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THE WALL STREET JOURNAL.
WSJ.com

ENCORE | AUGUST 29, 2010

Compensating a Family Caregiver

By ANNE TERGESEN

Given the still-fragile economy, a growing number of families are compensating relatives who serve as caregivers to elders, elder-law attorneys say.

But to avoid stoking family tensions or running afoul of Medicaid eligibility requirements, it's important to draft a formal employment agreement--and disclose the arrangement to the entire family.

According to a recent report by the National Alliance for Caregiving and AARP, about 43.5 million Americans look after someone age 50 or older, up 28% from 2004. While no one tracks how many are paid, elder-law attorneys say the numbers are rising.

Howard S. Krooks, an elder-law attorney who practices in Boca Raton, Fla., and Rye Brook, N.Y., says nearly all his clients who serve as caregivers are compensated. Such cases currently comprise about 20% of his workload, a figure that has doubled since before the recession. "When people are out of work," he says, "they are more likely to ask for payment."

But if a parent may need to rely on Medicaid to cover future nursing-home costs, a family must pay the caregiver in a way that's permitted under Medicaid law. To qualify for Medicaid, applicants must show that they have limited assets (the figure varies by state) and they are barred, for the most part, from giving away assets to family members to meet the standard.

Before Medicaid will pick up the tab for nursing-home costs, it requires applicants to recoup certain payments made to relatives over the previous five years -- and use the money to pay the nursing home.

But if payments to relatives are made under the terms of a written employment agreement, often called a personal-care contract, the law allows it. To pass muster with Medicaid, it's important to have such a contract in place "before the services are rendered," says Jeffrey Bloom, an elder-law attorney at Margolis & Bloom in Boston.

Elder-law attorneys say employment agreements should document a caregiver's responsibilities and hours and set a rate of pay that's in line with local practices. Both the caregiver and care recipient should sign the contract and disclose it to the rest of the family.

Rather than issue weekly paychecks, some families pay caregivers a lump sum upfront--calculated by multiplying the caregiver's hourly wage by the number of hours he or she is expected to work over the parent's life expectancy. With such a move, a family can transfer assets to a child that might otherwise be deemed available to pay a nursing home, says Mr. Krooks. But in some states, lump sums can trigger delays in Medicaid coverage, he adds.

To find an elder-law attorney familiar with your state's rules, go to ElderLawAnswers.com or the National Academy of Elder Law Attorneys at naela.org.

Because caregivers owe income tax on their pay, some families instead prefer to give them larger inheritances. One downside: "You don't know how much money will be left," says Mr. Bloom.

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