



The attorneys in the Elder Law Group at Cohen and Wolf, P.C. are dedicated to helping individuals and families to protect their homes and their assets from the high cost of long term medical expenses. Our depth of experience in the areas of Medicaid and planning for special needs will provide you peace of mind through the most difficult of times. Let us review your important estate planning documents to ensure that proper care is taken of your health and finances should you become unable to act for yourself. In addition, our Trusts and Estates group offers guidance regarding your testamentary instruments and a variety of trusts, as well as sophisticated tools for estate tax reduction. The additional support of our highly regarded Business & Corporate, Securities, Employment, Matrimonial and Litigation groups is also there for you when you need it.

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For more than half-a-century, Cohen and Wolf has represented businesses, individuals and municipalities in matters involving litigation, corporate and securities law, real estate, land use and zoning, tax, employment and labor, municipal law, personal injury, family law, estate planning, elder law and asset protection planning. The firm's team of more than 50 experienced lawyers is based in its four Connecticut offices: Bridgeport, Danbury, Westport and Orange. For more information please visit: www.cohenandwolf.com.

TOPICS:

Why You Need an Elder Lawyer

Nursing Home Admissions Agreements - Know Before You Sign!

Conservators: A New Statute - A New Approach

Differences in NY-CT Medicaid Rules

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Why You Need an Elder Lawyer

By L. Joyelle DeFelice

The realization that your parent may be slipping in cognitive function is usually gradual, but it is important to trust your instincts when things do not seem "right." You may notice your aging parent forgetting things, or not doing things as usual. Perhaps your parent begins to call you with a routine question, and then calls again a short while later, with no memory of the prior conversation. You notice a parent struggling to keep track of the finances, or failing to stock food in the home. Stories of the occasional "accident" become more frequent. The toast catches fire; the blender is inexplicably discovered under the bed; the stove is not turned off when cooking is done. A trip to the market results in a phone call that your parent has lost the way home.

You cannot control your parent's illness, but you can take steps to put some basic protections in place for the difficult journey that may be ahead. A skilled elder lawyer can assist you and your parents by preparing the following documents which will allow your parents to choose their caregivers:

- **Durable Power of Attorney** - one of the basic tools to preserve your ability to assist your parent, even after he or she becomes mentally or physically incapacitated. This document allows your parent to give you authority to act for them in a broad array of matters, from handling finances and real estate to filing tax returns. A properly prepared durable power of attorney will remain in effect after your parent is no longer capable of handling his or her own affairs. Without the power of attorney, a probate judge would have to appoint someone to manage the financial duties of a person who has become incapacitated.

ed. Although a power of attorney form is available in stores or on the internet, special provisions are used for elderly clients that are tailored to their needs and should be prepared by professionals.

- **Appointment of Health Care Representative** - a document appointing a health care representative to make medical decisions for your parent if he or she becomes incapable of directing medical care.
- **Living Will** - a document covering important end-of-life wishes (also called "advance directives"), which is written to avoid the possibility of unwanted medical interventions in situations where recovery will not be possible.
- **Designation of Conservator** - under Connecticut law, a person is able to choose someone whom he or she would prefer to act as the conservator of the estate and person in the event that he or she is declared legally incompetent. With new changes to the statute, it is now more important than ever to select a conservator of one's choosing instead of leaving the decision to a Probate Court judge.

Seek the advice of an experienced elder lawyer if you have an aging parent, even before actual help appears necessary. Advance planning is the most effective way to avoid financial catastrophe. Try to avoid emergency or crisis planning. Any delay can push valuable options out of reach. But it is never too late to benefit from the advice of an attorney, even if a short or long term crisis has befallen your family. Younger members of the family should have similar documents in the event of emergencies.

What You Should Know Before You Sign a Nursing Home Admissions Agreement

By Jane L. Harness

If your parent needs to move to a nursing home due to frailty or illness, you may find yourself involved in the admissions process ...ready or not. But beware - recent case law in Connecticut holds a child responsible for parent's expenses in a nursing home when the application for Medicaid under Title 19 was not properly submitted.

The admissions agreement is a legally binding contract. If the resident is not able to manage his or her affairs, it may be an adult child or other relative who ends up signing the agreement - either as an agent for the resident under durable power of attorney, or as a so-called responsible party. It is becoming increasingly likely that the admissions agreement that you might sign on behalf of your parent could hold you liable for nursing home expenses that are not covered by Medicaid.

As of this June, a decision entitled *Glastonbury Healthcare Center, Inc. v. Carmine Esposito* gives nursing homes new power to create financial liability for the person who signs on behalf of a resident. In *Glastonbury*, a son was held responsible for over \$102,000 in nursing home charges incurred for his elderly mother's care.

