

Elder Law Advisor



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Can my spouse or child admit me to a long-term care facility in Wisconsin if I am incapacitated and not able to make my own health care decisions?

No, unless you have executed a Wisconsin power of attorney for health care and have specifically authorized your "health care agent" to admit you to such a facility. Many individuals are surprised to learn that a loved one, such as a spouse or child, cannot admit someone to a care facility simply because of the natural and legal relationship that exists. Admission to a care facility involves your legal health care rights. If you do not make your wishes known within a Wisconsin health care power of attorney, it is very likely that a court of law will have to make certain decisions for you.

Attorneys Practicing
Elder Law

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If I want to give money to my child, what are some issues that I should think about?

The most important decision is whether the "giving of money" should be a gift (with no legal expectation of repayment) or a loan (where repayment is legally required). If medical assistance eligibility may be needed in the next five years, any transfer of money to a child (whether as a gift or a loan) will require consideration and proper planning. In addition to medical assistance eligibility, gifts may trigger the need to file a gift tax return – even if no tax is due. Loans should be in writing and properly documented using appropriate interest rates and repayment periods.

What are the current changes being proposed to medical assistance eligibility for long-term care?

One proposed change is designed to make eligibility for medical assistance benefits more difficult if assets were gifted in the five-year look-back period before an application is filed. For example, one common strategy has been for a single parent to gift assets to his or her children and then have the children pay for the parent's care. If implemented properly, this strategy often protected one-half of the parent's assets for the children. The new rule would eliminate this planning opportunity.

Save the Date:

Protect Your Assets: Medical Assistance & Long-term Care Planning Seminar
Eau Claire: February 16, 2012 @ The Florian Gardens
Wausau: February 15, 2012 @ Holiday Inn & Suites
Visit www.ruderware.com for details.

Another proposed change is to revise the penalty period start date when an individual who is already receiving medical assistance long-term care (or nursing home) benefits gifts assets (often, an inheritance or lawsuit settlement) received after his or her Medical Assistance eligibility began. Currently, the penalty period for giving away those assets is not started until a date in the future. The proposed change would start the penalty period on the date the individual makes the gift, thus eliminating days or weeks of MA coverage.

A final proposed change is to eliminate "spousal refusal." Spousal refusal occurs when one spouse needs long-term care, that spouse applies for medical assistance, and the other spouse refuses to disclose and share information about his or her income and assets with the medical assistance caseworker. In effect, only the nursing home spouse's income and assets can be considered in such a case. The proposed rule change would require the non-nursing home spouse to disclose his or her income and assets as well as the nursing home spouse's income and assets.

About the Authors

Attorney Jane Lokken



Jane Lokken joined the firm in 1987 after graduating from the University of Wisconsin Law School. She practices extensively in the probate, trust administration, and real estate areas.

Her estate planning practice focuses on the elderly, and she is current chair of the Elder Law Section of the State Bar of Wisconsin. Jane is listed in the 2011 edition of Best Lawyers in America® for Elder Law.

In recent months, Jane worked with a number of clients to develop specialized limited liability companies to own recreational real estate and meet the clients' objectives of maintaining control during their lifetimes and an orderly, creditor-free transition to the next generation.

Attorney Mark Munson, CELA



Licensed to practice law in Wisconsin, Illinois and South Dakota, Mark Munson principally advises clients in the areas of elder law, public benefits (including special needs trusts), estate and trust planning, and taxation. Mark regularly advises clients in the areas of asset protection and medical assistance eligibility. Mark also assists clients with probate and estate administration, trust administration and guardianship.

Mark is a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation, the only organization accredited by the American Bar Association for the certification of elder law attorneys in the United States. In order to become a CELA, Mark was required to have sufficient experience in various practice areas with the field of elder law, pass an all-day comprehensive examination that tests various issues and disciplines within elder law, and receive the recommendation of other elder law attorneys in Wisconsin and the United States.

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- Gifting and divestment planning
- Medicare and Medicaid benefits
- Social Security benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship
- Veterans' benefits

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