

Certain Medicaid Waiver Payments May Be Excludable From Income

Update: New Q&A's 1-20 were added on February 23, 2015.

On January 3, 2014, the Internal Revenue Service issued Notice 2014-7, 2014-4 I.R.B. 445. Notice 2014-7 provides guidance on the federal income tax treatment of certain payments to individual care providers for the care of eligible individuals under a state Medicaid Home and Community-Based Services waiver program described in section 1915(c) of the Social Security Act (Medicaid Waiver payments). Section 1915(c) enables individuals who otherwise would require care in a hospital, nursing facility, or intermediate care facility to receive care in the individual care provider's home. The notice provides that the Service will treat these Medicaid waiver payments as difficulty of care payments excludable from gross income under § 131 of the Internal Revenue Code.

Individual care providers who receive Medicaid waiver payments for the care of eligible individuals in their homes and payers of Medicaid waiver payments have raised several questions not addressed in Notice 2014-7. The following questions and answers clarify the notice and provide guidance on the information reporting requirements, and the employment tax requirements for Medicaid waiver payments described in the notice.

Individual Care Provider Questions

Q1. I receive payments under a state Medicaid program other than a Medicaid Home and Community-Based Services waiver program for the personal care of my adult disabled son in our home. May I exclude these payments from gross income?

A1. Whether the Service will treat payments under a state program other than a state Medicaid Home and Community-Based Services waiver program as difficulty of care payments excludable from gross income will depend on the nature of the payments and the purpose and design of the program.

Q2. I moved into my elderly mother's home to care for her, and I do not have a separate home where I reside. I receive payments under a state Medicaid Home and Community-Based Services waiver program for personal care and supportive home care. Am I considered to be providing care in "the provider's home" for purposes of Notice 2014-7?

A2. Yes. Under § 131, "the provider's home" means the place where the provider resides and regularly performs the routines of the provider's private life, such as shared meals and holidays with family. See *Stromme v. Commissioner*, 138 T.C. 213 (2012). In this situation, the mother's home became the provider's home because it is where the provider resides and regularly performs the routines of the provider's private life.

Q3. I am an individual who cares for an unrelated elderly person five days a week in her home, and I have a room in the care recipient's home where I sleep four nights a week. I receive Medicaid waiver payments for this care. On weekends and holidays, I reside with my family in our separate home. May I exclude these payments from gross income?

A3. No. In this situation, the provider works in the care recipient's home, but the provider has a separate home where the provider resides and regularly performs the routines of the provider's private life, such as shared meals and holidays with family. Therefore, the provider does not provide care for the care recipient in the provider's home, and the provider may not exclude the Medicaid waiver payments from gross income.

Q4. I am an individual who cares for an unrelated elderly person seven days a week in her home where I live. I receive Medicaid waiver payments for this care. I do not have another home. May I exclude these payments from gross income?

A4. Yes. In this situation, the care recipient's home is also the care provider's home, and the care provider does not have a separate home. Therefore, the Medicaid waiver payments are excludable from the care provider's gross income for the care furnished in the shared home.

Q5. I am the parent of a disabled child, and I receive state Medicaid Home and Community-Based waiver payments excludable from gross income under Notice 2014-7 for the care of my child in our home. My sister lives with me, and she also receives state Medicaid Home and Community-Based waiver payments for the care of my child. May she exclude the Medicaid waiver payments from gross income?

A5. Yes. More than one care provider living in the home with the care recipient may exclude state Medicaid Home and Community-Based waiver payments from gross income under Notice 2014-7.

Q6. I am a respite care provider, and I provide personal care and supportive services to disabled individuals in their homes, or in my home where the care recipient does not live. I receive payments for this care under a state Medicaid Home and Community-Based Services waiver program. May I exclude these payments from gross income?

A6. No. The exclusion only applies to payments for care in the individual care provider's home where the care recipient lives under the recipient's plan of care.

Q7. I am an individual care provider, and I receive payments under a state Medicaid Home and Community-Based Services waiver program for the care of a disabled individual who lives with me in my home under the individual's plan of care. The program has a cost-sharing provision that may require an individual to pay the administrator of the program a portion of the total amount that the administrator pays me for the care of the disabled individual. May I exclude the entire payment that I receive from the administrator for the individual's care?

A7. Yes. You may exclude the entire payment that you receive under the state Medicaid waiver program for the care of the disabled individual in your home even though the individual is required to pay the administrator part of the cost of the care. By contrast, an individual care provider may not exclude direct payments from a care recipient who pays part or all of the cost of the recipient's care with the care recipient's private funds.

Q8. I am an individual care provider, and I receive vacation pay from the state, as well as Medicaid waiver payments for the care that I provide to a disabled individual living in my home under the individual's plan of care. May I exclude the vacation pay from gross income?

A8. No. The only amounts excludable from gross income under Notice 2014-7 are payments for the care of the disabled individual.

Q9. I received payments described in Notice 2014-7 on or after January 3, 2014, that are excludable from gross income as difficulty of care payments under § 131. May I choose to include those payments in my gross income for 2014 and later years?

