

PACAH Spring Conference

April 20, 2022

KENNEDY, P.C. LAW OFFICES WORKSHOP

MOVING TO THE GREEN: HOW TO LOWER AND ELIMINATE BAD DEBT

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Presentation Overview

- Medicaid Appeals
- Guardianships
- Private Pay Matters
- Estates

■ Medicaid Appeals

MA Eligibility Appeals

- Our goal: Settle the matter with the CAO and have a Notice of Eligibility issued prior to the hearing before the Bureau of Hearings & Appeals.

Triggers for Action

- Pending MA application AND
 - Uncooperative family
 - Incapacitated Resident
 - Refusal to provide verifications
 - Refusal to spend down assets
- Growing Balance
- Refusal to forward Patient Pay

Early v. Late Involvement

- Benefits of early intervention:
 - Preserve retroactive MA effective date.
 - Obtain an MA approval sooner.
 - Minimize continued spending of Patient Pay.
 - Act before transferred resources are spent.

Early v. Late Involvement

Stages in the process:

- Before the MA denial.
- After the denial, before the appeal deadline.
- After the appeal, but before the BHA hearing.
- After the hearing, stip entered into.
- After stip, before stip deadline.
- After the stip, after the deadline.

Problems Caused by Late/Delayed Action

- Potential loss of retroactive MA eligibility
- Increased legal fees
- If gap in coverage, and no assets to recover, cannot get paid for services rendered

MA Eligibility Appeals

Specific Issues with certain CAOs

- Not recommended to enter into stipulations outside of the Bureau of Hearings & Appeals jurisdiction.

■ Guardianships

Guardianships

- Possible triggers for guardianship:
 - Assistance with MA application process.
 - No one with authority to access Resident's funds to pay bill.
 - Current POA misappropriating Resident's funds.
 - No one available to make medical decisions for Resident.

Guardianships

- Interplay with Medicaid Eligibility Process
 - Apply for MA, file a petition for guardianship, and keep the MA application alive until the guardian is appointed.
 - After guardian is appointed, the guardian will need time to liquidate assets, etc., and work with the facility, our firm, and/or the CAO to establish MA eligibility.

■ Private Pay Matters

Triggers for Action

- Private balance owed
 - *Finite*: significant balance owed
 - *Growing*: must be addressed
- Refusal to forward Patient Pay
- Period of ineligibility due to transfer penalty

Considerations before Proceeding

- Cost/benefit analysis.
- What is the balance? Is it growing or finite?
- What are the costs to proceed?
- Is there a signed Admission Agreement?
- Are there resources upon which to recover?
- What is the value of those resources?
- If property, how is it held?
- Likelihood of success on the merits?
- Other factors?

Potential Defendants

- Resident
- Resident's Spouse/Child
- Person who signed Admission Agreement
- POA/Guardian
- Transferee/recipient of resident's resources

■ Estates

OPENING AN ESTATE TO RECOVER A PRIVATE BALANCE

- Can be done when a resident with assets passes away. And, for example, the family has no intention of opening an estate.

Opening an Estate to Complete the MA Application Process

- Can be done when a resident passes away after the MA application is filed but before all verifications have been provided to the CAO or the necessary spenddown has been completed.
- Cost analysis required.

Opening an Estate to Complete the MA Application Process

- Must consider two tracks:
 - 1) The process of petitioning to open an estate as a creditor and seeking the appointment of an administrator; and
 - 2) Keeping the MA application “alive” until all outstanding verifications are obtained by the Administrator.

Prior Medical Expenses

- Since the inception of managed care, providers have experienced difficulties in obtaining the appropriate treatment of PME's.
- DHS Policy Clarification: For prior unresolved PME requests, initial requested deadline to submit/resubmit PME's to state was March 31, 2022.
- Working on resolution with MCOs on process moving forward to pay PME's.

Questions?

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