

LK Alert

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COMMUNITY SPOUSE MAY BE LIABLE FOR "NECESSARIES"

Based on a recent decision from the Supreme Court of New York, Wayne County, in April, 2011 (*Wayne Health Care Demay Living Center v. The Estate of Robert Blair and Sonja Blair*), nursing homes may now have another option for the collection of unpaid bills for the resident's cost of care. Under the common law, a spouse who lives in the community may be liable for the resident spouse's nursing home costs under the "law of necessities." This doctrine says that spouses have a duty to furnish each other with necessities, including medical care.

In order to collect under the law of necessities, the nursing home must show that it knew about and relied on the credit of the community spouse, knew the financial status of each spouse, and knew at the time the spouse was admitted that the community spouse had the ability to pay the institutionalized spouse's bill. Although the nursing home must first pursue collection against the resident debtor spouse, the community spouse could be liable if the resident spouse can not pay. Finally, the community spouse could be liable for the entire bill even if he or she did not sign an Admission Agreement.

It is important to note that this decision came from a court in Wayne County, and is not binding on courts in other counties in New York State. However, courts often look to such decisions for guidance, and it is possible that nursing homes will more frequently look to the law of necessities in seeking to recover payment from a community spouse.

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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