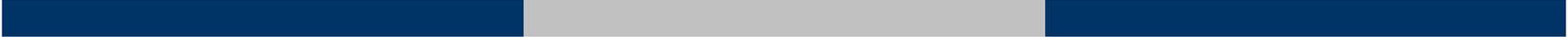


Common Legal Concepts for Business Office Managers



Nora Gieg Chatha, Esq.
Danielle L. Dietrich, Esq.

Who Is Tucker Arensberg, P.C.

Pittsburgh and Harrisburg Offices represent LTC providers in PA, OH, WV, NJ, NY, MD offering competitive and flexible in:

- ❑ Department of Health and Human Services Survey, Licensure and related matters including bed acquisitions, transfers and census management
- ❑ Medical Assistance and Medicare Eligibility, Reimbursement, Audit and Discharge Appeals
- ❑ Resident Concerns including Family, Dependent and Guardianships
- ❑ Collections and Business Office Support
- ❑ Employment and Labor Law
- ❑ Long Term Care Compliance (both state and federal)
- ❑ Privacy and Security Laws (HIPAA, HIT, etc.)

Who Is Tucker Arensberg, P.C.

- ❑ Risk Management
- ❑ Compliance and Training Programs
- ❑ Ancillary Provider Contract Management
- ❑ Intellectual Property
- ❑ Litigation
- ❑ Public and Private Financing
- ❑ Real Estate Law
- ❑ Business Succession Planning and Corporate Law (Mergers and Acquisitions)
- ❑ Private and Public Financing
- ❑ Public Outreach
- ❑ Electronic Health Record (ERC) Conversions
- ❑ Arbitration, Mediation and Alternative Dispute Resolution

Who Is Tucker Arensberg, P.C.

- ❑ Bankruptcy, Insolvency and Creditors' Rights
- ❑ Business and Corporate
- ❑ Employee Benefits/ERISA
- ❑ Environmental
- ❑ Health Law and Info Technology

In addition, the members of the Long Term Care practice frequently provide training for administrators, CEOs, directors, controllers and other members of the Long Term Care team on a variety of legal topics.

Your Presenters

Nora Gieg Chatha is a shareholder who, prior to joining the firm, served as Counsel for the Pennsylvania Department of Human Services (then Public Welfare) where she advised the Commonwealth on all aspects of Medicaid (Medical Assistance) eligibility, reimbursement and compliance. She now applies that concentrated knowledge of the Medicaid program in the private sector to represent providers, fiduciaries and individuals in varied legal matters including compliance, reimbursement, payor disputes, and both administrative and Orphans' Court litigation. Nora assists long term care providers to establish processes and conduct training to secure census while streamlining admissions, payment and resident relations. Nora has handled numerous administrative and appellate actions in array of Medicaid, Medicare, reimbursement, licensing and bed transfer matters. Nora also serves as Co-Chair of the firm's Estates & Trust and Fiduciary Services Practice Groups. Nora can be reached at (412) 594-3940 or nchatha@tuckerlaw.com.

Your Presenters

Danielle Dietrich provides full service legal assistance to SNF/AL/PC business offices. She works with facilities to qualify residents for public benefits (Medicare/Medicaid), including assisting staff with filing applications for public benefits on a resident's behalf, obtaining the necessary asset verifications, and appealing the denial of benefits or institution of penalty periods to both the Bureau of Hearings and Appeals and the Commonwealth Court. If a resident becomes incapacitated without a power of attorney in place, Danielle guides facilities through the guardianship process, including drafting and filing of guardianship petitions, and obtaining court approval. She also assists facilities with challenging resident discharge situations.

Danielle pursues collections actions against uncooperative or abusive family members under the Pennsylvania Filial Support laws. She will also pursue such actions against uncooperative residents or former residents who fail to pay the private amounts due to the facility. Danielle can be reached at (412) 594-5605 or ddietrich@tuckerlaw.com.

Today's Topics

- Legal Representatives in Pennsylvania
 - ▣ Agents, Guardians and Statutory Healthcare Reps
- Admissions Issues
 - ▣ Agreements
 - ▣ Arbitration
- Property Ownership In Pennsylvania
 - ▣ Personal Property
 - ▣ Real Estate
 - ▣ Financial Accounts
- Collections
- Discharge



Who's On First?

