Considering a Personal Care Contract

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This article will explore common issues and questions related to Personal Care Contracts, which is one strategy available to assist an elderly loved one with their daily care as well as a planning technique to qualify an elderly individual for Medicaid/MassHealth.

A Care Contract. In the Care Contract strategy, the senior pays an hourly wage to a family member (the caregiver) in exchange for the caregiver's promise to provide a list of services to senior. To document the services that senior needs, and their value in the community, we typically recommend that the senior be examined by a Geriatric Care Manager (GCM). The GCM's report will be attached to the Care Contract and included in any future Medicaid application to document and prove to Medicaid that payments made to the caregiver by the senior were for fair market value and were not a gift. A transfer for fair market value is not a gift and therefore does not carry any associated penalty period. In this way, an elder can transfer a large sum of money over time to a family member in exchange for services that the family member likely was going to perform anyway. The caregiver is now being paid for those services and the senior has slowly transferred money away from the nursing home and to a certain family member.

The Caregiver is considered an Employee. Generally, if an

elder hires someone to perform household work, including caregiver services, that person is deemed to be an employee. As the employer, the elder may need to withhold and pay Social Security and Medicare taxes, as well as all applicable state taxes from their employee's pay each pay period. Additionally, the elder is required to file a W-2 for any caregiver. The payments to the caregiver is income to them. As such, the caregiver must pay income tax on the amount received. Depending on the caregiver's individual tax bracket, this means that approximately 25 to 30% or so of the payments will be lost to taxes. As this can get complicated, you should certainly consult a qualified accountant to determine the exact amount of tax that the senior and caregiver would pay upon receiving the payments described.

Workers' Compensation Insurance. In Massachusetts, if a caregiver works more than 16 hours per week, then workers' compensation insurance must be paid by the elder. Workers' compensation insurance will pay for medical expenses and lost wages to the caregiver in the event of worker-related injuries or illness.

What is a fair wage? How much should the caregiver be paid? As described above, we typically recommend a report by a GCM to determine the appropriate hourly rate for the care involved. Each task that may be needed could have differently hourly rates.

Record keeping. It is important that the caregiver keep detailed logs of the time, activity, and receipts for expenses of the senior.

Heightened scrutiny with family members. As with any strategy, there is no guarantee. Medicaid typically scrutinizes transactions between family members more closely than those of independent third parties (such as services paid to a home care agency). The strategy described above simply increases the chances of success by documenting the services

appropriately and gathering of sufficient support.

Other considerations. Should the caregiver receive additional compensation for overtime work? In Massachusetts, a caregiver must be paid for any overtime if more than 40 hours in a 7-day week. Also consider other HR-type issues such as whether the caregiver receives paid time off or reimbursements for out-of-pocket expenses by the caregiver.

Every situation is unique. Paying for care without proper guidance from a CPA/accountant and a qualified elder law attorney may expose you to risk and liability.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.