

Estate Strategies



Important Policy Change to Consider Before Paying for Home Care

Why your Caretaker Contract should be Medicaid-compliant ~ even if you're not on Medicaid

By: Melisa M.W. Mysliwicz



All payments made to caregivers for personal care and home care services within five years of a Medicaid application are now considered a divestment.

assistance and home care services. Under a policy change made effective October 1, all payments made to caregivers for personal care within five years of applying for Medicaid benefits will be considered a divestment for purposes of Medicaid eligibility, unless a Medicaid-compliant caregiver contract was in place. Divestments, which are defined as transfers for less than fair market value, result in a penalty period during which Medicaid will not pay for costs for long-term care services, home and community-based services, home help, and home health.

Paying for even just a little health care help at home right now – could keep you from receiving full Medicaid benefits within the next five years.

A new change to Michigan's Medicaid policy should catch everyone's attention, even if you're not currently considering Medicaid

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Client Tax Updates

By: Marlaine C. Teahan

Do You Plan to Make Gifts of Closely Held Business Interests?

If you plan to make gifts of your closely held business interests, you should know that the U.S. Department of Treasury is working on regulations that may disallow or restrict discounts of the value of the gift. Traditionally for these types of gifts, appraisals have included minority discounts and a lack of marketability discounts, ranging from approximately 20%-40%.

We expect that temporary regulations will be issued this fall, restricting these discounts. Sometimes, the effective date of the Treasury's final regulations are back-dated to when the temporary regulations were issued. This means if you plan on making any gifts using these discounts, the most conservative approach would be to make the gifts before the temporary regulations are issued. The time is now to make such gifts.

Would you like to gift money to charity from your IRA in 2015?

In prior years, individuals 70 ½ or older could exclude up to \$100,000 from gross income for donations paid directly to a qualified charity from their IRA. This tax benefit is one of the so-called "Tax Extenders" that Congress often passes on a year-to-year basis. We don't yet know if this tax extender benefit will be passed for 2015 - it could be passed as late as mid-December, giving you a very narrow window to make such a gift. If this type of gift is something you would like to make, if it is made available, keep checking our blogs or give us a call for updated information. You can also research "IRA Charitable Rollover 2015" or "Charitable Donations from IRAs" to stay updated. If this Tax Extender is passed, you will have to make the qualified charitable donation from your IRA on or before December 31, 2015.

Here are some important details of an IRA Charitable Rollover as outlined on the IRS website:

- The donation satisfies any IRA required minimum distributions for the year.
- The amount excluded from gross income isn't deductible.
- Donations from an inherited IRA are eligible if the beneficiary is at least age 70 ½.
- Donations from a SEP or SIMPLE IRA aren't eligible.
- Donations from a Roth IRA are eligible.
- Married individuals filing a joint return may each exclude up to \$100,000 donated from each spouse's own IRA (\$200,000 total).

Deathbed Will: *When is it too late?*

Why putting off your will can lead to greater legal challenges in the future

You had always planned to get your will written or revised. You were advised that you should have a trust drafted and your assets transferred into the trust. But somehow, life got in the way. You never got around to it. Now, suddenly you are hospitalized and facing an uncertain future. The prognosis may even be grave. Is it too late to have a will drafted?

Depending on the facts and circumstances, there may be sufficient time to get a will or trust in place. While such planning is not ideal, and may be more likely to be challenged, wills prepared close to death can be just as valid as those prepared in advance. Even so, we highly suggest taking the time now to put together a thorough plan to ensure that your wishes are carried out after death. However, should the unexpected happen, we are ready to help.



Important Medicaid Policy Change, continued

It is important to note that payments made to caregivers that might be considered divestments include all personal care contracts, including:

- Health care monitoring
- Medical treatment
- Securing hospitalization
- Visitation
- Entertainment
- Shopping
- Help at home
- Other assistance with daily living



In addition, any arrangement that pays for expenses such as home/cottage care or repairs, property maintenance, property taxes, homeowner's insurance, heat and utilities for the homestead, or other real property, is considered a home care contract.

