



Reviewing Long-Term Care Facility Agreements

Caring for an elderly loved one is already stressful enough. Imagine that after all the time you have spent trying to keep them home, it's no longer possible. Maybe there's a hospital stay, maybe it's been a long time coming and pre-planned car ride. In either case, the amount of paperwork that the new resident's representative will be faced with can be daunting, its volume making it difficult to remember or really understand.

Maybe the facility worker will explain it, maybe they won't, or maybe they will be like one director we worked with who was encouraged by her bosses to explain 90% of the documents in the admission packet, and to just ask for a signature on the other 10%. If they're not telling you what you're signing, why, or what it means, that should tell you to look more closely.

When we review long-term care admissions agreements, whether at a nursing home or assisted living facility, there are two primary items that we want to look out for. The first is important for whoever is signing in the new resident and the second is important for us as elder law attorneys.

Financial Guarantee.

Long-term care facilities are businesses, first and foremost. Given that a nursing home may realistically cost \$8000, to \$10,000 per month, and given that there are strict limitations for when a facility may discharge a resident, they are very interested in making sure that they can get paid. Therefore, almost every facility these days will have a financial guarantee document – not that it's always clear that's what it is.

If you are admitting a loved one and sign the financial guarantee, then you may personally be responsible for paying their bills. Now, the resident should pay first and apply for Medicaid where applicable, but

if there is no money and the resident isn't eligible for Medicaid, then you may be required to pay.

Sometimes these provisions are clear and sometimes they are obfuscated behind aspirational language, something like "I agree that the resident should receive the best care available, regardless of the cost." We have met with people who have had to pay their parent's or sibling's bill because they didn't know what they were signing.

There are things you can do about this. If you have guardianship or power of attorney for your loved one, you should be sure to always indicate that you are assigning in that capacity. If you sign as



attorney-in-fact, you cannot be personally liable (since you aren't acting in your individual capacity). It's a pain to write out every time, but those extra few words can save you thousands of dollars.

Restrictions on Gifting

This one goes to my heart as an elder law planner. To oversimplify a little, a resident of a nursing home or assisted living facility must spend their resources down to \$2000, in order to be eligible for Medicaid to pay for their bill. Normally, if you give assets away, this results in delayed Medicaid

coverage. The problem for facilities is that too many people make gifts without knowing the rules, ending up both ineligible for Medicaid benefits and unable to pay the bill.

Since they don't want to be stuck with an unpaid bill, more and more facilities are putting clauses into their admissions agreements that prohibit gifting. This gets to me directly — we regularly assist clients with protecting assets from this spend down process, and doing so often involves implementing gifting plans. We often save half or more of the resources that would otherwise be spent down and make sure that the facility gets paid at the end.

Unfortunately, not every resident works with an experienced elder law attorney and facilities have to live with the result of financial mismanagement. The presence of a restriction of gifting shouldn't prevent you from using a good facility, but your elder law attorney will need to review the contract to make sure that you are able to protect any resources.

Conclusion

If timing allows it, we would recommend that you have the facility's admissions agreement reviewed by an attorney before signing. This is not always possible, especially in emergency situations or when the patient is discharged from the hospital. If you have no time, remember that the preferred way to sign is as attorney-in-fact ("*<patient>*", by *<your name>* POA" is acceptable). This may save you from having to pay someone else's share.