Legal Representatives In Pennsylvania

Types of Legal Reps in Pennsylvania

- ❑ Statutory Health Care Representative
- ❑ Agent under Health Care Power of Attorney
- ❑ Agent under Financial Power of Attorney
- ❑ Court-Appointed Guardian

Healthcare Representatives

Healthcare Representatives

- ❑ Chapter 54 of PEF Code provides for statutory means for competent adults to control their health care through instructions written in advance or by designated health care agents under a Power of Attorney or stating health care representatives and requested orders.
- ❑ Chapter 54 governs requirements for Living Wills, Advanced Directives & Healthcare Powers of Attorney

Healthcare POA Execution Reqt's

- **Who may make?** An individual of sound mind may make a health care power of attorney if the individual: (1) is 18 years of age or older; (2) has graduated from high school; (3) has married; or (4) is an emancipated minor. 20 Pa. C.S. 5452(a).
- **Requirements?** A health care power of attorney must be:
 - (1) dated and signed by the principal by signature or mark or by another individual on behalf of and at the direction of the principal; and
 - (2) witnessed by two individuals, each of whom is 18 years of age or older.

What May Healthcare Agents Do?

- Health Care Agent has the authority to make any health care decision and to exercise any right and power regarding the principal's care, custody and health care treatment that the principal could have made and exercised, including **the power to authorize admission to a medical, nursing, residential or similar facility**, or **to enter into agreements for the principal's care**. The health care agent's authority may extend beyond the principal's death to make anatomical gifts, dispose of the remains and consent to autopsies. 5456(a)
- Health Care Agent has the same rights and limitations as the principal to request, examine, copy and consent or refuse to consent to the disclosure of medical or other health care information. 5456(d)

Section 5461 Statutory Health Care Representatives

- **(a) General rule.**--A health care representative may make a health care decision for an individual *whose attending physician has determined that the individual is incompetent* if:
 - (1) the individual is at least 18 years of age, has graduated from high school, has married or is an emancipated minor;
 - (2) (i) the individual does not have a health care power of attorney; or
 - (ii) the individual's health care agent is not reasonably available or has indicated an unwillingness to act and no alternate health care agent is reasonably available; and
 - (3) a guardian of the person to make health care decisions has not been appointed for the individual.
- **(b) Application.**--This section applies to decisions regarding treatment, care, goods or services that a caretaker is obligated to provide to a care-dependent person who has an *end-stage medical condition or is permanently unconscious* as permitted under 18 Pa.C.S. § 2713(e)(5) (relating to neglect of care-dependent person).

Relevant Definitions Under Section 5422

"Competent." A condition in which an individual, when provided appropriate medical information, communication supports and technical assistance, is documented by a health care provider to do all of the following:

- Understand the potential material benefits, risks and alternatives involved in a specific proposed health care decision.
- Make that health care decision on his own behalf.
- Communicate that health care decision to any other person.
- ***This term is intended to permit individuals to be found competent to make some health care decisions, but incompetent to make others.***

"End-stage medical condition." ***An incurable and irreversible medical condition in an advanced state*** caused by injury, disease or physical illness that will, in the opinion of the attending physician to a reasonable degree of medical certainty, ***result in death***, despite the introduction or continuation of medical treatment. Except as specifically set forth in an advance health care directive, the term is not intended to preclude treatment of a disease, illness or physical, mental, cognitive or intellectual condition, even if incurable and irreversible and regardless of severity, if both of the following apply:

- The patient would benefit from the medical treatment, including palliative care.
- Such treatment would not merely prolong the process of dying.

Default Statutory Healthcare Representatives

Who may act as health care representative? In the absence of designation or if no designee is reasonably available, any member of the following classes, in descending order of priority, who is reasonably available may act as health care representative:

- (i) The spouse, unless an action for divorce is pending, and the adult children of the principal who are not the children of the spouse.
- (ii) An adult child.
- (iii) A parent.
- (iv) An adult brother or sister.
- (v) An adult grandchild.
- (vi) An adult who has knowledge of the principal's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the principal would make health care decisions.

Limitations on Who May Serve as Statutory Health Care Representative

- ❑ An individual may by signed writing, including a health care power of attorney, provide for a different order of priority or disqualify individuals from serving as health care representative
- ❑ An individual with a higher priority who is willing to act as a health care representative may assume the authority to act notwithstanding the fact that another individual has previously assumed that authority.
- ❑ Unless related by blood, marriage or adoption, a health care representative may not be the principal's attending physician or other health care provider nor an owner, operator or employee of a health care provider in which the principal receives care.

