



Minnesota
Budget
Project

Budget Conference Agreement Likely to Discourage Seniors from Making Charitable Donations

The conference agreement on the budget reconciliation bill that has passed the House and will soon be considered by the Senate includes a change in Medicaid policy that is likely to have a significant impact on charitable giving by many seniors. This change in Medicaid's "transfer of assets" provision would **penalize seniors who make charitable donations up to five years before they turn out to need long-term care.**

For many years, the Medicaid program has included a provision intended to penalize seniors who give away their assets in order to qualify for Medicaid long-term care services. The provision applies to "transfers for less than fair market value" that are made up to three years before an individual applies for Medicaid. While these transfers include charitable donations, under current law, donations do *not* usually result in a penalty when seniors need Medicaid coverage for long-term care. As a result, there currently is no disincentive for seniors to make such donations.

Under current law, when a senior applies for Medicaid and it is determined that he or she made a significant charitable donation within the past three years, a "penalty period" is determined. The penalty period lasts for as long as the transferred asset would have paid for long-term care; during this period, the person is ineligible for Medicaid coverage for long-term care. Under current law, however, the penalty period begins *at the time the donation was made*. In most cases, the donation was made months or years before the individual needed Medicaid long-term care coverage. As a result, the penalty period is usually *over* by the time the senior's health has deteriorated to the point that the individual needs long-term care — and thus no penalty actually occurs.

The conference agreement changes these rules in two key ways. First, transfers (including charitable donations) that were made up to *five years* before an individual applies for long-term care coverage will be counted as transfers of assets. Second and most important, *the penalty no longer would begin at the time that the donation was made; instead, the penalty period would start at the time the individual needed long-term care coverage.* As a result, there would be an actual disqualification of the individual for long-term care coverage at the very time the individual needed that coverage.

An example can help illustrate how this would work. Suppose a senior has made a charitable donation of \$10,000, and turns out three years later to need long-term care. Assuming that the average cost of long-term care is \$5,000 a month, a two-month penalty would result (\$10,000 divided by the monthly cost of long-term care). *Under current law*, the two-month penalty period would begin at the time the transfer was made three years earlier, so the penalty would be over — and have no impact — when the individual subsequently needed long-term-care coverage. *Under the conference agreement*, by contrast, the two-month penalty period would be applied at the very time when long-term care was needed — and would make the senior ineligible for the first two months that he or she needed such care.

Once this change in the treatment of donations is understood, **it is likely that financial advisors and other trusted individuals will advise many seniors — especially those nearing an age when their health could begin to deteriorate — to refrain from making significant charitable donations,** in order to avoid being left without the means to

take care of their health care needs in the future. A significant reduction in charitable contributions ultimately could result.