"Let our advance worrying become advance thinking and planning" – Sir Winston Churchill

# ELDER LAW TODAY

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Since our last newsletter, we have welcomed into the world grandchild #3: Clara Elaine Barkley born June 16, 2014. She is doing great, as is her big brother, 2 year old Grayson William Barkley. And, our third grandchild, 6 month old Ruth Colleen Campbell, is thriving as well. We are blessed beyond measure. Enough bragging!

My mother-in-law was a victim of Alzheimer's Disease and I watched her suffer from this dread disease. She was fortunate in one respect; my father-in-law, as a result of being severely wounded during WW II in Achen Germany, was awarded Veteran's disability compensation which was payable to her when he died, which allowed her to reside at the House of Hope until her death.

Most folks don't have the luxury of being able to stay at the House of Hope when their loved one suffers from Alzheimer's Disease. That brings me to the topic of this Elder Law Today: **avoiding personal liability when a loved one enters a nursing home.**

As we know, when a person is admitted into a nursing home, it's often a family member who manages the details of the move. If you are managing a loved one's transition into a nursing home, you will likely be asked to sign a nursing home admission agreement as your loved one's "responsible party." These agreements can be very thick, complicated, and confusing. To make matters worse, you are often asked to sign them as soon as the person is admitted, at a time when you would rather be focused on making sure your family member is comfortable. You are likely to be facing a great amount of stress. Don't feel pressured to sign an admission agreement on the spot. Take the time to review the document and make sure you understand what you are signing. You do not want to accidently accept financial responsibility for your loved one's care or give up any of your loved one's rights. Both federal law and state law prohibit nursing homes from requiring you to guarantee payment of nursing home bills. This means that they cannot require you to sign as a responsible party upon your loved one's admission. Importantly your loved one cannot be refused admission due to your refusal to sign. The simplest way to avoid the risk of signing as the responsible party is by having your loved one sign the nursing home admission agreement himself or herself. If the person is unable to sign due to a severe cognitive impairment or a physical limitation, you may decide to sign on that person's behalf. If this is the case, there are other things you can watch out for to avoid liability for the nursing home costs. No matter who signs the agreement, it is important to take the time to make sure that person understands what it means.

Even if you are not made personally responsible for a resident's nursing home costs, an admission agreement may still require a responsible party to use the resident's assets to pay the nursing home costs and to help the resident qualify for Medicaid. In some cases nursing homes have successfully sued the responsible party under such a contract. The nursing homes argued that the responsible party breached the contract by failing to qualify the resident for Medicaid in a timely manner, unreasonably delaying the Medicaid application process, or improperly transferring the resident's assets. If you are managing the financial affairs of a nursing home resident, you need to familiarize yourself with the requirements for Medicaid. You should consult an attorney with Medicaid experience so that you do not unintentionally jeopardize the resident's Medicaid eligibility and create liability for yourself.

In addition to understanding the implications of signing as a responsible party, there are other provisions to look for when signing a nursing home admission agreement. Keep an eye out for a binding arbitration provision. This type of provision will state that all disputes regarding the resident's care will be decided through arbitration. You

should know that signing such a provision means you are giving up your right to go to court to resolve a future dispute with the nursing home. The nursing home cannot require you to sign such a provision. However, if you do sign a contract including an arbitration provision, it will generally be enforceable.

If you are helping a loved one move to a nursing home, getting informed is one of the best ways you can protect your loved one and yourself. If at all possible, consult an experienced Elder Law Attorney *before* signing any documents for the nursing home.

**Elder Law Today** is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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