Most people do not anticipate entering a nursing home or needing long-term care Medicaid benefits – especially not five years in advance. Without a crystal ball to predict the future, you will want to take precautions to avoid a penalty period. The best practice is to establish Medicaid-compliant caretaker contracts for all personal care and home care – whether it is provided by relatives or third-party providers. In order for these contracts to be considered Medicaid-compliant, each of the following criterion must be met:

1. The services must only be performed after a written legal contract has been executed between the client and provider.
2. The contract must be dated, notarized, and signed by the provider and the client, either individually or by the client's agent under a durable power of attorney, guardian, or conservator, provided that the person signing for the client is not the provider of services.
3. No services may be paid for until the services have been provided. To be Medicaid-compliant, there cannot be prospective payment for future expenses or services.
4. At the time that services are received, the client cannot be residing in a nursing facility, adult foster care home (license or unlicensed), institution for mental diseases, inpatient hospital, or intermediate care facility for individuals with intellectual disabilities.
5. At the time that services are received, the client cannot be eligible for home and community based waiver, home health, or home help.
6. The contract must show the type, frequency and duration of such services being provided to the client and the amount of compensation being paid to the provider.
7. Payment for companionship services is prohibited.

It is also important to note that it is presumed that relatives who provide home and personal care services do so for love and affection only. Payment for home and personal care services to relatives creates a rebuttable presumption that the payment was a transfer for less than fair market value, known as a divestment. Therefore, even if a Medicaid-compliant caregiver contract is in place for services provided by a relative, if and when Medicaid is applied for, the Department of Health and Human Services will determine fair market value for such services by comparing the contract price to other area businesses which provide such services. If the relative's rate was greater, then it will very likely be considered a divestment. For this reason, it would be wise to compare a relative caretaker's cost of services to other providers in the area in advance to be sure the rate is similar. Additionally, it is recommended that the documentation gathered is retained in case fair market value is contested in the future. These contracts will be reviewed by the Department of Health and Human Services in detail and will have a direct impact on your future Medicaid eligibility. If you need a caregiver contract, contact us to help you through the process.

Don't be the Victim of a Scam

By: Marlaine C. Teahan & Melisa M. W. Mysliwec

Arming yourself with information is the best way to protect your family from becoming the victim of a scam. No matter how educated or intelligent you may be, anyone can fall victim. It's especially important to keep an eye on the elderly or those who may be more trusting, to ensure that they don't fall prey to the cons. There are things that you can do right now to protect yourself, but first let's take a look at the latest scam warnings in our area:



Grandparents Scam. A grandparent receives a frantic call from someone they believe to be their grandchild, claiming to be in trouble and in need of money. The story changes – the child was arrested, in a car accident, needing emergency assistance – but the scam is the same. The caller asks for money to be wired immediately. In another version of the same ploy, the scammer may pretend to be a family friend or neighbor. The request is almost always to have money wired, or for bank account information to be provided. Wiring money is like sending cash: there are no protections for the sender.

IRS Scam. There are several reports of phone calls from people posing as agents from the IRS, stating that there is an arrest warrant for owed taxes. No matter how scary or urgent the caller may make it sound, the IRS will never initiate contact by phone, email, text, or social media to ask for personal or financial information. If you have any doubt, call the real IRS at 800.829.1040.

Home Repair Scams. Be wary of door-to-door solicitations for home repairs. The best advice is to get two-to-three estimates before narrowing down your options. Ask to see the contractor's license and do some research through the Better Business Bureau before making a decision. It's also best not to leave home repair workers alone in your home.

So how can you tell scams from legitimate offers? Here are five of the most common warning signs:

1. The Offer Seems Too Good to be True

The old adage says it all: if something seems too good to be true, it probably is! This is the biggest red flag for all potential scams. Examples of these common tactics include: claiming money has been left to you from an unknown relative, being awarded a loan or grant you that you have not applied for, or saying that you've won a lottery you've never entered.

2. Request for Private Information

We all know to keep our bank and personal information private, but beware of the all-too-convincing emails or phone calls that may sound legitimate. For example, a caller claiming to represent your bank, or an email that uses the logo for a reputable organization but has a different sender email address. Your bank will never call you asking for your SSN, date of birth, or credit card numbers.

3. Suspicious Email Domains

This flows right into our next warning sign: look carefully at the domain name used by the suspected scammer. Be

suspect of any free email addresses such as Hotmail, Yahoo, or Gmail. We've even seen reputable company names added into domain names as part of a ploy, so be wary of the sender. When in doubt, contact the company through a verified email address or phone number.

