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# Representing Clients Receiving Long-Term Services and Supports

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# NSCLC

**National Senior Citizens Law Center**

Protecting the Rights of Low-Income Older Adults

*The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and preserve their access to the courts. For more information, visit our Web site at [www.NSCLC.org](http://www.NSCLC.org).*

# Nursing Home Reform Law

- Applies to every facility certified for Medicare and/or Medicaid.
- Applies regardless of resident's payment source.
- Law found at 42 USC 1395i-3 (Medicare), 1396r (Medicaid); 42 CFR 483.1 – 483.75
  - Surveyor's Guidelines in Appendix PP to State Operations Manual

# Law's Cornerstone: Individualized Care

- Facility must provide services that resident needs “to attain or maintain the highest practicable physical, mental, and psychosocial well-being.”
  - 42 C.F.R. 483.25

# Facilities' Standard Procedures Often Violate Law

- Important to recognize and combat false statements.
- 20 Common Nursing Home Problems – and How to Resolve Them
  - Downloadable for free from [nsclc.org](http://nsclc.org)

*“Medicaid does not pay for the service that you want.”*

- A facility “must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State [Medicaid] plan for all individuals ***regardless of source of payment.***”
  - 42 C.F.R. 483.12(c)



# Medicaid-Eligible Residents Are Not Second-Class Citizens

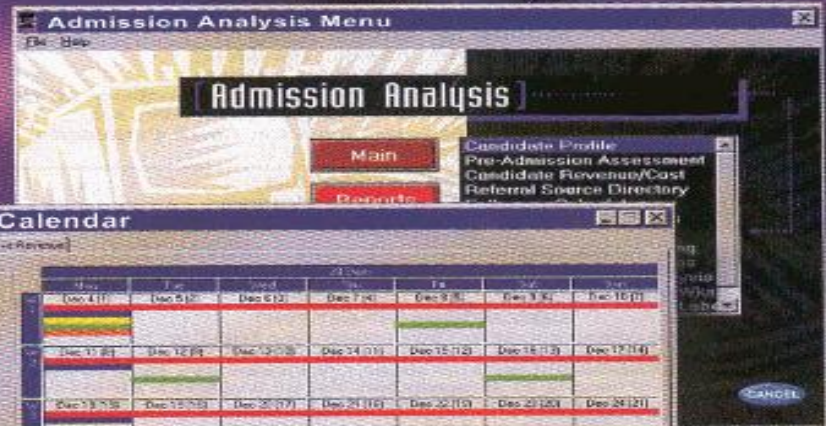
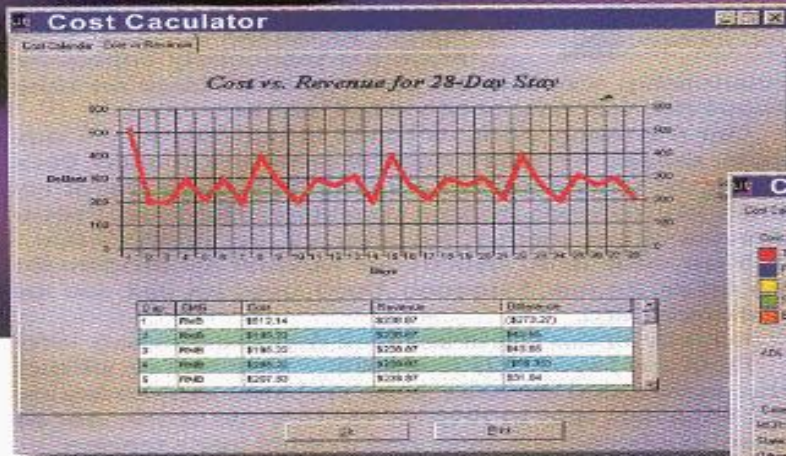
- Reform Law requires high quality care for all residents.
- A facility must not discriminate on the basis of payment source.
- **Don't listen to facility tales of financial woe**; it is hypocritical for facility to accept Medicaid money and then plead poverty as excuse.



