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ELDER LAW MINUTE

John is a 76 year old widower with $180,000 of savings. He currently lives in a personal care home, but has been told that he has reached their maximum level of care and will need nursing home care soon. John has three children and would like to protect some of his assets for them if possible. He wonders whether it is advisable to make gifts to his children at this late date?

The answer is yes. Even after the Deficit Reduction Act of 2005, it is possible to make gifts and protect about half of your assets. However, the mechanics of doing so have changed. In the past, John would have given away about half of his assets and spent the other half at the nursing home. The penalty would have started running the month in which the gifts were made. It would have run out the same time that John's money was exhausted.

Since 2006, in order for the penalty to start running, John has to apply for Medicaid and pass the income and resource tests. That means that his resources must be no more than $2,000. So, John needs to transfer substantially all of his assets to his kids. Assuming a transfer of $179,000, the initial transfer penalty would be 41.07 months from the date that John would qualify for Medicaid but for the gifts. That means that Medicaid will not pay the nursing home on John's behalf for 41.07 months.

You may wonder how John will pay the full private pay rate during that time. He only has $1,000 left. John's children will supplement the payment of his income to the nursing home. In so doing, they will reduce the amount of their gifts from John. Medicaid recognizes that funds transferred back to John reduce the transfer penalty of 41.07 months. After about 20½ months, the children will have spent about half of the $179,000 on John so the transfer will be reduced to $89,500 and the penalty will be reduced to 20.53 months.

John can show DFCS all of the monies received from his children and used for his care during this period and his caseworker will end the transfer penalty in the middle of month 21. John has successfully protected about $89,500 in under 21 months.