



## Julian Gray and Frank Petrich's Elder Law: Care deals are weighty

May 25, 2014 12:00 AM

By Julian Gray and Frank Petrich

A recently released Census Bureau report takes a hard look at the older population (those of us who are 65 and older) and how dramatically this population is expected to grow, particularly the baby boomers (those born in mid-1946 to mid-1964) who started becoming 65 in 2011.

In 1970, 9.8 percent of our country was 65 and older; in 2010, it was 13 percent; and by 2030, the older population is projected to represent 20 percent of the total population. If you were 85 in 2010, your average life expectancy is another 6.5 years and you represented 1.8 percent of the U.S. population. By 2030, those 85 and over will represent 2.5 percent and by 2050 4.5 percent.

Some eye-opening statistics, especially if you have concerns for your long-term care needs (and 70 percent of the older population will have those needs at a cost of about \$275,000).

This brings us to today's topic of caregiver agreements, wherein a family member agrees to take care of an older parent or other relative for which the family member is to be compensated. We've been getting many requests for such agreements.

There are numerous reasons to consider such an arrangement. First of all, we've had many situations where a son or daughter — it is usually a daughter — either through a sense of guilt and/or a sense of obligation, decides that they can provide a better level of care and/or services to their loved one than can a stranger.

In addition, with the cost of personal care/assisted living in the area of \$48,000 to \$72,000 a year and skilled nursing care averaging almost \$105,000 a year in Pennsylvania, a caregiver agreement becomes a legitimate way for an older person to help preserve resources by "spending down" excess resources in exchange for needed services.

If they simply gave way those resources (made gifts) and became a resident of a skilled nursing facility, they could then be subject to a five-year “lookback” period as to any gifts if they were to apply for Medical Assistance to pay for their care.

So, who can benefit under a care agreement?

First of all, the older person who may be able to stay in her or his own residence and delay indefinitely a move to a facility.

We’ve also had many instances where the child also has taken an older person into their own home. This arrangement is somewhat similar to the good olde days, where you owned a farm, your parents owned the adjacent farm, and if they became ill, they moved in with you.

In those days, however, the life expectancy was much shorter than today and, thus, today’s arrangement could create a much longer ongoing provision of services.

The caregiver child could certainly benefit from a care agreement as well. We’ve had numerous instances where that child has given up a career, geographically relocated to Pittsburgh and/or disrupted their own family life to care for an older person. Under a care agreement, they could be compensated/reimbursed for their services and expenses.

Even the commonwealth could benefit. Why? Well, the time period for which the commonwealth, under the Medical Assistance program, would have to pay for skilled nursing care could be substantially decreased or even eliminated by having an older person being provided care under a care agreement in a home environment.

What should be in a care agreement?

First of all, it needs to be in writing! State clearly and in detail the type and nature of the services to be provided by the caregiver. For example, are meals to be provided and, if so, how often. Who pays for the food? What are the room and board arrangements? How are utility costs (gas, electric, water) to be accounted for and paid? What about housekeeping and laundry arrangements; cleaning services and materials — who provides? Who furnishes the living accommodations — the parent, the caregiver child?

What kinds for personal services will the caregiver provide; paying bills, home maintenance items, medication administration, transportation, shopping (grocery and other), making the arrangements for medical services? Spell them all out.

What about the caregiver's issues?

Well, they are getting paid. So, they'd better figure out a reasonable hourly rate for the specific services they're providing (look, for example, to what home health agencies charge). Keep a log of the time and services provided in the event of a challenge to the amount of money paid. Keep in mind that the money received is taxable income and needs to be reported. Again, keep good records.

Also, don't do such an agreement yourself. Get competent legal advice to assist you in preparing a care agreement. It's too important not to do it correctly.

As to these agreements, keep in mind the old Slovenian proverb: "You can best prepare yourself for old age by having many daughters."

Alas, both of the authors of this column only have sons!