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Transfer of money could be improper if no personal care agreement

Elder Law Answers reported on a case out of Louisiana where a nursing home resident was deemed to have improperly given his closest relatives, his caregiver nephew and his nephew's wife, nearly \$50,000 because there was no valid written personal care agreement. The nursing home resident was denied Medicaid to pay for his care for 15 months, the length of the imposed penalty in this instance. (www.elderlawanswers.com). Although this was not a Pennsylvania case, family caregivers should take note because the same result can and does happen here.

Family caregivers are a critical part of our long term care system, providing hours and hours of unpaid caregiving for older and ill relatives. Much of the time, no pay is wanted or expected; care is provided out of love and affection. However, when the caregiver is forced to give up employment, or opens her home to an aging relative, or when the caregiving becomes more consuming, a senior with some means might want to give the caregiver money. The senior may want to pay for her share of household expenses, or to pay the caregiver some money in gratitude. Unfortunately, although everyone has the best intentions, a transfer of assets without a written care agreement will often result in that transfer being deemed a gift; the result could be a denial of Medicaid benefits for some period of time.

When someone enters a nursing home, or applies for help at home through the PDA Waiver program, and a Medicaid application is started, there is a five year "look back" for any transfers over \$500 in any given month that are done without fair consideration. That is, did the institutionalized person give anyone money without receiving something tangible in return? A senior can buy groceries or pay household expenses for himself, but if he gives money to his adult daughter to compensate her for caring for him, then there is no "fair consideration" per the Pennsylvania Department of Health Services (DHS formerly DPW). However, a written expression of the "contract" between father and adult daughter to compensate the daughter for her time, efforts and, often, loss of outside income, is accepted as fair consideration. This "protects" some of parent's assets from being spent on more expensive care, and rewards the caregiver who is actually providing this care. Note that the caregiver should report the compensation on his or her income tax return.

If a senior is paying an outside person for care, in most cases this is a clear and straightforward receipt of a benefit for the money given. However, there are instances where a senior is paying someone "under the table" for care given. This also will be treated as a gift if done within the five year "look back." There is no documentation to show what the money was used for. Moreover, failure to pay taxes on wages is a violation of tax laws. What can seem like a savings can come back to be a much more expensive choice in the long run.

Any older person, especially one who is in any need of caregiving assistance, should consider a care agreement if he or she is thinking of compensating a family member for care or housing costs. The fairly minimal cost to set up such an agreement will often prove worthwhile in the long run, especially if an unexpected nursing home admission comes into the picture.