

# Session A-12 Guardianship: A Critical Tool to Resident Care and Facility REVENUE!

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## Introductions

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## Why Are SNFs In Business?

- ▶ To provide care
- ▶ To be paid for services provided

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## Example of Mr. Smith

- ▶ Mr. Smith is admitted to Facility by Son on January 1, 2019. Mr. Smith is 84 years old and has a diagnosis of dementia and a variety of physical ailments. Minimal information is gathered upon admission. Financial intakes state he receives \$1,500.00 a month in social security, however that is all (assets, banking, housing unknown). An admission agreement is signed and care begins. Facility attempts to contact Son regarding financials and care, however Son does not return calls.
- ▶ 6 months pass. It is July 1, 2019. No payment has been made on Mr. Smith's account since admission, income or otherwise. Son has been contacted regarding payment and a Medicaid application, however he continues to be non-responsive. Mr. Smith's condition has declined considerably. He is totally unable to assist with his medical and financial decisions. Facility wants to file a Medicaid application but is hesitant.

Any problems here?

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## Problems with Mr. Smith

- ▶ Compliance concern with care
- ▶ Admission procedures
- ▶ Payment issues regarding income
- ▶ A Medicaid application should have been filed within first 3 months and still needs to be filed to preserve a March 1 effective date
- ▶ Payment issues regarding missed Medicaid days
- ▶ Unable to discharge to a safe location
- ▶ Mr. Smith needs a caretaker for his medicals and finances however his son is absent

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## Helping Resident AND Facility

- ▶ Mr. Smith needs help with care. The facility needs to be able to provide proper care.
- ▶ Mr. Smith is unlikely able to afford the care he is receiving. Without assistance his bill climbs without an end in sight. Facility is unpaid for over \$60,000 at this point.

The appointment of a guardian could remedy both the resident and facility's issues

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## Guardianship or Power of Attorney?

### ▶ POA

- ▶ Chosen by the resident
- ▶ Revocable by resident
- ▶ **Must have capacity to draft document**
- ▶ Can be medical, financial, or both
- ▶ Preference by the Courts as less restrictive than Guardianship
- ▶ Governed by Title 20, Chapter 56 of the PEF Code

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## Guardianship or Power of Attorney?

### ▶ Guardianship

- ▶ Guardians are appointed by the Court and responsible to the Court.
- ▶ Can only be modified or terminated by the Court
- ▶ **Must be incapacitated**
- ▶ Can be emergency, permanent, partial, plenary
- ▶ Can be for medical affairs, financial affairs, or both
- ▶ More restrictive due to Court oversight
- ▶ Governed by Title 20, Chapter 55 of the PEF Code
- ▶ **Can revoke a Power of Attorney**

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## Why Choose a Guardianship?

- ▶ Primarily due to capacity/ incapacity
- ▶ If resident is incapacitated and does not have a Power of Attorney or other legal mechanisms already in place, then Guardianship may be mandatory

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## Guardianship

Types of guardianship

Guardian of the Person

- ▶ For medical affairs, placement
- ▶ Guardian of the Estate
  - ▶ For financials

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## Guardianship

- ▶ Types
  - ▶ Guardian of the Estate
    - ▶ For financial matters, payment
  - ▶ Guardian of the Person
    - ▶ For medical affairs, placement

You may have a separate person/entity for Guardian of the Person and Guardian of the Estate. For instance, a family member to maintain the medicals and an organization to handle the more complex finances

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## Guardianship

- ▶ Partial/Plenary
  - ▶ Plenary- an absolute or full guardianship. Giving the guardian total power as defined in Title 20, Chapter 55 of the PEF Code
  - ▶ Partial- a guardianship limited by the Court. Could limit the guardian's powers for medical or financial, or both.

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## Guardianship

- ▶ Duration
  - ▶ Emergency
    - ▶ Only last 72 hours, but can be extended longer per the Court
    - ▶ Designed to prevent immediate harm
    - ▶ Primarily medical in nature
  - ▶ Permanent
    - ▶ Indefinite, until modified or terminated by the Court

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## How you get obtain Guardianship?

- ▶ Petition the Court
- ▶ Medical evidence is gathered
- ▶ A proposed guardian is suggested
- ▶ Pleadings/paperwork is filed with the Court
- ▶ A Court hearing is set (generally 2 months for a standard guardianship, within a week for an emergency guardianship)
- ▶ Notice to the next of kin and interested parties
- ▶ Witnesses testify at the hearing, judge makes a decision
- ▶ Final decree is issued appointing a guardian

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## What is capacity/ incapacity?

