

Gifts, Medicaid Nursing Home Benefits, and What to Consider Before Giving

By: Brandon C. Walecka, Esq.

Walecka Law, P.C.

774-203-9003

Brandon@WaleckaLaw.com

I often hear the question, “How much can I gift someone without triggering taxes?” While Massachusetts doesn’t impose a gift tax, the federal government does, albeit with a considerably high exemption. In the current year of 2023, gifts up to \$17,000 per recipient are not subject to reporting (for married couples, the limit is \$34,000 per recipient). If your generosity surpasses this threshold, you’ll need to file a gift tax return, even though no immediate tax is owed. This step is about tracking gifts to calculate your estate’s value when combined with reported gifts, only becoming relevant if your total exceeds the federal estate and gift tax exemption, which is presently \$12.92 million per person or \$25.84 million for couples. Generally, this isn’t a major concern for most individuals.

However, it’s crucial for seniors to be aware of the impact of gifting on MassHealth (Medicaid) eligibility, specifically the program’s five-year look back period. While you might not face a gift tax liability, gifts are still considered during the MassHealth application process.

When applying for MassHealth, the program reviews your financial records over the five years prior to your application date. If they identify asset transfers, such as

monetary gifts, during this period, they may impose a disqualification period, rendering you ineligible for MassHealth benefits for a certain duration.

Seniors often explore gifting for estate planning or long-term care considerations, as well as to support family members. Gifts and transfers to trusts can yield tax savings and reduce long-term care expenses, aiding those in need while expressing love and concern.

However, not all gifts are trouble-free for both the giver and the recipient. Before reaching for your checkbook, consider these key questions:

Why are you giving? Is this gift simply an expression of love for a special occasion or event? Or is it intended for tax or long-term care planning? Evaluate if the transfer truly offers benefits, considering tax thresholds and potential MassHealth ineligibility periods.

Are you keeping enough money? Ensure your gift doesn't jeopardize your financial security. While small gifts may not raise concerns, large ones warrant budgeting to guarantee your needs, leisure activities, and emergencies are covered.

Expectations: Are you expecting the money to be paid back or for the recipient to perform some tasks for you? In either case, make sure that the beneficiary of your generosity is on the same page as you. The best way to do this is in writing, with a promissory note in the case of a loan, or a written agreement, if you have an expectation that certain tasks will be performed.

Strings Attached: If your gift is tied to specific conditions, like property use or caretaking, explore legal avenues like trusts or life estates to ensure your intentions are upheld. Your expectations may not pan out as expected, what if the recipient doesn't do what you expected or runs into circumstances (such as bankruptcy, a lawsuit, divorce, or

illness) that no one anticipated.

Recipient's Welfare: Consider if the gift aligns with the recipient's needs, especially if the recipient has special needs and under the potential impacts on public benefits, the need for money management, or personal challenges.

If, after addressing these considerations, you still wish to proceed with your gift, please do so. Our intention is not to discourage your generosity but to encourage thoughtful decision-making. It's imperative to consult with a seasoned elder law attorney before making any gifts, especially if MassHealth benefits might be a future necessity.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.