WORKING WITH AND MANAGING DIFFICULT FAMILIES

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Managing the Problem Family
Member/Caregiver

“Possession is 9/10th of the law.”
Once a resident has been admitted, it is very difficult under current regulations to effect a transfer.

Managing the Problem Family
Member/Caregiver

Follow your intuition regarding prospective residents (and family members)
Managing the Problem Family Member/Caregiver

Pre-Admission Checks:
• Sex Offender Registry
• Criminal History (Iowa Courts Online)
• Collection History (Iowa Courts Online)
• Litigation History (Iowa Courts Online)

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Claims for Refusal to Admit:
• DIA does not have jurisdiction

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Claims for Refusal to Admit:
• Iowa Civil Rights Commission (protected categories):
  1. Gender
  2. Race
  3. Religion
  4. Disability
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Claims for Refusal to Admit:

Unlikely to succeed if based on disability, as most residents in NFs/SNFs suffer from some type of disability.

Involuntary Discharge

1. For the Resident’s Welfare or That of Other Residents - “Welfare” of a resident or that of other residents refers to their social, emotional, or physical well-being.

Involuntary Discharge

A resident might be transferred or discharged because the resident’s behavior poses a continuing threat to the resident (e.g., suicidal) or to the well-being of other residents or staff (e.g., the resident’s behavior is incompatible with the resident’s needs and rights) [Source: § 58.40(1)(b)].
Involuntary Discharge

2. Behaviors impacting other residents such as yelling, verbally abusing, striking out, sexually assault of peer residents suffice as reasons for discharge. These behaviors need to be well-documented in the clinical record, including any identified impact on the other residents.

Involuntary Discharge

3. A resident who is non-compliant with care needs (refusing medications, non-compliant with care directives [e.g. – repositioning, bathing] usually does not provide sufficient basis for discharge, unless that refusal has in impact on other residents in the facility (odor considerations).

Involuntary Discharge

4. Discharges based on “welfare” considerations - Regulations require that “evidence that the resident’s continued presence in the facility would adversely affect the resident’s own welfare or that of other residents shall be made by the administrator or designee and shall be in writing and shall include specific information to support this determination [Source: § 58.40(1)(b)].
Involuntary Discharge

5. I’m ready to discharge a resident, but where are they going to go?

If discharge is based on significant behavioral problems, it may be difficult if not impossible to locate a different provider who agrees to accept the resident.

Involuntary Discharge

The Department will watch a discharge action closely, and will not hesitate to cite a facility, if there is evidence to suggest that a resident has been “dumped” back on a family member, if there is inadequate evidence of careful discharge planning including securing proper care resources.
Involuntary Discharge

Potential options may include discharge to different level of care provider (hospital, mental health institution, psychiatric facility; home with home health services arranged).

Involuntary Discharge

If a discharge is based on a resident’s violent behavior, some facilities have called law enforcement, seeking arrest of the resident, however law enforcement may refuse involvement out of concern that they will be stuck with placement considerations.

Involuntary Discharge

In non-payment is an issue, discharge back to a family may be the only option, but if the family contests the discharge, the Administrative Law Judges have been sympathetic to family’s arguments that they are unable to care for a resident in a home setting based on care needs and lack of family members home during the day because of employment.
Involuntary Discharge

If non-payment is due to ineligibility or denial of Medicaid, remember that under F206, the rule that requires a facility to re-admit a resident following a hospitalization only applies if the resident “is eligible for Medicaid nursing facility services.”

Involuntary Discharge

In this circumstance, a resident who is hospitalized, does not have a right to return to the facility under either the bed hold rules or F206. Please assure that your bed hold policy provides that a bed will not be held if there is a delinquency owing for past charges.

Involuntary Discharge

Remember to strictly follow the written involuntary discharge notice procedures under 58.40 (30 day notice with specific requirements and copies to specified individuals and agencies).
The Problem Family Member/Caregiver

Neither state nor federal regulations allow for an involuntary discharge of a resident based on a problematic family member.

