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## Estate Planning Matters

# Can Financial Gifts to Children Protect Your Assets from Medicaid?

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After her 73 year old husband, Harold, suffered a paralyzing stroke, Mildred and her daughter, Joan, came into my office. The following is an account of their experience.

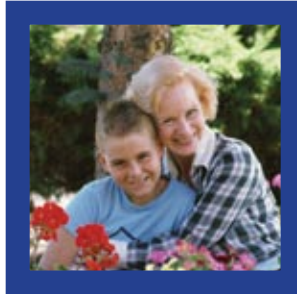
Dark circles have formed under Mildred's eyes. Her hair is disheveled. Joan holds her hand.

"The doctor says Harold needs long-term care in a nursing home,"

Mildred says. "I have some money in savings, but not enough. I don't want to lose my house and all our hard-earned money. I don't know what to do."

Joan has heard about Medicaid benefits for nursing homes, but doesn't want her mother left destitute in order for Harold to qualify for them. Joan wants to ensure that her father's medical needs are met, but she also wants to preserve Mildred's assets.

"Can't Mom just give her money to me as a gift?" she asks.



"Can't she give away \$12,000 a year? I could keep the money for her so she doesn't lose it when Dad applies for Medicaid."

Joan has confused general estate and tax laws with the issue of *asset transfers and Medicaid eligibility*. A "gift" to a child in this case is actually a transfer and Medicaid has very specific rules about transfers.

At the time Harold applies for Medicaid, the state will "look back" three years to see if any gifts have been made. The state won't let you just give away your money or your property to qualify for Medicaid. Any gifts or transfers for less than fair market value which are uncovered in the look-back period will cause a delay in Harold's eligibility for Medicaid.

In North Carolina, for example, every \$4800 given away during the three years prior to a Medicaid application creates a one month period of ineligibility. So if Harold and Mildred give their daughter \$12,000, Harold will be ineligible for Medicaid for 2.5 months.

So what can Harold and Mildred do? There are a number of steps they can take, ranging from proper gifting strategies, to private annuities, to raising the Community Spouse Resource Allowance. The key point to remember is this: There are legal strategies that can help Harold and Mildred obtain adequate care in a nursing home facility while preserving some, if not all, of their assets.

If you or a loved one is in a situation similar to Harold and Mildred's, or if you want more information on preserving your assets from the high cost of nursing homes, please do not hesitate to contact me.



*Jason Sutton, an Elder Law Attorney, is a member of the National Academy of Elder Law Attorneys, the North Carolina Bar Association, and the American Bar Association.*

*He advises seniors on methods, procedures, and techniques to legally preserve and protect their estate.*

*This is achieved by minimizing their estate tax burden, protecting their assets from high costs associated with estate administration and protecting their life savings and their family home from the cost of nursing home care.*

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