

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-04-17

DATE: January 8, 2004

FROM: Director
Survey and Certification Group

SUBJECT: Clarification on Nursing Homes Requiring Promissory Notes or Deposit Fees as a Condition of Admission, and Implications Related to Surety Bonds

TO: State Survey Agency Directors

Letter Summary

- The purpose of this memorandum is to address issues of nursing homes requiring promissory notes or deposit fees as a condition of admission and the implications of deposit fees on surety bonds.
- 42 C.F.R. §489.22 addresses special provisions applicable to prepayment requirements.
- 42 C.F.R. §483.12(d)(3) prohibits a nursing facility from charging, soliciting, accepting, or receiving any gift, money, donation, or other consideration as a pre-condition of admission or continued stay in the facility.
- 42 C.F.R. §483.10(c) gives the resident the right to manage his or her financial affairs.

Deposit Fees and Promissory Notes as Conditions of Admission

The Centers for Medicare & Medicaid Services (CMS) has been asked whether a facility requiring a deposit fee or a promissory note as a criterion for admission is in violation of any of the resident protections set forth in the requirements for long term care facilities at 42 C.F.R. Part 483 or provider agreement requirements at C.F.R. 42 Part 489.

There are several relevant regulations that preclude a facility from charging an admission deposit, or requiring a promissory note be signed for an individual being admitted to a Skilled Nursing Facility (SNF) or Nursing Facility (NF) in which the individual's stay is covered by Medicare or Medicaid.

42 C.F.R. §489.22 addresses special provisions applicable to prepayment requirements. The regulations prohibit a provider of inpatient services from requiring an individual entitled to Medicare to prepay the nursing home as a condition of admittance for services covered by Medicare. A provider may not deny covered inpatient services to an individual entitled to payment made for those services due to inability or failure to pay a requested amount at or before admission. Additionally, a provider may not charge an individual for an agreement to admit or readmit the individual on some specified future date for covered services.

Similarly, 42 C.F.R. §483.12(d)(3) prohibits a nursing facility from charging, soliciting, accepting, or receiving, (in addition to any amount payable under the Medicaid program) any gift, money, donation, or other consideration as a pre-condition of admission or continued stay in the facility.

These regulations do not preclude a facility from charging a deposit fee to, or requiring a promissory note from, an individual whose stay is not covered by Medicare or Medicaid. In instances where the deposit fee is refundable and remains funds of the resident, the facility must have a surety bond that covers the deposit amount.

When a nursing home resident or applicant applies for Medicaid, the facility often requires the resident to pay for NF services (usually at private pay rates) during the period it takes to determine Medicaid eligibility. A NF is permitted to charge an applicant or resident whose Medicaid eligibility is pending, typically in the form of a deposit prior to admission and/or payment for services after admission. Medicaid eligibility will be made retroactive up to 3 months before the month of application if the applicant would have been eligible had he or she applied in any of the retroactive months. In addition, the NF must accept as payment in full the amounts determined by the state for all dates the resident was both Medicaid eligible and a NF resident. Therefore, a NF that charged a recipient for services between the first month of eligibility established by the state and the date notice of eligibility was received is obligated to refund any payments received for that period less the state's determination of any resident's share of the NF costs for that same period. A NF must prominently display written information in the facility and provide oral and written explanation to applicants or residents about applying for Medicaid, including how to use Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

Under the post-eligibility process, if the Medicaid-eligible resident has income and is required to make a monthly payment to the NF (which is a portion of the Medicaid payment amount), then the NF is permitted to retain the amount it is legally owed. However, the NF must not charge any administrative fees.

Protection of Resident Funds and Surety Bonds

The requirements in the nursing home regulations at 42 C.F.R. Part 483 set forth protections for resident funds. Regulations at 42 C.F.R. §483.10(c) give the resident the right to manage his or her financial affairs. The facility may not require residents to deposit their personal funds with the facility. In cases where the resident chooses to deposit funds with the nursing home, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in 42 C.F.R. §§483.10(c)(3) through (8). The requirements further mandate that the facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

The purpose of the surety bond is to guarantee that the facility compensates residents for any loss of funds that the facility holds, safeguards, manages and accounts for. If residents choose to have the facility manage their funds, the facility may not refuse to handle these funds. The facility is not responsible for assets not on deposit with them.

The facility is required to have and maintain a system that assures the complete and separate accounting of each resident’s personal funds entrusted to the facility on the resident’s behalf. The surety bond is not limited to personal needs allowance funds. Any resident funds that are entrusted to the facility for a resident must be covered by the surety bond, including refundable deposit fees.

If you have any questions, please contact Jeane Nitsch at (410) 786-1411 or via E-mail at Jnitsch@cms.hhs.gov.

Effective Date: Immediately.

Training: This information should be distributed to all survey and certification staff, their managers, and the state/RO training coordinator.

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management (G-5)