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Legal Matters®

Elder Law
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How to give assets to your grandchildren (but keep control)

Many older people would like to make significant gifts to their grandchildren, in order to help them and in order to reduce the size of their own estate for tax purposes. But they also worry that the grandchildren won't be able to handle large sums of money.

The good news is that you can give each of your grandchildren up to $13,000 a year without incurring any gift tax. If you're married, your spouse can also give each grandchild up to $13,000 a year.

The bad news is that young people are notoriously immature with money, and simply handing a young adult a big windfall won't necessarily result in the wisest and most cautious financial decisions.

However, there are ways that you can "give" money to grandchildren for tax purposes, but retain control over it at the same time.

If your grandchildren are minors, then you can't transfer assets to them directly. In most cases, you'd need to transfer assets to a custodial account, where an adult custodian manages the account for the child's benefit.

That's great – but the problem with a custodial account is that the moment the minor reaches adulthood (usually at age 18 or 21), he or she will own the account completely. The brand-new adult can immediately withdraw all the money and spend it on anything he or she feels like.

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A better solution is to put the money into a trust. With a trust, you can specify that your grandchildren won't have access to the assets until they are old enough to handle them responsibly. For instance, a trust might end when a grandchild turns 28. Or a grandchild might get a third of the assets at age 25, a third at 30, and the rest at 35.

Setting up a trust for a grandchild is a little tricky, though. While

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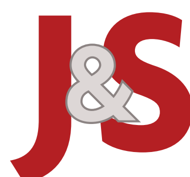

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Lawsuit could help seniors who move to a nursing home

Medicare will cover a nursing home stay entirely for the first 20 days, as long as the patient was first admitted to a hospital as an inpatient for at least three days. But a growing number of seniors are finding that Medicare won't pay for a nursing home stay because they weren't actually "admitted" as an inpatient at the hospital – they were merely held "under observation."

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Frequently, these patients have no idea that they weren't actually admitted. They were given a bed and a wristband, nurses and doctors came to see them, and they received treatment and tests just as if there had been a formal admission.

Increasingly, hospitals are classifying hospital stays as "observations" – sometimes retroactively – due to pressure from Medicare to reduce inpatient costs. Tens of thousands of people a year are now facing this problem, which can prevent them from receiving full reimbursement under Medicare Part A in addition to being denied coverage for a subsequent nursing home visit.

However, a class-action lawsuit has now been filed that might help elderly patients all over the country.

The suit was brought in a federal court in Connecticut by two elder advocacy groups, the Center for Medicare Advocacy and the National Senior Citizens Law Center.

These groups are asking the court to make it illegal for hospitals to accept Medicare patients "under observation" instead of simply admitting them. They claim that this practice violates the Medicare Act, and denies senior citizens their due process rights under the U.S. Constitution.

If the court won't do away with "observation" status entirely, then the groups are asking that hospitals be required to notify patients right away if they haven't been admitted, so that they can weigh their options.

Currently, Medicare doesn't require that patients be notified as to whether and when they have officially been admitted. As a result, whenever you or a loved one has a hospital stay, it's a very good idea to ask directly about your admission status. If you haven't been formally admitted – particularly if a nursing home stay afterward is likely – you should discuss this with your doctor and see if anything can be done.

Tens of thousands of people a year are now facing this problem, which can prevent them from receiving full reimbursement under Medicare Part A in addition to being denied coverage for a subsequent nursing home visit.

Government long-term care insurance program is scrapped

A part of the new federal health care law that would have set up a voluntary, government-run insurance program for long-term care has been scrapped by the Obama Administration.

The program, known as the "CLASS Act," would have allowed people to pay monthly premiums for five years, after which they would be eligible for future benefits to help pay for long-term care services that are not covered by Medicare.

But the Administration has concluded that there's no way to make the program financially self-sustaining, as required by the law.

Because the insurance is voluntary, it's likely that only those people most likely to need long-term care would sign up for it, Administration officials said. This creates a problem, because without a large pool of younger and healthier people paying into the program, the benefits would be too small or the premiums would be too large for it to be worthwhile for people to participate.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

How to give to your grandchildren (but keep control)

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you (and your spouse) can directly give an adult grandchild $13,000 a year without paying gift tax, the same rule doesn't apply if you put the money in a trust. That's because you're not really "giving" the grandchild the money; you're just giving him or her a future interest in the money. The law says that to avoid the gift tax, you have to give a "present interest" in the money.

