

GETTING PERSONAL: Relatives Can Get Paid For Providing Care

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NEW YORK (Dow Jones)--Caring for a family member can be not only a responsibility but a source of income.

So-called "caregiver agreements" - formal contracts in which relatives are hired to care for elderly family members - have been around for a while. But with the economic downturn deepening and unemployment rising, more families may be open to entering into such arrangements, elder law attorneys and caregiver advocates say.

Getting paid to look after an aging loved one might seem an unusual arrangement running as it does against the grain of love and affection. But such contracts can make sense for a variety of reasons. Financial transfers made under a caregiver agreement generally aren't considered gifts, an important consideration if an elderly person later hopes to qualify for Medicaid, the joint federal/state program that covers nursing-home care. The contracts can also provide assurances to other family members about the cost and quality of care being delivered and reward caregivers for the long hours they put in. The agreements need to be carefully crafted and properly executed and there are also tax consequences to consider, though.

The idea of being cared for by a trusted family member, such as an adult child, may be more appealing than hiring a stranger to an aging parent. And for those who want to stay in their own homes, or now need to because they can't sell their property to fund entry into a continuing-care retirement communities, hiring a relative can be a money-saving strategy. For adult children who have more time to devote to mom or dad, such arrangements can provide a modest source of income - or at least cover expenses they incur in providing care - at a time when many families are struggling financially. More than 2.6 million Americans lost their jobs in 2008, according to government figures released Friday, the most since 1945, and layoffs are likely to accelerate this year.

"We expect the deteriorating economy to lead to a spike in caregiver agreement work," based on historical trends, says Thomas D. Begley, Jr., an elder and disability law attorney, with Begley, Begley & Bookbinder, P.C., a law firm in Moorestown, N.J.

Caregiver agreements, also known as personal-service or personal-care contracts, can reduce tension among family members. In the absence of such formal arrangements, a parent may decide to bequeath a larger slice of their estate to the primary caregiver, typically one child, which can lead to the will being contested by siblings who feel slighted, says Linda Fodrini-Johnson, president-elect of the National Association of Professional Geriatric Care Managers.

In recent years, caregiver agreements have grown in popularity as a Medicaid planning tool because they can reduce the size of an estate, according to Louis Jay Ulman, a senior principal at Offit Kurman, a law firm with offices in the Baltimore-Washington corridor. That's because a rule change extended the look-back period for making gifts to family members to five years from three.

If properly set up, transfers made under a caregiver agreement aren't considered gifts but rather compensation because they are payments made in return for a service, lawyers say. In order to qualify for Medicaid, individuals must pass state-specific means tests for income and assets. In general, an individual may not have more than \$2,000 in assets to qualify for Medicaid. Some property is excluded, including the primary residence (within certain limits).

In addition, in order to pass legal muster, caregiver agreements must be arms length, written contracts that are completed in advance in which the compensation for the services is reasonable.

"You can't do the contract after the fact and say this \$100,000 was for looking after mom," says Bernard A. Krooks, founding partner of Littman Krooks LLP, a New York law firm.

It's also wise to solicit input from family members before entering into such agreements in order to avoid problems later on. The recipient of the care also should have a comprehensive estate plan in place, including powers of attorney, to ensure their wishes are respected if they later become physically or mentally incapacitated.

Contracts should also specify the duties the caregiver will be expected to perform. For instance, when Ralph Gobell and his wife Ellen entered into a caregiver contract with her elderly father, Richard Holden, their joint responsibilities included making sure Holden took his medications, preparing and serving his meals, running errands, keeping his house clean and tidy and paying his bills among other things.

Charges Vary Widely

Agreements also need to state the cost of the services. Depending on the circumstances, compensation is based on the average hourly rate local agencies would charge for the service or at a discount to the market rate, says Ronald Fatoullah, a certified elder law attorney who practices in Great Neck, N.Y. Charges vary widely by geography from \$12 to \$20 an hour for personal-care services to \$60 to \$150 an hour for geriatric-care management services, he says.

Like many caregivers who enter into such agreements, the Gobells were just looking to be compensated for the expenses they incurred, such as money spent on gas, and time they spent caring for Holden, who wanted to remain in his own home as long as his health permitted.

Contracts should also stipulate how payment to the caregiver will be made. Depending on the circumstances, it can be an upfront lump-sum payment based on the senior's life expectancy - or in regular installments, like a paycheck. In the case of lump-sum payments, it's advisable to put safeguards in place to prevent a caregiver from absconding with the funds and have a mechanism for the return of monies in the event that a contract ends prematurely.

"Caregivers are also required to pay income taxes on the compensation they receive," says Kerry R. Peck, a managing partner at Peck, Bloom, Austriaco & Koenig, LLC, a law firm in Chicago. Depending on how the contract is structured (employee versus independent contractor), Social Security and other payroll taxes may need to be withheld, and so you'll need to hire an accountant or payroll service.

Caregivers can end up working long hours. For this reason, Fodrini-Johnson, the geriatric-care manager, recommends including a respite clause in contracts. "A skilled nursing facility provides care 24/7 but in three shifts. If you don't have time off, you can become physically and emotionally drained. It's important for caregivers to have time off to recharge their batteries."

Depending on the complexity and other planning needs, the cost of setting up a caregiver agreement can cost anything from \$1,000 to \$4,000.

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