

TO: Local District Commissioners, Medicaid Directors

FROM: Judith Arnold, Director
Division of Coverage and Enrollment

SUBJECT: Evaluating Personal Service Contracts for Medicaid Eligibility

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Liaison:
Upstate (518)474-8887 New York City (212)417-4500

The purpose of this message is to provide guidance for social service districts in evaluating personal service contracts.

A personal service contract, also known as a caregiver agreement, is a formal written agreement between two or more parties in which one or more of those parties agree to provide personal and/or managerial services in exchange for compensation paid by the party receiving the services. Since the enactment of the Deficit Reduction Act of 2005, which lengthened the look-back period for asset transfers and changed the penalty start date, districts have seen an increase in the number of Medicaid applications involving personal service contracts. Under the personal service contracts reviewed to date, the elderly applicant's resources are transferred in a lump sum to a family member in exchange for services to be provided by the family member for the lifetime of the applicant. This planning tool is being used to reduce the applicant's resources in order to qualify for Medicaid while compensating family members for services provided, even though the services may have been provided free of charge in the past.

For Medicaid eligibility purposes, a determination must be made as to whether the applicant received or will receive fair market value (FMV) for the resources transferred to the caregiver. If a determination cannot be made that the applicant will receive FMV for the resources transferred, the resources are subject to a transfer penalty.

Uncompensated Transfer - A personal service contract that does not provide for the return of any prepaid monies if the caregiver becomes unable to fulfill his/her duties under the contract, or if the A/R dies before his/her calculated life expectancy, must be treated as a transfer of assets for less than fair market value. If there are no such legally enforceable provisions, there is no guarantee that FMV will be received for the prepaid monies.

If a personal service contract stipulates that services will be delivered on an "as needed" basis, a determination cannot be made that FMV will be received in the form of services provided through the contract. A transfer of assets penalty must be calculated for an otherwise eligible individual.

Calculating the Transfer Penalty Amount - Districts do not need to evaluate personal service contracts until the individual applies for and is otherwise eligible for nursing facility services. When doing such an assessment, if the district determines that the funding of a personal service contract is an uncompensated transfer, the district must give the applicant credit (i.e., by reducing the transfer amount) for the value of any services actually received from the time the personal service contract was signed and funded through the date of the Medicaid eligibility determination.

Note: No credit is allowed for services that are provided as part of the Medicaid nursing home rate.

In order to assess the value of these furnished services, the district must be provided with credible documentation (e.g., a log with the dates and hours of services already provided). Any amount subtracted (i.e., the credit for caregiver services actually provided) must be commensurate with a reasonable wage scale, based on fair market value for the actual job performed and the qualifications of the caregiver. If credible documentation is not provided, no credit is deducted when calculating the uncompensated transfer amount.

For assistance in evaluating job duties and pay rates, districts may refer to the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook. The latest 2006-07 Edition is available at: <http://www.bls.gov/oco/>. The handbook includes information on training and other qualifications needed for particular jobs. If a district determines that a reasonable pay rate for a particular job/service is less than the amount spelled out in the contract, the district should use the lesser amount in calculating the amount of compensation received for the transfer.

Districts should contact their local district liaison if they have any questions concerning the treatment of a particular personal service contract.