

# Long-Term Care Admission Agreements

TUCKER | ARENSBERG  
Attorneys



# Who Is Tucker Arensberg, P.C.

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

- 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](mailto:nchatha@tuckerlaw.com).

# Your Presenters

**Jennifer Bittel Derby** is an Associate Attorney with experience in reviewing long-term care admissions agreements in the context of nursing homes, assisted living facilities, and personal care homes, and advising clients regarding these agreements. Jen is experienced in handling Medicaid applications including appeals and the administrative law process necessary for seeking Medicaid approval for both nursing home care and PA Aging Waiver care at home. Jen can be reached at 412-594-3936 or [jderby@tuckerlaw.com](mailto:jderby@tuckerlaw.com).

# Today's Topics

- 1) Discussion of Types of Long-Term Care Facilities in Pennsylvania
- 2) Relevant Laws and Regulations related to Admissions Agreements
- 3) Elements of an Admissions Agreement
- 4) Arbitration Clause in an Admissions Agreement
- 5) Who may enter into a long-term care admissions agreement?
- 6) Asset Disclosures in an admissions agreement
- 7) Issues related to Guarantors/Third Party Liability/Filial Support Law

# Types of Facilities

Independent Living

Assisted Living/ Personal Care

- Memory Care Facilities

Skilled Nursing Facilities

Care Continuum Facilities (CCRC's)

## Types of Facilities

- Potential Residents may be asked to sign admissions agreements at all levels of care in Pennsylvania
- This may be done despite the resident receiving some type of government benefit like VA benefits or Medicaid
- The facility often asks for asset disclosures from the potential resident
- Often the agreement will also mention if the facility offers “Benevolent Care” - a mechanism for ensuring when a resident has exhausted their financial resources, they will still be provided with care and will be able to remain in the facility/community

# Applicable Laws – Assisted Living

**The PA Laws related to Assisted Living Facilities requires that a medical evaluation is completed, initial assessment of a resident, and a preliminary support plan prior to the resident's admission.**

55 PA Code Section 2800.22

(b) *Certification.*

(1) A certification shall be made, prior to admission, that the needs of the potential resident can be met by the services provided by the residence.

(2) The certification shall be made by one of the following persons:

(i) The administrator acting in consultation with the supplemental health care providers.

(ii) The individual's physician or certified registered nurse practitioner.

(iii) The medical director of the residence.

# Applicable Laws – Assisted Living and Personal Care

## **§ 2800.25. Resident-residence contract (Assisted Living)**

### **55 Pa. Code § 2600.25 (Personal care)**

(a) Prior to admission, or within 24 hours after admission, a written resident-residence contract between the resident and the residence must be in place. The administrator or a designee shall complete this contract and review and explain its contents to the resident and the resident's designated person if any, prior to signature.

(b) The contract shall be signed by the administrator or a designee, the resident and the payer, if different from the resident, and cosigned by the resident's designated person if any, if the resident agrees. The contract must run month-to-month with automatic renewal unless terminated by the resident with 14 days notice or by the residence with 30 days notice in accordance with § 2800.228 (relating to transfer and discharge).

# Applicable Laws – Assisted Living and Personal Care

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## What must be included in the Resident – Residence Contract under PA Law?

(c) At a minimum, the contract must specify the following:

- (1) Each resident shall retain, at a minimum, the current personal needs allowance as the resident's own funds for personal expenditure. A contract to the contrary is not valid. A personal needs allowance is the amount that a resident shall be permitted to keep for his personal use.
- (2) A fee schedule that lists the actual amount of charges for each of the assisted living services that are included in the resident's core service package in accordance with § 2800.220 (relating to service provision).
- (3) An explanation of the annual assessment, medical evaluation and support plan requirements and procedures, which shall be followed if either the assessment or the medical evaluation indicates the need for another and more appropriate level of care.
- (4) The party responsible for payment.
- (5) The method for payment of charges for long distance telephone calls.
- (6) The conditions under which refunds will be made, including the refund of admission fees and refunds upon a resident's death.

# Applicable Laws – Assisted Living and Personal Care

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## (Continued) What must be included in the Resident – Residence Contract under PA Law)?

