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Legal Matters®

Providing for a caregiver child

Taking care of an aging parent can be a full-time job. Children may have to give up paying jobs in order to provide adequate care. Unfortunately, caregiving is usually unpaid work. Parents who want to compensate a child who takes on the burden of caregiving may do so in one of several ways:

Caregiver agreements. Caregiver agreements are an increasingly popular way to ensure a caregiver child is compensated

for his or her work. A caregiver agreement (also called a personal care contract) is a contract between a parent and a child (or other family member) in which the parent agrees to reimburse the child for caring for the parent.

These agreements have many benefits. They provide a way to reward the family member doing the work, and they can help alleviate tension between family members by making sure caregiving is fairly

compensated. In addition, they can be a key part of Medicaid planning, helping to spend down savings so that the parent might more easily be able to qualify for Medicaid long-term care coverage, if necessary. The downside to caregiver agreements is that the income is taxable. Note that such agreements should not be drawn up without

Parents who want to compensate a child who takes on the burden of caregiving may do so in one of several ways.



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the help of your attorney.

Estate plan. A parent can leave a caregiver child an additional amount in the parent's will or trust. The problem with this method of compensation is that it can lead to conflict between siblings or other family members. If a parent chooses to go this route, it is important that the parent explain his or her reasoning to any other children or family members who might be upset. Communication between family members can prevent problems later. To avoid any appearance of undue influence, the parent should not involve the child in drafting the estate plan.

House. If a parent doesn't have cash to compensate a caregiver

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More skilled nursing coverage for Medicare beneficiaries?

The COVID-19 pandemic has been particularly devastating for nursing homes and their residents. Aside from the tragically disproportionate loss of life, care for surviving residents has been delayed or interrupted due to infection, facility lockdowns or other health system disruptions. In such cases, Medicare beneficiaries who qualified for skilled nursing facility (SNF) coverage may be eligible for an additional 100 days of coverage. Whether all qualified beneficiaries will actually get the extended coverage is another question.

Medicare does not pay for long-term care, just for “medical” care from a doctor or other health care professional or in a hospital. But there’s a partial exception to this rule. Medicare will pay for up to 100 days of care per “spell of illness” in an SNF as long as the following two requirements are met:

1. Your move to an SNF followed a hospitalization of at least three days; and
2. You need and will be receiving skilled care.

After the 100 days of coverage ends, a new spell of illness can begin if the patient has not received skilled care, either in an SNF or a hospital, for a period of 60 consecutive days. The patient can remain in the SNF and still qualify as long as he or she does not receive a skilled level of care, but only custodial care, during that 60 days.

Following the declaration of a public health emergency this spring, the federal Centers for Medicare & Medicaid Services (CMS) issued a letter granting a waiver to allow Medicare beneficiaries coverage for an additional 100 days in an SNF, without satisfying the new spell of illness requirement, in certain CO-

VID-19-related circumstances. The letter stated that the policy will apply only to skilled-care beneficiaries whose process of care was interrupted by the public health emergency. (The letter also waived the three-days-in-a-hospital rule in certain cases.)

But many months after that letter, there is still confusion about which COVID-19-related circumstances qualify for the waiver. Importantly, according to the Center for Medicare Advocacy, CMS has confirmed that beneficiaries do not necessarily have to have a COVID-19 diagnosis to qualify for the additional 100 days of coverage. Rather, as the issue is whether the emergency situation interrupted the patient’s path to 60 consecutive days of non-skilled care. However, in some cases, nursing homes do not understand how the waiver applies or are not inclined to assist patients with a waiver application.

In addition, the Center for Medicare Advocacy has found that the “waiver that extends SNF benefits by up to 100 days does not appear to afford beneficiaries the same rights as the first 100 days of statutory coverage,” including rights to appeal coverage denials. The Center reports that it “has received an increasing number of requests for guidance on expanded Medicare coverage in skilled nursing facilities.” In response, the organization has compiled self-help materials to assist beneficiaries and their advocates. Visit: <https://medicareadvocacy.org/center-for-medicare-advocacy-toolkit-how-to-obtain-an-additional-100-days-of-medicare-coverage-in-a-skilled-nursing-facility-during-the-covid-public-health-emergency/>

How parents can provide for a caregiver child

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child, the parent may transfer the parent’s house to him or her. The parent can transfer the house outright and retain a life estate, or the parent could make the child a co-owner of the house. If the caregiver child has lived with the parent for at least two years, transferring a house can have Medicaid

planning advantages as well. However, transferring a house can have serious tax and other consequences, so before taking this step it is important to consult with your attorney.

Life insurance policy. Another option for compensating a caregiver is to take out a life insurance policy in the child’s name. The benefit of this method is that the life insurance policy will go directly to the child, avoiding probate, but the policy could be very expensive.

Your attorney can help determine the right method to compensate a caregiver family member.

Estate planning when you have a stepfamily

Ideally, a second marriage that joins two families together is a joyous occasion that creates one bigger family unit. Unfortunately, it too often also can eventually produce inheritance fights between step-parents and children. A good estate plan is necessary to help avoid these types of family squabbles.