# Resist emphasis on reimbursement.

## Introducing **Amazing New Admission Analysis.**

# It's Pre-Admission Costing On Steroids.



**Finally, an admission management tool built to integrate seamlessly with the rest of your system!**

**You can manage your bottom line one admission at a time!**

# “The nursing staff will determine your care.”

- 
- Assessment within 14 days

- Care plan w/i 7 days after assessment

- Resident & resident’s representative participate in preparation of care plan

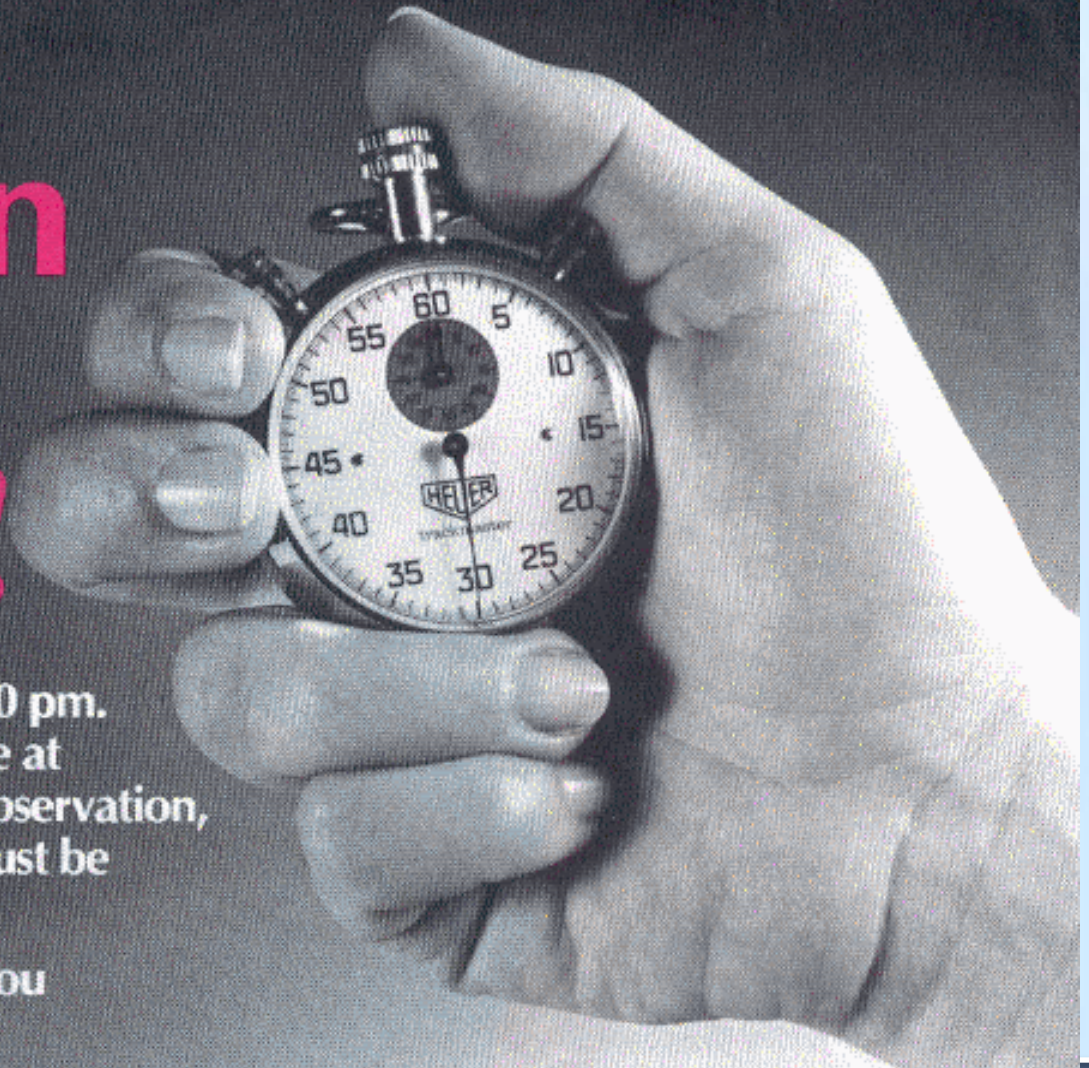


# Some care planning is deficient!

## Draft a Care Plan in 30 Seconds!

A new resident is admitted at 2:00 pm. And you're scheduled to go home at 3:30 pm. Meanwhile, the basic observation, assessment, and care planning must be done before you leave.