Managing the Problem Family Member/Caregiver

Problem family members need more attention, not less. Oftentimes facilities, out of frustration, give up attempting to resolve grievances by problem family members.

Managing the Problem Family Member/Caregiver

What is the source of the dissatisfaction?

1. legitimate care concerns;

2. unrealistic expectations;
**Managing the Problem Family Member/Caregiver**

What is the source of the dissatisfaction?

3. personality conflicts; and/or
4. inability to deal with changes in loved one.

**Managing the Problem Family Member/Caregiver**

Try to encourage families to be part of solution and to be active in care.

**Managing the Problem Family Member/Caregiver**

If a family member’s repeated complaints are legitimately without basis, documentation of the facility investigation to the unfounded complaints provides ammunition in subsequent litigation and communication with the Department that the family member’s perceptions or expectations were unreasonable.
Managing the Problem Family Member/Caregiver

If the facility perceives that guilt or emotional problems associated with the resident’s placement serve as the basis for a family member’s complaints, utilizing the services of the social worker, religious advisor or other community outreach programs may assist the family member in resolving his/her negative feelings.

Managing the Problem Family Member/Caregiver

Carefully screen admissions for potential grievance concerns. A family member that has sought multiple placements for a resident or reports extensive dissatisfaction with several previous placements ought to be a red flag that no amount of care will be acceptable to a family member.

Managing the Problem Family Member/Caregiver

Screen prospective admissions for evidence of significant family conflict which may be a sign of potential problems.
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Family Members as a Source of Regulatory Complaints: Pursuant to Iowa Code 135C.38(1)(a) relating to complaints, “unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, the department or committee shall make or cause to be made an on-site inspection of the health care facility.”

Managing the Problem Family Member/Caregiver

If a facility has a well-based belief that a family member is making harassing or unfounded complaints, a facility can make their concerns known to the Department. This does not guarantee that the Department will decline to investigate a complaint made by a problematic family member.

Managing the Problem Family Member/Caregiver

Prohibition on Retaliation - Pursuant to Iowa Code 135C.46, a facility shall not discriminate or retaliate in any way against a resident who has initiated or participated in any proceeding authorized by this chapter, and is subject to a fine or immediate revocation of the facility’s license.
Managing the Problem Family Member/Caregiver
Further, any attempt to expel from a health care facility a resident by whom or upon whose behalf a complaint has been submitted to the department under section 135C.37, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the licensee in retaliation for the filing of the complaint.

Managing the Problem Family Member/Caregiver
Visitation restrictions - Pursuant to Iowa Administrative Code 58.47(2), a particular visitor(s) may be restricted by the facility for one of the following reasons:

1. The resident refuses to see the visitor(s). [This applies to requests to deny access to a visitor by a legal surrogate – power of attorney for health care].

Managing the Problem Family Member/Caregiver
Visitation restrictions - Pursuant to Iowa Administrative Code 58.47(2), a particular visitor(s) may be restricted by the facility for one of the following reasons:

2. The resident’s physician documents specific reasons why such a visit would be harmful to the resident’s health.
Managing the Problem Family Member/Caregiver

Visitation restrictions - Pursuant to Iowa Administrative Code 58.47(2), a particular visitor(s) may be restricted by the facility for one of the following reasons:

3. The visitor’s behavior is unreasonably disruptive to the functioning of the facility.

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(this judgment must be made by the administrator and the reasons shall be documented and kept on file).

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Any visitation restrictions should be in writing, with a copy to the program coordinator at DIA.
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Visitation restrictions should be imposed incrementally, and can include restrictions on time and location of visitation.

Managing the Problem Family Member/Caregiver

Family members who remain non-compliant may be subject to increasingly restrictive visitation.

Managing the Problem Family Member/Caregiver

It would be an extremely rare circumstance where visitation is banned completely (e.g. allegations of abuse).
Managing the Problem
Resident/Family Member/Caregiver

QUESTIONS?