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The Intersection Between Admission Agreements and the Collection Process

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Introduction and Objectives of Presentation

- ▶ Be able to use Admission Agreement provisions to lay the groundwork in the collection of delinquent accounts
- ▶ Acquire a working knowledge of the options and remedies available to facilities in the collection of delinquent accounts
- ▶ Understand how a well-crafted agreement can help address a number of accounts receivable issues

Defining Facility's Relationship with Residents

- ▶ Regulatory relationship
- ▶ Contractual relationship
- ▶ Distinction between enforcement of regulatory requirements and contractual rights
- ▶ Resident/family take advantage of third-party benefits/payments
- ▶ Admission Agreement can be used to assist provider in satisfying “documentation” requirements related to admission process

Financial Screening

- ▶ A thorough and timely completion of a financial screening at time of admission allows you to budget private pay and anticipate when an MA application might be necessary
- ▶ It can also help you assess the extent of any financial impropriety and help identify assets for execution
- ▶ Follow the Medical Assistance application

Educating Residents and Families

- ▶ Discussions with families and responsible parties as to their obligations
- ▶ Medicare co-pays, Part A coverage, and possible observation stay issues
- ▶ Private pay spend down
- ▶ Medical Assistance application responsibility
- ▶ Responsibility with respect to resident income

Financial Authorizations

- ▶ Provide authorizations to obtain financial information at time of admission for resident or agent to sign
- ▶ Utilize if the family becomes uncooperative
- ▶ Authorization to obtain documentation and financial information for the CAO

Identification of Parties to Admission Agreement

- ▶ Resident
- ▶ Facility
- ▶ Responsible Person
- ▶ Resident Representative

Charges

- ▶ Daily rate for basic/routine nursing services
- ▶ Additional charges for ancillary services and supplies
- ▶ Charges for services provided by third parties

Billings and Payment

- ▶ Monthly statements and other billings
- ▶ Late charges and cost of collection
- ▶ Modification of charges
- ▶ Obligations of resident's estate and assignment of property

Resident's Obligation to Apply for Medical Assistance

- ▶ Honest disclosure of all financial resources
- ▶ Notification of “spend down” of resources
- ▶ Execution of authorization to obtain financial information
- ▶ Requirement to apply timely for Medical Assistance benefits

Determination of Eligibility

- ▶ Obligation to cooperate fully in the Medicaid eligibility determination or redetermination process
- ▶ Obligation to pay privately if the Medical Assistance application is denied

Authorization to Apply and/or Appeal (Medicaid)

- ▶ Obtain resident authorization to allow facility to apply for Medicaid benefits and/or appeal the denial of Medicaid benefits on behalf of the resident in the event of the following situation:
 - Resident is incapacitated;
 - Resources are depleted; and
 - No other legal representative of resident is known to the facility or no other friend or relative is known to the facility who is authorized and/or is available or willing to act on resident's behalf.

Medical Assistance

- ▶ File the application to preserve maximum retroactive benefit period
- ▶ File even with only basic biographical information
- ▶ Keep all transmittal records – tracking is best
- ▶ Injunctive relief to compel performance of contractual obligations

MA Denials

- ▶ File a protective appeal to preserve rights on denials and penalties; it can always be withdrawn later
- ▶ Preserves retroactive benefit period
- ▶ If you need more time to gather documentation, then wait until later in the appeal period to file an appeal
- ▶ Keep confirmation of fax transmission or mailing
- ▶ Penalty: were the assets transferred for a reason exclusively other than applying for MA? Was the penalty calculated correctly?

Assignment of Benefits

- ▶ Obligation to apply for any third party payor benefits, including Medicare, Medical Assistance, SSI, private health insurance
- ▶ Assignment of payments, to the extent permitted by law, of all third party payments to the facility to the extent of any applicable charges

Hardship Waiver

- ▶ Applies when the imposition of a penalty period would deprive the resident of:
 - medical care such that the resident's health or life would be endangered
 - food, clothing, shelter or other necessities of life

Facility's Right to File Appeal of a Hardship Waiver Denial

- ▶ If DHS imposes a penalty period, it is possible to apply for a hardship waiver
- ▶ Admission Agreement should provide authorization to apply for a hardship waiver
- ▶ According to the LTC Handbook, a provider has no authority to file an application for a hardship waiver without the authorization of the resident or the resident's representative (PA 1826)

Hardship Waiver Factors

- ▶ The value of the asset transferred
- ▶ The amount of compensation received
- ▶ The date the asset was transferred in relation to the date of the MA application
- ▶ Any pattern of gifting
- ▶ The relationship between the transferee and the transferor
- ▶ The reasons the assets cannot be returned
- ▶ Special consideration given for sudden unexpected onset of serious illness or disability after the date of transfer

