

## How to Compensate a Family Member for Providing Care (Personal Care Agreement)

Note: This information is derived from the Family Caregiver Alliance and cross-referenced with other sources. For information from Family Caregiver Alliance, visit: [Family Caregiver Alliance](http://www.familycaregiveralliance.org).

The person providing care for someone with dementia makes many sacrifices: one significant sacrifice often being giving up a job and employment benefits. A formal agreement among family members can provide a way to compensate a person providing care if he or she is no longer able to hold other employment. Even though most family members want to help and feel a sense of duty to care for a relative, it is a job with heavy time commitments and responsibilities. One way of protecting the caregiver as well as the person receiving care is by putting the care relationship in writing.

This is a binding agreement, also called a **long term care personal support services agreement, elder care contract, or family care or caregiver contract**. Most often, it is called a **personal care agreement**. This agreement can offer family caregivers security that they will not suffer undue financial consequences. At the same time, the agreement can also give the person receiving care peace of mind that she or he has a caring advocate to manage his or her needs.

### What is a Personal Care Agreement?

The agreement is a contract, typically between a family member who agrees to provide caregiver services (the caregiver) for a disabled or aging relative and the person receiving care (the care recipient). The personal care agreement is usually between an adult child and his/her parent, but other relatives may be involved, such as an adult grandchild caring for a grandparent.

Drawing up an agreement clarifies what tasks are expected in return for a stated compensation. It can help avoid family conflicts about who will provide care and how much money will change hands. For this reason, the agreement should be discussed with other family members to resolve any concerns before an agreement is drafted. (Note: see the Do I Need a Lawyer section of this document for more information)

When contracting with a family member, it is wise to treat the agreement as a formal document. If the care recipient is receiving state supported in-home care, the agreement will show the state where the money is going and for what kind of services. In addition, a caregiver agreement can offset potential confusion among family members concerned about bequests to heirs, and avoid misunderstandings later over the reduction of the amount of money that may be inherited. These details could be included when Estate Planning with an attorney.

## Basic Components of a Personal Care Agreement

Three basic requirements:

- The agreement must be in writing.
- The payment must be for the care provided in the future (not for services already performed).
- Compensation for care must be reasonable. This means it should not be more than the cost for a paid caregiver from a local home care agency.

Other Components:

- Date the care begins.
- Detailed description of the services provided (for example: food preparation, transportation and errands: driving to medical, dental, and other appointments).
- How often will services be provided.
  - Allow for flexibility in care needs by using language such as “no less than 20 hours per week.”
- The location where the services are to be provided.
- How much and when the caregiver will be compensated.
- If the plan is for the caregiver to live with the care recipient, will room and board be free as part of the compensation? If not, include details on how living expenses will be covered (for example, the caregiver will pay a proportional share of utilities, mortgage, insurance, taxes).
- How long the agreement is to be in effect.
  - Examples: one year, two years, over a person’s lifetime.
- A statement that the terms of the agreement can be modified only by written mutual agreement.
- Signatures of the parties, including the Power of Attorney for the person with dementia and date of agreement.

## Additional Details to Consider

Consider creating an "escape clause" in the event that one of the parties wants to terminate the contract. Use a term such as "this agreement remains in effect until terminated in writing by either party." Consider a provision for back-up care that "springs" into action if the caregiver becomes ill or wants a vacation.

When an agreement has been made to cover room and board costs when the caregiver lives with the care recipient, consider what happens if the care recipient moves into a care facility. Will health insurance or a long-term care insurance policy be purchased to cover the caregiver? If so, include that in the personal care agreement and be specific without being inflexible. Consider adding an allowance for easy-to-overlook out-of-pocket expenses.

To determine the level of care required, consult with a local homecare agency, physician, geriatric care manager, hospital discharge planner or social worker. There may be a fee involved to conduct a care assessment in the home. Because the care recipient has dementia, it is important to plan for disease progression. This assessment will also help in anticipating any future care needs.

When preparing an agreement, address what each care task means. Define, for example, what "personal care" is: does it include bathing, dressing, and dental hygiene? The result will be a more realistic caregiving assessment if care tasks and the time required to complete them are clearly defined.

Caregivers should maintain a detailed daily log and have a concise job description. Documentation will support the intent of the contractual relationship if for any reason it comes into question.