Actions Healthcare Reps May Take

Statutory healthcare representatives have the same authority and decision-making process as provided for a health care agent in section 5456 (relating to authority of health care agent) and 5460(c) (relating to relation of health care agent to court-appointed guardian and other agents). 20 Pa. C.S. 5461(c).

Agents Under
Financial Powers of
Attorney

Financial POA Execution Reqt's

(1) A power of attorney shall be dated, and it shall be signed by the principal by signature or mark, or by another individual on behalf of and at the direction of the principal if the principal is unable to sign but specifically directs another individual to sign the power of attorney.

(2) If the power of attorney is executed by mark or by another individual, then it shall be witnessed by two individuals, each of whom is 18 years of age or older. A witness shall not be the individual who signed the power of attorney on behalf of and at the direction of the principal.

Reqt's Cont'd

(3) For a power of attorney executed on or after January 1, 2015, the signature or mark of the principal, or the signature of another individual signing a power of attorney on behalf of and at the direction of the principal, shall be:

- (i) **Acknowledged before a notary public or other individual authorized by law to take acknowledgments**. The notary public or other individual authorized by law to take acknowledgments shall not be the agent designated in the power of attorney.
- (ii) Witnessed by two individuals, each of whom is 18 years of age or older. A witness shall not be the individual who signed the power of attorney on behalf of and at the direction of the principal, **the agent designated in the power of attorney or the notary public or other person authorized by law to take acknowledgments before whom the power of attorney is acknowledged**.

Notice & Acknowledgement

- ❑ **Section 5601(c) Statutory Notice.** All powers of attorney shall include a statutory notice in capital letters at the beginning of the power of attorney. The notice shall be signed by the principal. In the absence of a signed notice, upon a challenge to the authority of an agent to exercise a power under the power of attorney, the agent shall have the burden of demonstrating that the exercise of this authority is proper.
- ❑ **Section 5601(d) Agent Acknowledgment.** An agent shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed to the power of attorney an agent acknowledgment page.

Agent Powers that Must be Expressly Included

- (1) Create, amend, revoke or terminate an inter vivos trust other than as permitted under section 5602(a)(2), (3) and (7) (relating to form of power of attorney).
- (2) Make a gift.
- (3) Create or change rights of survivorship.
- (4) Create or change a beneficiary designation.
- (5) Delegate authority granted under the power of attorney.
- (6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- (7) Exercise fiduciary powers that the principal has authority to delegate.
- (8) Disclaim property, including a power of appointment.

Bottom Line in Reviewing Financial POAs

- ❑ Properly executed
- ❑ Two independent witnesses (i.e., not agent or notary)
- ❑ Notarized or Attorney Acknowledgment
- ❑ Statutory Form Notice at Beginning of Instrument
- ❑ Statutory Form Agent Acknowledgment
- ❑ Necessary Powers are Included
- ❑ Agent's authority is triggered
- ❑ Agent's authority is broad enough

Court Appointed Guardians

- ❑ No Health Care or Financial Agent under Power of Attorney
- ❑ Statutory Health Care Representative not indicated
- ❑ Dispute over validity of existing Power of Attorney or Agent's Authority
 - Battle of POAs
 - Questions of Capacity
 - Questions of Validity
 - Existing Power of Attorney not broad enough – Failed to include necessary powers (e.g. gifting, etc.)

PA Standard for Incapacity

- ❑ Chapter 55 of PEF Code.
- ❑ "Incapacitated person" means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.
20 Pa.C.S. 5501.

Purpose of Ch. 55 Guardianships

- Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which **permits incapacitated persons to participate as fully as possible in all decisions which affect them,** which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through **the use of the least restrictive alternative;** and recognizing further that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as guardians.
20 Pa.C.S. 5502.

Who may be Appointed?

- The court may appoint as guardian any qualified individual, a corporate fiduciary, a nonprofit corporation, a guardianship support agency under Subchapter F (relating to guardianship support) or a county agency. In the case of residents of State facilities, the court may also appoint, only as guardian of the estate, the guardian office at the appropriate State facility. The court shall not appoint a person or entity providing residential services for a fee to the incapacitated person or any other person whose interests conflict with those of the incapacitated person except where it is clearly demonstrated that no guardianship support agency or other alternative exists. Any family relationship to such individual shall not, by itself, be considered as an interest adverse to the alleged incapacitated person. If appropriate, the court shall give preference to a nominee of the incapacitated person. 20 Pa.C.S. 5511(f).

