

BLACK ENTERPRISE

LEGAL AIDE

Playing the inheritance shell game

Transferring assets to qualify for health benefits can land you in jail

Imagine this scenario: Your 82-year-old grandmother, a recent stroke victim, is sentenced to serve five years in prison and ordered to pay a \$25,000 fine for giving your mother, an uncle, and each of her five grandchildren \$10,000 each. Sound impossible? Maybe not. Now anyone disposing of their assets or assisting someone else in doing so to qualify for Medicaid benefits—which pay for nursing home care—could be committing a crime.

Because privately paying for a nursing home can deplete savings, many people transfer their assets to a spouse or to their children to qualify for benefits. But as Medicaid costs have become increasingly overwhelming, legislation is being written and implemented that makes getting these benefits more difficult.

Before January 1, 1997, a penalty period was imposed on the person filing if nonexempt transfers—such as cash, stocks, life insurance or property—were made within three years of applying for Medicaid. This generally delayed approval. Now, however, criminal misdemeanor or felony charges can be filed; the upshot is penalties and sentences of up to \$25,000 in fines, five years imprisonment or both.

These criminal sanctions may not only be imposed on the person who makes the transfer but also on anyone who assists them, including a spouse or child. Under the new law, it's presumed that the transfer was made for the purpose of gaining Medicaid eligibility.

No one should transfer assets without first consulting an attorney knowledgeable in elder care law. There are other issues involved in asset transfer, such as individuals losing their financial independence and security, tax consequences for both the recipient and the transferor, and the possibility that the recipient may lose these assets if there are credit problems or if they are involved in litigation like a divorce.



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