When two people marry who both have children from previous relationships, complications can arise. Married people typically leave everything to their spouse, so children from the previous relationship may now see their inheritance go to their stepparent, who may in turn leave it to his or her own children. Even if the stepparent promises to take care of the stepchildren, it doesn't always work out that way. If additional children are added to the relationship, things can get even more complicated.

Every couple needs to redo their estate plan before they get remarried. The following are some ideas for reducing or eliminating disputes before they arise:

Consider a trust. A trust can allow you to leave money to your spouse for your spouse's lifetime and

then pass the balance to your children. There are a variety of different types of trusts that can be structured to fit your family's particular needs.

Leave something for your children. Even if the bulk of your estate is going to your spouse, you may want to consider leaving a little something to your children in your will. It is a sign of good will and it means your children won't be waiting around for their stepparent to die.

Buy life insurance. Life insurance can be a good way to make sure your children inherit. You can leave your estate to your spouse, but take out a life insurance policy with your children as beneficiaries.

Divide personal property. Family heirlooms can be a big source of problems even if their only value is sentimental. You can make your wishes known by writing up a list of personal items and the names of who they should go to and attaching it to your will.

If you are planning on remarrying, consult with your attorney to find the best way to make sure your wishes are carried out with as few issues as possible.

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Should you sell your life insurance policy?

Older Americans with a life insurance policy that they no longer need have the option to sell the policy to investors. These transactions, called "life settlements," can bring in needed cash, but are they a good idea?

If your children are grown and your mortgage is paid off, you may decide that there is no longer a reason to be paying premiums every month for a life insurance policy, or you may reach a time when you can no longer afford to keep up with the premiums. If this happens, you may be tempted to let the policy lapse and get nothing from it, or to surrender the policy for its cash value, which usually is a fraction of its death benefit.

Another option is a life settlement. This allows you to sell your policy to an investor for an amount that is greater than the cash value, but less than the death benefit. The buyer pays all future premiums and receives the death benefit when you die.

Life settlements offer seniors a way to get cash to supplement retirement income and help pay for living expenses, health care, or other needed items. They can be a good alternative to surrendering a policy or letting it lapse. But as with any financial transaction, you need to exercise caution.

The amount you receive from a life settlement depends on your age, your health, and the terms and conditions of the policy. It is hard to determine if you are getting a fair price for the policy because there are no standard guidelines for life settlements. Before selling you should shop around to several life settlement companies. You should also note that transaction fees can eat up a good chunk of the proceeds of the sale.

In addition, you may have to pay taxes on the lump sum you receive. Finally, the beneficiaries of your policy may not be pleased with the sale, which is why some life settlement companies require beneficiaries to sign off on the transaction.

Before choosing a life settlement, you should consider other options. If you need cash right away, you can borrow against your policy. If the premiums are too much, you may be able to stop paying premiums and receive a smaller death benefit.

To find out the right solution for you, talk to your attorney or a financial advisor.



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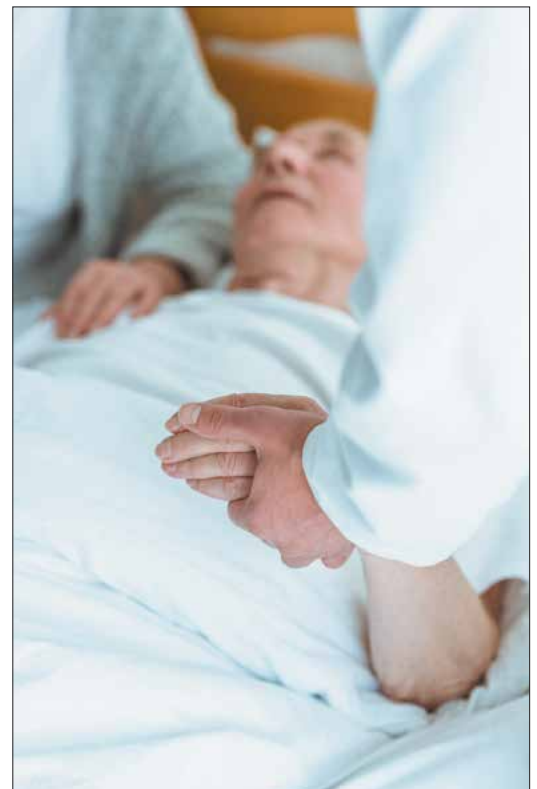
LegalMatters | winter 2021

What's a health care proxy and why do I need one?

If you become incapacitated, who will make your medical decisions? A health care proxy allows you to appoint someone else to act as your agent for medical decisions. It will ensure that your medical treatment instructions are carried out, and it is especially important to have a health care proxy if you and your family may disagree about treatment. Without a health care proxy, your doctor may be required to provide you with medical treatment that you would have refused if you were able to do so.

In general, a health care proxy takes effect only when you require medical treatment and a physician determines that you are unable to communicate your wishes concerning that treatment. How this works can depend on the laws of your particular state and the terms of the health care proxy itself. If you later become able to express your own wishes, you will be listened to and the health care proxy will have no effect.

If you are interested in drawing up a health care proxy document, contact your attorney.



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