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Medicaid Spend Down: Convert Assets into Exempt Resources

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Another technique for accelerating an applicant's qualification for Medicaid and/or preserving family assets is to convert assets that would otherwise be counted toward the Medicaid resource eligibility limits (countable assets) into **non-countable** (or exempt) resources.

In most instances, this involves purchasing non-countable assets. Since the applicant typically expends cash (a countable resource) and in return receives full value (in the form of the non-countable asset), no transfer penalty is triggered by the exchange.

There are a number of ways to convert countable assets into non-countable form.



Some examples include:

- Purchasing a new or more expensive personal residence
- Making home improvements or repairs to an existing personal residence
- Buying (and/or trading in an existing motor vehicle for) a more expensive motor vehicle
- Purchasing household goods and/or home furnishings
- Purchasing joint or life estate interest in child's home (discussed below)

Purchase Joint or Life Estate Interest in Child's Home

Another possible technique to accelerate an applicant's qualification for Medicaid and potentially preserve assets involves the planned purchase by the applicant of a life estate interest (or possibly an interest as joint tenant with rights of survivorship, JTWROS) in the home of a child.

If the parent/applicant pays not more than fair value for the life estate interest (or joint interest), the payment of the purchase proceeds for full and fair consideration is arguably not a "transfer" that triggers a penalty for Medicaid purposes. Also, because the parent's life estate interest (or JTWROS interest) terminates at death, there is no asset in the parent's estate that is subject to estate recovery (at least in those states, like

Pennsylvania, that do not expand estate recovery to include non-probate assets).

However, as with most other elder care strategies, important limitations apply.

One Year Residency Requirement

In 2006 as part of the Deficit Reduction Act of 2005 (DRA), Congress enacted a requirement that an individual purchasing a life estate interest in the home of another person must reside there for a period of at least 1 year after the date of the purchase in order to be treated as an uncompensated transfer. If the 1 year of residence requirement is not met, then the payment made by the applicant in exchange for the life estate interest will be treated for Medicaid eligibility purposes as a *transfer* of assets subject to penalty. Consequently, the purchase of a life estate interest could result in a period of ineligibility.

Valuing the Life Estate

In order to avoid a transfer penalty, the payment for the life estate interest cannot exceed the value of the life estate interest. That underscores the importance of properly valuing the purchased life estate (or joint) interest.

Estate Recovery

The effectiveness of this particular technique is based in part on an assumption that the purchased life estate interest will not be subject to estate recovery. As of the date of this writing, Pennsylvania does not pursue estate recovery against “non-probate” assets and therefore it would not be subject to estate recovery. However, if Pennsylvania law is at some future point modified in this respect, the viability of this technique would need to be re-visited and possibly abandoned altogether. Also, if the parent/applicant’s child lives in a different state, then the estate recovery rules in that particular jurisdiction should be considered in connection with this technique.

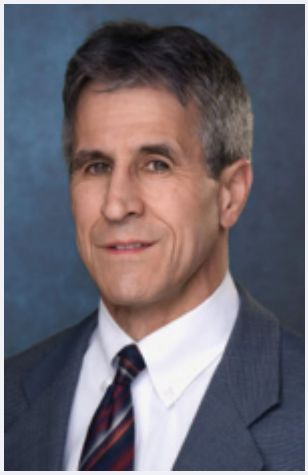
Income Tax Issues

The impact on the child’s (or other family member’s) ability to exclude sale proceeds on the sale of his/her primary residence, pursuant to Internal Revenue Code §121 should also be considered. The sale of the life estate interest (or other joint interest) to the parent could affect a child’s ability’s to later sell his/her interest in the home without recognizing capital gain tax.

Purchase of a Joint Interest in the Child’s Home

The DRA does not address whether a purchase of an interest in a child’s home as JTWROS is subject to the 1 year residency rule or even whether it is even considered a transfer for Medicaid purposes. Presumably the 1 year rule does not apply and it would not be considered a transfer (if it is for fair value), but there’s no authority that directly addresses the point.

If you have questions about converting assets into exempt resources, purchasing a life estate interest in your child’s home, or other Medicaid-related matters, contact us at 814-459-2800.



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