Resident Funds: Ability to Deduct Outstanding Balance

- ▶ Admission Agreement provision permitting facility to apply resident trust funds to outstanding balance upon death, transfer or discharge of resident
- ▶ Facility policy for refund of resident trust accounts
- ▶ Statutory order for refund of resident accounts
- ▶ MA estate recovery

Durable Financial Power of Attorney

- ▶ Resident is strongly encouraged to provide
- ▶ Distinguish Financial Power of Attorney from Health Care Power of Attorney or Other Advance Directive
- ▶ Resident obligation to pay for guardianship proceedings in the event resident fails to designate a Power of Attorney

Capacity of Resident and Guardianship

- ▶ Resident is not competent to manage his or her finances
 - No agent or other individual with access to funds or documents
 - Agent or family unwilling to act
 - Agent or family is misappropriating assets
- ▶ Responsibility for costs, including attorneys' fees, remains with the resident or resident's guardianship estate

Guardianship Proceedings

- ▶ Is resident incapacitated?
- ▶ Is there a POA?
- ▶ Who will serve as guardian?
- ▶ Stands in shoes of resident, controls finances and is accountable to the court
- ▶ Particularly useful if there is no POA or there is misappropriation

Indemnification

- ▶ Hold resident responsible for damage or injuries caused by resident to other persons, residents or staff
- ▶ Limited benefit if resident is cognitively impaired or has inadequate financial resources

Mediation and Binding Arbitration

- ▶ Overview of Alternative Dispute Resolution (“ADR”) Process
- ▶ CMS Final Arbitration Rule
- ▶ Issues to Consider Prior to Implementing an ADR Process
 - Involve Your Insurance Provider
 - Clause or Agreement
 - Scope of Issues
 - Mediation
 - Location

Mediation and Binding Arbitration (cont.)

- Organization to Provide ADR Process
- Alternative Arbitration Agency or Arbitrator
- Rules of Procedure
- Allocation of Costs
- Federal Arbitration Act or State Law
- Single Arbitrator or Panel
- Appeals
- Confidentiality
- Requesting ADR
- Informing Residents of ADR

Mediation and Binding Arbitration (cont.)

- ▶ Challenges to Arbitration Agreements
- ▶ Implementing ADR
 - Decide whether ADR fits your organization
 - Revise Admission Agreement or develop separate Arbitration Agreement
 - Coordination with and approval of liability insurance carrier

Incomplete Admission Agreement

- ▶ Missing signatures, missing dates and missing terms
- ▶ If there is a responsible person, make sure he or she is named in the Admission Agreement and that he or she has signed the Admission Agreement
- ▶ Importance of attorneys' fees and cost of collection clauses in Admission Agreements cannot be overstated

Responsible Person Agreement

- ▶ Stand-alone agreement
- ▶ When possible, have the resident's agent sign
- ▶ Mirrors the obligations in the Admission Agreement – obligation to pay from resident resources and cooperate in Medical Assistance process
- ▶ Fill in all agreements completely and accurately. Failure to do so may result in agreement being unenforceable.
- ▶ Third party guarantee prohibition

Annuities

- ▶ The rise in DRA compliant annuities has been frustrating issue for providers
- ▶ Criteria for compliance with DRA
 - Irrevocable and non-assignable
 - Actuarially sound
 - Payable in even monthly installments
 - Names DHS as 1st position beneficiary
- ▶ Facility/contractual responses

Trust Issues

- ▶ Revocable, irrevocable and special needs
- ▶ Revocable trusts – available resource
- ▶ Irrevocable trusts
 - Must be reviewed carefully for the conditions under which income and principal may be distributed and to whom
 - Must be reviewed to determine who made contributions to the trust and when
 - If there are any conditions under which trust principal may be distributed, the entire principal may be deemed to be an available resource

When All Else Fails – Civil Complaint

- ▶ Cost benefit analysis
- ▶ Projected assets and income versus payments
- ▶ Public record search

Civil Complaint

- ▶ Breach of contract
- ▶ Reasonable value for services rendered
- ▶ Fraudulent transfer
- ▶ Filial support

Recap

- ▶ Application for Medical Assistance
- ▶ Hardship Waiver
- ▶ Preliminary Injunction
- ▶ Guardianship
- ▶ Civil Action/Complaint
- ▶ Application for Representative Payee
- ▶ OME

Conclusion and Q&A

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