

# ELDER LAW TODAY

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## *Financial Gifts to Children and Their Effect on Medicaid Qualifications*

There are so many misconceptions surrounding Medicaid with respect to financial gifts, that we thought we would address some of the more frequently asked questions:

**Q:** “Is it true that under current Medicaid laws, a parent cannot make financial gifts to their children or others once they have entered the nursing home?”

**A:** No. In fact, a proper gifting program is a great Medicaid planning technique. At the time an applicant applies for Medicaid, the state will “look back” 5 years to see if any gifts have been made. Any financial gifts or transfers for less than fair market value during the five-year look back may cause a delay in an applicant’s eligibility. A proper gifting program requires calculating the penalties *prior* to making gifts.

**Q:** “Is \$13,000 per year the maximum my mother can give me if she is going to apply for Medicaid?”

**A:** No. The \$13,000 per year gift people ask about when discussing Medicaid Planning is a *tax law* figure and not relevant with respect to Medicaid’s specific asset transfer rules. The maximum monetary figure Medicaid applicants need to concern themselves with is the “penalty divisor” for their state. The penalty divisor is the state assessed average cost for nursing home care by which the state assesses Medicaid penalties.

The penalty divisor for transfers prior to February 8, 2006 is the average monthly rate of \$4,000 for Kansas. For transfers on or after February 8, 2006, the penalty divisor is the average *daily* rate of \$137.65 (this figure is subject to change each year, which is why consulting an expert knowledgeable in Medicaid law is imperative).

**Q:** “What if my mother just gives me all of her money to hold onto for her, can I tell the state my mother does not have any money and qualify her immediately for Medicaid?”

**A:** Absolutely NOT. Failure to report gifts made by a Medicaid applicant constitutes fraud. Further, let’s say your mother had \$21,000 when she entered the nursing home. If she were to give you all of her money in one lump sum, the gift would result in a penalty (i.e. a period of ineligibility

during which time she could not apply for Medicaid) of 7 months from the date of the gift.

**Q:** “I know that my mother’s house is considered “exempt” under Medicaid laws. Can my mother give me the house without incurring penalties?”

**A:** No. Any assets which are given away (personal property or real property) are considered gifts. If your mother gave you her home, the state will assess a penalty based on the fair market value of the house at the time your mother transferred the home to you. (Exceptions for adult disabled children may apply.)

There are a number of steps a Medicaid applicant can take to preserve their assets, ranging from gifting strategies, private annuities, to raising the Community Spouse Resource Allowance. What you need to remember is that the laws are constantly changing and the planning you did for your mother-in-law six months ago may not be proper for your mother tomorrow. Consult a knowledgeable elder law attorney for advice.

### *Services Available*

Adrian & Pankratz, P.A. offers the following Elder Law services:

Division of Assets	Long Term Care Planning
Guardianship	Powers of Attorney
Estate Planning	Wills
Living Trusts	Special Needs Trusts

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