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FAMILY FINANCE

Medicaid and IRA pay status

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My mother's sizable individual retirement account is "in pay status" . You wrote that this means the IRA principal doesn't have to be spent before she qualifies for Medicaid. I spoke with a lawyer who said that is true, but Medicaid will require that it be named as the IRA beneficiary so that upon her death it can be compensated for any monies laid out. Is this correct? He also said Medicaid can require that the maximum distribution be taken out. Would I be better off taking money out of her IRA and incurring the tax consequences, or leaving it as it is and risking losing it all to Medicaid?

T.J., via e-mail

You can't withdraw anything from your mother's IRA while she's alive unless you have her power-of-attorney specifically granting you that right. But as a general rule, it's foolish to take any IRA withdrawals until you have to. "You don't want to incur taxes any sooner than you must," says Bernard J. Krooks, a New York City elder-care attorney.

Medicaid has no right to be named as an IRA beneficiary, says Donald Hecht, a Garden City elder-care attorney. You may be thinking of a rule that only applies to immediate-pay annuities. Medicaid has the right to be named as a remainder beneficiary - in the first position after a spouse and a minor or disabled child - on immediate-pay annuities purchased after Feb. 8, 2006. (For more on these annuities, see my Nov. 26 column.)

When an IRA is in pay status, Medicaid has access only to the mandated annual distributions. Lately, Medicaid has begun requiring these distributions be based on its own life-expectancy table rather than the IRS'; the result is to



increase the distribution. This new requirement has been challenged and is being litigated.

How does Medicaid view a life estate? If a parent gives her house to her child, keeping a life estate for herself, does Medicaid consider the house still to be one of the parent's assets? If not, can Medicaid put a lien on the house after the parent's death?

F.C., Kings Park

No. Under current law, Medicaid can only recover benefits it paid during your lifetime from your probate estate. Your probate estate doesn't include such assets as a life interest in your house, assets with named beneficiaries (like IRAs) or assets you jointly own.

Keeping a life estate in a house means you retain the right to live there until you die. In legal jargon, what you've transferred to your child is a "remainder interest." The child won't own the house outright until you die; the value of his remainder interest depends on your life expectancy. To use a very simple example: If the house is worth \$300,000, the life interest you keep might be worth \$100,000 and the remainder interest might be worth \$200,000.

So you've made a \$200,000 gift to your child. Does that affect your Medicaid eligibility? The answer is yes if you made the gift within five years of applying for Medicaid, says Krooks. Gifts made within Medicaid's five-year look-back period delay your eligibility for benefits. If a nursing home costs \$10,000 a month, for example, a \$200,000 gift will delay your benefits eligibility by 20 months (\$200,000 divided by \$10,000).

The five-year look-back starts when you enter a nursing home. Let's say you transfer the \$200,000 remainder interest to your child in 2007. If you don't enter a nursing home until 2012, the gift has no effect on your Medicaid eligibility. But if you enter a nursing home in 2011, its full \$200,000 value will delay your eligibility.

Send questions to Family Finance, Business Desk, Newsday, 235 Pinelawn Rd., Melville, NY 11747-4250, or e-mail to Bfamfin@aol.com. Include your age, income and a list of major assets. Letters and e-mails can't be answered personally.

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