

Personal Care Agreements

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How to Compensate a Family Member for Providing Care: Introduction

Many families reach a point when they recognize that an ill or older relative needs help. There are usually warning signs: difficulty with daily activities; memory problems; trouble with banking and finances; multiple falls; problems with driving; forgetting medications. Sometimes an elderly or ill loved one needs more than occasional assistance — they need full-time care.

But who will provide that care? The answer is usually close to home: an adult child. One sibling might become the caregiver by default, or one is selected because he or she lives closer or has fewer family responsibilities of his/her own.

The person providing care for a loved one may make a significant sacrifice: giving up a job and employment benefits. A formal agreement among family members can provide a way to compensate a person providing care if he or she is no longer able to hold other employment. Even though most family members want to help and feel a sense of duty to care for a loved one, it is a job with heavy time commitments and responsibilities. One way of protecting the caregiver as well as the person receiving care is by putting the care relationship in writing.

This is a binding agreement, also called a **long-term care personal support services agreement, elder care contract, or family care or caregiver contract**. Most often, it is called a personal care agreement. This agreement can offer family caregivers security that they will not suffer undue financial consequences. At the same time, the agreement can also offer your loved one peace of mind that she or he has a caring advocate to manage care needs.

What Is a Personal Care Agreement?

The agreement is a contract typically between a family member who agrees to provide caregiver services for a disabled or aging relative and the person receiving care. The personal care agreement is most commonly between an adult child or and his/her parent, but other relatives may be involved, such as an adult grandchild caring for a grandparent.

Drawing up an agreement clarifies for a family what tasks are expected in return for a stated compensation. It can help avoid family conflicts about who will provide care and how much money will change hands. For this reason, the agreement should be discussed with other family members to resolve any concerns before an agreement is drafted.

When contracting with a family member, it is wise to treat the agreement as a legal document. If your relative is receiving state supported in-home care, the agreement will show the state where the money is going and for what kind of services. In addition, a caregiver agreement can offset potential confusion among family members concerned about bequests to heirs, and avoid misunderstandings later over the reduction of the amount of money that may be inherited.

Basic Components of a Personal Care Agreement

A personal care agreement has three basic requirements for a person to pay a family member for care:

- The agreement must be in writing.
- The payment must be for care provided in the future (not for services already performed).
- Compensation for care must be reasonable. This means it should not be more than what would be paid to a third party for the same care in your state or geographic area. Tasks performed should match “reasonable” or “customary” fees typically charged for those services.

A properly drafted personal care agreement will contain:

- Date the care begins
- Detailed description of services to be provided, for example, transportation and errands: driving to medical, dental, adult day care, and other appointments, food preparation
- How often services will be provided (Allow for flexibility in care needs by using language such as, “no less than 20 hours a week” or “up to 80 hours a month.”)
- How much and when the caregiver will be compensated (weekly or biweekly)
- How long the agreement is to be in effect (The agreement should set time, such as a year or two years, or even over a person's lifetime.)
- A statement that the terms of the agreement can be modified only by mutual agreement of the parties in writing
- The location where services are to be provided (home of elder/adult with disabilities, caregiver's own home, other location. Allow for the location of the care to change in response to increasing care receiver needs.)
- Signatures by the parties, date of the agreement

Additional Details to Consider in an Agreement

The caregiver's tasks should be clearly stated in the agreement but might include the term “or similar to be mutually agreed upon by the parties” for flexibility. If the agreement is too rigid, it will have to be rewritten if circumstances change.

Consider creating an “escape clause” in the event that one of the parties wants to terminate the contract. Use a term such as “this agreement remains in effect until terminated in writing by either party.” Consider a provision that “springs” into action if the caregiver becomes ill or wants a vacation. Is there a designated backup person who can step in temporarily?

Is there a provision for room and board costs if the care recipient lives with the caregiver (a proportional share of utilities, mortgage, insurance, taxes)? Consider what happens if the care recipient moves into a care facility. Will health insurance or a long-term care insurance policy be purchased to cover the family caregiver? If so, include that in the personal care agreement and be specific without being inflexible. Consider adding an allowance for easy-to-overlook out-of-pocket expenses.

To determine the level of care required, consult with a local homecare agency, physician, geriatric care manager, hospital discharge planner, or social worker. There may be a fee involved to conduct a care assessment in the home. This will also help in anticipating any future care needs. If the care receiver has dementia, for example, a decline could require different care options.

Examples of care are: personal care, grocery shopping, preparing meals, housekeeping, laundry, coordinating household and medical bills, making phone calls, financial management, transportation (consider mileage), monitoring and managing medications, tracking changes in health, and liaison with

healthcare practitioners.

When preparing an agreement, ask yourself what each care task means. Define, for example, what “personal care” is: does it include bathing, dressing, dental hygiene? If you specifically define the care tasks and the time required, the result will be a more realistic caregiving assessment.

Caregivers should maintain a detailed daily log and have a concise job description. Documentation will support the intent of your contractual relationship if for any reason it comes into question.

You are creating a contractual relationship between employer (care recipient) and employee (caregiver), a relationship that requires withholding and paying taxes. Other considerations are whether to provide employee benefits such as health insurance or workers' compensation. In the area of taxes and Social Security, you may want to seek the advice of an attorney to confirm what applies in your situation. Consider a vacation pay provision to offset caregiver stress or a raise after one year for a job well done.

How to Discuss Personal Care Agreements Within the Family

A stressful conversation for any family is what happens to the money when a parent becomes ill, and who will serve as the primary caregiver. One method for discussing difficult topics is holding a family meeting. The caregiving team meets in a comfortable place, seated around a table with room to spread out documents under discussion. (Using technology such as Skype may help to include family members who live far away.) A well-organized meeting can provide the family members with shared support and a better understanding of the decisions to be made.

