

The Wisdom of Caregiver Agreements

It used to be that children lived close to their parents. Now families scatter across the country with only one or two children nearby. Usually less than half of the children in a family live in the same county as their parents. In the past, parents seldom lived past their 70's. Now it is not unusual for parents to live into their 90's. Most parents could count on leaving some inheritance to their children. With the average cost of skilled nursing care exceeding \$100,000 per year in Connecticut, leaving a legacy to children, let alone charity, seems unrealistic to most middle-class parents. Most parents used to have at least one adult child who did not work outside the home. Now, almost all adult children work outside the home making it difficult to provide daily care for a parent.

Given these unprecedented changes, a caregiver agreement can recognize the special efforts made by a child without altering the fairness and equality of an estate plan. Parents frequently wish to reward a child who has provided more assistance to them with a disproportionate share of the house or other assets at death. This solution can cause resentment and probate litigation among the children after they are gone. It also does not take account of the serious possibility that no assets will remain if a parent needs long-term care. If a parent cannot obtain long-term care insurance, why not instead be up front about it, confer with all of the children, and come to a fair caregiver agreement that will compensate the child providing care.

State and federal governments recognize that services provided by adult children will save the government significant money in Medicaid and Veterans benefits. On the other hand, government agencies are concerned that significant fraud can occur if parents transfer assets to children for assistance without a formal agreement and commitment to provide care. Consequently, both the state and federal government provide incentives for entering into a "legally enforceable caregiver agreement."

Sections 3029.10(G) and 3029.30 of the Connecticut Department of Social Services Uniform Policy Manual allow parent to enter into a legally enforceable caregiver agreement with a family member. The caregiver does not have to receive payments as assistance is provided, but can choose to receive a lump sum at a later date. The Connecticut Department of Social Services (DSS) allows payment for homemaker and home health aid services at the "current state minimum hourly wage for such services". DSS has published rates for such services. For all other services like financial management, bill paying, and home repair and maintenance, DSS considers the "actual cost" of such services. The family simply has to document where they found the going rate for the service provided. DSS will want to see a business-like record or log that tracks the care. This log should include what was done and how much time it took, the mileage driven for your parent's care, out-of-pocket expenses, etc. If health care providers, neighbors, and/or a geriatric care manager will provide letters substantiating that the care provided kept a parent from having to go to a nursing home, the caregiver can even receive up to the average monthly cost of nursing home care (currently \$9,060 per month).

The Veterans Administration also recognizes legally enforceable caregiver agreements. Aid and Attendance pension benefits depend upon the amount of income the veteran or his widow receives. Care expenses can reduce income sufficiently to qualify the applicant for Aid and Attendance pension benefits. Adult children, even if they are not health care professionals, can provide home attendants services and charge for it to reduce the parent's income for benefit purposes. Currently, veterans can receive up to \$1,554 per month and widows of veterans can receive up to \$998 per month.

To some, just the thought of charging parents for providing assistance runs counter to their family values. Their parents did so much for them, how could they charge their parents? Admittedly, a formal agreement is not comfortable or easy. Yet, for certain families it can prove to be a valuable tool.

All families should consider a caregiver agreement to promote fairness among the children, to assure an inheritance for the next generation, and to help qualify for government assistance. If you need help in preparing a legally enforceable caregiver agreement, give us a call.

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