

PACAH 2018 SPRING CONFERENCE



*Medicaid Eligibility and Collections:
Recognizing Problems and Finding Solutions*

Presenters

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HYPO #1

Tom was admitted to the Facility on January 1, 2018. Tom's daughter, Tina, signed the Admission Agreement as Tom's Responsible Party. During the admission meeting, Tom listed the amount of money in his bank account as \$20,000. During the MA application process, it was discovered Tom transferred the \$20,000 to Tina on January 2, 2018 to avoid paying this money to the Facility. The CAO eventually approved Tom's MA application but assessed a \$20,000 transfer penalty.

- What are facility's options?

Hypo #1 Discussion

- Breach of contract?
 - Against Tom?
 - Against Tina?
- MA appeal?
- Undue hardship waiver?

HYPO #2

Carl is 98 years old and suffers from severe Dementia. Carl was admitted to the facility on January 1, 2018. Carl's son, Charlie, signed Carl's Admission Agreement as Responsible Party. Years ago, Charlie was appointed by Carl to act as his agent under POA for financial matters. During the MA application process, the facility discovered Charlie used his authority as POA to transfer Carl's house to himself in December 2017. The CAO assessed a \$200,000 transfer penalty.

- What are the facility's options?

Hypo #2 Discussion

- Civil action?
 - Fraudulent transfer?
 - Breach of fiduciary duty?
 - Breach of contract?
- Mortgage and promissory note?
- Orphans' Court action?
 - Petition for accounting / surcharge?
 - Guardianship?
- MA appeal?
- Undue hardship?

HYPO #3

Margaret, 89, was admitted to the Facility on January 1, 2018. Margaret suffers from severe Dementia. Margaret's son, James, signed the Facility's Admission Agreement as Responsible Party. As of March 1st, no payments have been received toward Margaret's care so the Facility filed a blank MA application. James is not answering his phone and does not return phone calls from the Facility requesting that he provide the necessary financial verifications. On April 15th, the CAO issues an MA denial for failure to provide verifications.

- What are the facility's options?

Hypo #3 Discussion

- Appeal MA denial?
- Civil action against James to compel cooperation?
- Guardianship?
- BHA continuances, if necessary?

HYPO #4

John has been a long-term resident at the facility. John suffers from Dementia and his daughter, Alice, has been handling John's financial affairs as POA for several years. The CAO requested updated bank statements from John to re-determine his eligibility for MA benefits. John's bank is now questioning the POA document and is refusing to provide Alice with access to the bank statements. On May 1st, the CAO issued a Notice discontinuing John's eligibility for MA benefits due to the failure to provide verifications.

- What are the Facility's options?

Hypo #4 Discussion

- Appeal Notice of discontinuance?
- BHA subpoena?
- Challenge the bank's refusal to recognize the POA?
- Guardianship?
- BHA continuances, if necessary?

HYPO #5

Adam, 95, suffers from severe Dementia and was admitted to the SNF on January 1, 2018. An application for MA benefits was filed on Adam's behalf on March 1, 2018. When bank statements were provided to support Adam's MA application, it was discovered that Adam's son/POA, Sam, wrote numerous checks to himself in 2017 totaling \$50,000. The CAO imposed a \$50,000 transfer penalty.

- What are the facility's options?

Hypo #5 Discussion

- MA appeal?
- Undue hardship waiver?
- Civil litigation?
 - Against Adam?
 - Against Sam?
- Guardianship?
- Petition for Accounting?

HYPOTHESIS #6

Bill was admitted to the facility on January 1, 2018 and suffers from severe Dementia. Bill's son, Joe, is Resident's POA and signed the admission agreement as Responsible Party. Bill is receiving MA benefits and has a patient pay obligation of \$2,000/month consisting of Social Security and a pension. The facility receives Bill's Social Security as Representative Payee. Joe receives Bill's pension of approximately \$800/month but refuses to forward the income to the facility.

- What are the facility's options?

Hypo #6 Discussion

- Civil action against Joe?
 - Specific performance?
- Petition for Accounting?
- Guardianship?

HYPO #7

Claire, a resident of a skilled nursing facility, was incapacitated and Claire's family refused to cooperate with the MA application process. An MA application was filed by the nursing facility on Claire's behalf. Claire's MA application was denied due to excess resources. An appeal of the MA denial was filed by the nursing facility. A BHA hearing has not yet been scheduled. Due to the lack of a representative willing to act on Claire's behalf, the nursing facility petitioned for the appointment of a guardian for Claire. Claire passed away after the guardian was appointed but before the guardian could liquidate Claire's assets and appropriately spend down excess resources. Claire's estate is worth \$20,000. The nursing facility is owed \$50,000.

- What steps should the Facility take?

Hypo #7 Discussion

- BHA continuances?
- BHA subpoenas?
- Open an estate?
 - To spend down?
 - To complete MA application?

HYPO #8

Betty was admitted to a skilled facility on October 1, 2017 as Medicaid pending and an Medicaid application was filed in January 2018. The CAO denied the Medicaid application in February for failure to provide verifications. The facility is receiving the monthly income in the amount of \$2,000. The facility referred the matter to legal in April 2018 after the facility learned that the CAO did not receive an appeal to the February denial.

- What steps should the Facility should take?

Hypo #8 Discussion

- Nunc pro tunc appeal
- Reimbursement as “Other Medical Expense”

HYPO #9

Jerry, a resident of a personal care facility, has spent his liquid assets on his care but he remains at the facility with a growing balance of \$6,000 per month that he cannot cover because his income is only \$2,000 per month. Jerry's POA is cooperative and wants to sell Jerry's house that is worth \$500,000 but the zoning limitations make it difficult to sell the property.

- What steps should the Facility take?
- How would the analysis change if Jerry has a guardian instead of a POA?

Hypo #9 Discussion

- Title Search
- Broker's Price Opinion or appraisal
- Mortgage, promissory note, and settlement agreement

Website

www.kennedypc.net