Necessary Court Findings?

- ❑ **5512.1. Determination of incapacity and appointment of guardian.**
- ❑ **(a) Determination of incapacity.**--In all cases, the court shall consider and make specific findings of fact concerning:
 - ❑ (1) The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.
 - ❑ (2) The extent of the individual's capacity to make and communicate decisions.
 - ❑ (3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.
 - ❑ (4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions.
 - ❑ (5) The duration of the guardianship.
 - ❑ (6) The court shall prefer limited guardianship.

Types of Guardians

1. Limited v. Plenary
2. Temporary v. Permanent
3. Person v. Estate

Roles of Guardians

Guardian of Person

1. General care, maintenance and custody of the incapacitated person.
2. Designating the place for the incapacitated person to live.
3. Assuring that the incapacitated person receives such training, education, medical and psychological services and social and vocational opportunities, as appropriate, as well as assisting the incapacitated person in the development of maximum self-reliance and independence.
4. Providing required consents or approvals on behalf of the incapacitated person.

Guardian of Estate

Financial Matters

1. Liability Insurance
2. Business Matters
3. Judgements/Claims/Litigation
4. Contracts
5. Manage Finances
6. Marshall Assets
7. Pay bills
8. Taxes
9. Sale/Investment of Property

Section 5524 Effect of Incapacity Adjudication

A partially incapacitated person shall be incapable of making any contract or gift or any instrument in writing in those specific areas in which the person has been found to be incapacitated. **A totally incapacitated person shall be incapable of making any contract or gift or any instrument in writing.** This section shall not impair the interest in real estate acquired by a bona fide grantee of, or a bona fide holder of a lien on, real estate in a county other than that in which the decree establishing the incapacity is entered, unless the decree or a duplicate original or certified copy thereof is recorded in the office of the recorder of deeds in the county in which the real estate lies before the recording or entering of the instrument or lien under which the grantee or lienholder claims.

Use of Guardianship Funds

5536. Distributions of income and principal during incapacity.

(a) In general.--All income received by a guardian of the estate of an incapacitated person...in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incapacitated person, without the necessity of court approval. The court, for cause shown and with only such notice as it considers appropriate in the circumstances, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incapacitated person for the care, maintenance or education of the incapacitated person, his spouse, children or those for whom he was making such provision before his incapacity, or for the reasonable funeral expenses of the incapacitated person's spouse, child or indigent parent.

Use of Funds Cont'd

(b) Estate plan.--The court may allow the following:

- (1) Make gifts, outright or in trust.
- (2) Convey, release or disclaim his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.
- (3) Release or disclaim his powers as trustee, personal representative, custodian for minors, or guardian.
- (4) Exercise, release or disclaim his powers as donee of a power of appointment.
- (5) Enter into contracts.
- (6) Create for the benefit of the incapacitated person or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life.
- (7) Exercise options of the incapacitated person to purchase or exchange securities or other property.
- (8) Exercise all rights and privileges under life insurance policies, annuity contracts or other plans or contractual arrangements providing for payments to the incapacitated person or to others after his death.
- (9) Exercise his right to claim or disclaim an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.
- (10) Change the incapacitated person's residence or domicile.
- (11) Modify by means of codicil or trust amendment, as the case may be, the terms of the incapacitated person's will or of any revocable trust created by the incapacitated person, as the court may deem advisable in light of changes in applicable tax laws.

Essentials?

- ❑ Permissible Petitioners? Any person interested in the alleged incapacitated person's welfare may petition for guardian. Section 5511(a)
- ❑ Dismissal of Proceedings? The court may dismiss when proceeding has not been instituted to aid or benefit the alleged incapacitated person or that the petition is incomplete or fails to provide sufficient facts to proceed. Section 5511(a)
- ❑ Nonresidents? The court may appoint guardian for person not domiciled in PA who has property here. Section 5511(b)
- ❑ Emergency Guardians? If Irreparable harm under Section 5513.
- ❑ Reporting? Annual reports under 5512.3/5521(c), inventory within 3 months under 5521(b), final reporting.

Bottom Line?

- ❑ Ensure no POA in place
- ❑ Make sure medical records support incapacity
- ❑ Understand Limit

To Admit or Not Admit?

