

Signing a Care Facility Contract Without Counsel Costs Wife Big Bucks

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While it always is dangerous to sign any contract without first consulting a lawyer, it is especially risky to sign papers provided by a nursing home, assisted living facility, or other care center upon a loved one's admission. First, you likely will be under substantial stress and not in a frame of mind to give the contract the deliberate attention needed. Second, care facility contracts typically contain jargon foreign to lay persons. I can almost guaranty that you'd be surprised to learn all the obligations you undertake when signing as "responsible party" for a nursing home or assisted living resident.

What can go wrong if you sign on the dotted line as "responsible party?" Plenty! For instance, do you really want to risk your own house and savings if the facility doesn't get paid and you haven't promptly and properly applied for Medicaid [a daunting task on its own]? I didn't think so, but, nevertheless, you may incur personal liability if you you don't obtain legal advice before agreeing to be "responsible party."

Care facilities may not require you to guaranty a parent's bill but courts have been known to enforce a so-called "voluntary" guaranty. When you sign as "responsible party" are you voluntarily guarantying your loved one's bills? I would argue not, but wouldn't you rather avoid the risk entirely by having us negotiate more favorable contract terms before you sign.

Our Oct. 29, 2012 blog entry illustrates the risks of signing a care facility agreement without counsel. *Cook Willow Health Center v. Andrian* (Conn. Super. Ct., No. CV116008672, Sept. 28, 2012). In signing as "responsible party" the resident's daughter agreed to arrange payment to the facility from the resident's assets or Medicaid, but apparently the daughter didn't follow through. Since the daughter signed the admission agreement, the daughter is obligated to take the actions to which she agreed as "responsible party" and the nursing home could sue the daughter for the unpaid bills.

Even more recently the New York courts held a wife liable for her husband's nursing home costs in *Sunshine Care Corp. v. Warrick* (N.Y. Sup. Ct., App. Div., 2nd Dept., No. 2011-02193, Nov. 28, 2012). In signing the admission agreement as "designated representative" for her husband in a nursing home, the wife agreed to pay the facility from her husband's resources and be personally liable if the nursing home wasn't paid due to the wife's actions or omissions. The court held that the contract obligates the wife for her husband's unpaid bills because she had access to her husband's funds but didn't pay the nursing home.

As the cases referenced above show, signing a care facility agreement without counsel can be very costly. In addition to leading to personal responsibility for a loved one's bills, signing an unfavorable agreement can force you to spend on your loved one's care costs amounts you otherwise lawfully could preserve through Medicaid planning. While many facilities routinely include in a care contract terms that may frustrate Medicaid planning, I typically negotiate out those provisions before my clients sign a contract.

So, what should you do when a loved one needs long term care? Consult an elder law attorney BEFORE signing anything. Thousands of dollars [or more] may be at stake. FriedmanLaw frequently helps clients understand complex care facility contracts and negotiate away unfavorable provisions.