

## Elder Law: Orderly, legal, financial way to care for Mom

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By Julian Gray and Frank Petrich

In a prior column, we discussed the "caregiver child" exception to Medicaid law, which permits the transfer of a parent's residence to a child (without a penalty) if certain conditions are met. We'd now like to discuss an option for a parent and a child who provides care to that parent, be it in the parent's own residence (home or apartment) or in the residence of the child.

Let's assume that widow Judy, 75, who lives in Pittsburgh, has three children: Matthew, Jennifer and Sydney. Both Matthew and Jennifer live in another state. Sydney lives in the Pittsburgh area, a one-half hour drive from her mother, on a good day. She has a part-time job, while her husband works full time.

Judy has always gotten along well with each of her children and, eventually, wants her estate to be equally divided among them.

Judy has been living on her own for the last five years since her husband died, but has had numerous health issues. Recently, she suffered a mild stroke and made a good recovery. But she was left with some challenges in performing her activities of daily living. Sydney has been assisting her mother in many of these activities, but because of the driving time between their homes, it's been difficult for her.

Judy has been giving some thought to moving to an assisted living facility and has recognized that, at some point in the future, she may need to move to a nursing home. With assisted living facilities costing \$35,000 to \$60,000 a year and nursing homes averaging \$92,000 a year in Pennsylvania, Judy is concerned not about not only the expense but also the possible isolation from Sydney and Sydney's husband.

Knowing that about 70 percent of people over 65 are expected to need long-term care services at some point in their lives, Sydney has felt the need to have "the talk" with her mother about the options available. Sydney also has discussed her concerns with her husband, and Sydney feels that her mother could receive more attentive, responsive and personalized attention to her increasing care needs if her mother moved into Sydney's house.

However, Sydney is concerned that some of the changes that she might need to make to her house and the increase in family expenses as a result of her mother's move would be beyond her family's ability to provide. This is especially true as Sydney realizes that she would have to give up her part-time job in order to care for her mother.

Judy, in addition to her Social Security checks and her husband's pension, has some other assets at her disposal. She had thought of making gifts of these assets to each of her three children, but was concerned about the Medicaid five-year "lookback" period, which could create a problem if she did require nursing facility care. Judy also wanted input from her two out-of-state children as to Sydney's offer.

Judy then had "the meeting," which followed "the talk," with the three children to discuss this move-in option. Judy also recognized that she would be putting somewhat of both a financial and personal burden on Sydney while her other two children would bear little of these burdens.

After "the meeting," Judy met with her lawyer and decided to enter into a "personal care agreement" with Sydney. In such an agreement, which was formalized as a written contract, they spelled out the services that Sydney would be providing to her mother.

In their case, the agreement discussed the room and board arrangements, which included the meals that Sydney would prepare for Judy, the accommodations with which Judy would be furnished, common living areas at her disposal, cleaning services to be provided and the materials and equipment necessary to provide these services. Furthermore the agreement spelled out the utilities such as gas, electric, water, etc. to be provided to Judy, the furnishings of her living area and laundry services.

Equally important, the agreement further spelled out the personal assistance to be provided by Sydney to her mother. These services included transportation to physicians' appointments, assisting with medications and providing personal assistance with bathing, dressing, hair care, eating, personal shopping and other incidental services.

The agreement then spelled out how Sydney was to be reimbursed/compensated for her expenses and efforts. Household expenses were to be reimbursed on a pro-rata basis. Here, Judy would be paying one-third of these expenses (as one of three people living in the home). A value, comparable to that which home health care agencies charged, was then placed on Sydney's time, and the number of estimated hours that Sydney was to provide caring for her mother on a monthly basis was determined, to arrive at a monthly dollar amount Judy was to pay Sydney for these activities.

Sydney also was made aware that the money she would receive for her personal services were taxable income to her and would have to be reported for income tax purposes and that both Sydney and Judy would have Social Security payment responsibilities. However, these details were easily addressed with an accountant.

Let's now look at what was achieved by this "personal care agreement."

First, Judy was able to have her personal care needs met by a loving child in the child's home. She was further able to reduce her assets by about \$4,000 a month without a possible penalty period incurred by the Medicaid program if she were to need nursing facility care. Her daughter, Sydney, was able to be fairly compensated for the care she provided to her mother, even though she had to give up her job to do so, and was in a much better position to address her mother's care needs than if her mother had to move to a long-term care facility.

While the need for this type of arrangement in our society is great, given the large number of seniors who wish to stay at home as well as the prevalence of the efforts of their family members already performing care giving services for free, few people realize the legal and tax issues surrounding this situation. Therefore, it is important for families considering this option to familiarize themselves with the proper methods to achieve a well thought-out plan.

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