The personal care agreement is a contractual relationship between employer (care recipient) and employee (caregiver), a relationship that requires withholding and paying taxes. Other considerations are

whether to provide employee benefits such as health insurance or workers' compensation. In the area of taxes and social security it may be wise to seek the advice of an attorney, to confirm what applies in the specific situation. Consider a vacation pay provision to offset caregiver stress or a salary increase after one year for a job well done.

Consider setting up a structure for monitoring the care to ensure it is delivered as expected. This may mean asking another trusted family member or friend to check in with the care recipient from time to time or hiring a geriatric care manager to oversee the delivery of the care.

A personal care agreement can be changed at any time, as long as both parties agree to the change. Simply write a note explaining the change -- more or less pay, more or fewer hours, different tasks -- with both parties signing and dating the note, and attach it to the original contract. Or, an entirely new document can be drawn up if both parties agree to a number of things that need to be changed. If a new contract is drafted, include the phrase "This agreement supersedes all previous agreements between the parties having to do with personal care."

### **Do I need a lawyer?**

It is not necessary to hire an attorney in all cases, but, depending on the circumstance and the complexity of the situation, it may be advisable when entering into a contractual relationship. If a pre-paid, lump-sum payment structure is being considered it would be helpful to consult with a lawyer. A lump-sum contract is complex and it is more difficult to show compensation in terms of "fair market" value for care services. A monthly or bi-weekly salary for care services is easier to track, especially for Medicaid purposes. If either party feels uncomfortable about the proposed financial transactions or how the arrangement will impact eligibility for Medicaid, Veterans benefits or any income-based programs, consult an attorney to avoid conflict later.

Because of the progressive nature of most forms of dementia, it may be wise to have an attorney review the document if the person with dementia acts as their own agent and signs the agreement. As the care recipient's dementia progresses, an important consideration becomes assessing whether he or she lacks capacity to sign the agreement. The Power of Attorney or the court appointed guardian or conservator must sign the document in this situation. If the person being paid to provide care also holds the care receiver's Power of Attorney or legal guardianship, consider consulting with an attorney. A list of elder law attorneys can be found through the Alzheimer's Association [Community Resource Finder](#).

If the caregiving situation is not complex, it is possible to draw up an agreement without paying for a lawyer. One model with clear, easy-to-follow explanations is the Elder Care Agreement (Form 85) in the book [101 Law Forms for Personal Use](#) by Ralph Warner and Robin Leonard (Nolo), available in both hard copy and electronic versions. Once a version of the agreement has been created that both parties are comfortable with, make several copies, have them signed and dated by both parties with a copy going to each party.

## How Does This Affect Eligibility for Medicaid?

Medicaid (MO Health Net in Missouri and Healthcare and Family Services (HFS) Medical Benefits in Illinois) is a state and federal program that may pay for long-term care costs for people with limited income and assets. To qualify for Medicaid, a person's spending and assets are subject to a "look-back" period of up to five years. This is sometimes called the asset "spend down." If the care receiver needs to enter a facility or apply for other services that Medicaid might pay for, the personal care agreement can show that care payments were a legitimate expense and not an attempt to hide assets by giving cash to family members. The care receiver is paying for the "value" in personal care services. Without a caregiver contract in place, Medicaid could deem payments to a family caregiver as gifts, delaying the individual's Medicaid eligibility. Consult an elder law attorney or the appropriate state Medicaid office for more information to avoid penalty. Regulations are complicated and vary from state to state. Another option to be aware of when looking to hire and direct one's own care is Consumer-directed Care. More information on Consumer-directed Care is available through the Department of Senior and Disability Services (Missouri) or the Department of Healthcare and Family Services (Illinois).

## Resources

The Alzheimer's Association provides information on common subjects related to aging and dementia in order to assist families with the care that they provide. The following tip sheets are recommended based on your interest in the information provided in this packet. Please call us at **800.272.3900** to receive a copy.

- Tip sheet on Hiring an Independent In Home Companion
- Tip sheet on Taxes For Hiring In-Home Workers
- Tip sheet on State and Federal Tax Credits and Deductions
- Tip sheet on Medicaid in MO
- Tip sheet on Medicaid in IL
- Tip sheet on Moving the Person with Dementia into the Caregiver's Home

If you would like any of this information sent to you, or would like to know what other resources the Alzheimer's Association has to offer, please call **800.272.3900**.

### Family Caregiver Alliance

800.445.8106

[www.caregiver.org](http://www.caregiver.org)

### Alzheimer's Association

Community Resource Finder: [www.alz.org/crf](http://www.alz.org/crf)