

Beware: Many Nursing Homes Don't Follow Nursing Homes Reform Law

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on May 21, 2008.

Jennifer is the caretaker for her mother, but feels that her mother's health has taken a turn for the worse and the decline requires more help than Jennifer is able to offer. She decides to place her mother in a nursing home. Although Jennifer's mom still has some assets, it is clear that she will ultimately need government assistance, so Jennifer's search focuses on nursing homes that accept nursing home Medicaid.

The nursing home will ask Jennifer to sign a number of forms on behalf of her mother. Sometimes not knowing what they have signed or not knowing that what they have been asked to sign is illegal, an adult child, like Jennifer, will sign an admissions contract that actually requires a family member to accept financial responsibility for the nursing home resident.

The federal Nursing Home Reform Law prohibits a nursing home that accepts Medicare and/or Medicaid from requiring a resident's family member or friend to become financially liable for the nursing home bill, if the nursing home resident runs out of money.

There are still a number of nursing homes that use this contract language in Texas. H. Clyde Farrell, a renowned Texas elder law attorney who practices in Austin, says that "this is a game that nursing homes play; then if they get called on it they say that we didn't require the person to sign it but that they signed it voluntarily." Mr. Farrell's response is that, "No, this was not [signed] voluntarily; no one explained this [language] to them." He suggests that the way to fight back is to never sign the contract in your own name, but sign it in the name of the parent as agent under financial power of attorney (if you have their power of attorney) so that you obligate the estate of the parent only.

The agreements often use the term "responsible party." Family members and friends often sign as "responsible party," believing that they are only signing as a contact person, and not realizing that "responsible party" is defined in the admission agreement as someone who is financially responsible for all nursing home expenses.

Eric Carlson, Director of the Long-Term Care Project of the National Senior Citizens Law Center in Los Angeles, California stated that, "Our recent study of nursing home admission agreements found that 19% of admission agreements required a financial guarantor; 2% percent required a guarantor, unless the resident was Medicaid-eligible; 30% percent solicited a guarantor or "responsible party," without saying that a guarantee was required. So overall, about half of the agreements (51%) either required or solicited a guarantee."

Family members and friends need to be vigilant and strong - they should refuse to sign as guarantors or "responsible parties," and should consult an attorney if a nursing home attempts to enforce an already-signed agreement against them. See National Senior Citizens Law Center, *Think Twice Before Signing:*

Improper and Unfair Provisions in Missouri Nursing Home Admission Agreements, at 29-32 (2007), available at www.nsclc.org.