

Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

**AM I RESPONSIBLE TO PAY FOR MY PARENT'S
NURSING HOME CARE COSTS?**

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**PLEASE HAVE ALL CARE CONTRACTS REVIEWED BY ATTORNEY
TIMOTHY P. CRAWFORD. DISCUSS FAMILY RESPONSIBILITY
WITH YOUR RELATIVES. MAKE SURE YOUR DAUGHTER DOES
NOT BECOME RESPONSIBLE FOR YOUR NURSING HOME CARE
COSTS.**

If the elder or disabled child being denied Medicaid remains in the facility past the Medicaid pay period, then the facility by law can look to the patient for payment, but the patient has few resources because the spend down for Medicaid eligibility has occurred. Who then can be made responsible for the bill?

There are several bases for liability, which should be carefully reviewed with the concerned family member's lawyer. It is possible, for example, that one relative has responsibility under the responsible party contract theory, one escapes liability as an agent, but several have joint and several responsibility under the last possible theory, statutory liability.

Contractual liability. The facility with an unpaid bill can, if the patient lacks funds, look to anyone who guaranteed the bill contractually. Most care facility contracts do not have a "payment guarantor" explicitly identified, but contracts OFTEN use the phrase "responsible party" to identify the relative or friend who actually signs the contract when the patient is ill or incapacitated. This "responsible party" is liable, under many versions of the care agreement, to pay the bill when the patient does not. Please have your facility agreement reviewed by your lawyer, to see if this exposure to contractual liability exists. Although federal law prohibits facilities which are certified for Medicaid or Medicare payment to include a financial guarantee as a condition of admission or continued stay, 42 U.S.C. 1395i3(c)(5)(A)(ii); 1396r(c)(5)(A)(ii), these federal statutes may have to be raised in a defense to the collection action as a counterclaim.

Agency Relationship, etc. What if the responsible party who signs the care contract seeks to limit his or her liability to the funds of the patient under his or her control, and to thus AVOID personal liability for an unpaid care bill? The responsible party can avoid personal liability by having a **representative capacity**, fully disclosed to the care facility. These representative capacity arrangements can be set up through a court (guardian, conservator) or by incapacity planning documents – a power of attorney, trust, or health care advance directive. **The responsible party who is protected by a court or incapacity planning documents must be sure that the care agreement contract SHOWS the representative capacity.** For example, the contract should be signed as “John Jones, guardian for May Jones”, or “John Jones, agent for May Jones”. However, in a recent Montana case, Vencor v. Gray, 2003 WL 329248, 2003 Mont. LEXIS 24 (Mont 2003) the guardian daughter was subject to personal liability for “bad acts” of promising to pay for care herself, not paying out all of the estate assets for care, or continuing to arrange for care at Vencor even after she knew her mother had insufficient assets to pay for care.

Statutory Liability Spouses are of course liable for the support of spouses. Are other relatives likely to be liable for the care of a disabled relative by law? The question often is posed by an adult child: “Am I liable for the care bill of my mother and father?” There is no duty of support by children.

The Wisconsin spouse responsibility statute is not currently enforced. As a condition of participation in federal funds for Medicaid, the states agreed to not enforce spousal responsibility laws for those eligible for Medicaid.

We can expect to see more private claims for care costs made, perhaps by creditors on behalf of the ill family member, and court cases determining the obligations of various family members.

**“Those Who Plan Ahead Win.
Those Who Don’t Plan Ahead Lose.”**

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

*Attorney Timothy P. Crawford is a Nationally Board Certified Elder Law Attorney (**CELA**). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

Timothy P. Crawford was invited to join the Council of Advanced Practitioners (CAP**) of the National Academy of Elder Law Attorneys (**NAELA**) in August of 2005. **CAP** is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client’s Choice Award.

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to Protect Their Assets from Nursing Home Care Costs"**

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