



Elder Law Advisor

Your Trusted Guide on the Elder Care Path

Caregiving Agreements—Fairness for the Caregiver Child

A recent article in US News & World Report states that “more than 50 million family members provide more than \$300 billion a year in uncompensated care to family members.” The care is frequently provided by an adult child who has moved back into the family home to take care of mom or dad. In elder law, we call this child the “caregiver child.”

The caregiver child has often left the work force to take care of an aging parent. He or she has lost an income, and also loses health insurance, Social Security and IRA contributions, and the chance to advance in his or her prior employment. A caregiver child makes many personal sacrifices in the course of caring for a parent.

At our law firm, we always ask if an adult child is providing care for an aging parent, and raise the issue of compensation for the caregiver child. The parent will often suggest leaving an additional bequest in his or her will to the caregiver child, in recognition of the care services provided. There are several problems with this approach. With the high cost of long-term care, there is no guarantee that the parent will have any assets to pass to the caregiver child. An unequal bequest in a will can also create friction between the caregiver child and the other children, who will receive less.

The best strategy involves setting up a caregiver agreement between the ill parent and the caregiver child. The agreement details the services the child will be providing and the method of payment. The agreement serves many useful functions. First, it is evidence that the payments from parent to child are not gifts that would trigger

a Medicaid waiting period. Instead, the payments are compensation for services provided, not subject to any penalty. Second, the agreement reduces friction between the caregiver child and other children, since the parent clearly states his or her intent that the care be compensated.

It is very important to establish the care agreement early in the caregiving relationship. Medicaid will normally approve a written care agreement that provides for payments concurrent with services provided, so long as the amount of payment is reasonable in relation to the service provided. Medicaid is far more suspicious of caregiver agreements that purport to pay a lump sum for past services provided, and may seek to treat these payments as gifts, subject to a transfer penalty waiting period.

In our experience, parents recognize that they are asking a lot of a child who becomes a caregiver. They want to give the child the tools to do the job well. A caregiver agreement prepared by an experienced elder law attorney can be an important part of the plan. Do you know an adult child caring for an aging parent? Or a parent receiving care, who wants to make sure a caregiver child is treated fairly? Please give him or her a copy of this article.

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