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Medicaid Spend Down: Family Caregiver Contracts

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Qualifying for Medicaid often involves accelerating expenditures to reduce an applicant's countable resources down to the required level. One technique for spending down assets to accelerate qualification is through the use of a Family Caregiver Contract.

A **Family Caregiver Contract** is an agreement between a parent and another family member (typically an adult child) whereby the other family member agrees to provide personal care services to the parent in exchange for stated compensation. Because the caregiver is providing services, the amount paid to him/her is not considered a transfer subject to penalty, provided that the services rendered to the elderly parent are "fair value" for the amounts received by the caregiver.

Family Caregiver Contracts are potentially subject to abuse, and therefore they raise various issues, which are described in detail below:

- Value of services provided
- Documentation
- Form of payment
- Taxes

Value of Services Provided

The most obvious (and perhaps the most important) issue concerns the value of the services provided. If the compensation provided to the family caregiver cannot be justified as reasonable in relation to the services provided, then family members can expect that the valuation of the services may become a point of contention when the applicant applies for Medicaid.

If the Department of Human Services (DHS) determines that the compensation paid to the family caregiver reflected more than "fair value," the DHS will likely argue that the payments were a disguised transfer and should therefore trigger a transfer penalty. To reduce the risk that the arrangement will be re-characterized at

a later point in time, families should carefully determine the value of services to be rendered and document that any payments received are reasonable in relation to the services provided. Outside sources should be consulted as useful guides in determining the value of any services. For example, declarations from professional caregiver agencies can be used to justify value. Market surveys are another potential source to consult in setting the value of services.

Documentation

Another important issue in connection with family caregiver contracts is that of documentation. Compensation arrangements should be determined in advance of rendering the services and should be set forth in a formal written agreement. It is also recommended that cancelled checks be maintained and that a log be kept documenting the dates and hours worked by the family member providing the services.

Form of Payment

Another potential issue is the form of payment. For example, will the care provider be paid in installments over time (e.g., hourly fee for services) or in a lump sum in advance? Although a lump sum format is not *per se* prohibited, it will naturally draw closer scrutiny and would presumably be more easily characterized as a disguised transfer.

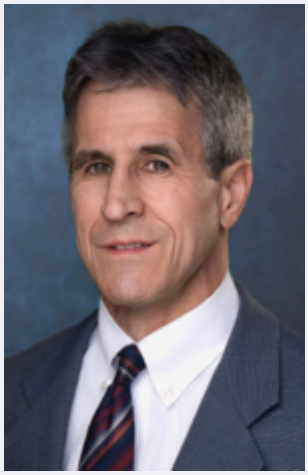
The preferred form of payment may hinge on the types of assets the applicant has and how readily marketable those assets are. For example, if an applicant's only significant asset is a difficult-to-sell physical asset or a contingent legal claim that is, by definition, not in the applicant's physical possession, a lump sum transfer may for practical reasons be the only (or perhaps the most logical) option. In such cases, some practitioners suggest that the asset be transferred to a third party under an escrow arrangement such that the service provider's entitlement to the escrowed asset is earned over time as services are rendered.

Taxes

Because a family care contract is, in essence, an employment contract, the parties must comply with all of the various laws pertaining to employers and employees, including payment of taxes. Accordingly, it may be necessary to withhold for income, social security and other forms of taxes. At a minimum, family care providers should understand that the amounts they received in exchange for services will be subject to taxation in the same manner as any personal services.

Family Caregiver Contracts can be beneficial in the appropriate circumstances. If you have questions about using them, or about other Elder Law or Medicaid matters, contact us at 814-459-2800.

See also:Medicaid Spend Down: Convert Assets into Exempt Resources



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