Focus On Caregiver Agreements
By Bernard A. Krooks, Esq. | 03/14/03
Jewish Home & Hospital

A study by AARP, formerly the American Association of Retired Persons, and the National Alliance for Caregiving found that there are approximately 22 million Americans actively involved in caring for family members such as a spouse, parent or disabled child. However, most of these arrangements are not formalized (i.e., reduced to a written contract between the caregiver and the person receiving the services), creating the potential to adversely affect the caregiver and the family member receiving the care.

For many family caregivers, the issue of compensation to the caregiver for the services rendered to the family member often is never addressed due to a sense of moral obligation or an unwillingness to create disharmony within the family. However, this approach may cause negative consequences for the caregiver as well as the care recipient.

Let's consider a common scenario to see how this could happen:
"Molly" is an 85 year-old widow and the mother of Diane. Molly's health deteriorated to the point that she could no longer live independently. She moved in with Diane and her husband so that Diane could provide 24-hour a day care for her mother. Molly lived with Diane for five years before her health deteriorated to the point that Diane could no longer care for her mother and Molly had to enter a nursing home.

Unfortunately, Molly never engaged in elder law planning. Thus, in addition to not formalizing her caregiving arrangement with her daughter, she did not take any steps to protect her remaining assets. Molly had assets of $300,000 that will be used towards privately paying her stay at the nursing home (at a cost of $10,000 per month). Molly does not qualify for Medicaid. To qualify she is only allowed to have $3,850 in assets (the maximum Medicaid resource allowance for 2003 in New York State) in her name.

What could Molly have done to better allocate her personal assets for Diane, her family caregiver? Molly could have entered into a written caregiver agreement with her daughter, providing that Diane would be compensated for the fair market value of her services. If the agreement was properly drafted and signed by Molly and Diane when Diane started caring for her mother, it would have most likely been accepted by Medicaid as a legitimate spend down of Molly's assets. With this arrangement in place, Molly would have spent a substantial portion of her assets on the care provided by Diane, and she conceivably would have been able to qualify for Medicaid benefits upon her admission to the nursing home. Her $300,000 would have been preserved, as it would have been paid to Diane as compensation for services rendered to her mother over the five-year period.

Without a formal caregiver agreement (i.e., a written contract) which can be provided to Medicaid, Diane's claim that she should be entitled to Molly's $300,000 for caring for her mother for five years would most likely be rejected by Medicaid. While relatives and
family members legitimately can be paid for care they provide to an individual, Medicaid presumes that such services are provided for free unless this presumption is rebutted. This presumption can be rebutted by the existence of a written caregiver agreement signed by both parties.

In addition to providing a legitimate spend down of a Medicaid applicant's resources, a caregiver agreement also protects the caregiver by providing fair compensation for the services rendered to the family member. A parent will often not get around to (or even think about) changing his or her Last Will and Testament to provide a greater distribution of assets to a caregiver child in recognition of the services rendered. This often results in feelings of resentment by a caregiver child who feels slighted for being treated the same as his or her siblings who may have provided little or no services to the parent. With a caregiver agreement, the caregiver typically is compensated at a fair market value rate during the family member's lifetime. Additionally, the caregiver agreement may sometimes contain a provision whereby the family member in need of care agrees to execute a new deed transferring title to his/her home to the caregiver. If the family member is living in the caregiver's home, the agreement MAY provide that funds will be made available to modify the caregiver's home so that the family member can live there safely and without difficulty.

Other questions that must be considered when a caregiver agreement is drafted include:

Will the contract be for a term certain or for life?
Will the caregiver receive compensation in the form of a lump sum or periodic payments?
What specific services will be provided?
What will happen when the caregiver wishes to take a vacation?
What happens if the caregiver no longer wishes to provide the services or becomes incapacitated or dies?

Law firms that specialize in Elder Law are a good resource to help families draft caregiver agreements and provide guidance on the issues surrounding such agreements.

This article authored by Bernard A. Krooks, Esq. and Howard S. Krooks, Esq. of Littman Krooks LLP

For more information on Elder Law and Financial Planning, visit the Legal/Financial Issues section of our online Caregivers Guide.
(914) 684-2100.