

Medicaid Eligibility: Addressing Gifts & Business Investments

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Understand the Medicaid look-back period, how gifts and investments impact eligibility, and strategies for recovering assets or paying privately to avoid penalties.

By Harry S. Margolis

Question:

My husband's stepfather, whom we have only been in contact with for the last three years, was living with my husband and myself for a few months until he needed to go into a nursing home in February. We are applying for Medicaid. His biological children took a great deal of money from him over the years, including during the look-back period. Also, my father-in-law invested money into a business my husband and I were starting. This too, was during the look-back period. Will our business be sued for that money? Will any large monies my father-in-law gave away during the look-back period be the children's responsibility to pay back?

Response:

Both the investment in your husband's company and the "gifts" to the children could be problematic. As you know, any transfer made during the five years prior to applying for Medicaid – the so-called "lookback" period – must be reported to the Medicaid agency. In most cases they will cause a period of ineligibility for benefits.

In the case of your father-in-law's investment in your husband's business, this will not be considered a transfer if the investment was done "by the book," meaning that your father-in-law received back an ownership interest in the business worth the amount that he paid. You will need to document all of this. If you did not do so at the time, you may be able to

create the proper legal papers now.

This eliminates the transfer penalty but creates another problem. Your father-in-law will now have an asset that may make him ineligible for Medicaid due to its value. You may be able to establish that there's no market value to the interest or that it's inaccessible because it can't be sold without your husband's cooperation.

With respect to the transfers to your father-in-law's children, there's an argument that your stepfather-in-law should not be penalized if the funds were stolen rather than gifted, but that's unlikely to be successful. The children can "cure" the transfers that occurred during the lookback period by returning the funds. Or they can pay privately for your father-in-law's care until the penalty period has expired. For example, if the "gifts" were made in 2021, it may be more beneficial financially to pay privately for the nursing home until the date in 2026 that is five years and one day after the last of the transfers occurred.

If they choose the second approach, they may be able to deduct the costs of the nursing home as a medical expense on their own tax returns. But this gets complicated.

For advice on how to get the tax deduction and for strategies specific to your state's Medicaid program, I recommend that you consult with a local elder law attorney. One place to find one is at www.elderlawanswers.com.

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Harry S. Margolis practices elder law, estate and special needs planning at [Margolis Bloom & D'Agostino](#) in Wellesley, Massachusetts, and is the founder of ElderLawAnswers.com and co-founder of the Academy of Special Needs Planners. He is author of "[The Baby Boomers Guide to Trusts: Your All-Purpose Estate Planning Tool](#)" and answers consumer questions about estate planning issues at www.AskHarry.info. Please post your estate planning questions there.
