# LawTrends

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## Medicaid Planning for the Single Individual

by Gary L. Miller

The Deficit Reduction Act of 2005 greatly curtailed "divestment planning," or gifting assets to qualify for Medicaid. The three-year "look back period" was extended to five years for gifts made after February 8, 2006. In addition, the penalty period for "improper transfers" (the number of months calculated by dividing the amount of the transfer by the Average Private Pay Rate, currently $5,247), instead of beginning on the date of the transfer, now begins when the applicant would have otherwise qualified for Medicaid. In other words, for the penalty period to begin, the applicant must already be in a nursing home and have no more than $1,500 of resources. This change in the improper transfer rules effectively eliminated the "half-a-loaf" strategy (gifting half and retaining half to pay for care during the penalty period), as well as the strategy of making consecutive monthly gifts in the amount of the Average Private Pay Rate (each causing ineligibility for that month only) until resources were reduced to $1,500.

However, one variation on the half-a-loaf strategy has continued to be effective for a single Medicaid applicant who is already in a nursing home. The applicant gifts a portion of the assets and uses the balance to purchase a


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single premium immediate annuity. The annuity is calculated to make payments for the length of the penalty period in an amount slightly less than the cost of care. Therefore, the applicant would have qualified for Medicaid but for the gift (presumably the individual must actually apply for Medicaid and be initially denied). The result is that the penalty period begins in the month of the gift, and the applicant becomes eligible for Medicaid in the month after the payments end.

The above strategy is subject to important caveats. The annuity must not only be "actuarially sound," but also must be nonassignable (not the case with most annuities) and must name the State of Ohio as primary beneficiary (or as contingent beneficiary after the spouse) to the extent of Medicaid benefits paid.

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*Mr. Miller is a member of the Firm and a former financial planner who practices in the areas of estate planning, probate, elder law, business law, taxation, and qualified retirement plans. He can be reached at our Toledo office (419-241-6000) should you have any questions regarding this Medicaid planning strategy.*

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