Legal Matters®

Elder Law
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When can an adult child be liable for a parent's nursing home bill?

Although a nursing home cannot require a child to be personally liable for their parent's nursing home bill, there are circumstances in which children can end up having to pay. This is why it is important to read any admission agreements carefully before signing.


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Federal regulations prevent a nursing home from requiring a third party to be personally liable for a resident's charges as a condition of admission. However, children of nursing home residents often sign the nursing home admission agreement as the "responsible party." This is a confusing term and it isn't always clear from the contract what it means.

Typically, the responsible party is agreeing to do everything in his or her power to make sure that the resident pays the nursing home from the resident's funds. If the resident runs out of money, the responsible party may be required to apply for Medicaid on the resident's behalf. If the responsible party doesn't follow through on applying for Medicaid or provide the state with all the information needed to determine Medicaid eligibility, the nursing home may sue the responsible party for breach of contract.

In addition, if a responsible party misuses a resident's funds instead of paying the resident's bill, the nursing home may also sue the responsible party. In both these circumstances, the responsible party may end up having to pay the nursing home out of his or her own pocket.

In a recent case in New York, a son signed an admission agreement for his mother as the responsible party. After the mother died, the

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How to prepare when elderly parents move in with adult children

More and more parents are moving in with their adult children, and the trend probably won't reverse any time soon. As nursing home costs continue to rise, children and their parents are finding that living together is a better arrangement, both financially and emotionally.

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But having a parent move in is a big adjustment for everyone, and it is important to be prepared. Preparations can range from making physical adjustments to the house to figuring out finances.

Here are some things to think about:

► **Work out the financial details first.** If the adult children have siblings, the question of whether the siblings are going to contribute to the parents' room and board can be sensitive. Even if there are no siblings, there is still the question of how much the parents can or should contribute to the household. An extra mouth to feed can be expensive. It can get even more costly if you need to do major renovations or hire a home health care worker.

More significant changes could be converting a room on the first floor into a bedroom, widening doors to allow a wheelchair or walker to pass through, or installing ramps.

Should the parents have a contract under which they pay the children for caring for them? If the parents contribute to remodeling the house, do they gift their portion of the house to the children, retain an interest, or put it in a trust? These and other decisions can affect the parents' eligibility for Medicaid if it becomes necessary for the parents to enter a nursing home at some point.

To avoid fostering resentment and guilt among family members, you should try to work out as many of these details as you can before the big move. Your attorney can help your family create a plan that takes all the various contingencies into account, so that everyone is on the same page and knows what to expect.

► **Make the home senior friendly.** Whether putting in an addition or just fixing up a spare bedroom, adjustments will probably have to be made to accommodate the parent or parents. Some basic adjustments include replacing doorknobs with levers, checking railings to make sure they are sturdy, installing grab bars in the bathroom, and putting non-slip backings on rugs.

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In addition to these accommodations, the space should be personalized for the parents. Consider the parents' likes and dislikes and what would make them feel at home when renovating. It is important that even if the parents have only a bedroom of their own, they feel like it is their space.

► **Look into a tax deduction.** When considering the financial details of the new arrangement, keep in mind that the children may be able to claim the parents as dependents and get a tax deduction if they provide more than half of the parents' support during the year.

► **Know where to go for help.** If family members are serving as caregivers, they don't need to feel like they are doing this all alone. There a number of services that are designed to help caregivers. From home health care workers to meals programs and transportation services to adult day care centers and respite services, there are a number of different ways to get help.

Contact an Area Agencies on Aging program in your state to find out the services in your area. In addition, a number of resources are available to provide caregivers with information and support.

Adult child may be liable for parent's nursing home bill

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nursing home sued the son for breach of contract, arguing that he had failed to apply for Medicaid or use his mother's money to pay the nursing home and that he fraudulently transferred her money to himself.

The court ruled that the son could be liable for breach of contract even though the admission agreement did not require the son to use his own funds to pay the nursing home.

