

The Elderlaw Forum: Am I liable for Dad's nursing home bill?

by Professor Michael Myers

Our aging and increasingly complex society has expanded the use of the durable power of attorney as an estate planning tool. It is, however, subject to hidden abuses and risks.

For example, we learned of an instance where a daughter used a power of attorney to sell her mother's home, thereby forcing her mother into a nursing home she did not wish to enter. Several helpline callers have described situations where an opportunistic family member has used the power of attorney to deplete an estate prior to the principal's death.

On the other hand, the agent under a power of attorney can be exposed to financial risk. An example was described by a helpline caller who said he had just admitted his father to a Michigan nursing home, a direct transfer from a hospital following hip surgery. His father is 89.

"He is extremely frail and will not be able to leave the nursing home," said the caller. The first 20 days of his father's stay will be covered by the "skilled nursing" benefit under Medicare. "But what happens after that?" he asked. He was concerned because he had signed the nursing home admission agreement in two places: first, as his father's agent under a power of attorney, which he has held since 2003, and second, as the "responsible party."

He intends to apply for Medicaid benefits. "But, I am concerned I may be responsible for the nursing home costs after the 20-day Medicare skilled nursing benefit lapses and before Medicaid kicks in," he said. I advised him to immediately complete the Medicaid application, making certain all requested information is provided. Most delays are due to incomplete data.

The state has 45 days in which to complete the application process. In the meantime, I suggested that he write a letter to the nursing home stating that both of his signatures on the admission agreement were entered in his capacity as the agent for his father. Also, he should ask Medicaid for an expedited review of the application and retroactive benefits.

“They’re an awfully smooth bunch over there at the home,” said the caller. “I left feeling uneasy about what I signed.” He has reason to be concerned. It is common for nursing homes to contend that the person who signs as the “responsible party” has “voluntarily” taken on the responsibility of a guarantor for payment.

“I was vulnerable,” said the caller. “They knew I wanted Dad to be admitted. It’s a nice home. But I can’t afford to be personally responsible for its charges.” He needs to act promptly, for his own protection. Powers of attorney contain risk for both the principal and the agent. They should be used with caution.

(Pro bono legal information and advice is available through the USD Senior Legal Helpline, at 1-800-747-1895; mmyers@usd.edu. Opinions are solely those of the author and not the University of South Dakota.)

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