



## Legal Agreements for Families and Caregivers

There are an estimated 53 million adult caregivers in the United States and nearly one in five (19%) are providing unpaid care to an adult with health or functional needs. In addition, sixty-one percent of caregivers are women and are therefore at even greater risk of experiencing financial setbacks<sup>1</sup>.

For both financial and practical reasons, an increasing number of families are turning to “caregiver agreements” to help manage caregiving responsibilities. These agreements make the care and payment clear for the caregiver, the recipient, and also for other family members. It can help avoid family conflicts about who will provide care and how much they will be paid. For this reason, the agreement should be discussed with other family members to resolve any concerns before it is drafted.

### What is a Caregiver Agreement?

- A formal contract that states what care is to be provided and how much the caregiver will be compensated.
- The contract can be used whether or not the caregiver is a family member.
- 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

### A Caregiver Agreement should include:

- Date care begins
- Detailed description of services. 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
- How often services will be provided (and allow for flexibility with language such as “no less than 20 hours a week” or “up to 80 hours a month”)

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<sup>1</sup> National Alliance for Caregiving and AARP, *Caregiving in the U.S.* June 2020

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- How much and when the caregiver will be compensated (i.e. weekly, monthly). The amount of compensation provided must also be reasonable, meaning it should be similar to what you would typically be charged in your state or geographic area for similar services. Also, for payments provided in the future (not services already performed).
- How long the agreement is in effect
- Location where services will be provided
- Include a statement that the terms of the agreement can be modified by mutual agreement (in writing) of the parties involved
- Signatures by the parties and date agreement was signed

## **Additional Details to Consider in a Caregiver Agreement**

- 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?
- Consider a provision for room and board costs if the care recipient lives with the caregiver.
- Consider adding an allowance for easy-to-overlook out-of-pocket expenses.
- 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.
- The care agreement is a contractual relationship between employer (care recipient) and employee (caregiver), a relationship that requires withholding and paying taxes. 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.

## **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, please see the Long Term Care Personal Support Services Agreement Example in the Resources section.

## Impact on Medicaid

If the person receiving the care needs to apply for services that Medicaid may pay for, the personal care agreement can also show that care payments were a legitimate expense and not an attempt to “hide” assets by giving cash to a family member. Check your state’s Medicaid rules since regulations vary from state to state.

## Resources

**More information about personal care agreements is available from the Family Caregiver Alliance *National Center on Caregiving***

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

Website: [www.caregiver.org](http://www.caregiver.org)

Family Care Navigator: [www.caregiver.org/family-care-navigator](http://www.caregiver.org/family-care-navigator)

**National Academy of Elder Law Attorneys (NAELA)**

To find lawyers who specialize in elder care.

[www.naela.org](http://www.naela.org)

**Long Term Care Personal Support Services Agreement - Example**

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

For a care agreement example, go to [www.maine.gov/dhhs/sites/maine.gov.dhhs/files/documents/LTC-Personal-Support-Agreement.pdf](http://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/documents/LTC-Personal-Support-Agreement.pdf)