

SELECT COMMITTEE ON EFFICIENCY IN GOVERNMENT

Washington's Transfer of Assets Law

Prepared by Sue O'Connell for the Medicaid Subcommittee
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Background

The Medicaid Subcommittee expressed interest in November 2011 in obtaining more information about the effects of a Medicaid law in Washington state. The law allows prosecution of an individual who receives assets from a Medicaid applicant or enrollee in order to allow the person to qualify for Medicaid coverage of long-term care services.

This briefing paper discusses Medicaid laws related to asset transfers, as well as the Washington law and its effects. It also presents options for subcommittee consideration.

Asset Determination Related to Long-Term Care

A person applying for Medicaid coverage for long-term care may not have more than \$2,000 in "countable resources," or assets. Some assets are not counted when determining eligibility. For example, a person's home, most personal effects, one vehicle, and property used for business purposes typically aren't considered when determining whether a person qualifies for Medicaid.

Federal law requires a 5-year "look back" at a person's assets, to make sure the person didn't improperly transfer assets during that time in order to qualify for Medicaid. An applicant or enrollee who transferred an asset without receiving something of equal value is ineligible for Medicaid for a period of time. The time period is determined by dividing the uncompensated amount of the transferred asset by the average monthly cost of nursing home care. In 2010, the average monthly cost of nursing home care in Montana was \$5,376.50.¹

Some transfers are exempt from the "look back," including transfers made:

- to a spouse before a person was determined eligible for Medicaid;
- to a spouse who is living in the community, if the transfer was made within 90 days of the eligibility determination;
- to a minor or adult child who is blind or disabled according to Social Security criteria;
- solely for a purpose other than qualifying for Medicaid, such as to satisfy a debt;
- as a result of fraud, if the applicant tried through the courts to recover the asset; or
- to a disabled person's Special Needs Trust, which must be used upon the person's death to reimburse Medicaid for payments made on behalf of the individual.

In addition, the transfer of a home is not counted if the title was transferred to the applicant's spouse; a child under the age of 21; an adult child who is blind or disabled; a child who regardless of age lived with the applicant in the 2 years immediately preceding the person's nursing home admission if the child provided care to the person in the home; or a sibling who

¹ Marsha A. Goetting, "Medicaid and Long-Term Care Costs," Montana State University Extension Services, Oct. 10, 2010, P. 1.

has an equity interest in the home and has lived there continually for at least 1 year before the applicant was admitted to a nursing home.

The Washington Law: What It Does and What It Has Accomplished

In 1995, the Washington Legislature approved a law creating a penalty for people who receive assets for less than fair market value from a person who applies for or receives Medicaid for long-term care services. The recipient of the assets is subject to a civil fine if:

- the Medicaid applicant or enrollee transferred the asset in order to qualify for coverage;
- the recipient was aware, or should have been aware, of the purpose of the transfer;
- the transfer created a period of ineligibility for the Medicaid applicant or enrollee; and
- the state provided Medicaid during that time because denial of coverage would have created an undue hardship for the applicant or enrollee.

A court may impose a fine of up to 150% of the amount that the state spent on Medicaid coverage during the time that the enrollee would have been ineligible for coverage because the asset could have been used to pay for nursing home care. The recipient of the asset also must pay the state's court costs and legal fees. Meanwhile, the state may petition to have the asset returned to the Medicaid applicant or enrollee.

Lori Rolley of the Washington Department of Social and Health Services (DSHS) provided the following information about Washington's experience with the law:

- The state hasn't compiled data specific to the use or effects of the law.
- Officials believe the law has served as a deterrent. DSHS notifies people about the law and the penalty when DSHS employees believe the individuals may have received assets in a questionable manner. This often results in the return of the asset.
- The state Attorney General's Office began preparing one prosecution under the law but decided against proceeding with the case because of perceived weaknesses in the law. The agency has prepared legislation to correct those weaknesses.

Options for Subcommittee Consideration

Based on the information presented to the subcommittee during the course of its work, members may want to recommend that the full committee:

1. Find that the state would benefit from stronger efforts to prevent people from transferring assets in an effort to qualify for Medicaid coverage of long-term care costs.
2. Approve drafting of a transfer-of-assets bill similar to the Washington state law.
3. Make no findings or recommendations.
4. Pursue other options identified by the subcommittee.