Reading Between the Lines: Legal Issue Spotting in Long Term Care Settings

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Looking for hidden issues

- Problems come in clusters
- People seek help for the most recent or most pressing problem
Training Objective

• Issue spotting is about being able to spot fact patterns that raise a red flag for further investigation
It’s a family affair

- Resident in long term care
- Spouse
- Significant other
- Dependant family members
- Distant family members
- Two way street
The easy ones

• I need a will
• Discharge
• I need a divorce
• I have been injured
• I am being sued
• They never answer my call
• I need a power of attorney
• I have been denied Medicaid
Is it ever as easy at it looks?

- Self identified legal problem

- Screen for:
  - Legal or non-legal issues
  - Urgency/Legal deadlines
  - Health and Mental Health
  - Eligibility for other benefits
  - Income eligibility
  - Financial exploitation
  - Family needs
Systemic Issues

• Pattern or practice that results in a failure or breakdown in the system and a lack of fairness or access to benefits or services
Example

• Social Security Fleeing Felon Rule

Social Security Administration to Pay $500 Million in Settlement

Government Stops Unlawful Social Security Suspensions

More than 200,000 people would be eligible again through court settlement Martinez v. Astrue was filed to challenge the enforcement of a narrowly drawn provision of the Social Security Act.
Systemic Issues

• Look for patterns of problems with
  – Health care providers
  – Agencies (public and private social services)
  – Courts
  – Medicaid
  – Medicare
  – Individuals
Types of Systemic Problems

- Misapplication or misunderstanding of the law
- Problems with access
- Unnecessary burden
- Due process denials
- Wrong answers
- Denial of service
- Unmet need
- Disparate Treatment – discrimination
- Unfair changes in rules
Needed change

- Policy change
- Management
- Project development
- Regulations and statutes
- Community initiative
- New programs
- Class action
What to do when you see one

- Document
- More then an isolated incident
- Talk to local advocacy organizations
- Legal aid – limitations
- Private attorneys
- NLRC Partners – ABA Cola, NSCLC, NCLC.
Looking for Underlying Causes

• A problem is frequently caused or aggravated by another problem
• Treating the symptom rather than the cause
• Model: medical legal partnerships
Medical Legal Roots

- Chronic ear infections
- Landlord providing intermittent heat
- Fix the landlord problem and the ear infections become less frequent
Non-Medical Example

- Client needs help with a collection case
- Standard solution is to review and if possible defend the collection case
- Holistic approach is to look for an underlying or a systemic issue
Keys to Issue Spotting

• Listen to what they have to say
• Probe and ask for more
• Look beyond the surface
• Know a little about a lot of things
• Not trying to be an expert on everything.
Probing Questions

• Additional questions, based on the answer to a previous question, to ask for more information or detail
Exercise Probing Questions

• Round 1
  • Tell me about your family
  • Dig deeper with probing

• Round 2
  • Tell me about where you are from
  • Dig deeper with probing
Basic Screening for new LTC residents

- Capacity – the ability to make and communicate informed decisions
- Understanding risks and benefits of choices
- See handbook for details
- If they fail the mini mental they probably lack capacity- passing it is no guarantee of capacity
Basics

• Can they describe risks and benefits of choice
• Can the give logical reasons for choices
• Flu shot example
LTC legal needs screening

- Do they have an advance health care directive?
- Is it on file?
- Do they want to make changes?
- Do they understand what one is?
- Do they want one?
- Does the health care surrogate know about it?
- Is the surrogate reliable?
Do they have a financial surrogate?

- Do they have a power of attorney?
- Joint bank accounts?
- Is the agent or joint account holder reliable?
- Do they want or need to make any changes?
Paying for long term care

- Are they receiving all possible income?
- Are they being financially exploited?
- Do they have long term care insurance?
- Have they thought about Medicaid?
Income

- Resident
- Spouse
- Other dependants
Supplemental Security Income

• Anyone who is:
  – aged (age 65 or older)
  – blind;
  – or disabled.

• Income and assets
  – Income below single $674 couple
    $1011(higher in some states)
  – Minimal savings ($2000 / $3000)
Social Security Disability

• Past work history, 6 months ago became permanently and totally unable to work
  – Must have worked in covered employment
  – Rules have changed on how long they must have worked
  – And
  – How recently they must have worked
Social Security Retirement

• 10 or more years in covered employment
• 62 years of age or older
• Some other detailed technical qualifications
• Not automatic
• Must file
• Can file online
• Anyone can assist with application
Quiz 1

• Joe had a stroke at age 60 and is totally and permanently unable to work he may be eligible for?
  – A) Social Security retirement benefits
  – B) Supplemental Security Income (SSI)
  – C) Social Security Disability benefits
  – D) B and C
Quiz 1.1

Joe is only eligible for $5 a month in SSI, why would he bother with the paperwork for SSI?

– A) Medicare
– B) Medicaid
– C) $5 is important
Questions?
Medicare

• Social Security Eligible
• And
• 65
• Or Social Security Disability for 24 months
Medicare

• You receive a disability pension from the railroad retirement board and meet certain conditions; or
• You have Lou Gehrig’s disease (amyotrophic lateral sclerosis); or
• You have permanent kidney failure and you receive maintenance dialysis or a kidney transplant and:
  – You are eligible for or receive monthly benefits under Social Security or the railroad retirement system; or
  – You have worked long enough in a Medicare-covered government job; or
  – You are the child or spouse (including a divorced spouse) of a worker (living or deceased) who has worked long enough under Social Security or in a Medicare-covered government job.
• You worked long enough in a government job where Medicare taxes were paid and you meet the requirements of the Social Security disability program; or

• You are the child or widow age 50 or older, including a divorced widow, of someone who has worked long enough in a government job where Medicare taxes were paid and you meet the requirements of the Social Security disability program.
Medicare Savings Plans (Spouse?)

