



How To Deal With Difficult Families

LeadingAge
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Faculty

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Common Issues

- Intra-Family Conflict
- Treatment Decisions
- Serial Complaints
- Deadbeats

Admissions Process

- Best way to deal with a difficult patient and/or family is ***not to accept for residency.***
- Perfectly acceptable to decline a potential admission . . .
 - after admission, however, may only terminate residency under certain, narrow criteria
- Cannot decline admission based on a “protected class” criteria
- Payor source is not a protected class

Admission – Residency Agreement

- Laws and regulations give residents rights and take facilities' away.
- Residency Agreement is the basic source of a facility's rights.
 - Also serves as valuable way to communicate expectations.
- Community expectations must be communicated consistently by marketing, administration, and operations.

Hello Problem Solver

- Every single resident and family member sees you as a problem solver:
 - Housing
 - Care
 - Therapist (for family too)
 - Mediator
 - Miracle Worker

Relationship Building

- Starts before the tour
- Set expectations
- Don't promise what you can't deliver
- Treat them all the same
- Ongoing communication
- Be honest. Own your errors.
- Let them come anytime

Ongoing Relationship

- Call with good news on occasion
- Newsletter, internet
- Your front desk person is critical
 - Scripting on how to handle situations
 - Train to not give too much information
- Dementia specific tactics

Communication Issues

- “Don’ t listen to my mother, listen to me!”
- “Don’ t listen to my sister, listen to me!”
- “I don’ t care how you do that here, this is how you should do it.”
- “You people are so incompetent.”
- “You never told me that.”

Communication Issues

- “Listen, this isn’t my mom’s problem. It’s yours.”
- “I swear we’ll sue you.”
- “I will gladly pay you on Tuesday.”
- “I’m the POA and I make the decisions.”
[even though Mom is competent]

“Don’t listen to my Mom”

- Is the resident competent?
- If not, is there a designated decision maker for health care?
- If not, is there a designated surrogate?
- Is the direction improper?
- Document discussions and agreements.
- Document the resident’s wishes and statements regarding her independence.

“Don’t listen to my sister”

- Is the resident competent?
- If not, is there a designated decision maker for health care?
- If not, is there a designated surrogate?
- Is the direction improper?
- Try to avoid getting in the middle of the fight.
- Document discussions and agreements.

Who Decides

- **Competency**
 - What is it?
 - Medical vs. Legal
- **DNR Order**
- **Surrogate Decision Making**
 - Health Care Decisions
 - Property Decisions
- **Non-authorized “decision makers”**

Competency

- Presumption of Competency.
- If question regarding an competency get a physician involved.
- Decisions regarding competency should be fully documented.
- Having someone who is willing to be a surrogate decision maker present is not sufficient.

Competency

- The Patient – unless clearly incompetent
- Guardian *of person* – health care powers
 - Be careful about extraordinary treatments
- Health Care Power of Attorney.

Treatment Decisions

- Conflict over the course of a resident's treatment implicates a variety of competing rights and obligations.
 - Long-term care facility must provide treatment as ordered by resident's physician.
 - Resident has the right to refuse treatment.
 - Long-term care facility does not have to follow treatment directives that violate its policies or conscience.
 - What happens at the impasse?

Contraindicated treatment directions

- Individual (often family member *very* involved in care) is making decisions that are clearly not in the resident's best interest.
- Not required to follow direction, even if the person is the designated decision maker.
- Do not tolerate interference with care or interference with other residents.
- Criticism is not interference.
- Understand the role you may play in their life.
- May need to address through incremental steps.

Contraindicated treatment directions

- Set limitations and parameters
- Document interactions
- Document the problem
- Get other family members involved
- Get ombudsman involved
- Letter from lawyer
- Prohibit entrance to facility
- Involuntary discharge
- Judicial intervention; restraining order

Possible Limitations/Parameters For Family Member

- Must follow service plan.
- Cannot interfere with care.
- Can only visit at certain times.
- Can only visit with supervision.
- May not bring in food or medicines.
- May not talk with certain staff.

Barring An Individual

- Not an explicit right but arguably within the community's power.
- Should have attorney draft the notice.
- Understand that this is not an easy road to go down.

Calling in the Calvary

- Potential partners for help with difficult family situations:
 - The Ombudsman
 - Geriatric Care Managers
 - Other Family Members
 - State Regulatory Agencies
 - Facility's Lawyer; Courts
 - Police

The Ombudsman

- Really may be there to help.
- Early involvement can prevent misunderstandings.
- The Ombudsman can be a partner in resolving a problem.
- Focus on the resident's interests.
- Even if the Ombudsman is unhelpful, don't ignore.

Geriatric Care Managers

- Can be sensible advisors to families
- Intermediaries
- Independent/neutral
- Shouldn't make demands that are clinically inappropriate

Other Family Members

- Others may not be aware of situation.
- May be helpful in changing behavior.
- May need to give them a stronger interest in the issue.
- Be careful – Don't get in the middle of a family war.

State Regulatory Agencies

- Make them aware of the issue.
 - Party that frames the issue usually gains the upper hand. Tattle first.
- Discuss approaches.
 - Get buy-in to your approach. Less likely to second-guess solution when informed of it before implemented.
- Give them your side.

Facility's Lawyer; Courts

- You do not have to deal with the problem alone, get help.
- Lawyer will help consider potential liabilities and risk manager. May advise to involve insurance carrier.
- Tough action can be directed by legal counsel, keeping administration as “good guy”.
- Courts may give relief on “common-sense” issues where the health care regulatory world looks too narrowly.

