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Who Will Mind Mom? Check Her Contract

Seniors Turn to Written Agreements to Compensate Relatives as Caregivers; Reducing Estate Size

By RACHEL EMMA SILVERMAN
September 7, 2006; Page D1

Trish Richert recently signed a binding employment contract. In exchange for taking care of a 77-year-old woman -- arranging and taking her to doctors' appointments, doing her bills, keeping her house tidy -- Ms. Richert, of Greensboro, N.C., receives a modest stipend that covers travel expenses and other costs.

Ms. Richert's employer: her mother. The two recently entered into a so-called caregiver contract -- a formal agreement, set up by a lawyer -- in which Ms. Richert, 45, receives a small payment for the long hours she spends caring for her mom.

A small but growing number of families are setting up caregiver contracts, in which adult children or other relatives are hired, for modest salaries, to take care of elderly or disabled family members. These arrangements, which are also called personal-service or personal-care agreements, can help reduce the size of a parent's estate and thereby improve their chances of becoming eligible for long-term-care coverage under Medicaid. They can also minimize battles between siblings and other family members. For many other families, the contracts simply help reward the significant amounts of time, effort and money that family members often spend watching over and taking care of an elderly relative.

There aren't any national statistics on how many family members are compensated for caregiving. But a huge swath of Americans already provide long hours of voluntary care for family members and friends -- and these numbers are likely to grow as the population ages and more people live longer. Some 44.4 million adult caregivers -- or 21% of the U.S. adult population -- provide unpaid care to seniors or adults with disabilities, according to a 2004 study by the National Alliance for Caregiving in Bethesda, Md., a research and advocacy coalition, and AARP, the Washington advocacy group for seniors. On average, those caregivers provide 21 hours of care a week; the average length of time spent providing care is 4.3 years.

Many caregivers have to balance their family duties with their real jobs. Nearly 60% of caregivers either work or have worked while providing care, the study found, with many having to make adjustments to their work life, including reporting late to work or even giving up their jobs entirely.

Kathy Nalven is in the process of drawing up a caregiver contract with her mother's 88-year-old fiancé, Edward Campbell. Ms. Nalven, a Fort Lauderdale, Fla., real-estate broker who is in her 50s, has agreed to take care of Mr. Campbell, but "the parameters have to be really clear," she says. "If it means that I can't work because I'm busy taking care of him, which I'm very willing to do, I need to be compensated. I'm not a saint." Ms. Nalven and Mr. Campbell

TAKING CARE

These Web sites offer information on caregiving contracts or related issues:

- National Academy of Elder Law Attorneys (naela.com)¹
- American Bar Association Commission on Law and Aging (abanet.org/aging)²
- National Family Caregivers Association (thefamilycaregiver.org)³
- Family Caregiver Alliance (caregiver.org)⁴
- National Alliance for Caregiving (caregiving.org)⁵

both say that the terms of the arrangement are still being worked out.

Elder-lawyers and caregiver advocates say that more people are considering compensating family members for their efforts. In recent weeks, Jennifer Cona, a Melville, N.Y., elder-law attorney, has drafted five caregiver contracts. Before that, she had drawn up only three in the preceding couple of years. "We're seeing a real increase," she says.

"I know in my own practice they are definitely increasing," adds Lauchlin Waldoch, a Tallahassee, Fla., elder-lawyer. "People are more receptive to them now."

Qualifying for Medicaid

There's another key reason for the uptick: Legislation passed earlier this year makes it tougher to qualify for Medicaid long-term-care coverage by making outright gifts to family members. The measures were passed to prevent seniors who have the means to pay for their own care from obtaining Medicaid, which is intended for poor patients. Lawyers say that if set up properly, caregiver contracts shouldn't be considered gifts to children because the patient is receiving a real service in return.