4. Grammatical Errors

Grammatical errors are a dead giveaway of a brewing scheme to swindle you out of your hard-earned money. Cybercriminals may be smart – but they don't always have a solid educational background. Investigators also theorize that scammers may be targeting those who may not catch the errors, and perhaps may be more susceptible to falling for the scam. No matter the reason, you'll want to trash any questionable literature and delete emails filled with spelling and grammatical errors.

5. Requests for Fees

The request may not come with the first correspondence, but be on the lookout for anyone asking for advance payments or fees. Scammers will claim many reasons for needing to clear the funds before completing an offer. Never pay for anything in advance – unless you are confident it is not a scam.

There are things that you can do right now to prevent scammers from targeting you. Nothing is foolproof, but it helps to be proactive. Ideas include:

- Opt out of having your name included on lists used by creditors or insurers to make unsolicited offers of credit or insurance ("Firm Offers"), go to optoutprescreen.com and click the button to opt out, or call 1.888.567.8688. Doing this prevents the consumer credit reporting companies (Equifax, Experian, Innovis, and TransUnion) from providing your credit file information for Firm Offers for five years. To Opt-Out permanently, you must mail a completed Permanent Opt-Out Election Form, which is available on the website.
- Opt out of having your personal information shared or sold by your bank, credit card company, phone company, etc.
- Do not provide unnecessary personal information, such as your phone number or email address, to retailers or others that may share or sell it.
- Use a "junk" email address for all online and in-store purchases.

Likewise, there are things that you should never do, including:

- Never give away any personal information, including your social security number, bank account information, or credit card numbers by phone or email.
- Do not pay processing or administrative fees to collect a prize or award.
- Never make a charitable donation without first checking with the Better Business Bureau (BBB) Wise Giving Alliance, which offers information about national charities. Call 703.276.0100 or go to www.give.org or www.irs.gov to find out if the charity is real.
- Never send your payment by a private courier or wire money to someone you don't know.
- Never click on links or attachments in emails from people you don't know, or you may put your computer at risk for viruses, trojans, or other malware.

Make a Complaint:

Michigan Attorney General's Consumer Protection Division

P.O. Box 30213

Lansing, MI 48909

517.373.1140

www.michigan.gov/ag

Federal Trade Commission

1.877.FTC.HELP

TTY: 866.653.4261

www.consumer.ftc.gov

Lansing Walk to End Alzheimer's

Fraser Trebilcock Makes Top 15 List of Teams in Fundraising

Team Fraser Trebilcock joined roughly 1,000 people outside the State Capitol Building in Lansing in September for the Annual Walk to End Alzheimer's. With the help of our very generous community, the Lansing Walk raised \$180,000 dollars for Alzheimer's awareness, support, research, and care. Team Fraser Trebilcock is proud to have ranked among the top 15 teams, with our largest turnout of walkers yet! Thank you to all of our walkers and support from our clients, attorneys, staff and their families. We believe that every dollar truly makes a difference, with this money staying right here in our community.

In a special fundraiser, our attorneys and staff went "alz in" to raise money for the Lansing Walk by holding a mini-tournament in our Lansing office. Our 8th floor transformed into a FUNdraising extravaganza with a mini putt-putt course and our very own Wii bowling lanes! While the lunch hour was filled with friendly competition, we also took time to support those in our own Fraser family who are currently caring for loved ones with Alzheimer's, and those who have lost someone to the disease. This fight is a personal one for us, and we are proud to do our part in bringing awareness to the cause.

The Walk is the nation's largest event to raise awareness and funding for Alzheimer's Disease, with annual walks taking place in more than 600 locations across the country, including downtown Lansing. If you would like more information on Alzheimer's disease, we would be happy to put you in touch with staff at your local Alzheimer's Association. There is also a 24-hour hotline: 1.800.272.3900. In addition, please let us know if you have any concerns about getting estate planning documents in order for family members suffering from Alzheimer's or another form of dementia. Our attorneys can work to ensure that your loved ones are protected under the law.



Few matters are as important as estate planning.

You need a plan that is highly personal and individualized, created by professionals who are experienced, honest, responsive, and caring. We help develop and implement plans to safeguard you and your family, so that when you can no longer care for yourself or your loved ones, the documents will be in place to put your plans into action.



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