- (7) The financial arrangements if assistance with financial management is to be provided.
- (8) The residence's rules related to residence services, including whether the residence permits smoking.
- (9) The conditions under which the resident-residence contract may be terminated including residence closure as specified in § 2800.228.
- (10) A statement that the resident is entitled to at least 30 days advance notice, in writing, of the residence's request to change the contract.
- (11) A list of assisted living services (or personal care services) or supplemental health care services, or both, to be provided to the resident based on the outcome of the resident's support plan, a list of the actual rates that the resident will be periodically charged for food, shelter and services and how, when and by whom payment is to be made.
- (12) Charges to the resident for holding a bed during hospitalization or other extended absence from the residence.
- (13) Written information on the resident's rights and complaint procedures as specified in § 2800.41 (relating to notification of rights and complaint procedures).

# Applicable Laws – Nursing Home Agreements

- If a Nursing Home is accepting Medicare or Medicaid, certain threshold standards apply under Federal Regulations, including admissions regulations. 42 C.F.R. § 483.12
- Nursing Homes, due to Federal funding, are heavily regulated. Therefore, admissions agreements in the nursing home context should be reviewed with much scrutiny.

# Applicable Laws – Nursing Home Agreements

- Equal Access to Care; Rules Related to Payment of Nursing Homes
- 42 C.F.R. § 483.10
- **(2) The facility must provide equal access to quality care regardless of diagnosis, severity of condition, or payment source. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all residents regardless of payment source.**

# Applicable Laws – Nursing Home Agreements

- A Nursing Home accepting Medicaid or Medicare may not require a third-party guaranty
  - Federal law states that a nursing home may “not require a third-party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility;”
- However, note that a facility may require an individual who has access to resident’s income and resources to sign an admissions agreement without incurring personal liability on behalf of the signing party

# Admissions Agreements – Medicaid for Long-Term Care

(4) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However, -

- (i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term “nursing facility services” so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and
- (ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

# Applicable Laws

## **42 U.S.C. §483.15 Admission, transfer, and discharge rights.**

(a) *Admissions policy.* (1) The facility must establish and implement an admissions policy.

(2) The facility must—

(i) Not request or require residents or potential residents to waive their rights as set forth in this subpart and in applicable state, federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and

(ii) Not request or require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(iii) Not request or require residents or potential residents to waive potential facility liability for losses of personal property



# Important Elements for an Admissions Agreement

# 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
- Seek advice of counsel when unclear

# 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

# Who May Enter into an Admissions Agreement?

- Resident
  - Capacity?
- Power of Attorney for Resident
- Guardian

# Who May Enter into an Admissions Agreement?

- ❑ “Responsible Party”
  - ❑ When used in an admissions agreement, responsible party should be defined specifically to avoid issues in interpretation.
  - ❑ Agreement should be clear that this person is the contact person and perhaps the person receiving pertinent information regarding the resident, but they should be specifically excluded as a “Guarantor” – or someone responsible for payment to the facility.

Agents Under Financial  
Powers of Attorney:  
Authority with Admissions  
Agreements



# 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

## Financial POAs

Caution:



While a POA may not be directly financially liable to the facility under the admissions agreement, the POA still may be liable as a breach of fiduciary duty for failure to provide payment from the resident's funds

## 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).

- **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.

Necessary  
Court  
Findings?

# Types of Guardians

Limited v. Plenary

Temporary v. Permanent

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.

# Case Studies



# 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
  - ❑ 2019 Proposed Rule CMS 3342-P – removed ban on pre-dispute arbitration agreements and solicited public comments
  - ❑ 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



# Arbitration Clauses in Admission Agreements

42 CFR § 483.70 - Administration.

**(n) *Binding arbitration agreements.*** If a facility chooses to ask a resident or his or her representative to enter into an agreement for binding arbitration, the facility must comply with all of the [requirements](#) in this section.

**(1)** The facility must not require any resident or his or her representative to sign an agreement for binding arbitration as a condition of admission to, or as a requirement to continue to receive care at, the facility and must explicitly inform the resident or his or her representative of his or her right not to sign the agreement as a condition of admission to, or as a requirement to continue to receive care at, the facility.

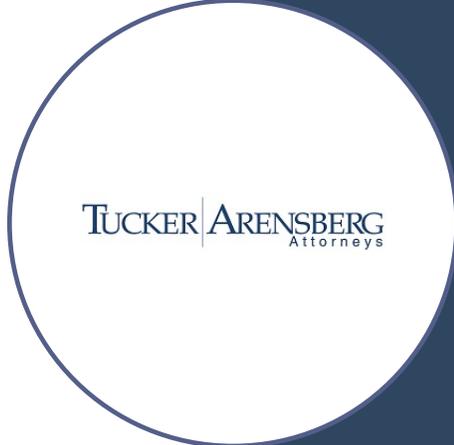
**(2)** The facility must ensure that:

**(i)** The agreement is explained to the resident and his or her representative in a form and manner that he or she understands, including in a language the resident and his or her representative understands;

**(ii)** The resident or his or her representative acknowledges that he or she understands the agreement;

**(iii)** The agreement provides for the selection of a neutral arbitrator agreed upon by both parties; and

**(iv)** The agreement provides for the selection of a venue that is convenient to both parties.

The logo for Tucker Arensberg Attorneys is centered within a white circle on a dark blue background. The text "TUCKER ARENSBERG" is in a serif font, with "Attorneys" in a smaller sans-serif font below it.

