

WHAT DO I NEED TO KNOW ABOUT
Personal Care Agreements?



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WHAT IS A PERSONAL CARE AGREEMENT?

A **Personal Care Agreement (PCA)** is a private contract between a disabled or aging person who is receiving care (Care Recipient) and a family member or friend who is providing care (Caregiver). The PCA is most commonly entered into between an adult child and a parent.

The Care Recipient pays compensation to the Care Provider in exchange for the Care Provider providing personal care or non-medical attendant services to the Care Recipient. PCAs are sometimes referred to as long-term personal services and support agreements, elder care contracts, family caregiver contracts or personal services agreements.

WHAT ARE CONSIDERED PERSONAL CARE SERVICES?

Personal Care Services may include financial related services such as reviewing bank and investment statements, reviewing and paying invoices and bills presented for payment, making deposits as necessary, and gathering documents necessary for the proper preparation of all tax returns required to be filed by the Care Recipient.

Personal care services may also include personal shopping, transportation, preparing meals, laundry, cleaning, hair care, personal hygiene and other incidental services.

Personal care services may also include providing or supervising personal care and assistance with all daily activities of living including eating, toileting, ambulating, transferring, bathing, and dressing.

Lastly, personal care services may include medical care assistance such as arranging transportation to and from health care facilities, contacting emergency medical service providers as necessary, scheduling appointments with health care providers, assisting with the implementation of health care provider instructions or directions relating to prescribed medications, special diets, use of durable medical goods and exercise.

WHAT ARE THE REQUIREMENTS FOR A VALID PCA?

The requirements for a valid PCA are: (1) the agreement must be in writing; (2) the agreement must be signed by the Care Recipient (or the Care Recipient's power of attorney holder) and the Caregiver; (3) the payment must be for services rendered by the Caregiver; (4) the payment amount or compensation must be reasonable based on the type of services, the number of hours for which services are provided, and the customary charges in the state or geographic region for non-medical care providers.

ARE PCA PAYMENTS CONSIDERED GIFTS?

Since the payments are in consideration or in exchange for services, the payments are not considered disqualifying transfers or gifts for gift tax purposes or for Medicaid eligibility purposes.

HOW CAN A PCA ASSIST IN ELIGIBILITY FOR MEDICAID?

A person who is age 65 or older may qualify for Medicaid benefits. In Tennessee, the Medicaid program for persons over age 65 is referred to as TennCare CHOICES. Medicaid is a needs-based or means-tested program which provides financial assistance to a person over age 65 to pay for long-term services and supports. Long-term services and supports may be provided in skilled nursing facilities or at home in the community.

To qualify for Medicaid, the applicant must meet certain assets and income eligibility criteria. In general, the applicant must "spend-down" non-exempt assets to qualify for Medicaid. Any gifts of assets within a specific period of time referred to as the "look-back period (5 years in 2021) will result in the disqualification of the applicant for a specific period of time referred to as the penalty period. However, payments pursuant to a PCA are not considered gifts. Therefore, the applicant can accelerate the spend-down process by paying to family members a reasonable compensation for services provided prior to the applicant becoming eligible for Medicaid.

HOW CAN A PCA ASSIST IN ELIGIBILITY FOR VA BENEFITS?

A veteran or veteran's spouse who is aged or disabled may qualify for the VA Improved Pension Benefit, sometimes referred to as Aid and Attendance (VA Benefits). VA Benefits are needs-based or means-tested benefits which provide financial assistance to the veteran or veteran's spouse to help cover some of the costs of long term care.



To qualify for VA Benefits, the applicant must meet certain monthly income eligibility criteria. In general, if the qualified medical expenses of the VA Benefits applicant are greater than the applicant's income, then the applicant would meet the income eligibility requirements for VA Benefits. Qualified medical expenses may include non-medical caregiver expenses if the care is deemed medically necessary by a physician. In other words, if a physician recommends that non-medical caregivers are necessary for the applicant's health, then the non-medical caregiver expenses can be used in the expenses over income calculations. The applicant may employ a family member or friend to provide non-medical or attendant care to the veteran. The veteran may pay compensation to the family or friend caregiver. If a family member or friend provides non-medical or attendant care for compensation, then the arrangement needs to be evidenced by a written contract. The written contract is referred to as a Personal Care Agreement. Therefore, the Personal Care Agreement can assist the applicant in qualifying for VA Benefits by increasing the applicant's



qualifying medical expenses by the amount of the family or friend caregiver's compensation, thereby allowing the Care Recipient's monthly income to meet the eligibility criteria for the VA Benefits.

WHAT ARE THE TAX CONSEQUENCES OF A PCA TO THE CARE PROVIDER?

The payments from the Care Recipient to the Care Provider constitute taxable income to the Care Provider. The Care Provider should report the payments on his or her IRS Form 1040, U.S. Individual Income Tax Return, and pay the applicable taxes on the payments. Applicable taxes may include federal and state income taxes, Social Security taxes, and Medicare taxes.

WHAT ARE THE TAX CONSEQUENCES OF A PCA TO THE CARE RECIPIENT?

If the Care Provider is classified as an employee under the IRS rules for household employees, and if the Care Provider is paid more than \$2,300 (2021) in one calendar year, then the Care Recipient must report the payments on IRS Form W-2 and on Schedule H (Household Employment Taxes) attached to the Care Recipient's IRS Form 1040.

WHO SHOULD DRAFT A PCA?

An elder law attorney with Medicaid eligibility and Veterans Benefits eligibility experience should prepare a PCA so that the PCA will be valid under the applicable federal and state laws, rules and regulations.

THE BAILEY LAW FIRM

The Bailey Law Firm concentrates its legal practice in the areas of wills and trusts, estate taxation and planning, asset protection planning, charitable gift planning, business succession planning, elder law, and estate administration and probate. The Bailey Law Firm has attorneys licensed to practice law in the states of Mississippi and Tennessee.

OLEN M. "MAC" BAILEY, JR.

The Bailey Law Firm was founded by Olen M. "Mac" Bailey, Jr. Mr. Bailey received his Master of Laws (LL.M.) degree in Elder Law with honors from Stetson University College of Law, his J.D. from Vanderbilt University School of Law, and his B.A. from Millsaps College. Mr. Bailey is an accredited attorney with the Department of Veterans Affairs.

ESTATE PLANNING

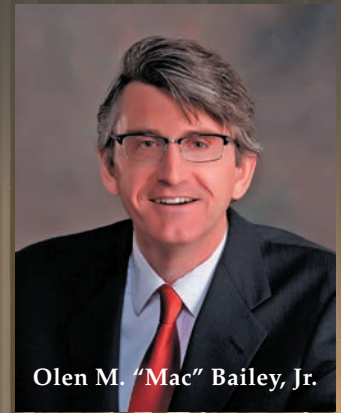
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