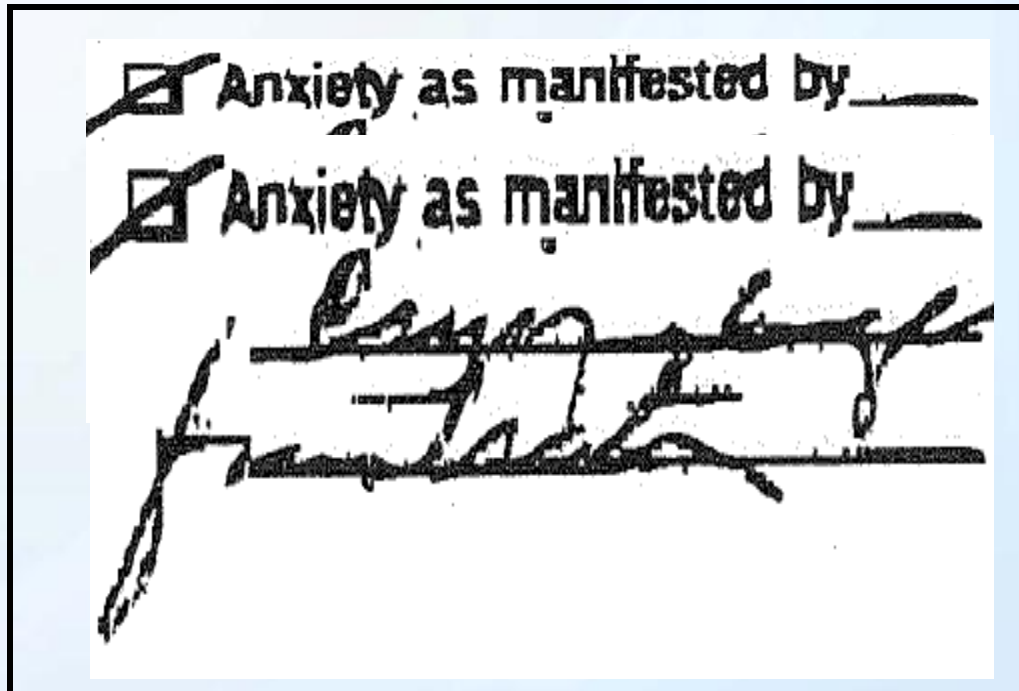
Beechwood® software will help you get it all done in time:



# 30 seconds?!!

- 2:00 pm: Resident admission and observation
- 2:15 pm: Review patient history
- 2:25 pm: Admitting progress notes recorded on computer
- 2:30 pm: Record medical and nursing diagnoses on computer
- 2:40 pm: Doctor's confirmation
- 2:45 pm: **Draft the Care Plan on computer in 30 seconds**
- 2:45 pm: Review and personalize Care Plan on computer
- 3:00 pm: Print Care Plan for Chart
- 3:05 pm: Print Progress Notes from your shift for Shift Report
- 3:10 pm: Discuss new resident and other events with evening nurse
- 3:30 pm: Leave facility

# Anxiety Problems





# Anxiety Goals

Resident will verbalize and/or demonstrate decreased anxiety level.

↓  
90 Days

# Anxiety Interventions

➤ Encourage to verbalize feelings; give realistic, positive feedback. Attempt to identify sources of anxiety and help to resolve where appropriate. Diversional activities to redirect attention away from anxiety. e.g. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



*“We don’t have enough staff, so you must wake up at six a.m.”*

- A resident has right to “reasonable accommodation of individual needs and preferences.”
  - 42 USC 1395i-3(c)(1), 1396r(c)(1)
- “[A] resident has the right to [c]hoose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care.”
  - 42 CFR 483.15

*“If we don’t tie your father down, he may fall or wander away.”*

- Right to be free from “any physical or chemical restraint imposed for purposes of discipline or convenience and not required to treat ... medical symptoms.”
  - 42 CFR 483.13
- Use of restraints requires physician order and informed consent.

*“Your mother needs meds to make her more manageable.”*

- Medication cannot be used for discipline or facility convenience.
  - 42 CFR 483.13(a)
- Is the medication for resident’s good or facility’s convenience?

# CMS Advocates Lessened Restraint Use

- e.g., Report on “Freedom from Unnecessary Physical Restraints: Two Decades of Process,” Survey and Certification Letter 09-11 (11/7/08)
- “Initiative to Improve Behavioral Health and Reduce the Use of Antipsychotic Medications in Nursing Home Residents”
  - <http://surveyortraining.cms.hhs.gov/pubs/VideoInformation.aspx?cid=1098>

*“We must end therapy because you aren’t making progress.”*

## **Medical Judgment**

- Facility is responsible for trying to “maintain” resident's condition.

