The 2019 Medicaid Transfer Penalty Divisor, Gifting Problems

By Robert C. Gerhard, III

The Pennsylvania Department of Human Resources released the updated transfer penalty divisor for applications for Medicaid long-term care benefits filed on or after January 1, 2019. The new divisor is $342.58/day, up from $330.19/day.

The transfer penalty divisor, also known as "the average daily private pay rate" is revised upwards in January of most years. The 2019 statewide average private pay cost for one month's worth of Pennsylvania nursing home care is $10,420, according to the PA Department of Human Services. To arrive at the daily penalty divisor, the average monthly private pay cost of a nursing home is multiplied by 12, for each month of the year, and then divided by 365, the number of days in the year: $10,420 x 12 = $125,040, divided by 365 = $342.57534, which rounded up is $342.58 per day.

How is the transfer penalty divisor used? The penalty divisor is used to determine periods of ineligibility caused by gifts made by a person asking the government (Medicaid) to help pay long-term care costs. Long-term care benefits can pay for nursing facility care, and in home care. However, if an applicant gives away assets that the government believes could have otherwise been used to address such expenses, they impose a waiting period before paying long-term care costs. This waiting period is commonly referred to as the "Medicaid transfer penalty" or "period of ineligibility for Medical Assistance long-term care benefits."

Asset transfers made within the 60 months prior to an application for Medical Assistance (Medicaid) long-term care benefits are totaled up and divided by the daily penalty divisor. In 2019, one day of ineligibility for benefits can result for every $342.58 worth of assets given away.

Example: Mrs. Smith requires nursing facility care and her countable assets are below the applicable limits. She files an application for Medicaid long-term care benefits in July 2019. However, six months before entering the nursing home she wrote a check to her son in the amount of $10,000, hoping to protect that money from possible future nursing home costs. This gift is clearly within the 5-year look-back. Unless an exception applies, this gift will result in 29 days of ineligibility for Medicaid long-term care benefits: $10,000 divided by $342.58 equals 29 days of ineligibility.

When applying for Medicaid long-term care benefits, a caseworker is assigned to review your bank statements. They look back over 5-years of bank records, and if they find asset transfers that exceed $500 per month in aggregate, or unexplained cash withdrawals, they can impose a period of ineligibility for benefits. Specifically the caseworker will divide the total gifting within the 5-year look-back by $342.58 and compute the number of days of ineligibility cased by the asset transfer. This is the "transfer penalty."

Example: Mrs. Smith requires nursing facility care and her countable assets are below the applicable limits. She files an application for Medicaid long-term care benefits in July 2019. However, every December for each of the past 5 years, she wrote a check to her son in the amount of $10,000. These gifts fall within the 5-year look-back. Unless an exception applies, these gifts are totaled up and will result in 145 days of ineligibility for Medicaid long-term care benefits: $50,000 divided by $342.58 equals 145 days of ineligibility.

A transfer penalty is a serious matter because nursing homes can sue certain family members if they end up not being paid due to gifting that occurred within the 60 month look-back. Pennsylvania laws, notably the filial support law, make the transfer penalty a very real financial threat to the children and spouse of a nursing home resident.

The transfer penalty commences when the applicant is otherwise medically and financially eligible, apart from the gifting. Unfortunately this normally means the period of ineligibility exists when the nursing home resident is out of money.

There are exceptions to the transfer penalty that can be argued on appeal, or by requesting a hardship waiver. Given the financial stakes involved, it is highly recommended that anyone facing a transfer penalty retain an elder law attorney to provide options that may exist to 1) avoid the imposition of a transfer penalty by identifying an exception that applies, 2) provide options to reverse the transfer penalty, or 3) provide options to otherwise mitigate the financial damage caused by a transfer penalty. Returning the gifted resources can reverse the transfer penalty, and sometimes Medicaid qualifying annuities can be used to reduce the impact of asset transfers within the 5-year look-back.

Robert C. Gerhard, III Esquire is president of the elder law firm of Gerhard & Gerhard, P.C., located in Jenkintown, Pennsylvania. Attorney Gerhard specializes in elder law, with emphasis on Medicaid Planning, Medicaid Applications, and Medicaid Appeals. He is a fellow of the American College of Trust and Estate Counsel, and author of the Pennsylvania law treatise, Pennsylvania Medicaid, Long-term Care.