

Houston Attorney to File Suit Against Nursing Homes that Violate Federal Law

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on June 23, 2010.

Houston attorney plans to change unlawful nursing home admission practices

A well known Houston attorney has announced she intends to file a lawsuit against nursing homes that continue to defy a federal statute known as the Nursing Home Reform Act of 1987 which prohibits requiring third-party guarantors as a condition of admission to a nursing home that accepts Medicaid or Medicare. This should be of great interest to people who have placed or will be placing a loved one in a nursing home and are required to personally guarantee payment of the nursing home bill.

Marian Rosen, who's high profile legal career includes, successfully defending socialite Candace Mossler alongside another famous Texas attorney, Percy Foreman, who represented Mossler's nephew, Mel Powers, against charges of murdering Mossler's husband. Both were acquitted.

Rosen has been in the news many times over the years but most recently for successfully suing a Houston homeowner's association and forcing them to return an elderly woman's home valued at \$150,000 which had been foreclosed on for past due homeowners' fees in the amount of \$800. She also made national news for her representation of a group of investors in a suit involving the Enron collapse and recently filed a class action suit against BBVA Compass for practices involving bank overdraft charges. She is involved in numerous elder law issues, including fighting the predatory practices of various insurance companies who convince elderly people to purchase annuities that, considering their age and circumstances, never should have been sold to them.

Rosen says she will seek to have the plaintiffs she will represent certified as a class and believes there will be a large number of plaintiffs and defendants since the practice is widespread. She said, "in violation of federal law, many nursing homes are surreptitiously securing the signature of family members as "'-responsible parties-'" on admission documents. Family members who simply want to be contacted when the resident has a change of condition, participate in care plan meetings and consult with healthcare providers run the risk of getting stuck with huge bills if the paperwork for Medicaid or Medicare is not approved in a timely manner."

Rosen commented, "families compelled to place a loved one in a nursing home are emotionally vulnerable. If they do not sign the paperwork their loved one will not be admitted. They have no time to hire an attorney to review the paperwork to protect their legal rights. This practice must be stopped."

Another nationally known attorney, Eric Carlson, managing attorney for the National Senior Citizen's Law Center in Los Angeles, has agreed to help in the case and has successfully sued nursing homes in California for the same practice. Carlson has authored many publications and articles, among them a publication called 20 Common Nursing Home Problems and How To Resolve Them, available at www.nsclc.org.

In a telephone interview, Carlson said, "Federal law is clear-a nursing home must not require a family member or friend to become liable for the resident's nursing home charges. Over the years, many nursing homes have ignored or evaded this federal law. It's important that consumers fight back in court, so nursing homes aren't able to take advantage of others in the future. A class action case against nursing homes is an important way to protect consumers who otherwise would be trapped by these illegal business practices."

New York attorney, Stephen J. Silverberg, who is the current president of the 4,500 member National Academy of Elder Law Attorneys, said, "For over 23 years some nursing homes have been financially abusing individuals who require institutional services and their families. It is more urgent than ever for someone to take action to permanently bring a halt to these improper actions."

The family member or friend handling the nursing home admission paperwork for a loved one must be aware of this very common and unethical practice that has caused a devastating problem for many.