### ▶ Incapacity

- ▶ An Incapacitated Person is legally defined as: An adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he/she is partially or totally unable to manage his/her financial resources or to meet essential requirements for his/ her physical health and safety.
- ▶ Medical evidence is critical. Medical expert may attend the hearing and provide live testimony or provide the State approved Expert Report, which can be found at <http://www.pacourts.us/assets/files/setting-6210/file-7072.pdf?cb=dc2d47>
- ▶ Medical expert could be the attending physician, medical director, phycologist, or psychiatrist.
- ▶ Helpful to conduct BIMS or MMSE assessments as further evidence

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## Family Involvement (or lack thereof)

### ▶ Due diligence before filing

- ▶ The Court has a preference to family being appointed as guardian
- ▶ Notice has to be given to all next of kin (meaning contact information will be required)
- ▶ The Court wants to know the interactions the facility has had with family and why family is not a viable option as guardian
- ▶ Research is necessary as to any PoA (and why they have been ineffective) POLSTs, or other health care directives

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## Choose your Guardian CAREFULLY

- ▶ While the Court ultimately appoints the guardian, many petitions are uncontested and the proposed guardian will be appointed
- ▶ As of June 1, 2019 the Court has heightened requirements for guardians
  - ▶ Criminal background checks for all guardian staff
  - ▶ Experience and training of guardian
  - ▶ Insurance checks
  - ▶ Amount of wards
  - ▶ Amount of visits/communication with wards
  - ▶ Conflicts
  - ▶ Any disciplinary problems

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## Seriously, choose your guardian carefully

- ▶ **Hot Button** issues in Southeastern PA
- ▶ Check up on the guardian
  - ▶ Make sure Guardian is:
    - ▶ Properly meeting Medicaid deadlines and submitting the proper paperwork
      - ▶ Do not assume. If deadlines are missed, the FACILITY misses out on reimbursement
    - ▶ Forwarding income
    - ▶ Meeting resident's care needs

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## What if the Guardian IS the Problem?

- ▶ Fear not
  - ▶ Review Hearing with the Court
    - ▶ Guardian can be removed
    - ▶ Guardian can be substituted with another

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## Back to Mr. Smith

- ▶ A guardian is appointed for Mr. Smith September 1, 2019. Upon appointment, guardian locates Mr. Smith's income and assets, consisting of the \$1,500.00 in social security (which guardian is now forwarding for care), a bank account and the owner of a residence. Guardian orders statements for the account and opens a guardian account transferring the remaining funds. Statements suggest misappropriation. Although Mr. Smith has resided in Facility since January, there have been constant ATM withdrawals at the local casino and countless fast food, hotel, and Uber charges. Further, Son has been living in Mr. Smith's house the entire stay.
- ▶ Facility decided to file a Medicaid application back in July. The CAO is requesting financial verifications and that the house be listed for sale as there is no intent for Mr. Smith to return home.
- ▶ Finally Mr. Smith's health is declining further and he is in need of hospice services

How can the guardian assist?

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## How the Guardian Can Help Mr. Smith and Facility

- ▶ Compliance
  - ▶ Since there are suspicions of misappropriation, guardian can work with facility and file reports to AAA
- ▶ Care
  - ▶ Guardian would have the authority to sign authorizations for hospice
- ▶ Medicaid
  - ▶ Has authority to provide verifications to CAO
  - ▶ Can assist with ejecting son from house and listing the house for sale
- ▶ Income
  - ▶ Now being paid to facility

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## Potential Benefits of Guardianship

- ▶ Facility
  - ▶ Compliance remedies
    - ▶ An advocate for care eliminates potential tags by DHS
    - ▶ If a resident is suspected of being abused (in which financial misappropriation counts) reports must be made to authorities within 24 hours.
  - ▶ Cash flow
    - ▶ Income, Medicaid reimbursement
    - ▶ Time value of money/ speeding up the reimbursement process
      - ▶ Access to needed information = less MA pending time and number of cases
- ▶ Resident
  - ▶ Has a proper caretaker for medical decisions
    - ▶ Can act quickly
    - ▶ Guided by resident's best interests
  - ▶ An advocate to fight for their rights (especially if they were being misappropriated)
  - ▶ Helps mitigate resident liability

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## Questions?

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