

# ELDER LAW TODAY

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## *What Is The Five Year "Look Back"?*

**W**hen applying for Medicaid, the state will "look back" 5 years to see if any gifts have been made. (For gifts or transfers occurring prior to February 8, 2006, the Medicaid eligibility caseworker will "look back" 3 years, unless the gifts or transfers involve a trust, then the "look back" is again 5 years.) The state will not let you just give away your property or your money to qualify for Medicaid. Any gifts or transfers for less than fair market value which are made during the "look back" period may cause a delay in Medicaid eligibility.

Here are some scenarios. The question being: "When will the following individuals become eligible for Medicaid benefits?"

### **SCENARIOS:**

1. In January 2000, Gordon gave his son \$120,000. Gordon enters a nursing home tomorrow and applies for Medicaid benefits.
2. In September 2000, Betty gave her son \$120,000. Betty enters a nursing home tomorrow and applies for Medicaid benefits.
3. In July 2003, Harold puts his daughter's name on his house worth \$150,000. Harold enters a nursing home tomorrow and applies for Medicaid benefits.

The answer to these scenarios can be found in the Kansas Economic and Employment Support Manual (KEESM) for Kansas residents. The analysis begins as of the earliest day on which the person is both in the nursing home and has applied for Medicaid.

At the time of application, the Medicaid agency combines all the gifts and transfers that fall within the "look back" and divides the combined amount by the state-determined monthly penalty divisor. In Kansas this is \$4,000 per month. The result is the number of months the donor is ineligible for Medicaid benefits.

### **ANSWERS:**

1. Immediately. Gordon's gift is not in the 5-year look back window.
2. Immediately. Betty's gift is not in the 5-year look back window, as it expired August 2005.
3. It depends. He may be eligible immediately if his daughter is under the age of 21, blind or disabled. Similarly, if his daughter has resided in the home at least 2 years immediately before the date Harold enters the nursing home and has provided care allowing him to remain in his home, then Harold may be immediately eligible. If exceptions such as this do not exist, then this is a gift of \$75,000, and a penalty period of 25 months applies.

Obviously, the gifting rules can be complicated at times. The penalty divisor also changes periodically. As always, it is important to 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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