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C O U N S E L L O R S A T L A W

Caregiver Agreements can and do work

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I came across an article "Protecting Your Future: Caregiver agreement protects assets" that reminded me how a simple, but effective, caregiver agreement can compensate a child who is assisting a parent, and perhaps lead to future family harmony. The article give a good overview of how a caregiver agreement can be effective: An example: Mom depends on daughter Janice for her care. If Mom gifts \$100,000 to Janice, then goes into a nursing home in the next five years and applies for Medicaid, the gift to Janice will result in about a nine-month penalty period. Janice will have to give the \$100,000 back to Mom to pay nursing home costs during the penalty period, or Mom will have to use other resources to pay. Instead, using a caregiver agreement, Mom pays Janice \$2,500 per month for caregiving services. If Mom moves to the nursing home in the next five years, the payments to Janice are compensation, not gifts.

A couple of details. The agreement must be in writing and entered into before the compensated services are rendered (you can't say "Mom, give me \$30,000 for care I gave you last year." Also, since the caregiver child is getting "paid" they must report the income for tax purposes. Also, the payment must be commercially reasonable to services a third party would provide - both in terms of hourly wage and fair room and board if the parent is living with you. Since caregiver agreements transfer money over a period of time, they are better entered into sooner rather than later. If the child feels "funny" about taking money to care for mom and dad, a couple of points to consider:

- If someone else were caring for them/giving room and board, that person would get paid
- The child can save the money they have been paid to provide additional resources to mom and dad, or divide among their siblings if that seems "fair" to the family
- If mom and dad need to apply for Medicaid, money that the child could have been paid for legitimately caring for their parents will instead be paid to the nursing home as part of a Medicaid spend down.

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