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Use of guardianships as collection method for nursing homes

A recent *New York Times* article by Nina Bernstein discusses the practice of some nursing homes to use guardianship proceedings to collect money owed to the facility. (http://www.nytimes.com/2015/01/26/nyregion/to-collect-debts-nursing-home-seizing-control-over-patients.html?_r=0). The article describes a couple who thought that they had prepared for aging and incapacity by having valid Powers of Attorney and Healthcare Directives, but after a dispute as to the nursing home bill, suddenly found themselves in a court battle over “control” of the spouse in the institution.

Lillian Palermo became incapacitated in her 80's and required nursing home care due to overwhelming physical disabilities as well as dementia. She applied for and received Medicaid, but when the patient responsibility amount suddenly doubled, her husband disputed the bill. He also complained about inexperienced employees who had dropped his wife on the floor. The nursing home filed a guardianship petition asking the court to give someone other than Lillian's husband full control over her money. Mr. Palermo was devastated and ultimately spent \$10,000 fighting the petition, which was withdrawn after the dispute over the outstanding balance was resolved.

The New York Times requested that researchers at Hunter College review guardianship court data to determine if indeed this is a trend among nursing homes. They found that in a random, anonymized sample of 700 guardianship cases filed in Manhattan over 10 years, more than 12 percent were brought by nursing homes. Some of these were filed for reasons other purely debt collection, such as families who could not work together, financial abuse of the incapacitated person, or the absence of any family or other persons to help apply for Medicaid. Those in the know, however, agree that guardianship petitions are used as “strategic move to intimidate” as was the case with the Palermos.

Guardianship proceedings transfer all, or some, of a person's legal rights to someone else. They are costly and time consuming, and can be very devastating to remaining family members, especially spouses. This was one issue raised by Katherine Pearson from Penn State Dickinson Law, in a discussion on the Elder Law Prof Blog (<http://lawprofessors.typepad.com>). Another is that the newly appointed guardian may not have the best interests of the elderly incapacitated person in mind, especially if the guardianship petition is brought by the nursing facility; the guardian may not be motivated to question any concerns about quality of care. The overriding issue, however, is when bills are not being paid, is a guardianship petition the best means for accomplishing the end goal of paying for care? This was not the purpose of the guardianship statute which is intended to narrow these procedures to the least restrictive alternatives to prevent harm.

The article in *The New York Times* only addressed the issue in Manhattan. There is no discussion as to what is happening in other states, although it is not a big leap to think it could be happening in Pennsylvania. Nursing facilities must be paid to continue to operate, and uncooperative family members exist everywhere. However, is seizing control over patients' lives really the only alternative? Mr. Palermo wrote in his own petitions to the court that “I'm trapped in a web of people and lawyers that will exhaust my 50 years of sacrifices and savings.” Maybe an expensive guardianship proceeding is not the only way to make sure that nursing facilities receive the payment that they deserve.