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PERSONAL SERVICE CONTRACTS

What is a Personal Service Contract?

When an elder is either already in a nursing home or will need long term care in the near future, the Personal Service Contract (“Contract”) is a planning tool to preserve a lump sum of the elder’s assets in exchange for personal care services. For Medicaid planning purposes, the Contract is an agreement between an elder and one or more caregivers who promise to provide personal care services for the elder. The lump sum payment made from the elder to the caregiver must be for fair market value. The Contract is binding on the parties and cannot be assignable.

Who can be the caregiver?

Anyone who provides services can be the caregiver. It can be a family member, friend, or a professional care provider. Although most Contracts involve local caregivers, it is possible for an out of state caregiver to provide a few hours per month of services.

How much can the elder pay the caregiver?

The caregiver cannot be paid more than fair market value for the services provided. Consideration must be given to the average number of hours per week the caregiver will work, in addition to the going rate of compensation in the community for those services. The elder’s life expectancy is also a factor. The payment to the caregiver is not considered a gift. Although not binding, the general understanding is that the caregiver will use the money for the elder if needed.

How long does the Contract last?

The Contract is generally written to cover the entire lifetime of the elder. If the elder lives longer than their life expectancy, the caregiver is obligated to continue care. If, however, the elder dies sooner, the caregiver is not obligated to return any of the funds received under the Contract.

What if the elder is not competent?

If the elder is not capable of signing, the elder’s agent may sign on the elder’s behalf. This may be a legal guardian with court approval or an attorney-in-fact named under a Durable Power of Attorney.



What are the tax consequences?

For the elder, capital gains tax issues may arise when the elder's assets are sold in order to make payment under the Contract. However, there is no gift tax because fair market value is received in exchange for the payment under the Contract. With regard to the caregiver, the payment to them must be reported as income on their tax return.

Summary:

The Contract is designed to help the elder maintain a better quality of care through the elder's lifetime. Many times, family members are voluntarily providing the services already. The Contract provides a legally enforceable means for those services to continue. It can bring great peace of mind both to the elder and caregiver if done properly. There are specific requirements in order for the Contract to hold up under a Medicaid application so consultation with a qualified Elder Law attorney is essential.