

LK Alert

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CONNECTICUT COURT DENIES MOTION TO STRIKE BREACH OF CONTRACT CLAIM AGAINST RESIDENT'S SON WHO SIGNED ADMISSION AGREEMENT

On April 29, 2011, the Superior Court of Connecticut issued a decision in the case of *Torrington Health & Rehabilitation Center v. Cisowski*, wherein the nursing home sued the resident and her son for a private balance resulting from a Medicaid penalty period. The facility alleged that Medicaid imposed a penalty period for assets transferred to the son, who signed an Admission Agreement ("Agreement") including the promise that if he received any asset transfers from his mother that resulted in penalty period, that the transferred assets (or an equal amount of the son's own assets) would be used to pay for his mother's cost of care. The facility alleged that the son breached the contract as "responsible party" under the Agreement. The son moved to strike the breach of contract claim against him, arguing that the facility was asking the Court to recognize "a newly emerging ground of liability in which the mere relationship of child to parent grants legal authority to the child to enter into a written contract binding on the parent." The son argued that his mother did not sign the Agreement and he lacked the authority to bind her; therefore, he could not be held liable as responsible party.

The Court denied the son's request, holding that the complaint satisfied the elements for breach of contract, including: an offer made by the facility to care for the resident; acceptance of the offer by the resident's son via his signature on the Agreement and placement of his mother in the facility; and consideration in the form of mutual promises of the facility to provide care and the son to carry out his obligations under the Agreement. The Court also noted the facility's position that the son was trying to add an element to the requirements for the formation of a contract, specifically that a third party beneficiary (i.e., the resident) needed to sign the Agreement for it to be enforceable. However, the son's counsel cited no authority in support of this position. These cases are fact sensitive. Other Courts have held that depending upon the specific language of the Agreement, the resident's signature may be required to enforce it against a responsible party. We are available to review Admission Agreements.

Littman Krooks LLP encourages you to share this LK Alert with anyone interested in the issues discussed herein. Please contact Nicole Garcia at (212) 490-2020 or (914) 684-2100 if you are interested in having an attorney from Littman Krooks LLP speak at your facility. Littman Krooks LLP offers legal services in several areas of law, including Accounts Receivable Management, Medicaid, Health Care, Guardianship, Elder law, Estate and Tax planning, Public Benefits, Estate Administration/Probate, and Trusts and Estates.

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