

THIS SAMPLE AGREEMENT DOES NOT CONSTITUTE LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR MEETING WITH AN ATTORNEY WHO IS KNOWLEDGEABLE ABOUT ELDER LAW.

Note: Most transfers or gifts of property will cause a period of ineligibility from Medicaid. However, federal law and N.C. Medicaid Manual MA-2240 VII.A. provide that assets that are exchanged for services are not considered disqualifying gifts, in some circumstances. Individuals who provide care for an elderly person may be able to get compensated for their services, if a written contract has been signed and reasonable compensation is paid. This rule also applies to a contract for future services but not to payment for past services, before a contract was signed. See [MA-2240.IX.H](#). [Scroll down several pages.] Your attorney may want to consider whether a care agreement such as the following one would be appropriate in your situation. As to whether the care provided must be “medically necessary,”¹ see endnote on the last page.



CARE AGREEMENT

This agreement made this _____ day of _____, 20____, by and between _____, Older Adult (hereinafter referred to as “Older Adult”), and, _____, Caregiver (hereinafter referred to as “Caregiver”).

SECTION 1. PURPOSE - The purpose of this agreement is to set forth the terms and conditions under which Caregiver will provide assistance with day to day living for the Older Adult in the Older Adult’s home in exchange for reasonable compensation. The real property will hereinafter be referred to as “the house.”

SECTION 2. SERVICES TO BE PERFORMED BY CAREGIVER - Caregiver shall furnish Older Adult with the services and incidentals specified herein, provided that the Older Adult remains in the house and performs his or her obligations under this contract. In consideration of the mutual premises contained herein, the parties intending to be legally bound agree as follows:

SECTION 3. NUTRITION

SECTION 3.1. Balanced Meals- Caregiver hereby agrees to prepare three (3) nutritionally balanced meals per day when such assistance is requested. Meals shall be served in the breakfast area or in the dining room. One such meal shall be served in the morning, one at midday, and one in the evening for the Older Adult. If, in the opinion of a licensed physician, Older Adult’s health makes his or her attendance at meals in the dining area inadvisable because of a minor illness, said meals shall be served in the Older Adult’s bedroom.

SECTION 3.2. Special Diet - Special diets will be provided only upon order of a licensed physician.

SECTION 3.3. Additional Duties - Caregiver agrees to grocery shop for

Older Adult with nutritious meals in mind. Following the preparation of meals, the Caregiver shall assist with feeding if necessary and clean the kitchen which includes washing dishes.

SECTION 4. CLEANING - Caregiver agrees to provide cleaning services on a weekly basis as follows:

1. General cleaning
2. Make bed
3. Wash laundry/ change linens
4. Wash dishes
5. Empty all waste containers
6. Sweep and dust-mop all non-carpeted floors, stairs and hallways
7. Vacuum all carpets and rugs, and spot clean as needed
8. Scrub floor
9. Dust all furniture
10. Scrub and disinfect all bathrooms
11. Remove finger marks from both sides of all entrance doors and from all interior doors, walls, woodwork, and partitions
12. Replace all restroom supplies in respective containers
13. Dust all light fixtures
14. Maintain Older Adult's bedroom in a neat and orderly condition
15. Clean basement and garage
16. Perform periodic heavy cleaning such as window washing and wall washing.

SECTION 5. OUTDOOR MAINTENANCE - Caregiver agrees to provide the following outdoor services:

1. Lawn care
2. Landscaping maintenance
3. Snow removal from walks and driveway
4. Garden or flower maintenance

SECTION 6. HOUSEKEEPING - Older Adult shall maintain the home in a clean, sanitary, and orderly condition. Caregiver shall make available to Older Adult all supplies reasonably necessary for Older Adult to perform the usual light housekeeping in order to maintain his or her accommodation. Caregiver shall perform all ordinary and heavy housekeeping as set forth in detail above.

SECTION 7. ASSISTANCE OUTSIDE THE HOME - Caregiver shall run daily errands for the Older Adult. These may include, but are not limited to, picking up dry cleaning and laundry, grocery shopping, shopping for necessities (e.g., shampoo), and maintaining Older Adult's car (e.g., oil change).