A9. No. A taxpayer may not choose to include in gross income difficulty of care payments that are excludable from gross income under § 131 as provided in Notice 2014-7.

Q10. If I received payments described in Notice 2014-7 in an earlier year, may I file an amended return to exclude the payments from gross income that I reported as income in the earlier year?

A10. Yes. You may file a Form 1040X, Amended U.S. Individual Income Tax Return, if you received payments described in the notice in an earlier year and the time for claiming a credit or refund has not expired under § 6511 of the Internal Revenue Code. A taxpayer generally may file a claim for refund within three years from the date the return was filed or two years from the date the tax was paid, whichever is later. For more information, see "When To File" in the instructions to Form 1040X or Tax Topic 308, Amended Returns, available at <http://www.irs.gov/taxtopics/tc308.html>. In Part III of Form 1040X, you should explain that the payments are excludable under Notice 2014-7. Excluding payments described in the notice in an earlier year may affect deductions or credits that you claimed for the earlier year, as well as other tax items for the earlier year. To help expedite the processing of your amended return, you should include the following to substantiate your claim: (1) the full name of the individual receiving care (and the care recipient's social security number or other taxpayer identifying number, if available); (2) copies of documents from third parties to show that you and the individual receiving care resided in the same home in the year to which the claim relates (such as a driver's license or other government-issued document, social agency document, bank statement, medical bill, or utility bill); and (3) evidence that the individual is receiving care under a state Medicaid waiver program.

Q11. I received wage payments that are excludable from gross income under Notice 2014-7. However, the agency that pays me treats me as an employee and continued to withhold federal income tax on the payments and reported the payments as wages in box 1 of Form W-2, Wage and Tax Statement. How should I report to the Service that the payments are excludable from gross income?

A11. If you are not able to obtain a Form W-2c, Corrected Wage and Tax Statement, from the agency reporting the correct amount in box 1 of Form W-2, you should include the full amount of the payments reported in box 1 of Form W-2 as wages on line 7 of Form 1040. You should then subtract the excludable portion of the amount in box 1 on line 21 "Other income," of Form 1040. If you have other income reportable on line 21, you should enter the net amount after subtracting the amount excludable from gross income under Notice 2014-7 from the other amounts reportable on line 21. You may need to enter a negative amount on line 21 if you have no other income reportable on line 21, or if the amount of other income you must report on line 21 is less than the amount excludable from gross income. You should write "Notice 2014-7" on the dotted line for line 21 if you file a paper return, or enter "Notice 2014-7" on line 21 for an electronically filed return.

Q12. I receive payments that are excludable from gross income under Notice 2014-7. Are the payments subject to social security and Medicare taxes under the Federal Insurance Contributions Act (FICA)?

A12. Maybe. Whether the payments are subject to social security and Medicare taxes depends on whether you are an employee of the agency, an employee of the individual care recipient, or an independent contractor. If the agency is your employer, the payments are subject to social security and Medicare taxes. See Q&A 18 under Agency Questions. If the care recipient is your employer and these payments are wages for that employment, the payments are subject to social security and Medicare taxes unless one of the exceptions for domestic services applies. See Q&A 19 under Agency Questions. If you are an independent contractor, the payments are not subject to social security and Medicare taxes. See Q&As 13 and 14.

Your status as an employee or independent contractor and the identification of your employer (if you are an employee) depend on whether the agency or the care recipient has the right to direct and control how you perform your services. Tax Topic 762, available at <http://www.irs.gov/taxtopics/tc762.html>, provides information and additional resources on how to determine whether you are an employee and, if so, who your employer is. If you think you are being improperly treated, you can file Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, to have the IRS determine your employment status.

If you believe social security and Medicare taxes were withheld in error from your payments, such as because one of the exceptions for domestic services applied, you must first contact the agency that withheld the taxes for a refund. However, if the agency indicates an intention not to file a claim or adjust the overpaid social security and Medicare taxes, you may claim a refund of the erroneously withheld social security and Medicare taxes by filing Form 843, Claim for Refund and Request for Abatement. The requirements for filing a claim for refund of your share of social security and Medicare taxes can be found in the Instructions for Form 843.

Q13. I provide services under a state Medicaid Home and Community-Based Services waiver program. The agency that pays me for these services does not treat me as an employee, and I do not have a separate trade or business of providing these services. However, the agency reported the payments as income on Form 1099-MISC, Miscellaneous Income. How should I report to the Service that these payments are excludable from gross income?

A13. You should enter -0- on line 21 of Form 1040 if you have no other income reportable on line 21. If you have other income reportable on line 21, you should enter the amount of the other reportable income on line 21. You should write "Notice 2014-7" on the dotted line for line 21 on a paper return or enter "Notice 2014-7" on line 21 for an electronically filed return. Because the payments are excludable from income, and because you do not have a trade or business of providing these services, the payments are not self-employment income subject to self-employment tax.

Q14. I am a sole proprietor in a business of providing home care services. In my business, I received payments that are excludable from gross income under Notice 2014-7. However, I received a Form 1099-MISC, Miscellaneous Income, reporting these payments as income. How should I report to the Service that these payments are excludable from gross income?