When planning the family meeting, it's important to include all necessary members. One question to consider is whether the person receiving care will attend. If your loved one has a cognitive condition (Alzheimer's disease or another dementia, for instance), consider whether or not he or she has the capacity to understand the discussion and whether it's likely to be upsetting. Are there “hot-button” issues not to be discussed in their presence? How critical is it for them to participate in decisions made on their behalf? Attending all or part of the meeting may allow the care receiver to build trust in the caregiving team. This can help later with their cooperation when tougher decisions must be made.

Before the meeting, it's best to set times and dates convenient (as much as possible) for everyone's schedule, then create your meeting agenda.

Here's a suggested list of topics to keep the discussion on track:

- Definition of the caregiver's role, with tasks clearly delineated
- The duration of the agreement
- Compensation for caregiving, including how it will be paid (weekly, monthly, lump sum?)
- Financial changes to the family estate (present and future impact)
- Who holds Power of Attorney?
- Who will serve as a backup should the caregiver become sick or need respite?
- Are there Medicaid “spend down” or “look back” period considerations?
- Is there a Health Care Directive?
- Is a physician on the team?
- How does the care receiver perceive his/her quality of life and independence? (What are their wishes?)
- What is the plan if it becomes time for placement in a residential facility?

If possible, record your meeting or have someone take notes. You might distribute meeting notes to other family members for future reference. Consider building a “personal care agreement” binder that contains necessary documentation. One person should facilitate the meeting to keep the discussion moving or to set

boundaries if the discussion gets out of hand. Some families choose to use an outside facilitator, a social worker, clergy member, geriatric care manager, or another person without a vested interest in the meeting's outcomes. More than one meeting may be necessary.

Below are a few examples of what documents that may be helpful:

- Documentation showing the median hourly compensation for a caregiver in your area (Call local home care agencies to get a sense of costs.)
- Medical records relevant to caregiver tasks
- The completed care assessment documenting level of care
- Additional legal documents such as Health Care Directive, Power of Attorney
- Financial documents and will and trust agreements

Should the meetings not reach desired goals, family mediation is a growing trend in the U.S., helping families deal with major life transitions. For more information, see the National Care Planning Council noted in the Resources section at the end of this fact sheet.

Do I Need a Lawyer?

You don't necessarily need to hire an attorney, but it may be advisable when entering into a contractual relationship. It depends on your set of circumstances and how complex an agreement your family requires. If you are considering a pre-paid, lump-sum caregiver contract, you may want to consult with a lawyer. A lump-sum contract is complex, and it's more difficult to show compensation in terms of "fair market" value for care services. A monthly or bi-weekly salary for care services is easier to track, especially for Medicaid purposes. If you are not comfortable with these transactions, consult an attorney to avoid conflict later.

Another legal consideration is if the care receiver lacks capacity to sign the agreement. The person holding the Power of Attorney or the guardian or conservator may sign. If the family caregiver also holds the care receiver's Power of Attorney or legal guardianship, consider consulting with an attorney. If you feel there is no need for an attorney, see examples of agreements in the Resources section.

How Does This Affect Eligibility for Medicaid?

Medicaid (Medi-Cal in California) is a state and federal program that may pay for long-term care costs for people with limited income and assets. To qualify for Medicaid, a person's spending and assets are subject to a "look-back" period of up to five years. This is sometimes called the asset "spend down." If the care receiver needs to enter a facility or apply for other services that Medicaid might pay for, the personal care agreement can show that care payments were a legitimate expense and not an attempt to hide assets by giving cash to family members. The care receiver is paying for the "value" in personal care services.

Check your state for Medicaid rules since regulations do vary from state to state. These regulations are complicated, and you may want to consult an elder law attorney for help in qualifying for Medicaid or Medi-Cal.

Resources

Family Caregiver Alliance

National Center on Caregiving

(415) 434-3388 | (800) 445-8106

Website: www.caregiver.org

E-mail: info@caregiver.org

FCA CareNav: <https://fca.cacrc.org/login>

Services by State: <https://www.caregiver.org/connecting-caregivers/services-by-state/>

Family Caregiver Alliance (FCA) seeks to improve the quality of life for caregivers through education, services, research, and advocacy. Through its National Center on Caregiving, FCA offers information on current social, public policy, and caregiving issues, and provides assistance in the development of public and private programs for caregivers. For residents of the greater San Francisco Bay Area, FCA provides direct support services for caregivers of those with Alzheimer's disease, stroke, traumatic brain injury, Parkinson's, and other debilitating health conditions that strike adults.

Other Organizations and Links

General information regarding personal care

Medicaid

www.medicaid.gov

National Care Planning Council

www.longtermcarelink.net

National Academy of Elder Law Attorneys (NAELA)

For a low cost 30-minute consultation, contact your local city or county Bar Association.

www.naela.org

Paperwork and related information

101 Law Forms for Personal Use (10th ed., 2016)

Elder Care Agreement

www.nolo.com

Long Term Care Personal Support Services Agreement

Department of Health and Human Services, Office for Family Independence (2011)

www.maine.gov/dhhs/ofi/documents/LTC-Personal-Support-Agreement.pdf

This fact sheet was prepared by Family Caregiver Alliance and reviewed by attorney Brent Kato and attorney Bruce Feder of Kato, Feder & Suzuki, LLP. © 2012, 2017 Family Caregiver Alliance. All rights reserved.

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