

When Your Child is Also Your Caregiver

Gina M. Barry, Esq.



It is very common for a child to provide care to an aging parent in order to allow the parent to continue to live at home. A

child is 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. As the child often has to reduce or eliminate other employment, in many cases, the parent will pay the child for the care provided.

What is a care agreement?

When a child provides paid care to a parent in the home, it is best to establish a care agreement. A care agreement is a contract that outlines the care to be provided as well as the payment terms. The care is typically provided until the parent passes away or is in need of care that cannot be provided at home. Tasks performed by the child usually include personal care assistance, grocery shopping, meal preparation, accounting services, transportation to and from appointments, housecleaning, and laundry services. It is recommended that the care be paid for on an ongoing basis as the care is actually provided.

Care agreement specifics

The care 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 agreement should also address responsibility for property maintenance, including but not limited to, needed repairs, mowing the lawn, additional landscaping, and snow removal.

It is crucial to value the services to be provided in the care agreement. Services may be valued as a package or individually. The package rate is useful when the care provided is substantially similar to that of a facility, such as an assisted living facility or nursing home. 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. All payments to the child are taxable income to the child and should be reported on the child's personal income tax return.

The parent and child should also set forth the circumstances under which the child is willing to provide care for the parent and the terms upon which the agreement may be cancelled. 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 agreement should also allow for written amendments so that the agreement can be changed if the situation changes.

Financial implications

The impact of a care agreement with respect to the parent's options for financing nursing home care is substantial. Currently, nursing home care costs approximately \$10,000 per month and is most commonly paid for by accessing long term care insurance, privately paying, or obtaining MassHealth benefits. When applying for MassHealth benefits, MassHealth will ask whether the applicant has made any gifts in the last five (5) years. If gifts are found, MassHealth will assess a penalty upon the applicant that 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 the services provided and was not a gift. It should be noted that caregiver agreements are subject to intense scrutiny by MassHealth. If a MassHealth application is anticipated in the future, the care agreement must be carefully drafted and must take into account MassHealth's current position as to these agreements.

Although there are many issues to address when establishing a care

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agreement, outlining the responsibilities of both the child and the parent will prevent most disagreements as the agreement will lay the framework for success. A successful care agreement will allow the parent to remain at home much longer. In addition, a properly drafted care agreement can be financially beneficial to both the parent and the child. As such, the benefit of having such an agreement in place far outweighs the effort involved in establishing the agreement.

Gina M. Barry is a Partner with the law firm of Bacon Wilson, P.C. She is a member of the National Association of Elder Law Attorneys, the Estate Planning Council, and the Western Massachusetts Elder Care Professionals Association. She concentrates her practice in the areas of Estate and Asset Protection Planning, Probate Administration and Litigation, Guardianships, Conservatorships and Residential Real Estate. Gina may be reached at (413) 781-0560 or GBarry@BaconWilson.com.