



William & Mary Elder Law Clinic Newsletter

W&M Elder Law Clinic

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The Benefits of Being a Caregiver Under Medicaid.

By Laura Wynn

Qualifying financially for Medicaid can be a daunting task, particularly if you have assets that you would like to pass on to your children and other non-spouse loved ones. In addition, Medicaid has steep penalties for gifting away assets that include months of ineligibility for the program. A caregiver Agreement is just one powerful tool to avoid such penalties.

A caregiver agreement is a contract between the two parties which details the kind of care the caregiver will provide; for example, bathing, cooking meals, dressing, cleaning, companionship, and otherwise caring for the individual.

The great benefit of entering into these contracts is that caregivers can be paid for services they are often already doing. Caregiver agreements give the caregiver compensation for helping out someone they care for and also help out the individual trying to qualify for Medicaid spend down some of his or her assets without gifting them away.

The one serious drawback to caregiver agreements is that the caregiver has to pay taxes on the money he or she earns under the agreement. The individual receiving help additionally becomes an employer and would have to pay certain other taxes, including Social Security, Federal and State unemployment taxes, and any other taxes which employers are responsible for paying on a quarterly and annual basis. Additionally, individuals cannot pay for any past services performed. This means that any services caregivers have provided prior to the caregiver agreement are uncompensated.

Caregiver agreements provide wonderful benefits and incentives for caregivers to take care of their loved ones who might otherwise need to go into a long-term nursing home.

If you are interested in a caregiver agreement, it is important to contact an attorney or the William & Mary Elder Law Clinic.

Planning Ahead: Powers of Attorney & Advance Medical Directives vs. Guardianship & Conservatorship.

By Abby Norris

One way to prepare in advance for a parent or loved one's future is to execute a durable power of attorney. A power of attorney is a document that authorizes a designated person to act on behalf of another. The power of attorney does not take away the rights of the principal. It is essential that at the time of execution, the principal is able to understand the nature and consequences of the power of attorney.

A power of attorney is normally effective as soon as it is signed, unless it is "springing." "Springing" powers of attorney contain language stating that they will not go into effect until a specified time in the future (for example, upon incapacity).

Alongside a power of attorney, an agent can be designated under an advance medical directive, which gives a loved one the authority to make tough health care decisions if the individual cannot make decisions for him or herself. Again, this document does not remove the principal's right to make decisions, and only provides a back-up plan in cases of emergency.

However, it is not always possible to prepare ahead of time for the kinds of unfortunate situations that require these documents. When executing a power of attorney isn't an option because the incapacitated person cannot legally agree to it, a loved one can petition the court to obtain guardianship and conservatorship. Guardians and conservators are appointed by a Circuit Court judge to protect an incapacitated person. A guardian's authority can be very broad or can be limited to making specific decisions. health and safety needs. A conservator is responsible for managing financial affairs.

Whenever possible, it is always prudent to plan ahead for these kinds of situations. A power of attorney and advance medical directive are great planning tools and are recommended for everyone, not just the elderly.