Contracts adding legal twist to family health care

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Financial contracts to care for sick or aging relatives - nearly unthinkable just a decade ago - are drawing new interest as everyday Americans wrestle with the time and expense of providing long-term health care, a University of Illinois legal expert says.

Law professor Richard L. Kaplan says the rise in so-called family caregiver agreements is far from a groundswell, and most people still bristle at the notion of being paid to care for parents or other relatives who may have once cared for them.

"To most, the idea is abhorrent because they consider this a family responsibility," said Kaplan, whose research on caregiver agreements appears in the current issue of the *Canadian Journal of Elder Law*. "I'm not sure I've seen anyone who has reacted positively on the first or even second hearing."

But he says more Americans are considering the agreements as a result of tougher standards imposed three years ago for Medicaid, a government program that covers nursing homes and other long-term health care costs after older Americans exhaust their own assets.

Under the change, officials now look back five years rather than three to see whether Medicaid applicants gave away homes or other assets that could have paid for their care.

If so, the government assesses a stiff penalty that denies Medicaid coverage for the amount of time the gifts would have covered health-care costs. For example, if a patient in a nursing home costing $5,000 per month gave her daughter a residence worth $200,000, the penalty period would be 40 months.

But there are no penalties if the assets are part of a family caregiver agreement, making them payments for services rather than a gift, said Kaplan, an expert on elder law and a member of the National Academy of Social Insurance.

"The biggest motivator for these agreements is the transfer of assets penalty, and that will only grow if the Obama administration implements its proposal to expand the look-back period from five to seven years," he said. "I think very few Americans would consider family caregiver agreements were it not for Medicaid."

Kaplan warns that the agreements have a major down side. Written agreements to provide services for pay - whether an hourly rate or the deed to a house - make the compensation taxable.

"That's a tremendous negative - so tremendous that for most Americans it's the end of the discussion," he said. "After all, if they provide care on a casual basis and then get an inheritance when their relative dies, this money would be tax free."

But Kaplan says agreements can also limit tax consequences if the Internal Revenue Service ever challenged an inheritance by claiming that the funds stemmed from services provided to the deceased. Without an agreement, the entire value of a bequeathed home could be taxed, as opposed to only a portion if a contract outlined the scope of hours and rates.

He says the contracts are a byproduct of changing family dynamics that have made caring for aging relatives more challenging than it was a generation ago. Fewer children, often spread around the country, are left to care for parents now living longer.

In addition, more two-worker households mean family caregivers may have to sacrifice pay, health insurance and retirement benefits - losses that can be at least partially recouped through a family caregiver agreement, Kaplan said.

"These agreements put more formality into what has typically been a very informal arrangement," he said. "For caregivers, it lays out their responsibilities and what they will receive for their efforts. For the older person, it specifies the care that he or she can expect from the caregiver."

Kaplan says hours, duties and other components of the agreements are worth considering as families explore long-term care options, even if they plan to provide care informally rather than through a contract.

"It's always better to address potential problems up front rather than after the fact," he said. "For example, who will pay for equipment like a hospital bed? Is the caregiver expected to be available 24 hours a day? What happens if the care needs of the older relative increase beyond what the caregiver is able to provide? How are vacations to be handled? Answering these types of questions may show you need a different, non-family solution."

Source: University of Illinois at Urbana-Champaign (news : web)