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CareOptions OnLine™

My Caregiver Agreement



Caregiver Agreement Document for:

John Smith
1234 Anywhere Street
Any City, Any 55555

312-525-1212 (Home)
312-656-1717 (Work)

Date of Birth: 08-17-74



CareOptions offers no legal advice. We recommend you have this document reviewed by your legal professional prior to execution.

January 6, 2006
www.careoptionsonline.org

CAREGIVER AGREEMENT

This CAREGIVER AGREEMENT ("Agreement") is made and entered into on Nov. 14, 2009 (the "Effective Date") by and between John Smith (hereinafter "Client") and Jane Smith, who is the Sister of Client (hereinafter "Caregiver"). Client and Caregiver may be collectively referred to herein as the "Parties" or each "Party".

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RECITALS

WHEREAS, Client and Caregiver wish to set out the terms of assistance Caregiver will provide to Client and the compensation Client will pay to Caregiver in exchange therefore; and

WHEREAS, Client and Caregiver wish to memorialize their understanding as contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Client and Caregiver agree as follows:

1. **Incorporated.** The above **RECITALS** are hereby incorporated as a material part of this Agreement with the same force and effect as if restated in full in this Paragraph.
2. **Services to be Provided.** The services to be provided and the duties to be performed by Caregiver shall include the following (collectively the "Services"):
 - a. [The services and duties to be provided and performed should be specifically itemized in clear language and include the time allotted for each service, therefore inserting a chart here with the service, frequency and time required is a good idea. Said services and duties can include, but are not limited to: bathing and dressing, arranging friend visits to the Client's home and at the friend's home, managing medications, prepare, serve and feed meals, run errands (if Caregiver will be driving, then insurance issues should be discussed, as well as Caregiver agreeing to maintain a valid driver's license), keep Client's home clean and tidy (take out garbage, change bed linens, wash dishes, vacuum carpets, mop/sweep floors and dust), pay bills and handle finances (and whether this includes writing checks), arrange and drive to medical appointments, pick up prescriptions, assistance carrying out Client's physicians directions regarding Client's care (physical therapy/speech therapy), record keeping, preventing Client from wandering or otherwise harming self or others, laundry, accompany Client on errands and appointments, Caregiver will know the whereabouts and the physical condition of Client at all times while on duty, Client will make use of any emergency contact procedures with Client's power or attorney and/or family members and/or physician, assist with getting in/out of bed, help with toileting and grooming, complete yard work (snow removal and lawn care), read to Client, visit with Client, play games with Client, care for Client's animal (dog, cat, etc.), bring Client to and from other activities and appointments (religious, hair, shopping, etc.), health care advocacy services, companion services, providing a room, holiday and gift shopping, exercise, and Caregiver will assist Client to live at home and to have as much control over the home environment and life as possible, under the circumstances.]

- b. [The services and duties should also contemplate any possible future Services Caregiver will provide to Client (i.e. if Client's condition deteriorates).]

Caregiver shall not be responsible for: [This section should detail what services and duties Caregiver is not responsible to perform, as well as any things that Client would like Caregiver not to do (i.e. not smoke in Client's home, not eat food from Client's home, not have personal visitors, not make personal phone calls, etc. – or specifically provide for when and if these types of things are allowed).]

3. **Method of Payment for Services & Expenses.**

- a. **Payment.** Payment for the Services provided by Caregiver to Client shall be made as follows:

- i. [Some of the ways that payment can be structured are: (i) on an hourly basis – where Caregiver receives paychecks on a weekly, bi-weekly or monthly basis; (ii) on a lump sum basis – where said lump sum payment is made directly to the Caregiver or through an escrow agent (the escrow agreement should state that the Client does not have access to or a reversion interest in the lump sum amount); (iii) in kind – for example, the Caregiver is paid in room and board as being allowed to live in the Client's home rent-free (in-kind can be as either a partial or full payment for the services provided); (iv) the Client may transfer their home to the Caregiver and retain a life estate in the house, or could make the Caregiver the co-owner in their home (Medicaid planning advantages should be considered when contemplating this option); or (v) the Client can take out a life insurance policy or name the Caregiver as a beneficiary on an existing life insurance policy. Also consider if overtime or any other benefits will be given (i.e. insurance), and if so, when. The tax advantages and consequences of each scenario should be considered, as well as whether the Caregiver will be an employee (therefore, social security and other payroll taxes will need to be withheld) or and independent contractor (i.e. The Parties hereto intend that this Agreement will create an independent contractor relationship for the Services described herein. Caregiver understands and agrees that Caregiver is not considered an employee of Client for any purpose whatsoever nor is Caregiver entitled to any of the benefits normally provided to its employees). Next, the payments made to the Caregiver are considered taxable income. Finally, the compensation for care or services must be reasonable (i.e. the amount is reasonable if “it is consistent with a charge for similar services performed in the community” MDHS Health Care Programs Manual 19.40.25. Local home care agencies and geriatric care managers should be contacted to determine the market rates for said services and the wage paid should be at or less than market rates.) [If a monthly rate is used, insert this language: This monthly rate recognizes that Caregiver will arrange additional assistance for Client. As long as the additional assistance for in-home care or day care does not exceed twenty-four (24) hours per week, the monthly rate shall be fully paid; otherwise there shall be a pro-rata reduction. This Agreement also recognizes that hospital stays or the need for respite care may arise. As long as such placements do not exceed one week in any given month, the full monthly rate shall be paid.]

