

## EVEN GIFTS ALLOWED BY THE INTERNAL REVENUE SERVICE ARE SUBJECT TO A PENALTY FOR MEDICAID

With the 2022 increase of the amount that the Internal Revenue Service (IRS) will allow a person to gift free from gift tax reporting, from \$15,000 per person to \$16,000 per person, per tax year, there is greater opportunity for tax-free gifting. As a result, any person who gives away \$16,000 or less annually to any one individual does not have to report the gift or gifts to the IRS. Gifts to spouses never have to be reported.

This annual exclusion gift is important mainly to persons whose estates are worth, in 2022, more than \$12,060,000. As estates in excess of \$12,060,000 per person are subject to tax, the wealthy use the annual exclusion gift as a method for reducing the amount of estate tax due on death. For example, a wealthy individual with 5 children who are each married can give \$16,000 to 10 people, reducing his or her taxable estate by \$160,000, a substantial amount. For most people, whose estates are well under the \$12,060,000 threshold, the IRS annual exclusion gift is meaningless as their estates will never be subject to federal gift and estate tax. What the majority of people should seriously consider is their potential need for Medicaid to pay for necessary nursing home or supportive living care. The 2023 gift tax exclusion is \$17,000 and federal estate tax exclusion is \$12,920,000.

A person who applies for Medicaid to pay for supportive living or nursing home care is subject to the “five-year lookback”. A Medicaid applicant is required to swear to and prove the he or she has not made any substantial gifts—those more than customarily given on birthdays and holidays—in the five years preceding a Medicaid application. A fifteen-thousand-dollar gift is considered significant by Medicaid. Unless the gift qualifies as an exception under Medicaid rules, the gift will cause a penalty period of ineligibility for Medicaid for the Medicaid applicant of approximately two months. During the two-month penalty period Medicaid will not pay for care, and the two months starts only after the applicant has little or no assets left with which to pay for care. The penalty is worrisome, and people need sound advice prior to making substantial gifts.

Here at Dutton Casey & Mesoloras PC we recommend to our clients who are not wealthy and who do not have comprehensive long-term care insurance refrain from making substantial gifts if there is any possibility that they will need supportive living or nursing home care in the next five years.

When you have questions related to elder law, estate planning, probate, and guardianship, think of the attorneys at Dutton Casey & Mesoloras. With over 165 years of combined experience, Janna Dutton, Kathryn Casey, Helen Mesoloras, Amy Gjesdahl, Melissa Kallio, Samantha Zumillo, and Caitlin Stanfel are here to assist you and those you care about. In addition, our Client Care Coordinator is a resource to clients and the community.

### Resources:

National Elder Law Foundation — [www.nelf.org](http://www.nelf.org)

National Academy of Elder Law Attorneys — [www.naela.org](http://www.naela.org)

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Appointments are also available in Arlington Heights, Naperville, and Skokie, Illinois or via video conferencing or telephone.

