

## The Elderlaw Forum: Avoid signing nursing home agreement!

by Professor\_Michael\_Myers

Caution! Do not sign a document when admitting a parent, a grandparent, a friend, or even a spouse to a nursing home, unless you are acting under a power of attorney or as a guardian.

A senior legal helpline caller signed as a "responsible party" only to learn that the term was intended by the nursing home to make her financially responsible for her uncle's care, if not covered by Medicaid or Medicare. "I thought that simply meant that I should be the family member to be contacted in the event of an emergency or other problem."

She had received a billing for transportation costs not covered by Medicare or Medicaid. The invoice demanded that she pay \$745. "He is the last surviving member of my mother's family. I helped him out because he had nobody else. Can I be held responsible for this bill?" she asked.

"No, you shouldn't have to for any of your uncle's expenses; but you may need a lawyer to escape liability," I advised.

Federal law—specifically, the Nursing Home Reform Law—prohibits a nursing home from requiring a third party guarantor as a condition of a resident's admission or continued stay. The nursing home, however, will likely contend it did not require the caller to sign as a "responsible party" but rather she did it "voluntarily."

She will have to argue in this case that the term "responsible party" is deceptive; that she signed for the purpose of being the main contact person to assist her uncle in dealing with the nursing home and its medical director. Her uncle is competent, but exhibiting signs of dementia.

Nursing home admission agreements may contain language defining "responsible person" to include people who voluntarily undertake to be responsible for the personal and financial obligations of the nursing home resident. An expensive court challenge may be needed for her to overcome the contract language.

My blanket advice: Do not sign anything. If the nursing home accepts Medicare and Medicaid payments, it may not require a commitment beyond that of the person being admitted as a resident; that includes spouses, even though spouses are generally financially liable for each other's necessary expenses.

(Pro bono legal information and advice is available to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu. Opinion solely those of Professor Myers and not the University of South Dakota).

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