

UFT Welfare Fund Retiree Legal Plan

PREVENTIVE LAW GUIDE



A newsletter designed to help guide you through the legality of reality

Issue 66
January 2014

Nursing home admissions agreements

By Jeffrey G. Abrandt, Esq.

Elder law attorneys routinely field a common question posed by families with a loved one entering or already in a nursing home: *Who needs to sign the admission agreement... the patient entering the facility or the loved one of the patient? And if the resident is unable to sign the agreement, does the spouse, adult child or another family member need to sign it?*

In many instances, a nursing home admissions agreement (contract) has been presented and the resident or family members are being pressured by the facility to sign it by the time a lawyer has been consulted.

If the loved one is already in the facility (typically for rehabilitation), the agreement does NOT have to be signed before an elder law attorney has reviewed the contract. If the prospective resident is not yet in the facility, the agreement may be need to be signed – but should not be until the contract has been reviewed by an elder law attorney.

In most cases, the family member or friend does not have to sign the contract. However, if he or she does sign it, there may be a variety of legal obligations imposed that may have been avoidable or not have even existed before the contract was signed.

Furthermore, if the individual who signs the agreement fails to perform those legal obligations, he or she could be subject to a lawsuit or even a judgment against them.

Entering a nursing home

Most admissions to nursing homes take place from a hospital with payment initially covered by the Medicare program. These admissions will typically begin as Medicare-covered short-term stays for rehabilitation – provided the resident was admitted to the hospital for at least three days prior to admittance into the facility.

Under these circumstances, Medicare will pay for up to 100 days of rehabilitation – paying all costs for the first 20 days with a co-payment of \$148 for days 21-100.

Discussions and demands to sign admissions agreements by family members are typically initiated at the time that the co-payment kicks in or at the end of the first 100 days.

Less common is that a family would be admitting a loved one from the community and is given the contract to review prior to admission. Again, please keep in mind: **No nursing home admissions contracts should be signed UNTIL they have been reviewed by an elder law attorney.**

In addition, the patient/resident should sign the contract if possible. The law is clear that there is not a requirement that family members or friends need to sign an admissions contract.

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Nursing home admissions agreements

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Important information about contract provisions

Nursing home admissions contracts frequently try to obligate family members to do the following:

- Ensure that the resident's income and assets are available to pay for the care
- Be responsible for a Medicaid application when the resident's funds are exhausted
- Ensure private payment for the room during the Medicaid application process even though the resident's funds are exhausted
- Ensure that Medicaid is recertified each year

Other offensive provisions commonly found in nursing home admissions agreements require family members to pay for collection costs, legal fees and damages suffered by the nursing home if payment for care is interrupted or stopped or for the failure to re-certify for Medicaid or private insurance.

There are NO Federal or state laws that require family members to agree to these onerous and (as some legal observers would characterize them) illegal terms. And yet each year, thousands of residents and their families sign contracts that include these offensive provisions without carefully reviewing them first.

Important legal protections

Federal law is clear that once a person is admitted to a nursing home, the failure or refusal to sign an admissions agreement by the resident, family or friends cannot be a basis to evict or terminate their stay at the facility. However, this does not mean the resident or their family may refuse to cooperate or pay for the care.

Federal law clearly states it is illegal for a nursing home to require a family member, friend or any third party to guarantee payment of the bill. But many nursing home contracts contain provisions that – while not strictly guaranteeing payment – do provide auxiliary duties that may violate the letter of the law.

It should be noted that spouses have rights, financial duties and obligations to each other under both Federal and state law, and the refusal to sign an admissions agreement is independent of these rights and/or obligations.

Finally, a word of caution... another provision of Federal law protects both the resident and nursing home from diversion of the resident's funds leaving the bills unpaid. Nursing homes are given the right to sue any person who has legal authority over the funds of a resident (such as the power of attorney, joint account holder, etc.) if that individual has diverted funds.

The process of entering and paying for a nursing home can be a daunting and overwhelming process. So make sure you understand the contract and have all documents reviewed by an elder law attorney to determine IF they should be signed, by WHOM they should be signed and if any of the terms should be altered before being signed.

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Preventive Law Guide is published three times annually by the Legal Service Plan Administrator in cooperation with the National Legal Office of Feldman, Kramer & Monaco, P.C., 330 Vanderbilt Motor Parkway, Hauppauge, NY 11788. Unless otherwise noted, articles are authored by attorneys in the National Legal Office.

Preventive Law Guide is not a substitute for individual legal advice from a lawyer. The information presented here is believed accurate, but laws vary between states and every legal situation is different. If you have any questions whether information presented here applies to you, contact a plan attorney. Don't guess when you can be sure. New York residents, call the NLO at 800-832-5182; all other residents, call 800-292-8063.

