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Things to Know When Your Child is Also Your Caregiver

By Gina M. Barry, Esq.

It is very common for a child to provide assistance to an aging parent in order to allow the parent to continue to live at home. A child is the most commonly the caregiver because the parent will not agree to hire professionals to assist with the activities of their daily life. Typically, the parent has concerns regarding privacy, and their child is the only caregiver they will trust.

When a child provides care to a parent, it is best to establish a care agreement. A care agreement is a contract in which the parent agrees to pay the child and the child agrees to provide care for the parent until either the parent passes away or is in need of nursing home level care. Tasks performed by the child may include, but are not limited to, grocery shopping, meal preparation, accounting services, driving to appointments, housecleaning and laundry services. The care is typically paid for in

either a lump sum or on an ongoing basis, with a lump sum payment being less desirable. It is also common to provide payment in the form of the parent financing an addition to the child's home in order to provide adequate space for the parent to reside with the child.

The agreement should set forth the exact services that the child will provide as well as the location where the services will be provided. The parent's "space," as well as any "common areas," should be detailed. Additionally, the agreement should set forth whether the parent or the child is responsible for paying monthly utility charges, as well as yearly expenses, such as property taxes and homeowner's insurance.

The services that the child will provide with respect to housekeeping, laundry, meals and personal assistance should be as detailed as

possible. The agreement should detail the schedule for the cleaning of the parent's room, describe any additional cleaning materials that will be provided to the parent, and establish parameters regarding the child transporting the parent to and from appointments. 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.

It is also crucial to value the services to be provided. Services may be valued as a package just as they would be at a comparable facility, or they may be valued individually. The package rate is useful when the care provided is substantially similar to that of a facility. 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 provided. Individual pricing is useful when a child is performing only some of the caretaking activities. All payments to the child are taxable income to the child and should be reported on their personal income tax return.

The parent and child should also set forth under what circumstances the child is willing to care for the parent and the terms upon which the agreement may be cancelled. 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 if it becomes unsafe to continue to provide care in the home.

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 accessing previously purchased long term care insurance, privately paying for care or obtaining MassHealth benefits. When applying for MassHealth benefits, MassHealth will ask whether the applicant has made any gifts during the applicable look back period. If gifts are found, MassHealth 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 regardless of whether they meet all of the other qualifications for benefits. 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 the services provided and was not 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. 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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