

Medicaid Pitfall: Paying for Private Aides in Massachusetts

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The longer we live, the greater the likelihood that we will require care at some point in time. Many families go to great efforts to keep their senior loved ones at home, even if that means bringing care into the home. Unfortunately, care is expensive. Paying for an aide through a home health care agency can cost \$25 or more per hour. Thus, many families opt to hire persons “under the table” (i.e., not through an agency and, often, paid in cash) to help care for their loved ones. Hiring a caregiver “under the table” may be a less expensive alternative to hiring a caregiver through an agency, but it could prove problematic if the person needing care requires Medicaid assistance in the future.

Medicaid (MassHealth in Massachusetts) is a means-based government benefit that helps qualifying persons pay for their long-term care costs. However, Medicaid has strict rules about how a person can spend their assets prior to qualifying for benefits. What may seem like an innocuous, or even reasonable, expense at the time could result in a period of Medicaid ineligibility for your loved one in the future if you aren't careful.

According to Massachusetts' Medicaid regulations, if a person transfers or disposes of resources for less than fair market

value within five years of an application for Medicaid benefits (unless a certain exception can be satisfied), the Medicaid applicant will be penalized for having made such transfers. The penalty is a period of ineligibility that is calculated based on the total value of assets transferred.

In the case of paying an aide "under the table", such private payments could be considered penalizing transfers for Medicaid eligibility purposes. To avoid this possibility, consider entering a service contract with the aide to memorialize the aides' compensation rates and the services they are to perform. Also, be sure that the caregiver keeps a very detailed log of the work performed. Often, challenge occurs where the aide is paid for inconsistent amounts, with no documentation, and checks are made out to "cash".

While it may seem easiest to pay an aide "under the table," doing so can leave your loved one unprotected against lawsuits and tax evasion penalties.

While paying aides "under-the-table," the senior is personally liable for any injury or illness they receive in the workplace. This means if the aide should happen to have an accident, such as slipping on the icy sidewalk and requiring medical attention, they could sue for the medical bills. Your loved one could end up paying these expenses out-of-pocket. By employing an aide legally, workers compensation insurance can help protect from this type of lawsuit. Workers compensation covers lost wages and medical treatment of an employee's work-related injury or illness.

When employees are paid "under-the-table" and don't report their aide's income on taxes, they are participating in tax evasion. By not paying household employer taxes, you are also evading necessary taxes. Individuals caught evading taxes are generally subject to substantial penalties from the IRS. For your aide to be legally employed, all required federal, state, and local taxes must be withheld and deposited throughout the

year, taxes must be processed, and W2s must be issued to caregiver employees.

Also, obtaining workers compensation and filing proper taxes further supports the fair market relationship between your loved and the aide, reducing the risk of challenge by Medicaid.

If you are considering hiring a private health care aide for yourself or a loved one, it is imperative that you first speak to a qualified elder law attorney to structure the arrangement in a legal manner so that payments to the caregivers are not later questioned by Medicaid.

Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic you think would be helpful to readers.

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.