

Will the State Take All My Assets If I Need Nursing Home Care?

Did I Miss the Boat Five Years Ago?

Kathleen Kienitz, Esq., Certified Elder Law Attorney

Lewiston Sun Journal, April 27, 2008 - updated February 2013

With nursing home costs soaring - in Maine in excess of \$90,000 per year - when the need for such care arises, many families find themselves in a state of shock. An individual is only allowed \$10,000 in assets before he'll qualify for MaineCare assistance with these costs. A spouse is allowed roughly an additional \$115,000 and the family home is exempt. Even with these allowances, this still leaves many people of modest means vulnerable to having their estates quickly depleted by the costs of long term care.

MaineCare for long term care assistance encompasses the federal Medicaid program. Although it is administered by the state, it is subject to federal law and regulations. Since 1993, several waves of federal legislation have tightened the rules with regard to qualifying for Medicaid. Until 1993, one could simply give away one's excess assets to meet the asset limits for Medicaid and immediately qualify for assistance. This was changed with the passage of OBRA 93 which first introduced transfer penalties into the rules. Initially, any transfers made within 30 months of application for assistance would result in a period of ineligibility for assistance. That "look back period" was later extended to 36 months. If transfers or gifts of assets were made during this period, a penalty period of ineligibility would be imposed. The number of months of ineligibility was determined by dividing the value of the transferred assets by the average monthly cost of nursing home care in the state. The period of ineligibility started the month the transfer was made.

In 2006, new laws were enacted that not only extended the look back period to five years, but delayed the onset of the penalty period until the point at which the individual's assets were at or below the asset limits and the individual was in need of nursing home care. The delay of the beginning of the penalty period had a more devastating effect on planning than the lengthening of the penalty period, as this meant that the penalty period now hangs over one's head for the entire five year period following the transfer.

It seems that word has gotten out about these changes and a lot of people have simply resigned themselves to the thinking that there is nothing they can do to protect their assets from the ravages of long term care costs unless they planned five years in advance. In fact, rumors have been swirling that the look back period is being extended to seven years (Incidentally, this has no basis in reality). The main point that this article strives to make is that such conclusion is an over simplification and that there are often overlooked planning options. It is true that planning has become more difficult, but one should never assume that there is nothing to be done.

There are still numerous planning options, many of which depend on the individual's or the couple's individual circumstances. There are exemptions from the transfer penalty rules, such as for transfers to a disabled child, a child who has cared for the parent in the parent's home, a trust for a disabled person or a sibling with an equity interest in the applicant's home. Annuities can be used if they are properly structured. It is even still possible to make outright transfers of assets when one is on the brink of needing nursing home care with careful planning. It is strongly advised that professional advice be sought before embarking on the planning strategies touched on in this paragraph. With the assistance of a qualified elder law attorney, however, people are often pleasantly surprised to learn that their situation is not as bleak as they had imagined it to be.