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# Arbitration Clauses in Admission Agreements

42 CFR § 483.70 - Administration.

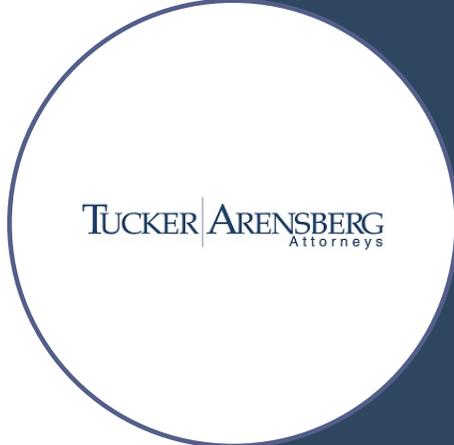
**(n) *Binding arbitration agreements.* (CONTINUED)**

**(3)** The agreement must explicitly grant the resident or his or her representative the right to rescind the agreement within 30 calendar days of signing it.

**(4)** The agreement must explicitly state that neither the resident nor his or her representative is required to sign an agreement for binding arbitration as a condition of admission to, or as a requirement to continue to receive care at, the facility.

**(5)** The agreement may not contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials, including but not limited to, federal and state surveyors, other federal or state health [department](#) employees, and representatives of the Office of the State Long-Term Care Ombudsman, in accordance with [§ 483.10\(k\)](#).

**(6)** When the facility and a resident resolve a dispute through arbitration, a copy of the signed agreement for binding arbitration and the arbitrator's final decision must be retained by the facility for 5 years after the resolution of that dispute on and be available for inspection upon request by [CMS](#) or its designee.



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# Asset Disclosure – Business Office/Manager

- What is the role of the business office in the admissions process?
- Business Office should be weary of providing advice to residents regarding their asset disclosures, or providing advice regarding Medicaid applications, for example.
- Providing specific legal advice related to a legal contract (admissions agreement) or related to the financial elements of a Medicaid application can potentially cause liability or fault on the facility

# Asset Disclosure – Business Office/Manager

- Often Admissions Agreements request income and financial information
  - This is because the facility wants to ensure that the prospective resident has the funds for continued payment of their care costs
- Business office should verify the information that they are receiving is correct. For example, does the resident have a POA or Guardian that is responsible for their funds that would be able to verify all information is accurate?

# Who is the Payor?

- Guarantees/Guarantors

- When are these allowed?

- Federal Regulation:

42 USC §483.15 **Admission, transfer, and discharge rights.**

(3) The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

# Collections Actions

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- Against 3<sup>rd</sup> parties
- Filial support
  - Pennsylvania’s filial support law generally provides that a spouse, child or parent who has “sufficient financial ability” of an indigent person has “the responsibility to care for and maintain or financially assist [such] indigent person, regardless of whether the indigent person is a public charge”. 23 Pa.C.S. § 4603(a)-(c).
  - In its April 26, 2019 Opinion in the matter of *Melmark, Inc. v. Schutt, et al.*, the Pennsylvania Supreme Court held that Pennsylvania’s filial support statute applies to a support claim by a Pennsylvania healthcare provider against parents domiciled in New Jersey for care provided in Pennsylvania to their disabled adult son.
  - The *Melmark* Opinion expands upon the application of Pennsylvania’s filial support statute, 23 Pa.C.S. § 4603(a)-(c), which was applied most notably by the Pennsylvania Superior Court in *Health Care & Retirement Corporation of America v. Pittas* to hold that a son was liable for his mother’s nursing care bill of nearly \$93,000

## Questions?

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**Nora Gieg Chatha, Esq.**

412-594-3940

nchatha@tuckerlaw.com

**Jennifer Bittel Derby, Esq.**

412-594-3936

jderby@tuckerlaw.com

1500 One PPG Place

Pittsburgh, PA 15222