

LATSHA DAVIS & MARSHALL



ATTORNEYS AT LAW

# Collections of Resident Accounts and Medical Assistance

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**Steven M. Montresor, Esq.**

# Introduction and Objectives of Presentation

- ▶ Be able to use Admission Agreement provisions to lay the groundwork in the collection of delinquent accounts and the MA process
- ▶ Acquire a working knowledge of the options available to facilities in the collection of delinquent accounts and the MA process
- ▶ Understand how a guardianship can help in this process

# Defining Facility's Relationship with Residents

- ▶ Regulatory relationship and contractual relationship
- ▶ Distinction between enforcement of regulatory requirements and contractual rights
- ▶ ID parties and obtain POA documents, if any
  - Resident, resident representative, facility
- ▶ Monthly statements, modification of charges, obligations of resident's estate and assignment of property

# Financial Screening

- ▶ A thorough and timely completion of a financial screening at time of admission allows you to identify income and resources
- ▶ It also provides a mechanism for approximating a time frame for the MA application
- ▶ Financial screening allows you to assess whether funds may be missing, which is basic evidence of possible misappropriation
- ▶ 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

# Internal Procedures

- ▶ Decide which team members are responsible for what duties and assign responsibility for follow-up: administration, business office, social services
- ▶ Prepare standard collection letters and a standardized collection process, such as calls and letters at 30, 60 and 90 days past due
- ▶ Routine review of all account receivables

# Early Identification of Problems

- ▶ Is there a lack of responsiveness from the resident's family?
- ▶ Is the resident incapable of managing his or her affairs and has no agent?
- ▶ Are there addictive behaviors in the resident's family?
- ▶ Did the resident not apply for MA when expected?
- ▶ Is the resident income not being turned over?

# Financial Authorizations

- ▶ Provide authorizations to obtain financial information at the time of admission for resident or agent to sign
- ▶ Authorization to obtain documentation and financial information for the CAO
- ▶ Utilize if the family becomes uncooperative
- ▶ Note: some financial institutions may insist on their own form



# 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

- ▶ Daily rate for basic/routine services and ancillaries
- ▶ 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

- ▶ Complete and accurate 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

- ▶ Admission agreement should contain an obligation to cooperate fully in the Medicaid eligibility determination and redetermination process
- ▶ Admission agreement should contain an obligation to pay privately if the Medical Assistance application is denied
- ▶ Note: a facility cannot hold a third party liable for a failed application for an amount in excess of resident funds

# 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

# 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



# Resident Representative 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

# Self-help

- ▶ Application for Medical Assistance
- ▶ Application for a representative payee
- ▶ Application for designated payee/hold payments
- ▶ Long-term care insurance/hold payments
- ▶ OME

# Duty to Report

- ▶ Providers have an affirmative obligation to report a reasonable suspicion of financial abuse
- ▶ Department of Aging
- ▶ Local law enforcement

# Discharge for Nonpayment

- ▶ Notice requirements
- ▶ Discharge plan elements set forth in 42 CFR §483.15
- ▶ Pennsylvania has very specific discharge requirements set forth in Appendix N to 55 Pa. Code §1181
- ▶ Effect of MA application on notice of discharge

# Alternative to Litigation: Notes and Mortgages

- ▶ Does the resident own property?
- ▶ It may be possible to use equity in the home to subsidize payment during a penalty period or other period of nonpayment
- ▶ Open end mortgage to account for increases in amount due and owing
- ▶ Maintain priority over DHS

# Estates

- ▶ Locate the estate: check the County of death and the County of domicile prior to admission
- ▶ File a Notice of Claim
- ▶ Downside: competing with DHS and other creditors
- ▶ If no estate and there are assets, petition the Register of Wills to appoint an administrator



# 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

**THANK YOU!**

# Conclusion and Q&A

Steven M. Montresor, Esq.  
Latsha Davis & Marshall, P.C.  
1700 Bent Creek Blvd., Suite 140  
Mechanicsburg, PA 17050  
Phone: (717) 686-4776  
Email: [smontresor@ldylaw.com](mailto:smontresor@ldylaw.com)  
Website: [www.ldylaw.com](http://www.ldylaw.com)