

# LOCALNEWS

## Medical Assistance rules regarding gift penalty

*A legal question and answer line for seniors.*

**Dear Senior Legal Line:**

**I am taking care of my mother by living at home with her. She would like to add my name to her house. Can my mother do this without having a gift penalty under the Medical Assistance rules, should she need Medical Assistance in the future?**

— Emily

**Dear Emily:**

The short answer is that it depends. There is a possibility that the care you provide to your mother can be a basis for your mother to fit into the “two-year” exception to the gift penalty rule, but a lot depends on the details.

Medical Assistance (also known as Medicaid) is the healthcare program that pays for healthcare coverage for eligible people who are aged, blind, or disabled. Federal and state law governs Medical Assistance and the counties administer the program. This program pays for care when Medicare stops paying and the person cannot afford to privately pay for their care. Medical Assistance has rules that determine if your mother would be eligible for the program. One of the rules is that the county is to look to see if she made any “uncompensated transfers” or

gifts during the 60 months (five years) prior to the month of her application for Medical Assistance.

Generally, if your mother added your name to her home, and you did not pay her fair value for this interest, this is a gift and it will make your mother ineligible for a while. To calculate the ineligibility period you divide the value of the gift by the average cost of a month of nursing home care (currently \$5,371 per month). The county would not provide healthcare coverage during the ineligibility period. Because she would have spent down her countable assets, the ineligibility period would be a great hardship to her. If the county believes that her health is in danger without Medical Assistance, they can provide it to her but will then come to you to ask that you return the gift to your mother (so she can put the home up for sale).

If you do not do so, the county may even try to bring you to court to force you to give the house interest back to your mother. Further, if the home's value has decreased since your mother added you to the title, the county will claim that not only do you have to sign your interest back to your mother, but you also have to pay her the difference between

the value of the interest when she gave it to you minus the value of the current interest. Thus, if your mother can fit into an exception to the “uncompensated transfer” or gifting rule, she and you can avoid many problems.

As long as your mother lives in her home, it is an excluded asset under the Medical Assistance rules and is not counted as an asset in determining her eligibility for Medical Assistance to pay for her care. However, if she can no longer safely live in her home and must move into a nursing home, the home loses its excluded status after six months of long-term care. Once this happens, if she needs Medical Assistance, the county will ask your mother to put the home up for sale. When it sells, your mother then will be required to use the proceeds to pay for her cost of care until she spends her assets down to the eligibility limit again. Your mother seems to be thinking ahead to the possibility that she cannot live in her home and she wishes for you to have the home. She wants to avoid the forced sale under Medical Assistance.

One way to do this besides the adding your name to the title and hoping that she will not need Medical Assistance for five years, is to fit into

an exception the uncompensated transfer rule. The exception you are talking about is the “two-year rule”. The two-year rule says that a transfer will not cause ineligibility if the person's child (or grandchild) resided in the person's home for a period of at least two years immediately before becoming institutionalized, and who provided care to the person that, as certified by the person's attending doctor, permitted the person to reside at home rather than receive care in an institution or facility. See Minnesota Statutes Section 256B.0595 subdivision 3. This exclusion continues as long as the child or grandchild resides in the home as their primary residence. Minnesota Statutes Section 256B.056 subdivision 2. Therefore, the transfer will have to be made after your mother has moved out of her home and into an institution or facility.

Because the county will look very carefully at this exclusion, your mother needs to be careful. Definitions are important in these statutes. A long-term care facility or institution is a nursing home (“skilled nursing facility”), a hospital, or an intermediate care facility for the developmentally disabled. An assisted living facility and group residential housing

are not “institutions” under the statutes. See Minnesota Statutes Section 256B.059 subdivision 1, paragraph h. Therefore, if your mother wants to use this exception, she cannot move from her home into an assisted living facility or similar setting. She has to move from home into a nursing home.

Furthermore, your mother's doctor has to verify in a written statement that you provided care that kept her out of a nursing home for the two years prior to her entering into the nursing home. The written statement needs to have details about what sorts of care you provided. The statement should describe the sort of care that nursing home residents get: assistance with activities of daily living, things residents need in order to safe, that show they cannot live alone. To help your mother's doctor write a good statement, you should keep daily logs about the care provided, similar to nursing home logs. Your logs can be submitted to the county along with the doctor's statement.

In conclusion, if you can live in your mother's home, provide the verifiable care that keeps her out of a nursing home for two years, and if your mother moves directly from her home into a nurs-

ing home, then your mother can probably transfer her home to you without becoming ineligible for Medical Assistance.