SECTION 8. PERSONAL CARE NEEDS - Caregiver shall observe Older Adult's physical and mental condition on a regular basis, and shall make arrangements as necessary to meet Older Adult's health needs by arranging transportation to the physician of the Older Adult's choice. Caregiver shall provide assistance to Older Adult

in carrying out the instructions of physicians, including storing, distributing and reminding Older Adult to take prescribed medications.

Caregiver shall also provide Older Adult with personal assistance with bathing, dressing, toileting, hair care, shaving, eating, care of clothing, personal shopping, and incidental services. Additionally, caregiver shall provide any spiritual, physical, social, or companionship needs of Older Adult.

SECTION 9. TRANSPORTATION - Caregiver shall assist Older Adult with transportation needs. Caregiver may drive the Older Adult, arrange for public transportation, or help with specially provided elderly transportation (e.g., vans for the elderly which provide door-to-door transportation).

SECTION 10. COMPANIONSHIP AND ENTERTAINMENT - Caregiver shall provide companionship and support for Older Adult. For example, caregiver may accompany Older Adult on walks or to an exercise center, read to, play games with or converse with Older Adult.

SECTION 11. COMPENSATION - Older Adult shall pay Caregiver:

_____ weekly
_____ monthly
on each _____ of the week/month
\$_____ per hour worked.

Caregiver may adjust hourly care fee specified above based on fair market value for similar services. Modification, however, may only be made by a written agreement between the parties. By this agreement, the Caregiver understands that his or her employment is for no definite period and may be terminated at any time, with or without notice or cause. The Caregiver further understands that nothing in this agreement shall constitute a binding contract for a term of employment. Thus, the Caregiver understands and agrees that his or her employment is "at-will." Upon termination of this Agreement for any reason, the Older Adult's sole and exclusive obligation will be to pay the Caregiver the Caregiver's compensation earned through the date of termination.

SECTION 12. GOVERNING LAW, ENTIRETY OF AGREEMENT AND SEVERABILITY - This agreement shall be governed by the laws of the state of North Carolina. It constitutes the entire agreement between the parties regarding its subject matter. If any provision in this contract is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

THIS IS A LEGALLY BINDING CONTRACT. EACH PARTY HAS READ THE ABOVE AGREEMENT BEFORE SIGNING IT. EACH PARTY UNDERSTANDS THE AGREEMENT HE OR SHE IS MAKING, HAVING HAD THE OPPORTUNITY TO ASK TO HAVE EACH TERM THAT THE PARTY DOES NOT UNDERSTAND FULLY EXPLAINED.

IN TESTIMONY WHEREOF, we, the Older Adult and Caregiver, having read this agreement, agree to its terms and sign it as our free act and deed on this the _____ day of _____, 20____.

Name of Older Adult

Name of Caregiver

STATE OF NORTH CAROLINA, _____ COUNTY

I, _____, a Notary Public of _____ County, North Carolina, do certify that _____, the maker, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this the _____ day of _____, 20____.

Notary Public

STATE OF NORTH CAROLINA, _____ COUNTY

I, _____, a Notary Public of _____ County, North Carolina, do certify that _____, the maker, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this the _____ day of _____, 20____.

Notary Public

¹ Manual section DMA 2240 IX.H.1.d. *purports* to require a doctor certification for a care agreement [with adult children *or* non-relatives] to be “valid” – i.e., to avoid the transfer penalty.

This requirement is probably **contrary to federal law** because that law only requires that the applicant got what she paid for. If she paid for care services, and paid fair market value, then there’s no transfer of assets. [For that matter, if she paid for a mink coat, or massage services, or flame-swallowing dancers to perform, DSS cannot question that either.] NC is attempting to impose a qualification on “paying for services” that goes beyond the basic rule – i.e., the federal law.

That said, it still should be fairly easy to comply with the “rule” requiring physician certification --- because, broadly viewed, much help for older people *is* aimed at keeping them out of a nursing facility. I don't think most physicians look at the phrase “necessary to prevent” institutionalization as strictly as a lawyer would, as they tend to be beneficent and protective. So, they'd probably back you up on this.

Also, one could try the “rebuttal” rule (2240-XIII).

In summary, if a healthy but older client wants to pay their dutiful relatives or third parties for the help they're providing, I'd recommend you go ahead and draw up a care contract. You can go along with NC and try to get the doctor certification, or forego it and tell your client she might face a denial and then need to appeal.