

## **Caregiver Contracts: Benefits for Both the Caregiver and Care Receiver**

We recently had a family come into our office because mom's health had deteriorated to the point where she required care in a nursing home- her dementia had worsened. Prior to her move to the nursing home, the family had applied for a VA pension with a special allowance for Aid and Attendance. Husband is still living and although he is disabled, he did not need extra care. Wife did, however, due to advancing issues with Alzheimer's.

Before wife's entry to a nursing home, daughter quit her job and began full time care for her mom. In considering the VA pension benefit, the family was advised that in order to get the maximum VA benefit, daughter should be paid for taking care of mom. Dad began paying daughter \$2,500 per month for being a caregiver. This arrangement and information was forwarded to the VA, and as a result, the VA paid a larger monthly pension amount to husband and wife. Daughter was also compensated for having quit her job in order to care for mom.

This arrangement was working well-- a win- win situation-- until mom went to the nursing home and the cost of her care more than doubled. Husband and wife needed more than the VA benefit would pay to cover the higher cost of her care. Mom needed to apply for Medicaid to cover these high, long term care costs.

## **Are Family Caregivers Financially Compensated?**

As background, it is estimated that there are 17.9 billion hours of unpaid care to dementia patients annually in the United States. We know that about 16 million people provide unpaid care to family members and friends to help them compensate for the loss of functioning that dementia brings with it. This care is worth about \$217 billion, and many caregivers are sacrificing wages and financial security to help their loved ones. Perhaps you are one of those unpaid caregivers, and maybe that is the way it should be. Some might say, "That's what family is for." Yet some families are rethinking this idea, and they are providing these invaluable services for a fee.

### **Caregiver Contracts: Treating a Family Member as an Employee**

When a family member spends time caring for a loved one, he/she loses an opportunity to earn a wage or to pursue personal interests. This could be detrimental to the caregiver's financial or psychological well-being. With only 24-hours in a day, many family caregivers feel stretched thin between work, family and caregiving responsibilities. Receiving pay for the time spent caring for a loved one can reduce financial and psychological stressors on the family caregiver.

If a family member is going to become a caregiver, then a Caregiver Contract should be put into place. The family caregiver should be treated as an employee with a formal

agreement.

The Caregiver Contract can prevent family disagreements since the contract should layout expectations, pay rate, how the payment will be made and details for the dissolution of the contract. The use of a legal, binding agreement can prevent misunderstandings and aid in resolving conflicts. Additionally, the contract can avert any resentment that may develop if a Care Receiver decides to bequeath a larger portion of his/her estate to the family member/caregiver rather than to other family members. Other family members may feel slighted when that happens; compensating the caregiver at the time of caregiving may avoid such issues.

### **Caregiver Contract: Planning for Public Benefits**

This is where the story continues for the family in our office. While an actual contract is not necessarily a prerequisite in the VA world, it is in the Medicaid world. In the Medicaid world, the presumption is that if there is no contract in place that the family caregiver is providing care for “love and affection.” Therefore, absent a caregiver contract, the \$2,500 per month that was being paid to our family caregiver is considered a gift or a transfer of assets when applying for public benefits. In our case, a total of \$25,000 was paid to the daughter, creating a time **penalty** of nearly four months. This penalty means that Mom’s Medicaid benefits would be significantly delayed- she would have to pay privately for her nursing home care for four months even though the family had nearly exhausted their savings. If a Caregiver Contract

had been in place, there would have been no penalty.

Currently, for every \$7,563 given away, an applicant will be disqualified from receiving one month of payment for Medicaid nursing home or assisted living care benefits. If money has been transferred from a Medicaid applicant to a family caregiver pursuant to a formal contract (that is, a Caregiver Contract), the money is not considered a gift; it is looked at as a payment for services. (Note: This applies to Colorado Medicaid only; other states may have different rules.)

Using a Caregiver Contract allows money to be paid to a family caregiver and it will not be considered a gift to that family member for Medicaid purposes. (Medicaid “gifts” are not the same as “gifts” as defined by the IRS. These two different concepts of “gift” are often confused but are not at all the same.)

Additionally, the use of a Caregiver Contract can show Unreimbursed Recurring Medical Expenses to the VA. The VA has a special pension for wartime veterans and surviving spouses of wartime veterans. This benefit requires that the applicant spend money on care in order to be eligible for the pension. Paying a family caregiver could count as that care expense. For more on the VA special pension visit <http://cjlordlaw.com> – Use the Resources Tab and click on the Nuts and Bolts Guide to VA Pension Benefits

## **Caregiver Contracts: Considering Other Issues**

1. Taxes and Social Security contributions must be made

by the caregiver (or the employee) Some families may consider hiring an accountant or payroll service to handle these details. Information can be found in IRS Publication 926 Household Employer's Tax Guide at [www.irs.gov](http://www.irs.gov).

2. The Caregiver Contract must be specific about:

- Expectations (what tasks will the family member be doing) and the type, frequency and time to be spent in providing the services
- Pay Rate- must be comparable to what is received in the open market
- Methods of Payment- payment must be regular – no less frequently than monthly
- Dissolution of Contract
- Must be in writing and signed by the care giver and the care receiver or his or her agent- signatures must be notarized and the contract must be executed prior to the time that services are provided and payment for the services is made.
- The Caregiver must keep a daily log of the services performed and the time spent in providing services.

3. The Caregiver Contract must meet legal muster in order to comply with the state's Medicaid regulations. Consulting an elder law attorney is recommended.

4. The Caregiver Contract must be agreed upon by the caregiver and by the care receiver. It is also a good idea to involve all potential parties so as to avoid misunderstandings or conflicts later.

5. Caregiver Contracts cannot be made between spouses.

Apparently caring for one another is a part of the “in sickness” vow spouses usually make. Caregiver Contracts can be made between parents and adult children, or grandparents and grandchildren, or aunts/uncles and nieces/nephews, etc.

NOTE- the care giver may NOT be an agent of the care receiver! This presents a difficult situation if the care giver is a trusted only child.

### **A Caregiver Should Always have a Medicaid Compliant Care Contract**

Compensation details for a caregiver should be carefully planned and considered in order to avoid family conflict. Failure to use a Medicaid Compliant Caregiver Contract could have devastating results for family relationships and could result in a substantial delay in receiving Medicaid benefits for a Medicaid applicant.