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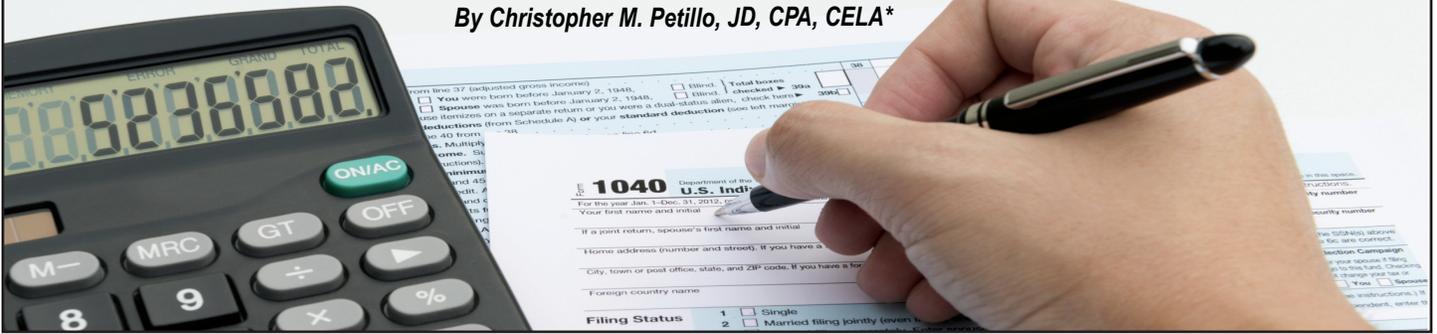
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Same-sex married couples & Federal tax returns

By Christopher M. Petillo, JD, CPA, CELA*



Same-sex couples will now be entitled to the same benefits (or pitfalls) as heterosexual couples when filing their Federal income tax returns. The Internal Revenue Service, in response to the demise of the Defense of Marriage Act (DOMA), has set down rules so that same-sex married couples may now file joint Federal income tax returns.

As part of the rules mentioned above, same-sex couples that had been paying taxes on the value of their spouse's health insurance benefits will no longer do so.

Inherited IRA spousal tax-free rollover rules are now available along with the ability to open an IRA for a non-working spouse using the earnings of the working spouse for qualification purposes.

In addition, same-sex married couples may go back and amend up to three years of Federal income tax returns if doing so would have resulted in a tax refund(s). If you would have owed money by amending, you are not obliged to amend and pay more.

Married Filing Jointly – A gift or curse?

The Internal Revenue Code has many “marriage penalties” built into the tax code. A couple with one earner will likely pay less taxes than if they were to file using the Single filing status as had been done in prior years.

However, two-earner households will likely pay more taxes than they would have if they were unmarried and filed using the Single filing status.

Student loan marriage penalty

What if you fell in love in college or grad school and you both have loans? Unfortunately, there is a marriage penalty awaiting you in the land of the student loan interest deduction.

The maximum deduction for student loan interest is \$2,500 for single filers. So can married couples deduct \$5,000? Well, no, that is not the case. If both spouses have student loan interest, the maximum amount of student loan interest that can be claimed as a tax deduction is limited to \$2,500.

The deduction is also limited by your income. If your modified adjusted gross income is under \$60,000 (or \$125,000 for married couples filing a joint return), you can deduct up to \$2,500 in student loan interest. If both spouses earned \$50,000 each, they can deduct a maximum of \$2,500 (not \$5,000).

State income tax returns

Couples in states such as New York, Massachusetts and California can also file jointly on their state income tax returns. In those states that do not yet recognize same-sex marriages, same-sex married couples may still have to file as Single (or head of household). This may make tax return preparation more time-consuming for couples in such states.

Federal estate & gift tax laws

Same-sex married couples are entitled to the same benefits as heterosexual couples. Benefits such as the Unlimited Marital Deduction for the estate tax-free transfer of assets to a surviving spouse – as well as the portability of the Deceased Spouse

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Same-sex married couples & Federal tax returns

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Unused Exclusion Amount – will now be available to all married couples, regardless of sexual orientation.

Keep in mind that the Federal government still has some unresolved issues to contend with such as Social Security benefits and veterans' benefits.

If you have any questions about this topic, we strongly advise you to contact the National Legal Office of Feldman, Kramer & Monaco, P.C. 

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NYSUT Member Benefits Trust
800 Troy-Schenectady Road
Latham, NY 12110-2455

 printed on recycled paper

Non-Profit Org.
U.S. Postage
PAID
Permit No. 312
Albany, NY