Although it is against the law to require a child to sign an admission agreement as the person who guarantees payment, it is important to read the contract carefully because some nursing homes still have language in their contracts that violates the law. If possible, consult with your attorney before signing an admission agreement.

Another way children may be liable for a nursing home bill is through filial responsibility laws, which are on the books in about half the states. These laws obligate adult children to provide necessities like food, clothing, housing and medical attention for their indigent parents.

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Filial responsibility laws have rarely been enforced, but as it has become more difficult to qualify for Medicaid states are more likely to use them. Pennsylvania is one state that has used filial responsibility laws aggressively.

How does work affect your Social Security payments?

Many people continue to work after retirement age, either by choice or out of necessity. But if you are receiving Social Security benefits, you need to be aware of how working can affect your benefit payments. Earning income above Social Security thresholds can cause a reduction in benefits and mean your benefits will be taxed.

Whether it makes sense to work and collect Social Security at the same time is a complicated assessment that depends on how much you earn and when you begin taking Social Security benefits.

If you work and are full retirement age or older, you can earn as much as you want and your Social Security retirement benefits will not be reduced. However, individuals may begin taking retirement benefits early, beginning at age 62. If you are younger than full retirement age, there is a limit to how much you can earn and still receive full benefits. If you earn more than $17,040 (in 2018), Social Security will deduct $1 from your benefits for each $2 you earn over the threshold.

In the year you reach full retirement age, you can earn up to $45,360 (in 2018) without having a reduction in benefits. However, if you exceed $45,360 in earnings, Social Security will deduct $1 from your benefits for each $3 you earn until the month you reach full retirement age. Once you reach full retirement age, your benefits will no longer be reduced.

For example, if your monthly Social Security benefit is $700 and you earn less than $17,040, you will receive $8,400 in benefits for the year. However, if you earn $18,480 ($1,440 over the threshold), you will receive $7,680 in benefits ($8,400 minus one-half of $1,440).

Note that if your benefits are withheld, at least some of those benefits will be returned to you in the form of higher monthly benefits once you reach full retirement age. When you reach full retirement age, Social Security will recalculate your benefits to take into account the months in which your benefits were withheld. In addition, if your latest year of earnings turns out to be one of your highest years, Social Security will refigure your benefit based on the higher earnings and pay you any increase due.

Working also can affect Social Security in regard to taxes. If your combined income (Social Security calculates "combined income" by adding one-half of your Social Security benefits to your other income) is between $25,000 and $34,000 (or $32,000 and $44,000, if filing jointly), you may have to pay taxes on 50 percent of your benefits. If your income is more than $34,000 (or $44,000 if filing jointly), then you may have to pay taxes on up to 85 percent of your benefits.

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The little-known tax on Roth 401(k) distributions

Employee retirement savings plans come in two main types: the traditional 401(k) and the Roth 401(k). The benefit of a Roth 401(k) over a traditional 401(k) after retirement is that distributions from a Roth 401(k) are tax-free, but there is a little-known situation in which distributions can be taxed.

Contributions to a traditional 401(k) are made pre-tax, so although it reduces your taxable income in the year you contribute to it, you have to pay taxes on the money you withdraw during retirement. On the other hand, contributions to the Roth 401(k) are made after taxes. This means that you won't have to pay any taxes when you withdraw the money.

However, some employers offer to match any contributions you make to your 401(k) as an employee benefit. If your employer matches your Roth 401(k) contribution, the contributions will be made before the employer pays taxes on it. This means you will have to pay income taxes on the match and any growth associated with the match when you take distributions. In other words, the employer match is treated like a traditional 401(k).

The maximum amount you can contribute to a Roth 401(k) (in 2018) if you are younger than age 50 is $18,500 per year. If you are older than 50, you can contribute $24,500 (in 2018). Your employer can match as much of your contribution as it wants, but the total contribution to a Roth 401(k) (in 2018) cannot exceed $55,000 or 100 percent of your salary, whichever is less.