



## **All Admission Agreements Are Not Created Equal!** **How to Ensure Your Admission Agreement Protects Your Facility**

Admission Agreements are the first line of defense in proactively addressing any financial concerns your health care facility may have in addressing problems with residents' financial accounts. Even if your facility has a robust Admission Agreement, it may not include all of the important things that a facility may need it to cover in the event of a family member's refusal to cooperate in the Medicaid application process, a failure to disclose a transfer of assets during the Medicaid look-back period, or in the case of a payment dispute which leads to litigation.

Through Cona Elder Law's many years of experience litigating nursing home collections cases, we have become astutely familiar with the clauses of Admission Agreements which are often unintentionally omitted, to a facility's detriment, and other provisions which, when unartfully drafted, can be exploited by opposing parties to a lawsuit seeking to avoid payment.

### **Some key elements of an effective Admission Agreement are:**

- Contractual language which enlists the assistance of a 3<sup>rd</sup> party "designated representative" or "sponsor" who has access to the resident's financial accounts and can assist in the Medicaid application process and the remittance of private payment and/or NAMI (with clear language defining the role and responsibilities of the "designated representative" and/or "sponsor");
- Clear and specific information concerning the obligation to remit the resident's monthly income to the facility while the Medicaid application is pending, and private payment for all uncovered months in the event the Medicaid application is denied (or a penalty period is imposed);
- Language requiring signators to attest to the "truth of statements" made in the Admission Agreement, and requiring the signatory to confirm, in writing, that they have not received, and are not aware of, any transfers of assets from the resident during the five years immediately preceding the admission to the facility (constituting a "representation" by the resident and/or 3<sup>rd</sup> party as to their financial eligibility for Medicaid);

- A clear explanation regarding how 3<sup>rd</sup> party signators may be held personally liable for damages incurred due to a breach of their obligations under the contract (to circumvent any argument claiming that holding these individuals responsible for breach of contract constitutes an impermissible 3<sup>rd</sup> party guarantee); and

- Contractual language entitling the facility to receive an award of interest, attorneys' fees and expenses, and other collections costs in the event of a breach of the Admission Agreement resulting in damages.

It is important for health care facilities to regularly perform a **Admission Agreement check-up** to ensure your facility's Admission Agreement is fully up-to-date, compliant with all applicable laws and regulations, and includes all of the recommended contractual provisions that will allow your Admission Agreement to fully protect you from liability and potential loss of revenue.

The experienced and skilled attorneys at Cona Elder Law can assist you in ensuring your facility's Admission Agreement is comprehensive, up-to-date and compliant, and, most importantly, will protect you in the event of a nonpayment dispute.

**Contact us at 631. 390.5000 to set up your Admission Agreement check-up and see if your facility can benefit from a new or updated Admission Agreement today!**

*Cona Elder Law is an award-winning health care law firm with a superior reputation representing health care systems, health care facilities, Assisted Living Facilities and Continuing Care Retirement Communities in New York, New Jersey and Pennsylvania. As an Elder Law firm, Cona Elder Law offers expertise in government benefits, Medicaid, Medicare, Fair Hearings, Article 78 proceedings and Guardianships, in addition to collections and litigation. We keep open all possible sources of payment, whether private payment through litigation or by securing Medicaid benefits on behalf of a resident. With our unsurpassed success rate, Cona Elder Law is more efficient and more effective than other law firms. Contact us at [631.390.5000](tel:6313905000) or visit [www.conaelderlaw.com](http://www.conaelderlaw.com).*