Admissions Issues

Admissions Agreement

- ▣ Entire legal relationship is governed by your admissions agreement (and law, of course)
 - ▣ Have you read your admissions agreement?
 - ▣ Do you understand it?
 - ▣ Importance of communications

Admissions Agreement

- Admissions Agreement is a contract
- Elements of a contract:
 - Offer
 - Acceptance
 - Consideration
 - Mutuality of Obligation
 - Competency and capacity

Admissions Agreement

- Identify your audience
 - Resident themselves
 - Capacity?
 - Agent under Power of Attorney
 - Guardian
 - Family
- Verify legal capacity
 - POA documents
 - Guardianship order
 - Competency and capacity

Admissions Agreement

- Review documents giving authority
- Guardianship order
 - Guardian over the person
 - Guardian over the estate
- Power of Attorney Instrument
 - Health care power of attorney
 - Financial power of attorney
- Powers bestowed

Petersen v. Kindred Healthcare, Inc.

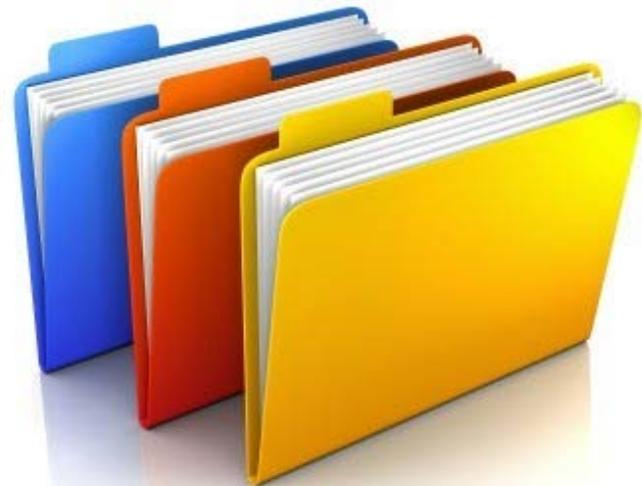
- ❑ A party dealing with an agent, known to be “acting only under an express grant of authority (such as a power of attorney), has a duty to take notice of the nature and extent of the authority conferred.”
- ❑ Failure to investigate is at your peril
- ❑ Successor agent had no authority to enter into arbitration agreement



Petersen v. Kindred Healthcare, Inc.

What does this mean for you?

- ❑ READ the Power of Attorney Instrument
- ❑ Deemed to have notice of conditions
- ❑ Look at when successor agent may act
- ❑ Verify those conditions have happened
- ❑ Keep evidence in file



Admissions Agreement

- What should you include in your contract?
 - All terms
 - Clear and concise language
 - Payment terms (amounts and deadlines)
 - Penalties
 - Cooperation and expectation re: MA-LTC
 - Bed hold info
 - Discharge info

Admissions Agreement

- ❑ What should not be in your agreement?
 - ❑ Legalese
 - ❑ If not-for-profit, cannot require “voluntary” contributions
 - ❑ Cannot require personal funds deposited with facility
 - ❑ Third-party guarantor requirements

Arbitration agreements

- Arbitration agreements
 - Guidelines still in flux
 - Late 2016 – LTC facilities could not use pre-dispute arbitration agreements if they accepted Medicare or Medicaid
 - Legal challenges
 - Proposed Rule CMS 3342-P
 - No final rule

POA and Arbitration Agreements

- ❑ Earlier CMS Proposed Rule – LTC facilities accepting Medicare or Medicaid cannot use pre-dispute arbitration agreements
- ❑ Put on hold by federal court in Mississippi
- ❑ Federal Arbitration Act
- ❑ Singling out an industry



Understanding Property Ownership in Pennsylvania

Common Types of Property

- ❑ Tangible Personal Property
- ❑ Real Estate
- ❑ Financial Accounts

Relevant Contexts?

