

Elder Law Advisor



April 2012

How can I compensate my children for taking care of me without it being considered a divestment for Medicaid purposes?

By: Attorneys Nick Heike and Jane Lokken

To prevent Medicaid from treating payments to family members as a divestment, there must be a written, and preferably notarized, contract between the parties. This “care contract” must be in place before the work is performed and must specify the services and amount to be paid. Medicaid rules also require the services directly benefit the person applying for medical assistance or Family Care and the payments must not exceed reasonable compensation for the services provided.

The payments made under a “care contract” are payments to household workers. It is important to consult with a CPA or other tax advisor to make sure any withholding or other employment requirements are met in this “nanny tax” situation. The ability to receive assistance from family members may help an individual stay at home for a longer period of time. Use of a written care contract removes the possibility that a penalty may be imposed for any payments to relatives. It is important that the flexibility to enter into this type of arrangement is included in the authority given under the individual’s durable financial powers of attorney in case the contract would be helpful when the individual is unable to sign.

Attorneys Practicing
Elder Law

Nick Heike
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Learn more about
Ruder Ware’s Elder
Law Group by
following this [link](#).

What is WisPACT?

By: Attorneys Mark D. Munson, CELA and Jane Lokken

WisPACT is Wisconsin’s Pooled and Community Trust available to disabled individuals, including many elderly individuals. Assets held by WisPACT are not counted when the individual is applying for means-tested public benefits, such as medical assistance and Family Care. Assets transferred to WisPACT may be used to pay for anything not paid for by public benefits, such as travel, entertainment, uncovered dental or other health care, or to pay family members providing assistance under a written care contract. There are two basic types of WisPACT trust accounts – those funded with the individual’s own assets (Trust I) and those funded with other’s (for example, parent’s or sibling’s) assets for the benefit of the individual (Trust II).



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If assets remain in a WisPACT Trust I account when the individual dies, those assets are either paid to the State of Wisconsin as a reimbursement for lifetime benefits received by the individual (with any amount greater than the benefits received distributed as designated by the individual), or, if the amount remaining is less than the lifetime benefits received by the individual, the funds will continue to be held by WisPACT and used for the benefit of other disabled individuals. Assets remaining in a Trust II account may be paid as designated by the contributor.

Because use of a WisPACT Trust can be an important planning tool to provide quality of life enhancements for elderly and disabled individuals, it is important the appropriate enabling authority is included within an individual's durable financial powers of attorney. Learn more about WisPACT at www.wispact.org.

Elder Law In Wisconsin News

Gov. Scott Walker recently signed S.B. 380, lifting the cap on the Family Long-Term Care program enacted last year. Under the terms of the 2011-2013 budget, capped enrollment in Family Care began June 30, 2011.

Who does this apply to? Who does it affect?

This applies to individuals that have completed their long-term care planning and have arrived at the correct asset level. This law affects individuals requiring in-home care or those moving into an assisted living facility.

What does it mean?

The objective is to eliminate waiting lists for these benefits. Previously individuals in this predicament could wait up to six months to begin receiving benefits all the while paying for private care out of pocket.

Around the State

Mark Munson recently presented at the annual State Bar of Wisconsin Elder Law Section Workshop; **Jane Lokken** and **Nick Heike** attended the workshop as well.

In February, **Mark Munson** gave a presentation on WisPACT and Medicaid qualification techniques at the regional meeting for The Outlook Group, Inc., a funeral services solutions company.

Mark Munson and **Nick Heike** attended the Asset Protection Trust Planning 2012 Update.

Mark Munson as well as **Dana Tesch** and **Mary Streich**, paralegals assisting the Elder Law Group, attended the Life Care Planning and Estate Planning: What Every Attorney Needs to Know About The Difference

Jane Lokken attended the WisPACT Update 2012 seminar sponsored by the State Bar of Wisconsin.

Mark Munson recently attended the Wisconsin NAELA board of directors meeting.

Elder Law Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Social Security benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship
- Veterans' benefits



About the Authors

Attorney Nick Heike



Nick has five years of experience in estate planning, business counseling, and banking law. He will continue to work with businesses and individuals, providing counsel on the formation and operation of businesses of varying sizes in addition to reviewing contracts and assisting with business transactions. Nick's work with individuals will primarily consist of personal planning in the areas of asset protection and estate planning.

Attorney Jane Lokken



Jane Lokken joined the firm in 1987 after graduating from the University of Wisconsin Law School. She practices extensively in the probate, trust administration, and real estate areas.

Her estate planning practice focuses on the elderly, and she is current chair of the Elder Law Section of the State Bar of Wisconsin. Jane is listed in the 2012 edition of Best Lawyers in America® for Elder Law.

Jane has worked with a number of clients to develop specialized limited liability companies to own recreational real estate and meet the clients' objectives of maintaining control during their lifetimes and an orderly, creditor-free transition to the next generation.

Attorney Mark Munson, CELA



Licensed to practice law in Wisconsin, Illinois and South Dakota, Mark Munson principally advises clients in the areas of elder law, public benefits (including special needs trusts), estate and trust planning, and taxation. Mark regularly advises clients in the areas of asset protection and medical assistance eligibility. Mark also assists clients with probate and estate administration, trust administration and guardianship.

Mark is a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation, the only organization accredited by the American Bar Association for the certification of elder law attorneys in the United States. In order to become a CELA, Mark was required to have sufficient experience in various practice areas with the field of elder law, pass an all-day comprehensive examination that tests various issues and disciplines within elder law, and receive the recommendation of other elder law attorneys in Wisconsin and the United States.

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