This is a stressful option since no one can predict the future. Perhaps if your mother's health is relatively good and there is no prediction of the need for Medical Assistance within five years plus one month, the better risk is for your mother to transfer an interest in her home to you now and wait. If she winds up not being able to wait five years plus one month, you can give the home back and your mother can try to convince the county that the two-year rule exception applies allowing her to transfer the home to you.

This column is written by the Senior Citizens' Law Project. It is not meant to give complete answers to individual questions. If you are 60 years of age or older and live within the Minnesota Arrowhead Region, you may contact us with questions for legal help by writing to: Senior Citizens' Law Project, Legal Aid Service of Northeastern Minnesota, 302 Ordean Bldg., Duluth, MN 55802. Include a phone number and return address. To view previous articles, go to: [www.lasnem.org](http://www.lasnem.org).

**Sunne's U-Pick Strawberries**

Begin picking approx. **July 8<sup>th</sup>**

**Monday - Saturday, 7 a.m. - 8 p.m.**

**Closed Sunday**

Located 1 mile west of Pelland Junction on the south side of Hwy. 11

Please call before you come out.

**(218) 285-3670**

Season lasts about 3 weeks.

**Mary's Window Fashions**

Custom products to fit any size window

All products professionally installed

**Blinds • Shades • Verticals**

**Mary Lloyd (612) 710-2081**

Shop in the comfort & convenience of your home or business

**Wedding Invitations**

Custom Printed by **North Star Publishing**

- Invitations and Envelopes
- Programs
- Save the Date Cards and Magnets
- Thank You Cards

**North Star Publishing**  
Printing • Design

1602 Hwy 71 • Int'l Falls, MN  
**218-285-7411**

**2013 INTERNATIONAL FALLS BASS CHAMPIONSHIP**

*Become Part of the Fun...*

**Volunteers WANTED**

Join us Wednesday, July 31st at 6:00 pm for the volunteer sign up and organizational meeting at Almost Lindy's. You can get information by going to our website at [www.ifallsbass.com](http://www.ifallsbass.com)

**I WANT YOUR**

Unwanted or broken gold & silver jewelry.

Come on in and see Rob today!

**BORDERLAND Jewelry**

283-4701 324 3<sup>rd</sup> St., Int'l Falls  
*Celebrating 30 Years!*

Helping you stay linked to your community

[ifallsjournal.com](http://ifallsjournal.com)

**Laminate...**

Maps, posters and shop drawings up to 38" wide. No seams.

Also, we can mount documents onto 3/16" or 3/8" foam core.

**North Star Publishing**  
Printing & Design

1602 Hwy. 71 • 285-7411

**MESOTHELIOMA LUNG CANCER**

If you or a loved one have been diagnosed with Mesothelioma, Lung Cancer or any other asbestos related disease contact us for a confidential review of your rights. There are strict time limits in which to bring these claims. Shermoen & Jaksa, PLLP has been representing Minnesota asbestos victims for over 20 years. We are one of only two Minnesota law firms that regularly litigate asbestos cases.

**Shermoen & Jaksa, PLLP Law Office**  
345 6<sup>th</sup> Avenue  
Int'l Falls, MN 56649  
(218) 283-4494  
1-866-283-4494 Toll Free

**Looking for a career with a new company?**

**NOW HIRING!**

ASSEMBLERS • WELDERS • PAINTERS • MATERIALS HANDLERS

Starting pay: **\$13.97 - \$15.81**

\$750 Relocation Assistance • \$250 Sign-On Bonus

Take the opportunity to join the team that builds some of the top vehicles in the world!

**POLARIS**

**Select STAFFING**  
EXTRA-MILE SERVICE

[www.applytopolaris.com](http://www.applytopolaris.com) or call 218.463.4418 EOE

**Put your Wedding or Engagement in The Journal**

cost is \$50

Submit photo and information to Tammie Calder

[tammie@ifallsjournal.com](mailto:tammie@ifallsjournal.com) or call 218-285-7411

**Kerby Olestad said "Everyone Should Play Golf"**

**July is Family Golf Month**

**Let's Celebrate Kerby's Way**

Go to the Golf Course this season and you'll realize that playing golf, even in your home town, may be the perfect vacation. Families are encouraged to play golf together.

**The hole is the goal SWING • SWING • SWING Ready, Set...Go Golf**

*Bring yourself and a desire to have fun!*

**Sat., July 20**

**FREE Green Fees & Cart Fees for Families after Noon**

**GREEN FEE COUPON**

**\$50<sup>00</sup> Green Fees for Two plus Cart**

Reg. \$98<sup>00</sup> • Valid thru Aug. 30, 2013

Golf clubs can be provided if needed.

**Falls Country Club**  
On Scenic Rainy River

218-283-4491  
[www.fallsec.com](http://www.fallsec.com)