- Private Payment/Patient Pay Liability
- MA-LTC
- Collections
 - During Lifetime
 - After Death

55 Pa. Code Section 178.4(e)

- The following rebuttable presumptions apply in determining the availability of both real and personal property resources:
 - (1) If an applicant/recipient is the sole owner, the resources is presumed available
 - (2) If ownership is shared by persons who are applicants/recipients, the resource is presumed available

55 Pa. Code 178.4(e) cont'd

- (3) If ownership is shared by applicants/recipients and a person who is not an applicant/recipient and if the applicants/recipients have a separate legal interest which can be disposed of without the consent of the other owners, the applicants'/recipients' share of the resources is presumed available
- (4) If ownership is shared by applicants/recipients and a person is who is not an applicant/recipient and the applicants/recipients have a legal interest which can be disposed of only with the consent of the other owner and consent is not withheld, the applicants'/recipients' share of the resource is presumed available

55 Pa. Code 178.4(e) cont'd

- (5) If consent to dispose of resources is needed but withheld by a nonapplicant/nonrecipient, assume that the resource is not available. The shared ownership and the nonapplicant's/nonrecipient's refusal to dispose of the resource shall be verified. The unavailability of resources is verified at application and no less often than at each reapplication.

Tangible Personal Property

- What is TPP?
 - Cash
 - Bank Accounts
 - Household Effects
 - Cars
 - Stocks

TPP Issues?

- Titling?
- Lifetime collection efforts?
- MA-LTC Treatment?
- Collection at death from Resident's Estate?

Real Estate

- Titling?
 - Always titled!
- How Titled?
 - Sole Ownership
 - Tenants by Entireties
 - Tenants in Common
 - Tenants with Rights of Survivorship

What type of Real Estate Interest is Held?

- Fee Simple
- Life Interest/Life Estate
- Remainder Interest

Common RE Issues?

- ❑ Identifying type of interest and joint owners
- ❑ Collections during lifetime
- ❑ MA-LTC treatment
- ❑ Collection at death from Deceased Resident's Estate

Financial Accounts

- ❑ Bank checking/savings
- ❑ Investment management
- ❑ Brokerage
- ❑ MPAA applicable solely to determination of property rights
- ❑ MPAA does not apply to or affect financial institutions or their rights or responsibilities with respect to multiple party accounts
 - MPAA does affect state nuances with respect to collections, taxation or Medicaid

Financial Account Issues?

- Titling?
- Lifetime collection efforts?
- MA-LTC Treatment?
- Collection at death from Resident's Estate?

Multiple Party Accounts Act

- Jointly held bank accounts are governed by the MPAA
- MPAA applicable solely to determination of property rights
- MPAA does not apply to or affect financial institutions or their rights or responsibilities with respect to multiple party accounts
 - MPAA does affect state nuances with respect to collections, taxation or Medicaid

MPAA Treatment Before/After Death

□ Before death

- Belongs to all parties in proportion to net contribution unless clear and convincing evidence to contrary
- Each party has unlimited withdrawal rights

□ After death

- Belongs to surviving account holder(s) per the express terms of account given presumption of right of survivorship unless clear and convincing evidence of different intent at time account was created
- Account and beneficiary designations cannot be changed by subsequent will

55 Pa. Code 178.4(f)

- A bank account owned jointly by a husband and wife is not entireties property unless a contrary intent is clearly shown or the account predates September 1, 1976. A bank account may be held in many forms. The legal rights of the parties are not wholly determined by the title of the account. The account titled or caption determines the rights of the account in relation to the bank and not their rights in relation to each other.

55 Pa. Code 178.4(f) cont'd

- The CAO shall apply the following rebuttable presumptions to determine the availability of bank accounts:
 - (i) The person whose name appears on the account title is the owner
 - (ii) Persons who own the account jointly – for example, “and,” “or,” “and/or” – own the account in proportion to their contributions
 - (iii) If contributions cannot be determined, each owner of a joint account owns an equal share
 - (iv) If an account is titled “in trust for,” the account is a tentative trust, unless a written trust document exists. A tentative trust is owned by the trustee, and the beneficiary has no legal rights before the death of the trustee.

Beneficiary Designations

- What are they?
 - ITF
 - POD
- Common assets?
 - Life Insurance
 - Retirement Accounts
 - Bank Accounts

Beneficiary Designation Issues?

- ❑ Verifying them?
- ❑ Lifetime collection efforts?
- ❑ MA-LTC Treatment?
- ❑ Collection at death from Resident's Estate?

