

Family Caregiver Agreements

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If you were to ask someone whether she would want to live in her home or in an institution should she need care, how do you think she would answer? Given the choice, one would bet that most, if not all, individuals would choose to stay and receive care in the comfort of their own homes. One would also assume that these individuals would also prefer to have a family member provide the care rather than a stranger. This has been the way of the world for quite some time and it does not look like it will change any time soon. With the exception of the last 40 to 50 years, generations of families have resided together and cared for one another. Yet, over the past several years, this family structure seems to have gone to the wayside. Nowadays, children typically move away and live in their own homes. As a result, there is not as much reliance on younger live-in family members to take care of the elderly family members. However, the desire still exists to remain in one's home even when facing the need for long term care. This desire can be accomplished by family members taking time to come to the elderly family member's house to provide care for a certain period of the day or night. Or, sometimes families revert back to the multiple generation family structure by either moving back in with a parent or having a parent move in with the child.

Usually the elderly family member wants to compensate the younger family member for the caregiving services, whether it is a child, grandchild, niece, etc... Thus, money exchanges hands. Unfortunately, today's world is no longer a place in which "under the table" payments exist without various consequences. As with most everything, the arrangement should be in writing to protect the elderly individual and the caregiver who provides the services. There have been several instances in which clients who seek assistance in applying for government benefits, such as Medicaid, are in disbelief when I tell them that The Department of Public Welfare (DPW), will treat these payments as gifts, resulting in a transfer penalty. If a person applies for Medicaid, DPW will review all financial records for the previous five years. If DPW finds transfers from the applicant to a third party, such as a child, DPW may ask if there is a Caregiver Agreement. If there was no written agreement between the family caregiver and applicant, then DPW presumes that the care was provided for "love and affection" and therefore the services were free of charge. As a result, all of the payments made within the five year look back period to the family caregiver will be treated as penalized uncompensated transfers or simply put "gifts". Conversely, this question frequently arises: Can parents retroactively compensate their child for care received over the past several years in order to spend down funds to expedite Medicaid benefits? The unpopular answer is that unless there was an agreement in writing between the parents and child dating back to when the services began, the retroactive "compensation" will be treated as a penalized gift. The potential complexity of this situation necessitates the advice of an elder care attorney.

How is this problem solved so that parents can still pay a child for his or her much needed caregiving services while protecting themselves and the child from transfer penalties? The answer is by executing a written Family Caregiver Agreement! There are many specific items such as reasonable compensation and services provided that should be addressed in a written Family Caregiver Agreement in order for the payments to be legitimate expenditures for Medicaid purposes. If you or a loved one are receiving caregiving services from a family member in the home, it would be beneficial to either party, as well as the family caregiver, to seek advice from an elder law attorney who has the expertise and knowledge in correctly drafting the Family Caregiver Agreement and providing advice on incorporating it into a long term care plan.

One thing to keep in mind when entering into a caregiving arrangement is that the family caregiver should always include the payments received on his or her personal income tax return to further emphasize that the arrangement is truly entered into as an "arm's length" transaction. It is recommended that the family caregiver consult with his or her tax professional in order to do so.

Lastly, one should also be aware that payments to a family member for caregiving services in which he or she is providing assistance with Activities of Daily Living, (bathing, dressing, feeding, transferring) can be treated as approved unreimbursed medical expenses to help expedite eligibility for non-service connected VA Benefits. While the VA does not require a written caregiver agreement, it is always in one's best interest to enter into a written Family Caregiver Agreement with the caregiver in case a higher level of care is required in the future under a Medicaid in-home program or at a Medicaid certified facility.