Medicaid isn't likely to "disqualify you for making those payments to your children if you have an arm's length, commercially reasonable contract, in writing, ahead of time," says Charles Sabatino, director of the American Bar Association's Commission on Law and Aging in Washington. Scott Solkoff, a Boynton Beach and Miami, Fla., elder-lawyer, says he has drafted more than 250 caregiver contracts in recent years; about half of the arrangements, he says, have been "Medicaid-driven."

Still, there's a lot of stigma to overcome when recommending the idea to families, lawyers say. The main reason: "People are still uncomfortable with the idea that you are paying your kids," says Palo Alto, Calif., lawyer Michael Gilfix.

Indeed, when Ms. Richert first heard about the contracts from her mother's lawyer, A. Frank Johns of Greensboro, N.C., "it felt funny," she says. "It's hard to put a dollar figure when you are doing something for your mom."

Advisers and family members say the deals are also smart because a formal arrangement, done ahead of time, can minimize feuds among siblings and other relatives. Oftentimes, one child serves as a primary caregiver and a parent may reward him or her by making informal gifts or by doling out a bigger piece of the estate in the will. Unfortunately, those arrangements can lead to family fights or will contests.

A formal caregiver contract, drafted ahead of time, makes the arrangement "more iron-clad," says New York elder-law attorney Bernard Krooks. "You have a written document showing this is what mom wants you to do and what mom wants to do for you. It helps avoid family squabbles." But lawyers say it's important to discuss the contract with other siblings or relatives so they are aware of the arrangement ahead of time; that can help minimize family tensions later.

Terry Huffines, of Brown Summit, N.C., set up a caregiver contract with her aunt, who is 92 years old, to help avoid any estate problems down the road with her aunt's 15 additional nieces and nephews. The agreement, set up by Mr. Johns, the Greensboro, N.C., lawyer, outlines the services Ms. Huffines, 72, will provide for her aunt, including driving her to the doctors, the grocery store and other household chores.

In order for a caregiver contract to be respected -- and to pass muster with Medicaid authorities -- it has to follow certain formalities. For one, you can't pay the caregiver an inflated rate in order to shift lots of money out of your estate. Instead, you should specify what duties the caregiver is expected to perform and then contact local home-care agencies or geriatric-care managers to establish the market value of those services in your area. Such duties can vary from preparing meals, bathing and dressing to housecleaning and chauffeuring, as well as arranging doctor's appointments and friends' visits and

overseeing medications.

Cost Varies Widely

The cost of care varies widely, depending on location and the services being performed, and can range from about \$15 an hour to more than \$100 an hour. Some families choose to pay a discounted rate to family caregivers, which is also acceptable, lawyers say. It's also much better to set up the caregiver contract when the incapacitated adult is of sound mind, as the arrangements can become far more complicated if a person acting as power of attorney signs the contract.

The contract should also specify whether the payment will be done in one upfront lump sum based on the senior's life expectancy -- a technique often used for Medicaid-planning -- or in regular weekly or monthly payments. It's also wise to create safeguards to prevent a caregiver from taking the money and running, such as depositing paychecks into an escrow account rather than to the caregiver directly.

There are also tax consequences to consider. The compensation is considered ordinary income, so the caregiver has to pay income taxes on the payment. Also, depending on how the contract is structured, Social Security and other payroll taxes may have to be withheld.

Many lawyers say they generally only set up the contracts as part of more-comprehensive estate plans, including power-of-attorney documents and wills, but that the arrangements can cost anywhere from about \$500 to several thousand dollars to create.

It's smart to check whether there are other sources of funding you can use to pay family members. Some long-term-care insurance policies, such as those that pay lump-sum "indemnity" benefits, may be used to pay family members who provide care, says Jesse Slome, executive director of the American Association for Long Term Care Insurance in Westlake Village, Calif. If you already have a policy or are considering one, see if the coverage will allow you to pay family members for their caregiving services.

In addition, some state or federal government programs provide funding to compensate family members in what is known as "consumer-directed care." For instance, a growing number of states have a "Cash & Counseling" program for Medicaid enrollees that allows participants to pay family members for their services. Contact your local agency on aging or department of social services for more information on government funding.

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