A14. You should include the full amount of the payments reported to you on Form 1099-MISC as income on line 1 of Form 1040 (Schedule C). You should then report the excludable amount as an expense in Part V, and write "Notice 2014-7" next to that amount. Even though you are a sole proprietor, because the amounts are excludable from income, they are not self-employment income and are not subject to self-employment tax. For additional Q&As discussing the application of self-employment tax to family caregivers, follow this link: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Family-Caregivers-and-Self-Employment-Tax>.

Agency Questions

Q15. As an agency that is a certified Medicaid provider, I make payments under a state Medicaid Home and Community-Based Services waiver program. What information should I request from individuals who claim the payments they receive are excludable from gross income under Notice 2014-7?

A15. If you do not have independent knowledge that the payments you make are excludable from gross income under Notice 2014-7, you may rely on a written statement by the payee, signed under penalties of perjury, unless you know that the statement is not true. The statement should affirm the facts you need to determine that Notice 2014-7 applies to the payee. For example, a statement may be worded as follows:

Under penalties of perjury, I declare that I am an individual care provider receiving payments under a state Medicaid Home and Community-Based Services waiver program for care I provide to _____ who lives in my home under the care recipient's plan of care.

Signed: Date:

Q16. I am an agency that employs individuals who provide care to disabled individuals under a state Medicaid Home and Community-Based Services waiver program. Some of the payments I make are excludable from the employee's gross income under Notice 2014-7. Am I required to withhold federal income tax on the payments that are excludable under Notice 2014-7?

A16. No. Federal income tax should not be withheld from the payments that are excludable from gross income under Notice 2014-7. If you do not have independent knowledge that the payments are excludable from gross income under Notice 2014-7, you may rely on a written statement by the employee, signed under penalties of perjury, unless you know that the statement is not true. The statement should affirm the facts you need to determine that Notice 2014-7 applies to payments made to the employee. See Q&A 15.

Q17. How do I complete the Form W-2, Wage and Tax Statement, that I provide to my employees who receive payments excludable from income under Notice 2014-7?

A17. Any amount excludable from gross income should not be included in box 1, Wages, tips, other compensation, of the employee's Form W-2. If the entire amount you pay to the employee during the year is excludable from his or her gross income, box 1 of Form W-2 should be left blank.

<https://www.irs.gov/individuals/certain-medicaid-waiver-payments-may-be-excludable-from-income>

Q18. If the payments I make to my employees are excludable from gross income under Notice 2014-7, am I required to withhold and pay social security and Medicare taxes under the Federal Insurance Contributions Act (FICA) on the payments?

A18. Yes. Even if payments you make to your employees for their services are excludable from gross income for federal income tax purposes, they generally are wages for social security and Medicare tax purposes. Thus, generally, you should withhold and pay social security and Medicare taxes, and report the social security and Medicare wages and taxes withheld on the employee's Form W-2. However, see Q&A 19 below if you pay the individuals but you properly treat them as employees of the care recipients.

Q19. I pay individual care providers to care for disabled individuals and properly treat the care providers as employees of the care recipients. I fulfill the employment tax responsibilities for the care recipient. If the payments I make to the care providers on behalf of the care recipients are excludable from gross income under Notice 2014-7, am I required to withhold and pay social security and Medicare taxes on the payments?

A19. Maybe. Although payments you make to the care providers as employees of the care recipients may be excludable from gross income for federal income tax purposes, those payments are generally wages for social security and Medicare tax purposes. However, there are several important exceptions to this rule. If the care recipient is the employer of the individual care provider, the FICA tax rules for domestic service (household work done in or around the employer's home) will apply. Under those rules, payments for services performed for a spouse or a child and services performed for a parent by a child under the age of 21 generally are not subject to social security and Medicare taxes. In addition, if wages for domestic services paid during a calendar year are below a threshold (\$1,900 for 2014), they are not subject to social security and Medicare taxes. See Publication 926 for more information on these exceptions. If you withheld and paid social security and Medicare taxes in error because you did not correctly apply one of these exceptions, see the Instructions for Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*.

Q20. I am an agency that is a certified Medicaid provider and I pay individual care providers to care for disabled individuals. Due to the facts and circumstances of how they perform their services, I do not treat the individuals as my employees or as employees of the care recipients, so the payments are not subject to social security and Medicare taxes. Some of the payments I make are excludable from the individual care provider's gross income under Notice 2014-7. What are my information reporting requirements?

A20. Generally, a payer must file Form 1099-MISC, Miscellaneous Income, to report payments to an independent contractor as compensation for services if the payments are \$600 or more during the calendar year. However, if you know that payments to an individual care provider are excludable from gross income under Notice 2014-7, you should not file a Form 1099-MISC reporting those payments. If you do not have independent knowledge that the payments are excludable from gross income under Notice 2014-7, you may rely on a written statement by the payee, signed under penalties of perjury, unless you know that the statement is not true. The statement should affirm the facts you need to determine that Notice 2014-7 applies to the payee. See Q&A15.