- b. **Client's Care Costs.** Client and Caregiver hereby acknowledge and agree that the Caregiver is not responsible for the Client's care costs.
- c. **Expenses.** If Caregiver is provided with funds for household, medical or other expenses, Caregiver will keep detailed records for Client. Caregiver will only make purchases that are approved by Client. Notwithstanding the foregoing, if Caregiver makes purchases for Client, whether household, medical, or other, Client will reimburse Caregiver as follows: (examples include, but are not limited to: immediately, within a set number of days of notification of an expenditure, Caregiver may deduct said expense from its lump sum escrow account, or along with Caregiver's next paycheck (if an hourly wage is contemplated). [Whether Caregiver will be reimbursed for mileage should also be discussed.]
- d. **Accounting.** Caregiver shall keep accurate records of the Services provided, time spent in providing such Services, and expenses incurred in providing such Services. Such records shall be available to Client for his/her review at any reasonable time.

- 4. **Location of Services to be Provided.** Caregiver shall provide the Services to Client at [choose: Client's home or Caregiver's home or other], which is located at 1234 Anywhere St.
AnyCity, Any 55555
- 5. **Work Schedule.** Caregiver shall provide Services to Client according to the following schedule [can be set up as a set time each day or a set number of hours each week]:

Monday: 3 hrs
 Tuesday: 3 hrs
 Wednesday: 3 hrs
 Thursday: 3 hrs
 Friday: 3 hrs
 Saturday: 3 hrs
 Sunday: 3 hrs

Holidays: 3 hrs
 Vacation Days: 3 hrs
 Sick Days: 3 hrs

In the event Caregiver is unable to adhere to the aforementioned schedule, Caregiver shall immediately notify Client of the same. Notwithstanding the foregoing, Caregiver agrees to work according to the aforementioned schedule, and will not alter the schedule without at least 24 hours advance notice to Client (to allow Client to approve the alteration and/or make other arrangements). Client and Caregiver hereby acknowledge and agree that in the event Caregiver is unable to adhere to the schedule that Joe Smith is a permissible substitute to provide the Services to Client during the time Caregiver is unable to do so.
 [Note that the care provided can range from part-time services to 24/7 care and supervision of professional paid caregivers.]

- 6. **Length of Commitment.** Caregiver shall provide the Services to Client for Lifetime [this can be a set period of time, or the Client's lifetime], which shall begin on Nov. 14, 2009. [If the Agreement is for a set period of time, here is additional example language: This Agreement is for the term of one (1) year. At the end of the initial term, the Services to be provided will be

evaluated by Client or Client's legal agents. A new caregiver agreement may be signed by the Parties at that time. It is the responsibility of the Parties to update this Agreement annually.]

7. **Authority of Caregiver.** [The authorizations for medical and financial decisions Caregiver can make for Client need to be clearly described (i.e. Client hereby acknowledges and agrees that Caregiver is authorized to make the medical and financial decisions for Client (if applicable: pursuant to that certain Durable Power of attorney dated 01/01/01 and Statutory Short Form Power of Attorney for Client dated 01/01/01, both giving Caregiver the respective powers of attorney) or Caregiver hereby acknowledges and agrees that Caregiver is not authorized to make medical and financial decisions for Client, and when such a need to make said decision arises, Caregiver will immediately notify Client's applicable power or attorney or guardian, as it applies.). This section will also need to be tailored to whether or not the Caregiver is the power of attorney for Client, and if so, the same should be stated herein, and if not, it needs to be reflected that the proper party should be notified, in particular if the Client is not of sound mind and/or has been declared incapacitated or incompetent (and if this is the case, language to this effect may be included: Client is a person with impaired abilities, and is a vulnerable person. Client is dependant on Caregiver and is not able to deal with Caregiver on equal terms. Caregiver will take special care not to take advantage of Client and not to unnecessarily influence Client's choices. Caregiver will under no circumstances assist Client to write checks unless authorized to do so in writing pursuant to this Agreement. Caregiver will not influence Client in any way whatsoever regarding the writing of a will or other estate planning.) If, however, Client is of sound mind when the Agreement is executed, then language to this effect should be included: In the event that Caregiver is not Client's power of attorney and Client is declared mentally incompetent or becomes incapacitated at any time during the course of this Agreement, Caregiver agrees to report to and be advised by Client's power of attorney as to matters affecting Client.]