So here's the solution: The trust is set up so that whenever you make a contribution, the grandchild has the right to withdraw that contribution for the next 30 days. If the grandchild does nothing, the money stays in the trust and the grandchild can no longer access it directly. But the contribution still counts as a "gift" for tax purposes.

Of course, this creates the risk that the grandchild will withdraw the money during the 30 days. However, you can make it clear to the grandchild that if he or she does so, you won't make any more contributions – which should be a very strong deterrent.

This type of trust is known as a "Crummey" trust. Despite the funny name, there's nothing wrong with a Crummey trust. It was named for D. Clifford Crummey, the man who pioneered the idea back in the 1960s.

To make things easier, a single Crummey trust can be created to benefit multiple grandchildren.

Here are a few things to consider if you're thinking about a Crummey trust:

- You can be the trustee if you want. But if you (or your spouse) is the trustee, you'll need to be careful in the way the trust is set up and administered, because if it's not done properly, the assets in the trust may be included in your taxable estate if you pass away.
- You'll want to decide who should pay the tax on the trust's income. You can set up the trust such that the income will be taxable to the trust, to the grandchild, or to you.
- The trust's assets will typically be considered as assets of the grandchild for purposes of calculating college financial aid awards.
- Any time you make gifts to grandchildren, you need to plan around something called the "generation-skipping transfer tax." This is a special tax designed to prevent people from avoiding gift and estate taxes by making gifts that skip generations. You may be able to plan around it and avoid it – depending on your circumstances – but you'll need to take it into account.

With a trust, you can specify that your grandchildren won't have access to the assets until they are old enough to handle them responsibly.

Tax deductions for long-term care insurance are increased

The amount you can deduct on your taxes as a result of buying long-term care insurance has been increased by the IRS for 2012.

If you itemize your deductions, you can generally deduct part of your premiums if the premiums, together with your other unreimbursed medical expenses, amount to more than 7.5 percent of your adjusted gross income.

The maximum amount of premiums you can deduct each year depends on your age at the end of the year. For 2012, the maximums are:

Age	Maximum deduction
40 or less	$350
41-50	$660
51-60	$1,310
61-70	$3,500
Over 70	$4,370

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For policies issued in 1997 or later, the premiums are deductible so long as the policies meet certain requirements. For instance, they must give you the option of "inflation protection" and "non-forfeiture protection." (You don't have to choose these options, but the policy has to offer them.)

For policies issued before 1997, the premiums are deductible if the policies were approved by the state insurance commissioner.

The rules for deductibility are different if you're self-employed. In that case, you can generally take the deduction as long as you made a net profit, even if your medical expenses don't exceed 7.5 percent of your income.

We welcome your referrals.
We value all our clients. And while we're a busy firm, we welcome all referrals.
If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

Many powers of attorney and health proxies should be revised

Medical privacy laws can create a 'Catch-22' where the people you've entrusted to make decisions for you can't get the information they need to do so.

Many power of attorney and health care proxy documents that were created years ago should be revised now as a result of a federal medical privacy law.

The law, known as HIPAA, generally prevents health care providers from disclosing your personal medical information to anyone other than you and someone you've named as your "personal representative."

Medical privacy is a good thing – but the law can create complications.

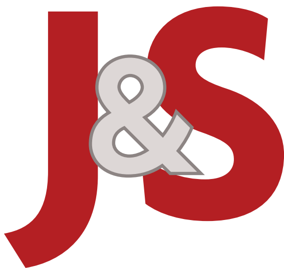
For instance, you may have a health care proxy that names someone you want to make medical decisions for you if you're not able to make them yourself. But if you haven't also named that person as your "personal representative" under HIPAA, then he or she might not be able to access your medical information in order to make informed decisions.

In addition, many power of attorney documents say that your agent can act on your behalf if you become incapacitated. But if your agent isn't also your personal representative under HIPAA, then even if you do become incapacitated, your agent might not be able to access your medical records in order to prove it – and as a result, the power of attorney might be of little value.

To make sure your agent doesn't get caught in this "Catch-22," your power of attorney and health care proxy documents should contain HIPAA clauses saying that the agent is also your personal representative. It's also good to sign separate HIPAA release forms.

Here's another issue: When people are admitted to a hospital, the hospital often asks them to fill out a generic health care proxy form. A lot of people dutifully fill out this form as part of the hospital paperwork. But if you do so, it could revoke the more carefully considered form you created as part of your estate plan. You'll want to be careful to make sure that the form you create as part of your estate plan is the most current form and the one on which the hospital will rely.

We'd be happy to help you make sure that these important documents are fully up-to-date.



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