Common Strategies and Issues

Collections Policies

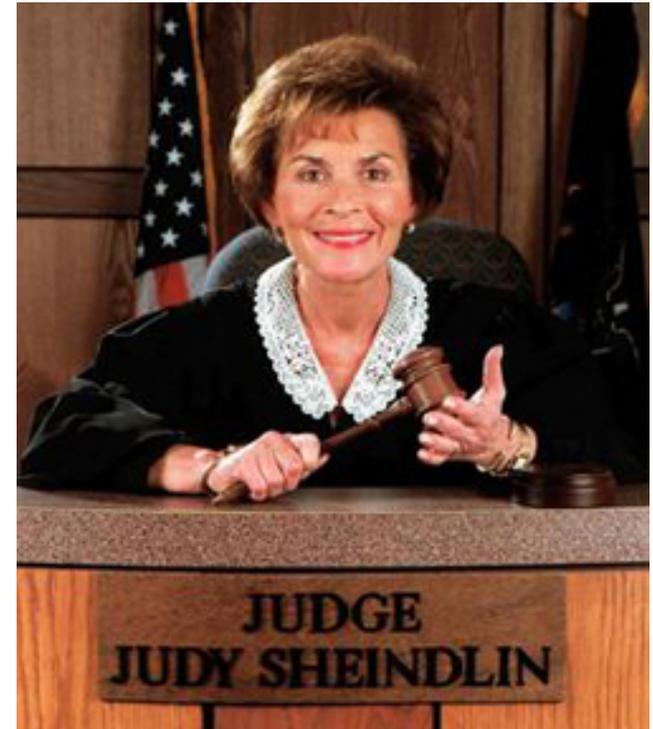
- Gospel of collections policies
 - They work!
 - Make your life easier
 - Timelines
 - Forms
 - Consistency
 - Delegate responsibilities
 - Increased money in the door

Lessons learned from nearly a decade of nursing home collections:

- ❑ Lay out expectations early
- ❑ Remove uncertainty
- ❑ Communication is key
- ❑ But so is documentation
- ❑ Demeanor and tone
- ❑ Respond to questions
- ❑ Look for red flags
- ❑ LISTEN

Magistrate Hearings

- ❑ Facility may self-represent
- ❑ Must be less than \$12,000
- ❑ Are you using legal name?
- ❑ What are your next steps?
- ❑ Are you filing with court after?
- ❑ What are you doing to collect?



More than \$12,000? You're going to need an attorney

- ❑ Compulsory arbitration
- ❑ General docket
- ❑ Formal process
- ❑ Attorney required
- ❑ Slower
- ❑ Special considerations
- ❑ Filial support



What to do with dead ends?

- MA-LTC “no-hoppers”
- Keep digging – get creative
- Look for error in CAO calculations
- CAO has to help with verifications
- Seek legal assistance
- Example errors
 - Wrong common level ratio
 - Property transfer issues

Discharge Issues

Discharging a resident

- Update to CMS regs this year:

Required to copy:

Office of the State Long Term Care Ombudsman

Pennsylvania Department of Aging

555 Walnut Street, 5th Floor

Harrisburg, PA 17101-1919

(717)783-8975



Discharging a resident

- Reasons for discharge:
 - 1) Medical (improved, declined, cannot meet needs);
 - 2) For his or her welfare or that of others; or
 - 3) Nonpayment



Medical Discharge

- ❑ Physician must be involved
- ❑ Dueling physicians?
- ❑ MA-51 should be clear
- ❑ Document everything
- ❑ Importance of nursing records
- ❑ Discharge must be “safe and orderly”
- ❑ Discharge location must be able to meet needs

Discharge for welfare

- ❑ Self or others
- ❑ Physical altercations
- ❑ Threats
- ❑ Documentation essential
- ❑ Physician involvement
- ❑ Tricky
- ❑ Discharge location that can handle behaviors?

Discharge for nonpayment

- Tricky issues re: MA-pending
 - Private portion still due
- “Reasonable” efforts to collect
 - What is reasonable?
- Discharge must still be safe and orderly
 - Often an issue
 - Who will take with no money?
 - Homeless shelter

Issues arising from discharge

- ❑ Challenges to a discharge
- ❑ Family refusing to acknowledge issues
- ❑ Ombudsman versus you
 - You may have attorney
 - Family may have attorney
- ❑ Discharge appeals result in significant delays and cost

Documentation essential to discharge challenges

- ❑ Nursing/progress notes
- ❑ Social services
- ❑ Visitor logs
- ❑ Documenting conversations with discharge location
- ❑ Care plan and care meetings
- ❑ Communications with resident and family



Questions?

Nora Gieg Chatha, Esq.

412-594-3940

nchatha@tuckerlaw.com

Danielle L. Dietrich, Esq.

412-594-5605

ddietrich@tuckerlaw.com

1500 One PPG Place

Pittsburgh, PA 15222