

Your Place or Mine?

Providing Care for Aging Parents

By GINA M. BARRY

When an aging parent needs assistance to live at home, many children opt to provide the care personally. Often, the parent will not agree to hire health care professionals to provide care due to their inability to appreciate the decline in their ability to live independently. Occasionally, the parent has concerns regarding privacy or safety, and the only caregiver they trust is their child.

Regardless of the circumstances, the 'caretaker child' arrangement conjures up a variety of legal issues.

A caretaker child arrangement begins when either the parent begins residing with the child in the child's home or the child begins residing, or continues to reside, in the parent's home while receiving care similar to that of a facility. When the child resides with the parent in a caregiver capacity, it is common for the parent's home or other assets to be transferred to the child as compensation. When the parent begins residing with the child, normally the parent's home is sold and the proceeds are used to build additional living space for the parent in the child's home or given to the child in exchange for the services the child agrees to provide.

In either situation, it is best to establish a care agreement. This is a contract between the parent and the child and possibly the child's spouse, in which the parent agrees to pay the child (in either a lump sum or on an ongoing basis) or to finance an improvement to the child's home, and the child agrees to care for the parent until the parent either passes away or is no longer able

to perform two of the activities of daily living. These include bathing, eating, dressing, transferring, and toileting.

When establishing a care agreement, value must be associated with the services provided. One approach involves valuing the services as a package like those at a board-and-care facility, and this is only feasible when the services

rendered are substantially the same as those rendered by such a facility. In this situation, the average monthly cost of the facility may be used in the agreement as the monthly cost of the care provided by the child.

An alternative approach involves valuing each service individually. This approach should be used when a child is performing only some of the caretaking activities or when there are indications that a non-caretaker child may challenge the agreement. Tasks performed by the child may include, but are not limited to, grocery shopping, meal preparation, accounting services, driving the parent to medical appointments, housecleaning, laundry services, etc. When using the individual pricing method, the child must keep a record of the services performed and receive payment based on the actual amount of service reflected on the time sheet.

In addition to valuing the services provided, there are various other provisions of the care agreement that are equally

important. The purpose of the agreement should be clearly stated and should set forth the exact services that the child will provide as well as the location at which they will be provided. The parent's space, as well as any common areas, should be described in detail. Additionally, the agreement should set forth

whether the parent or the child is responsible for paying monthly utility charges, such as gas, water, and electricity, as well as yearly expenses, such as property taxes and homeowner's insurance.

It is imperative that the parent and child decide under what circumstances the child is willing to care for the elder. The agreement should specifically state the terms and conditions upon which the parent or the child is allowed to cancel the contract. In order to avoid the appearance of an illusory promise on the child's behalf, the agreement should provide that cancellation shall only occur upon the occurrence of specified conditions, such as when it becomes unsafe to continue to provide care in the home.

The services that the child provides with respect to housekeeping, laundry, meals, and personal assistance should be as detailed as possible. The agreement should detail a schedule for cleaning the parent's room and establish parameters regarding the parent's transport to and from medical appointments by the child.

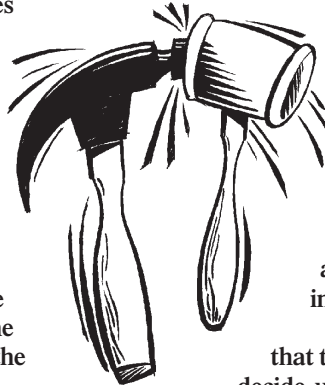
The agreement should also address any property maintenance duties the child will perform, including, but not limited to, ensuring repair of the premises or its mechanical components as needed, mowing the lawn, additional landscaping and snow removal.

In addition, a formula should be provided to determine how increased costs will be calculated whenever anticipated. For example, if the elder pays \$50 per month to cover the cost of food, any increase should be tied to the annual consumer price index increase or calculated in some other definable manner so that its application is precise. Without such a provision, a disagreement may arise between the parent and the child, which could, in turn, disrupt the ongoing performance of the agreement.

Any comprehensive care agreement should also address the disposition of the parent's property upon passing or admission to a nursing home. As the parent's last will and testament will govern the distribution of any remaining assets, the care agreement should mandate the execution of estate-planning documents by the parent.

The impact of a care agreement with respect to the parent's long-term care financing options is substantial.

At present, the most common options for financing long-term care include obtaining long term care insurance, privately paying for care, or obtaining Medicaid benefits. When applying for Medicaid benefits, the Division of Medical Assistance will ask whether the applicant has made any gifts during the applicable



look-back period. If gifts are found, the Division of Medical Assistance will assess a penalty upon the applicant. This penalty prevents the applicant from obtaining benefits for a certain time period based on the amount of the gift. When assets are transferred to a child as payment for care provided, it may be possible to avoid this penalty as the money was transferred to pay for

services provided and was not merely a gift.

Although there are many issues to address when establishing a care agreement, the benefit of such an agreement far outweighs the effort involved in establishing one.

Outlining the responsibilities of each party will prevent most disagreements during the pendency of the agreement.

Ultimately, working through the issues raised in a care agreement will lay the framework for a successful arrangement between the parent and the caretaker child.❖

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