarity. LEGAL GROUP

CLEAR ANSWERS TO LIFE'S CHALLENGES

Our Office

From Chapel Hill:

Start on East Franklin Street and take a right onto Raleigh Street
As it dead ends, take a left onto Country Club Road
Turn Left onto Raleigh Road
Turn right onto W. Barbee Chapel Rd and your destination will be on your left

FROM DURHAM:

Begin on NC 147 S to I-40 W
Take I-40 W to exit 273A to merge onto NC-54 W toward Chapel Hill.
Turn left onto W. Barbee Chapel Rd
Your destination will be on your left

FROM RALEIGH:

Take I-40 W to exit 273A to merge onto NC-54 W toward Chapel Hill.
Turn left onto W. Barbee Chapel Rd
Your destination will be on your left

Medicaid's Five-Year Lookback Rule

- What is it?
- How does it work?
- How can you plan around it?

What is the Five-Year Lookback Rule?

- Context: specific Medicaid programs
  - Long-Term Care Medicaid (nursing homes)
  - PACE Medicaid (PACE services)
  - Some others (but not all), not covered here
- Context: to qualify for these programs, countable assets must be less than $2,000.00
- Policy goal: preventing potential recipients from simply giving away assets in order to qualify for benefits

What is the Five-Year Lookback Rule?

- General Rule: at the time of application, the caseworker will evaluate the five years prior to application for gifts made
- Applies to transfers of real or personal property and to transfers by an applicant or applicant's spouse
- Applies to transfers of both countable and non-countable property
- Applies to transfers that occur after the "Lookback Date," which is typically five years prior to the Medicaid application

How Does the Rule Work?

- Applicant is required to disclose relevant transfers
- Caseworker will require account statements covering up to the entire lookback period
- Caseworker will review statements and transfers of assets for less than fair market value
- All transfers for less than FMV are presumed penalizable—burden is on applicant to overcome that presumption

How Does the Rule Work?

- Total value of gifts over the five-year period is divided by $6,810 (under current rules), the result is the "penalty period," in months
- During penalty period, the applicant is eligible, but no benefits are paid until penalty period has been completely served
- Penalty period does not begin until Medicaid benefits would otherwise have begun

Rebuttal

- Applicant may rebut the presumption that the asset was transferred to gain Medicaid eligibility
  - Must prove asset was transferred *solely* for a purpose other than qualifying for Medicaid
- Transferred asset was returned, or other assets of equivalent value were returned
  - Gift is said to be "cured"
- Rebut the valuation of the asset or the value of the compensation received

Undue Hardship Waiver

- This is a request by the applicant that the sanction be waived
  - i.e., sanction would endanger the health or life of the applicant due to lack of medical care, food, shelter, and other necessities
  - AND no other income or assets are currently available
  - AND applicant is making a good faith effort to recover the transferred asset or its value

Allowable Transfers

- Compensated Transfers (of course!)
- Transfers to legal spouse or to a blind or disabled child of any age
- Certain allowed transfers of homesite
- Transfers to special needs trust or pooled trust
  - d4A and d4C trusts

Allowable Transfers

- Transfers to trust for "sole benefit" of a disabled child or other disabled individual under age 65
- Purchase of Medicaid-compliant annuity
  - Actuarily sound, equal payments, Medicaid as beneficiary
- Loan of funds in return for Medicaid-compliant promissory note
- Regular donations/gifts

Planning for the Five-Year Lookback

- Generally: avoid making unnecessary gifts
- Cure gifts, when possible
- Prepare/retain evidence for rebuttal and/or undue hardship
- Example with intentional gift: half-a-loaf strategy
  - Simultaneous gift and purchase of Medicaid-compliant annuity at time of application
  - Protects some but not all of assets (i.e., “half a loaf”)

Making Gifts Years in Advance

- Can be done if more than five years prior to application
- Works well with long-term care insurance
- Gifts to family members is disadvantageous
  - Loss of control/access, risk of loss to creditors, possibility of unintended consequences, loss of basis step-up opportunity
- Alternative: Using an Irrevocable Trust

Any Questions?

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