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June 26, 2019

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RE: Request for an official ruling that CFC services are also tax exempt under IRS Notice 2014-7.

In the Question and Answer section of **Certain Medicaid Waiver Payments May Be Excludable From Income** (<https://www.irs.gov/individuals/certain-medicaid-waiver-payments-may-be-excludable-from-income>), I found this statement under Question 1:

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.

Personal assistance services and Habilitation provided under Community First Choice (CFC), a federal-mandated program Texas implemented provide the support as a Medicaid Home and Community-Based Service. The difference is that they are a Medicaid entitlement, so they do not require a waiting list.

1. The nature (definition) of the payments are the same. See bold items in documentation #1 & #2 below.
2. The purpose and design are the same. See bold items in documentation #1 below.

Supporting documentation is provided here:

1. Centers for Medicare & Medicaid Services' Medicaid.gov (<https://www.medicaid.gov/medicaid/hcbs/authorities/1915-k/index.html> & also attached)
 - The "Community First Choice Option" allows States to provide **home and community-based attendant services** and supports to eligible Medicaid enrollees under their State Plan. This State plan option was established under the Affordable Care Act of 2010.
2. Texas's page on Community First Choice (<https://hhs.texas.gov/services/health/medicaid-chip/programs/community-first-choice> & also attached)

To be eligible for Community First Choice services an individual must:

- Be eligible for Medicaid.
- Need help with activities of daily living, such as dressing, bathing and eating.
- **Need an institutional level of care.**

Community First Choice Services

Community First Choice Services include:

- Help with activities of daily living and health-related tasks through hands-on assistance, supervision or cueing.
- Services to help the individual learn how to care for themselves.
- Backup systems or ways to ensure continuity of services and supports.
- Training on how to select, manage and dismiss attendants.

Texas began the Community First Choice program on June 1, 2015. This means:

- Individuals on a 1915(c) waiver interest list who meet eligibility and coverage requirements may be eligible to get Community First Choice services.
- Individuals already getting services through a 1915(c) waiver will continue to get those services as they do today from their existing providers.

Texas changed the Personal Care and Habilitation Services on the 1915(c) waivers to be billed as CFC hours. I am a case manager for one of those waivers called CLASS (Community Living Assistance & Support Services) and our budget totals removed the PAS/Hab hours from the Waiver totals.

Therefore, I think the nature of the payments and the purpose and the design of the CFC program align with the same guidelines applied to the state Medicaid Home and Community-Based Services waiver program as difficulty of care payments excludable from gross income.

Your time and response are appreciated,

Heather Burdeaux
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