

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

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## **Payments to a caregiver and Medicaid penalty period**

An increasingly common scenario is when an older relative is living in his or her own home but now needs a little more assistance to remain there. Family members often work outside the home, so they cannot stay during the day to make sure the senior has meals, takes her medication or has assistance with bathing. The senior may need companionship due to dementia issues to keep him safe. The family makes informal arrangements, thinking it will be temporary; however, days turn into weeks or months and the family is glad that the senior is safe and able to remain in his or her home. The caregiver, often a senior herself, gets a little more money, and the family has peace of mind since a trusted person is helping the senior. Everyone wins, right?

A recent article in Elder Law Answers ([www.elderlawanswers.com](http://www.elderlawanswers.com)) speaks of a recent Michigan appeals court decision where a Medicaid applicant's payments to a non-relative caregiver resulted in a penalty period when the applicant later entered a nursing home. There was an informal agreement and no contract was signed. When the eventual applicant entered a nursing home, a penalty period was imposed since per Michigan law, the payments to the caregiver were deemed to be a gift. Michigan requires a signed contract and a written plan of care from a physician. The appeals court reluctantly upheld the ruling imposing a penalty period because the lack of a written contract and physician orders violated the regulations in place, even though they agreed that the family member did not intentionally violate any regulations.

Although Pennsylvania's regulations are not as strict as those in Michigan, even payments to a non-relative caregiver that cannot be supported by some type of written agreement are suspect and can result in a penalty period when Medicaid is applied for. Family members who pay a caregiver "under the table" cannot justify to whom those payments were made. If an arrangement is made with an agency, the payments to the caregiver can be supported by evidence and will prevent the issue of being unable to show a "paper trail" regarding assets being spent. At the very least, a *written* caregiver agreement should be in place that tracks the payments being made.

Other issues arise when paying a caregiver informally or "under the table, or any type of direct hire (that is, not utilizing the services of an agency). The family member doing the hiring becomes an employer, and must handle state and federal income taxes and documentation of same, insurance issues, coverage for holidays and sick days, and a host of other issues. Failure to address these issues (avoidance of taxes are the reason most caregivers want to be paid under the table) can result in major headaches for the family member or members who did the "hiring" including being responsible for the caregiver's failure to report their income. Then when the loved one's money runs out, or their health deteriorates to the point of needing long term care, another problem rears its ugly head: how to qualify for Medicaid.

Most well-meaning family members do not even consider these issues. The goal is to have the loved one cared for in the "now," not in planning for the future. In the Michigan case, a grandson was just concerned about caring for his grandmother, and gave her 10 more months at home with his informal arrangements. He did not intend to do anything wrong, but ran afoul of the rules anyway. Hiring an agency may look more expensive (on paper) but it is likely to be cheaper in the long run.