



## MEDICAID MYTHS PART II

More on Myth 6 from last month: This may be oversimplifying, but the five most relevant rules regarding the tax myth limiting gifts to \$10,000 per year are:

1. Medicaid is not the IRS and the IRS is not Medicaid. Oklahoma does not have a tax on gifts. There is no Oklahoma gift tax.
2. According to the IRS, anyone can give away up to \$11,000 per year to anyone else and not even tell the IRS. The transaction is entirely tax free for both parties.
3. According to the IRS, anyone can make lifetime gifts of up to \$1,000,000 to another person (or persons) without tax liability for either party. The only requirement is that the giver notify the IRS. NOTE: Of course the recipient has to report income earned by the gifts received. But the money received or asset received is not income to the donee.
4. According to the IRS, at the death of the giver, all reported gifts are totaled and added to the giver's taxable estate, the IRS then subtracts \$1,000,000 and taxes are on the remainder at a hefty rate.
5. According to Medicaid generally, however, almost all gifts cause ineligibility for benefits. More specifically, a gift of \$500,000 (which could have absolutely no IRS consequences either now or upon the giver's death) may, depending on the circumstances, make the giver ineligible for Medicaid benefits for up to 20 years. Even a gift of \$11,000.00 which doesn't even have to be reported to the IRS, could make the giver ineligible for Oklahoma Medicaid benefits for at least 5 months. CAUTION: Gifting of assets other than cash can have income tax consequences to the giver and/or to the donee. Examples - A gift of depreciable property may trigger income tax liability to the donor. A gift of property with a low cost basis passes the low cost basis to the donee. NOTE: Some gifts do not cause any Medicaid ineligibility.

**MYTH 7:** "The healthy spouse living at home gets to keep half of the assets"

**TRUTH:** Medicaid counts all of the countable resources of the sick spouse and the healthy spouse as of the day the sick one first enters a nursing home (or hospital if the stay continues into Nursing Home

care). The healthy spouse is allowed to keep half of that amount, BUT NO MORE THAN \$89,280 or no less than \$25,000 if the total combined resources are \$50,000 or less. The home, one vehicle and some other properties might not be countable resources - but with the wrong ownership, they can be countable, which is sometimes good!

**MYTH 8:** "Once on Medicaid, you are not allowed to sell your home"

**TRUTH:** You are permitted to sell your home whenever you want, but sale of the home could convert a temporarily exempt asset (a home) into a countable resource (money). Consequently, unless you know how to shelter the proceeds of the sale of the home, you will lose benefits until all of the house money has been paid to the nursing home.

**MYTH 9:** "The DHS caseworkers work for Medicaid, so they must know all the Medicaid law"

**TRUTH:** No one knows everything about Medicaid. Caseworkers are administrators. They are not Medicaid planners, and they are not lawyers. They should not be relied upon for advice. They cannot take the time and effort to get all the facts before advising. If they give bad advice, you suffer or your family suffers, not Medicaid.

**MYTH 10:** "I can't get Medicaid because I have too much money"

**TRUTH:** Maybe, maybe not. You don't have to lose out on Medicaid because you have too much money. You just have to re-arrange your assets to comply with the twists and turns of Medicaid law.

### **WORDS OF WISDOM:**

*You never saw a fish on the wall  
with its mouth shut.*

If you would like to receive this newsletter via e-mail, please let us know by e-mailing us at [info@medicaidoklahoma.com](mailto:info@medicaidoklahoma.com).

## **HOLMES, HOLMES & NEISENT, P.L.L.C.**

LEE M. HOLMES, MARK L. HOLMES & TRACY SPECK NEISENT, ATTORNEYS

501 N.W. 13<sup>TH</sup> STREET, OKLAHOMA CITY, OKLAHOMA 73103

phone: (405) 235-8455 fax: (405) 235-8454

[www.medicaidoklahoma.com](http://www.medicaidoklahoma.com)

*Providing Legal Services for Seniors, the Disabled and Medicaid Advocacy*