



Elder Law Guys: A caregiver's dilemma

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Within the past month, we have encountered multiple clients who have found themselves thrust, often quite unexpectedly and unprepared, into the role of a caregiver for a loved one.

Unfortunately, they are not unique in that regard.

The National Alliance for Caregiving and the AARP in a 2020 report estimated that family caregiving in the past five years alone has increased from 43.5 million to 53 million people providing unpaid care to an adult with health or functional needs. Almost 40% of these caregivers are male and 60% female. It's been estimated that these family caregivers provide close to \$500 billion in unpaid care services annually.

For our purposes, a caregiver is a person who gives help and protection to a person who is older or has disabilities or to one who is sick and who helps manage that person's ADLs (activities of daily living such as eating, bathing and dressing). An individual's ability to perform ADLs is important for determining the kind and type of care that person needs.

In addition, the more typical caregiving needs that we have encountered in the adult population have centered on one of or a combination of the following:

- Mobility (serious difficulty walking or climbing stairs).
- Cognition (serious difficulty concentrating, remembering or making decisions).
- Hearing (serious difficulty hearing).
- Vision (serious difficulty seeing).
- Independent living (difficulty doing errands).
- Self-care (difficulty dressing or bathing).

With almost 75 million of our population over age 60 and all baby boomers “aging out” in less than nine years (2030), the problem we see as to caregiving is only going to increase and, in our opinions, dramatically. Couple this with the fact that the marriage rate in the U.S is decreasing and the “gray divorce” rate (couples 50 and older) increasing, the problem gets compounded.

It has been estimated that nearly half of adults in their 40s and 50s already have a parent 65 or older and are raising a child or supporting a grown child. One in seven of these adults provides financial support for an aging parent as well as a child. As these adults age, the demand for multigenerational planning becomes critical.

Who is a caregiver? Well, it could be anyone: a spouse (if there is one), a parent for a dependent child, a sibling, a home care agency or an “under the table paid” acquaintance. For now, our discussion will center on the caregiver who is related to the care receiver. Not only are there financial considerations but also, equally important, emotional ones.

Based upon our firm’s client situations, we have seen a lot of pure burnout, anger and frustration over the caregiving role. It’s crucial for caregivers to take care of themselves as best as possible. Seek some degree of respite care and/or a support group.

In next month’s column, we’ll address some good sources of caregiving sources along with the recent expansion of the Pennsylvania Department of Aging Care Giver Support Act to help support care receivers in their home.

As to certain financial aspects of caregiving, let's touch on financial support for the caregiver.

An adult caregiver can be compensated for services. In doing so, it's critical to have a written caregiver agreement between the caregiver and the person receiving care. It should outline the scope of services to be provided and the basis for the compensation so as not to have the payments be construed as "gifts" or uncompensated transfers for possible Medical Assistance purposes for skilled nursing care or home- and community-based services, which, at some point, may be needed.

A second major financial consideration centers on the home.

It's not uncommon for a caregiver child to move in to take care of a parent, thus possibly curtailing the offspring's own career and earning ability. We have had more than one situation where the children basically gave up their lives to live with and take care of a parent for over five years. Parents generally want to preserve their home for their children, especially a child who is taking care of that parent in the parent's home.

There is an exception in federal law to the "transfer penalty" imposed on the transfer within the Medical Assistance five-year "look-back" period as to a "caregiver child." If the child has lived with the parent for at least two years immediately prior to the parent entering a skilled nursing facility, and but for the care provided by the child to the parent, that parent would have to be admitted to a facility, that home transfer is exempted from the "look-back" period. As with a caregiver agreement, such a transfer approach should only be done with competent advice and counsel.

A difficult situation can be made somewhat easier with both a good support system and good advice.

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