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Signing Nursing Home Admission Agreements

When a loved one is admitted to a nursing home, in addition to helping your loved one accept the changes that have occasioned the move and managing the details involved in the move, you are often requested, by the nursing home, to sign documentation. Nursing home admission agreements can be complicated and confusing. What do you do?

It is important to read the document thoroughly and not rush. If possible, ask for the opportunity to have your attorney review the agreement before you sign it. Read the agreement carefully. It may contain provisions that are misleading or even inappropriate. Because you will have greater leverage once the resident has moved into the facility, if possible, defer signing until then. Even if you must sign the agreement before the resident moves in, you may still request that the nursing home delete terms that are unfair or inappropriate.

The two items commonly found in these agreements that most require your attention are a provision that the one who signs the agreement is liable for the resident's expenses and a provision requiring all disputes to be resolved by binding arbitration. While these can be of the greatest concern, there are other provisions that you should also carefully review before signing a nursing home admission agreement for a loved one.

Responsible party: A nursing home may ask you to sign the agreement as the "responsible party." You need not agree to this. Nursing homes are prohibited from requiring third parties to guarantee payment of nursing home bills. It is not uncommon, however, for them to ask family members to "voluntarily" agree to pay the bills. The best practice is for the resident to sign the agreement. If the resident is incapable of doing this but has a valid power of attorney, the designated agent should sign as the agent.

If there is no designated agent, the nursing home will still require that the agreement be signed. In that instance, clearly specify, in writing, that you are signing as the resident's agent. Signing the agreement as a responsible party may obligate you to pay for the resident's nursing home bill if the resident cannot pay. For this reason, it is most important that you review the agreement for the term "responsible party," "guarantor," "financial agent," or any other term that binds the one who signs the

agreement to payment. Before signing, cross out any terms that indicate or even suggest that the signor is responsible for payment and clearly specify that your agreement is to use only the resident's resources and income to pay.

Arbitration provision: Many nursing home admission agreements contain a provision stating that all disputes regarding the resident's care will be decided through arbitration. An arbitration provision is not improper or illegal but it is beneficial to the nursing home as, by signing it, you are waiving the resident's right, in advance, to have a court resolve disputes that arise between the resident and the facility, those concerning payment but also issues regarding the resident's care and treatment. The nursing home cannot require you to sign an agreement that contains an arbitration provision. If you are not in agreement with the arbitration provision, cross out the arbitration language before the agreement is signed.

Private pay requirement: Nursing homes are not permitted to require, upon admission, which a Medicare or Medicaid recipient agree to pay privately for a period of time as a condition to admission. Nursing homes are also prohibited from requiring incoming residents to indicate their eligibility for Medicare or Medicaid.

Eviction procedures: Many admission agreements specify the bases upon which the nursing home can evict a resident. Nursing homes are not permitted to evict residents for reasons other than the following: the facility cannot meet the resident's needs, the resident's health has improved, the resident's presence is endangering other residents, the resident has not paid, or the nursing home is ceasing operations. If the admission agreement specifies other permissible grounds for eviction, cross them out before the agreement is signed.

Waiver of rights: No admission agreement should contain a provision whereby the resident agrees to waive the nursing home's liability for lost or stolen personal items. Similarly, no admission agreement should contain a waiver of the nursing home's liability for its residents' health.

The items addressed above are not exclusive. There may be other objectionable provisions that we have not identified here.