This means that in Connecticut, you can be held directly liable for any nursing home bill if you sign an admissions agreement on behalf of a parent - *even without express agreement to assume responsibility for the nursing home bill.*

"The admissions agreement that you sign on behalf of your parent could hold you liable for nursing home expenses that are not covered by Medicaid"

Talk to a lawyer if you are presented with a nursing home admissions agreement. Resist the urge to react to the fear that if you don't sign, you will be turned away. Admissions agreements govern more than your personal financial liability; they also set forth your rights regarding the deposit, arbitration or mediation; and sometimes they contain a provision regarding consent to treatment. When you meet with admissions personnel at the nursing home, remember to say that you cannot accept any terms and that you will not sign until you have had a chance to speak to your attorney. Keep in mind that you can be bound to an admissions agreement by an oral contract - and a silent one, at that.

The *Glastonbury* case should be viewed as a warning flare, highlighting how important it is for you to speak with an experienced elder law attorney to review and explain nursing home admission agreements prior to signature, and to assist you with the Medicaid application process.

Conservators: A New Statute - A New Approach

By Greta E. Solomon

Effective October 1, 2007, we are all affected by new laws governing conservators in Connecticut. A conservator is appointed by a probate judge for a person who has impaired or diminished capacity and does not have any documents to name someone to take care of him or her, such as a durable power of attorney or designation of health care representative. In many cases a family member is chosen; but the probate judge has the authority to name someone else.

The new statute makes significant and substantial changes in the process used to appoint conservators. The statute also changes, in some cases, the authority given to a conservator once one is appointed. The overriding reason for these changes is to protect the rights of persons with diminished or impaired capacity.

The intent of the new statute is good; but as a result of these changes, the process to appoint conservators will be more costly for our clients and their family members. In addition, although judges prefer family members, if there is a dispute, a judge may look to an independent party to act as conservator.

You are able to choose whom you want named to act on your behalf. It is therefore more imperative than ever to do proper advance planning. With the right planning and the right documents in place, a conservator may not be needed and the family can save time and expense. Or, at least you would be able to inform the court of your choices. Members of Cohen and Wolf's Elder Law Group can assist you in this planning.

Because of Differences in NY-CT Medicaid Rules Crossing State Borders Could Be Costly

By Ann L. Fowler-Cruz

Before you move a parent or a loved one to be closer to you, or you move out of state to be closer to the kids, be aware that the Medicaid rules can be very different across the border. Medicaid is a federal based program that is administered by each state. In other words, federal law generally sets the maximum/minimum standards but states set their own guidelines. We outline below some of the major differences between New York's and Connecticut's Medicaid rules.

Spousal Protections

Assets

States set the amount of assets a spouse can keep when the other spouse is seeking Medicaid eligibility. New York is more generous in the minimum amount of assets a spouse can keep - almost 3 times more.

Income limits

Another difference between New York and Connecticut is the amount of monthly income the spouse can keep. Connecticut uses a complex formula to determine the amount each spouse can keep. In New York, they have set a flat rate which is equal to the maximum amount allowed in Connecticut.

Asset Limits for a single individual

The states set the amount of assets a single individual may have and still qualify for Medicaid. Connecticut allows a single person to keep no more than \$1,600. This amount has remained the same for several years. Earlier this year, New York raised the amount a single New York resident could keep from \$5,400 to \$13,050!

IRAs

The treatment of certain assets for Medicaid eligibility varies from state to state as well. One major difference is the characterization of IRAs. In Connecticut, an IRA in distribution mode, i.e., receiving Required Minimum Distributions (RMD) is an available asset. In most cases, the

IRA would have to be broken, and a substantial tax liability would have to be paid. The balance would have to be spent down. In New York, it's a different story. An IRA in payout mode is considered an income stream and does not impact eligibility. Thus in New York, a Medicaid recipient could have an IRA of any value, and only the RMD would be available to the cost of care. Upon death of the recipient, the IRA could flow to the named beneficiary.

Planning Strategies

Spousal Refusal

"Spousal refusal" is a long term care planning strategy which allows the community spouse to keep assets over the allowable amount. "Spousal refusal" is available in New York. It was briefly available in Connecticut, but in October of 2007, Connecticut passed regulations that made "spousal refusal" basically ineffective as a planning strategy.

Irrevocable Trusts

Another planning technique that is commonly used in New York is the "Irrevocable Income Only Trust." In the simplest of terms, a person setting up the trust (the Grantor) transfers assets to the trust to protect the assets from creditors. The Grantor can receive the income generated from the assets within the trust, but the Grantor may not have any access to the principal. The use of this trust is very successful in New York. Due to changes in the law, more and more elder law attorneys are using this type of trust in Connecticut, but with certain caveats.

These are a few of the notable differences in Medicaid rules between New York and Connecticut that might impact the decision about where to place a loved one, perhaps for the rest of his/her life. Members of Cohen and Wolf's elder law group are well versed in the Medicaid rules in both states, and we are available to review the pros and cons with you based on your unique situation.

When was your last checkup - with your lawyer?

- Durable Power of Attorney
- Appointment of a Health Care Representative
- Living Will/Advance Directives
- Designation of Conservator/Guardian
- Last Will and Testament/Trusts
- Planning for Long Term Care
- Beneficiary Designations

Call one of the members of the Elder Law group to make an appointment for your legal "checkup."