8. **Termination.**

- a. **Probation Period.** During the first 30 (days) months of employment, Client may terminate this Agreement at any time with or without notice to Caregiver and without severance pay to Caregiver.
- b. **Termination.** Following the aforementioned probation period, this Agreement may be terminated at will by either Client or Caregiver by providing 2 days (weeks) advance written notice (such notice to be provided as contemplated in Paragraph 9(c) of this Agreement). Client may terminate employment without cause with no advance notice. If this occurs, Caregiver will be entitled to two (2) weeks severance pay at the rate of the average compensation over the past three (3) months. Client may terminate employment with no advance notice and no severance pay if Caregiver has violated the terms of this Agreement, or has been negligent, or acted in a way that could have allowed harm to Client.

9. **Miscellaneous.**

- a. **Direct Benefit.** Client and Caregiver hereby acknowledge and agree that the Services provided under this Agreement directly benefit the Client.

- b. **Agreement Made Before Services Began.** Client and Caregiver hereby acknowledge and agree that this Agreement was made before any Services contemplated herein began and is not for the payment of any past services Caregiver may have provided to Client.
- c. **Notices.** Any notices required or contemplated hereunder shall be in writing and shall be effective: (i) when delivered personally, or (ii) when deposited in the United States mail (sent certified or registered mail, return receipt requested), in each case to the address of the respective Party specified in this Paragraph (or to such other address a Party may designate in the manner set forth herein for the giving of notices).

If to Client: John Smith
 1234 Anywhere Street
 AnyCity, Any 55555

With a copy to: N/A [copy sent to guardian or power of attorney, if applicable]

If to Caregiver: Jane Smith
 5678 Anywhere Street
 AnyCity, Any 55555

- d. **Representation.** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, any construction to be made of this Agreement shall not be construed against any Party. This Agreement is executed without reliance on any promise, warranty or representation by any Party or Party’s representative other than those expressly contained herein, and each Party acknowledges that this is an arms-length transaction in which he, she or it was free to negotiate and did negotiate the terms of this Agreement, has carefully read this Agreement and has had the opportunity to consult with their respective counsel regarding its meaning and consequences. Each signatory to this Agreement has acted of his, her or its own free will and has been duly authorized to execute this Agreement on behalf of such Party.
- e. **Headings.** The organization or any headings used in this Agreement are for convenience only, and shall not be used in the interpretation of this Agreement.
- f. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and neither Party shall be bound by any verbal statement(s) or agreement(s) made heretofore. This Agreement cannot be varied except by written agreement executed by all of the Parties. Notwithstanding the foregoing, Caregiver and Client acknowledge that care needs and costs may change in the future. Upon the written agreement of Caregiver and Client, the terms of this Agreement may be amended and modified.
- g. **Cooperation.** The Parties hereto further agree to cooperate fully and execute any supplementary documents and to take any additional steps that may be reasonably necessary to give full force and effect to the terms of this Agreement.
- h. **No Assignment.** Neither this Agreement nor any or interest in this Agreement may be assigned by either Party.

- i. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.
- j. **Severability.** If any items, terms, or provisions contained in this Agreement are in conflict with any applicable federal, state or local laws, this Agreement shall be affected only as to its application to such items, terms, or provisions, and shall in all other respects remain in full force and effect. The provisions of this Agreement are severable, and if any provision or part hereof or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provisions or part hereof to other persons or circumstances shall not be affected thereby.
- k. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which when signed, shall constitute an original, and all of which when signed, when taken together, shall constitute one Agreement.

[Remainder of page left blank intentionally]

WHEREAS, the Parties have signed and executed this Agreement on the date and year as first above-written.

CLIENT:

X _____
John Smith _____ (print name)

STATE OF MINNESOTA)
) ss.
COUNTY OF Any)

The foregoing instrument was acknowledged before me by Mr. Notary Public, this
14 day of Nov., 2009.

X _____
Notary Public

CAREGIVER:

X _____
Jane Smith _____ (print name)

STATE OF MINNESOTA)
) ss.
COUNTY OF Any)

The foregoing instrument was acknowledged before me by Mr. Notary Public, this
14 day of Nov., 2009.

X _____
Notary Public

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