Police

- May be needed to “keep the peace”
- Do not hesitate to involve the police to prevent or resolve disruptions at community
- What’s your relationship with local police?
 - First contact with local police should not be when they are called to community in a crisis situation
 - “Just want to make you aware that we are having difficulty with a family and may be calling you to assist us.”

Serial Complainers

- Sometimes families do not *want* to be satisfied.
- Root-cause analysis: trouble dealing with resident's illness, life changes? sympathy and attention? obsession of the moment; building a lawsuit?
- Cannot overlook legitimate complaint because of volume of past, baseless complaints

Serial Complainers

- Communication strategy
 - Beware attempts to involve all staff in gripes, create confusion, cause divisions
 - May need to designate one supervisor to channel communications
- Risk Management – consider involving risk management/legal/insurance carrier

Deadbeats

- You expect us to pay?!
- Non-payment is a source for huge frustration, where long-term care facilities have limitations on actions to take against residents and their families.
- A quick and coordinated response will help; there are provisions for the Residency Admission contract that can help.

Deadbeats

- What's the cause for the outstanding balance/non-payment?
 - Lack of communication about bills and finances?
 - Depletion of assets?
 - Need to pursue Medicaid?
 - Financial exploitation or diversion of income and assets?

Deadbeats

- Have a system for monitoring accounts receivable and outstanding balances
- Don't let any residents slip through the cracks
- Don't set aside an account that is accruing an outstanding balance to address it later
- Set a target dollar amount or a certain time frame that initiates action on the account

Deadbeats

- Use a **team** approach
- Admissions coordinator – to set the tone from the beginning and utilize payment security options
- Social Services – to monitor what is happening in the family dynamic
- Business office – alert other disciplines when payment is becoming a problem; initiate and drive effort to obtain payments
- Administrator – coordinate the team; reach out for legal assistance

Deadbeats

- Act fast!
- The larger and older an unpaid balance becomes, the harder it is to collect
- It may take several months to get a resolution – even if the outstanding balance is small now, it may grow out of control before it is collected

Deadbeats

- Designate a “bad guy”
 - The person wrangling payment from a resident’s family should not be a front-line care-giver or someone whom family contacts first about care issues
 - The only contact the family should have with the bill collector is the bill collecting
 - Who?
 - business office manager; person who sends the bills; facility’s accountant; attorney

Deadbeats

- Set timeline and stick to it:
 - Initial notice;
 - Nasty letter;
 - Notice of involuntary discharge;
 - Notice of notification to authorities

Deadbeats

- Notice of involuntary discharge
- Under federal law (for certified facilities) and State law (for private-pay only), facility may terminate residency when:
 - “The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility.”

Options to Secure Resident Payment

- Residency Agreement provisions to secure payments:
 - Requiring 3rd party to use resident's funds
 - Fee Guaranty
 - Admission Deposit
 - Promissory Note

3rd Party Use of Resident's Funds

- Make part of standard Residency Agreement/admissions contract
- Is there a 3rd party that controls resident funds? (spouse, family, guardian, resident representative, POA)
- Contract provision requires the 3rd party to use the *resident's* income and assets for the *resident's* care

3rd Party Use of Resident' s Funds

- How?
 - Directly sign over the resident' s monthly income (i.e., pension or Social Security checks)
 - Make the facility the designated payee on Social Security checks
 - Liquidate assets (investments, stocks, property, home) to make payments

3rd Party Use of Resident's Funds

- 3rd party with control over a resident's funds is a *fiduciary*
- This contract provision highlights the already-existing fiduciary duties
- What if the 3rd party refuses or fails to use the resident's funds to pay for the resident's care?

3rd Party Use of Resident's Funds

- Legal action:
- Sue 3rd party for breach of this contract
 - 3rd party likely a better source for recovery of damages
- Report to the State regulatory agency for suspected elder abuse or neglect (financial exploitation)
- Report to local police for financial exploitation

Fee Guaranty

- In a fee guaranty, a 3rd party (guarantor) agrees to be *personally liable* for the resident's debt – that is, the guarantor will pay the resident's bills and future bills with the guarantor's own funds.
- The guarantor can be any 3rd party – legal representative, family member, friend or acquaintance
- Trade-off: the fee guaranty is a *very powerful tool* to secure resident payments, but it is so powerful that it must be carefully crafted and executed.

Fee Guaranty

- If a potential guarantor declines to execute a fee guaranty, the facility must accept that decision.
- If it appears that the fee guaranty was involuntary or conditional, then the fee guaranty will be void and the facility may face additional legal liability.

Admissions Deposit

- A facility may require that a resident pay a deposit as a condition for admission. The Deposit Fee agreement may be a rider to the residency agreement or a separate contract.
- Agreement:
 - Resident pays a refundable deposit as security for the resident's payment
 - Amount? Suggest 2 or 3 months of expected charges
 - Facility safeguards the deposit, and resident has no access to or use of the deposit

Admissions Deposit

- Agreement (continued):
 - If the resident has an unpaid, outstanding balance, facility may draw from the resident's deposit to satisfy the outstanding balance
 - Resident is then required to replenish the full deposit amount
 - Upon discharge, the deposit is used to pay any outstanding balance on the resident's account; remainder of the deposit is then refunded to the resident or resident's estate
- Similarly, consider **pre-payment**

Promissory Note

- A Promissory Note is a promise to pay a certain, specified amount at a future date or upon a future event.
- Use for a resident that you know who has assets, but those assets may not be liquid or may be in someone else's control