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## Postscript on Irresponsible Responsible Person

*Shorts on Long Term Care July/August 2010*

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Our article on "The Irresponsible Responsible Person" in the April 2010 issue of *Shorts* prompted a number of great responses and questions, along with a few new clients wanting revised admission agreements (Thanks!). The article, in short, pointed out that the term "responsible person" or "responsible party" is used frequently in SNF and assisted living admission agreements but is not defined anywhere in applicable state or federal law. We recommended replacing the term with two different terms – "financial legal representative" (someone with legal control over a resident's funds and assets) and "personal legal representative" (someone who agrees to accept required notices and give certain consents for a resident). The point we made was that using a term that has no legal meaning, like "responsible person," tends to confuse both providers and third parties such as family members because it's not clear what a "responsible person" is agreeing to do or can legally be required to do.

One reader raised a really interesting point for providers licensed as adult care homes. The Division of Health Service Regulation has a Resident Register form that adult care homes are required to use. Item 10 on that form has a line for "Responsible Person." So the reader asked if this needed to be changed. The answer, thankfully, is "no." That form is not a contract under which a third party is undertaking legal responsibilities for a resident, so it's different than a resident admission agreement signed by a third party. Instead, the form is simply a data collection form. More important, Item 10 on the form expressly defines what it means by "responsible person" by asking the provider to indicate if this individual is a guardian, power of attorney, or payee of funds assigned to a resident. This is entirely consistent with our April article in which we recommended that if you plan to keep using the term "responsible person" in your admission agreements, define precisely what you mean by it AND ensure that the obligations you are imposing on a third-party responsible person are actually permitted by applicable state or federal law. We've discussed this issue with officials at the Division of Health Service Regulation and they concur with our reading of the Resident Register form. Thanks to our reader for that great question.

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