## **Medicare Rules**

- Payment source should not affect care.
- Medicare payment does not require “progress.”
  - 42 CFR 409.32
  - *Jimmo v. Sibelius*

# *“Your children can visit you only during visiting hours.”*

- “[I]mmediate family or other relatives” have right to visit at any time.
  - 42 CFR 483.10(j)
  - Surveyors Guidelines say: “Likewise, facilities must provide 24-hour access to other non-relative visitors who are visiting with the consent of the resident.”

# *“We can’t admit your mom unless you guarantee debt.”*

- Reform Law prohibits facilities from requiring financial guarantees.
  - 42 CFR 483.12(d)
- Current admission agreements often obligate family member or friend (if he or she has access to resident’s money) to:
  - Use resident’s money to pay facility bill; and
  - Take all steps to apply for Medicaid when appropriate.



*“Please sign this arbitration agreement; it’s no big deal.”*

- There is no reason to agree to arbitration at time of admission.
- Per contractual language, arbitration often is optional.

# Medicaid Payment for Assisted Living

- CMS defers to states on assisted living standards.
- But often assisted living licensure statutes are poor fit for HCBS-eligible population.

# Proposed Regs for Community Character of Residential Settings

- Helpful provisions applicable to all HCBS settings:
  - Facilitation of full access to greater community, including ability to seek work.
  - Right to privacy, dignity, and respect.
  - Freedom from coercion and restraint.
  - Independence in making life choices.
  - Facilitation of LTSS choices.

# Rights Specific to Provider-Owned Settings

- Right to particular physical space, with protections against eviction.
- Privacy
  - Lockable doors (appropriate staff with keys)
  - Sharing rooms only by choice
  - Freedom to furnish or decorate living units

# Additional Rights in Provider-Owned Settings

- Control over schedules and activities.
- Visitors at any time.
- Physically accessible setting.

# Excluded Settings

- Nursing facilities, IMDs, ICF-MRs
- Other settings as determined by CMS, with presumption of disqualification:
  - In building that also provides inpatient treatment, or
  - On grounds of, or adjacent to, public institution or disability-specific housing complex.

# CMS Issues

## Managed Care Guidance

- In process for several years.
- CMS states that guidance will be evolving process.



# Ten Elements

- 1) Adequate Planning and Transition Strategies
- 2) Stakeholder Engagement
- 3) Enhanced Provision of HCBS
- 4) Alignment of Payment Structures with LTSS Programmatic Goals
- 5) Support for Beneficiaries

# Ten Elements (cont.)

- 6) Person-Centered Processes
- 7) Comprehensive and Integrated Service Package
- 8) Qualified Providers
- 9) Participant Protections
- 10) Quality

# Potentially Helpful Provisions

- Stakeholder Engagement: “Consumers must be offered supports to facilitate their participation, such as transportation assistance, interpreters, personal care assistants and other reasonable accommodations, including compensation, as appropriate.”

# Support for Consumers: Ombuds Program or Similar

- “[S]tates must ensure an independent advocate or ombudsman program is available to assist participants in navigating the MLTSS landscape; understanding their rights, responsibility, choices, and opportunities; and helping to resolve any problems that arise between the participant and their MCO.”

# Person-Centered Care

- Assessment and service planning processes must be person-centered.
  - Reference to regs for HCBS waiver, HCBS state-plan option, and Community First Choice Option.
  - No mention of service planning appeal rights.

# Aid Paid Pending

- CMS “expects states to adopt policies that ensure authorized LTSS continue to be provided in the same amount, duration and scope while a modification, reduction, or termination is on appeal.”
  - Currently, aid paid pending not generally available when authorization period has expired.

# Quality

- CMS “recommends” that states develop report cards.
- States, contractors, and/or MCOs must survey MLTSS consumers to develop experience and quality of life indicators.
  - Results must be posted on state website and available to stakeholder advisory groups.



# Contracts: A Nagging Issue

- Contracts between state and MCOs.
  - Set many important standards; play role of regulations
- Consumer advocates generally unable to review contractual language prior to finalization.

# Questions?

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