Navigating Medicaid’s Transfer Penalty: Exceptions and Solutions for Seniors

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Considering removing your parent's name from the house deed to shield assets from Medicaid? Explore the implications and discover alternative strategies for long-term care planning.

By Harry Margolis

Question:

Should we remove my mother’s name from the house and land? She is 80 years old and if she has to go to a nursing home, we do not want to lose the land and the house to the state. How should we take care of this?

Response:

There are a number of issues to consider. Taking your mother’s name off the house and land is a transfer of ownership. Most such transfers cause a penalty in terms of Medicaid of up to five years of ineligibility for benefits.

There are, however, a few exceptions to this “transfer penalty.” If you or any of your siblings have been living with your mother in her home for at least two years and during that time provided her with necessary assistance to be able to stay at home, you or that sibling can qualify for the so-called “caretaker child” exception.

In addition, there are exceptions for transfers to disabled children of the grantor or into trust for the sole benefit of any disabled beneficiary under the age of 65. In both of these cases, there would be no penalty for transferring ownership but it could only be transferred to the child or children who qualified for these exceptions.

Even if you don’t qualify for any of the exceptions, Medicaid allows for transfers to be “cured” by returning the transferred property. So, your mother could transfer the house to you and your siblings with the understanding that if she needed to apply for benefits within the subsequent five years you would return the house to her so she could qualify for benefits.

However, you should be aware that transfers can have adverse tax consequences, especially with respect to capital gains. If you and your siblings inherit the property upon your mother's death and then sell it, you will not have to pay any tax on capital gains due to the so-called "step-up" in basis that occurs when property passes at death. This doesn't occur when property is received by gift during the original owner's life. So, it could mean a sizable tax if your mother transferred the property to you and your siblings and you were to sell it. Of course, this is academic if you don't plan on selling the house and land.

Often when transferring homes for long-term care planning purposes, seniors use trusts or create life estates to protect the homes and for the children to receive a step-up in basis upon the parent's death. As you can see, these issues are complicated and some of the best solutions can be different in some states from others. 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.