- Medicare Savings Plans
- QMB
  - Medicare Part B premium and
  - out of pockets for covered services
- SLMB
  - Medicare Part B premium
1. **Do you have Medicare Part A, also known as hospital insurance?** If you aren’t sure, look on your red, white, and blue Medicare insurance card, or call Social Security at 1-800-772-1213. TTY users should call 1-800-325-0778.

2. **Is your income (for 2009) at or below the income limits listed below?**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>QMB</td>
<td>$923.00</td>
<td>$1,235.00</td>
<td>Part A and Part B premiums, and other cost-sharing (like deductibles, coinsurance, and copayments)</td>
</tr>
<tr>
<td>SLMB</td>
<td>$1,103.00</td>
<td>$1,477.00</td>
<td>Part B premiums only</td>
</tr>
<tr>
<td>QI</td>
<td>$1,239.00</td>
<td>$1,660.00</td>
<td>Part B premiums only</td>
</tr>
<tr>
<td>QDWI</td>
<td>$3,695.00</td>
<td>$4,942.00</td>
<td>Part A premiums only</td>
</tr>
</tbody>
</table>

3. **Are your resources* (for 2009) at or below $4,000 for an individual or $6,000 for a married couple?** (Resources include money in a checking or savings account, stocks, and bonds. When you count your resources, don’t include your home, car, burial plot, up to $1,500 for burial expenses, furniture, or other household items.)

* If you have income from working, you may qualify for these benefits even if your income is higher than these limits. Many states figure your income and resources differently, so you may be eligible in your state even if you think you exceed these limits. Limits are slightly higher in Alaska and Hawaii.
Medicaid

• Expectant mothers and infants
• Children
• Aged – 65 or older
• Disabled (SSI, SSDI, or other)
• Very state specific
• Know the basic eligibility guidelines in your state
• Know what LTC options are available
  – What about home and community based care
Medicaid

- Income limits (what is income)
  - QITs
- Asset Limits (what is an asset and what is exempt)
- Don’t make any gifts or transfers until you have received expert advice!
LTC Medicaid

• Do they have a community spouse or dependant children?
  – If so every state protects income and assets
  – Even modest estates need expert advice
Veterans Benefits

• All Veterans with an other than dishonorable discharge
• Point of entry is the local VA Medical Center
• Were they ever in the military or coast guard?
• Have they ever applied for VA health care
• Free to Veterans with serious service connected disability
• Free to veterans with limited income and assets
• Co pay for higher income and assets
### VA Means Test for Free Care

<table>
<thead>
<tr>
<th>Financial Test Year 2009</th>
<th>Free VA Prescriptions and travel benefits (maximum allowable rate):</th>
<th>Free VA Health Care: (0% service connected (non-compensable) and non-service-connected veterans only):</th>
<th>Medical expenses deduction (5% of maximum allowable pension rate from previous year):</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 dependents</td>
<td>$11,830 or less</td>
<td>$29,402 or less</td>
<td>$559</td>
</tr>
<tr>
<td>1 dependent</td>
<td>$15,493 or less</td>
<td>$35,284 or less</td>
<td>$732</td>
</tr>
<tr>
<td>2 dependents</td>
<td>$17,513 or less</td>
<td>$37,304 or less</td>
<td>$828</td>
</tr>
<tr>
<td>3 dependents</td>
<td>$19,533 or less</td>
<td>$39,324 or less</td>
<td>$923</td>
</tr>
<tr>
<td>4 dependents</td>
<td>$21,553 or less</td>
<td>$41,344 or less</td>
<td>$1,019</td>
</tr>
<tr>
<td>For each additional dependent add:</td>
<td>$2,020</td>
<td>$2,020</td>
<td>5% of maximum allowable pension rate</td>
</tr>
</tbody>
</table>

**Medicare Deductible:** $1,068  
**Income & Asset Net Worth:** $80,000
Look for

- Huge expansion of VA Community Living
- Home and Community Based Services VD-HCBS in 2009-2010
- Up to 100,000 new slots
- Targeted to selected states (10-20)
- Significant budgets (VA average cost of NH care is $700+ per day in VA facilities)
COBRA Subsidy under Economic Stimulus Plan

• Laid off between Sept. 1, 2008, and Dec. 31, 2009
• Pays 65% of premium
• Good for up to 9 months
• Income cap -$125,000 / $250,000
• Contact employer HR department
• [http://www.dol.gov/ebsa/COBRA.html](http://www.dol.gov/ebsa/COBRA.html)
• Pensions
  – Worked and were covered by a plan
  – Common issues
  – Employers out of business, merged, changed names
  – Vesting – did they work long enough
  – Lump sum distributions
  – Divorced with pension mentioned in decree
  – Surviving spouse
## Status of applications

### Have they applied?

<table>
<thead>
<tr>
<th>No:</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are they likely to be eligible</td>
<td></td>
</tr>
<tr>
<td>Do they need help applying</td>
<td></td>
</tr>
<tr>
<td>Is there an underlying issue that needs to be resolved before they can apply</td>
<td></td>
</tr>
<tr>
<td>Barriers to applying</td>
<td></td>
</tr>
<tr>
<td><strong>Yes</strong></td>
<td></td>
</tr>
<tr>
<td>What is the status</td>
<td></td>
</tr>
<tr>
<td>Is there something missing</td>
<td></td>
</tr>
<tr>
<td>Have they been denied</td>
<td></td>
</tr>
<tr>
<td>If so why</td>
<td></td>
</tr>
<tr>
<td>Might there be a legal solution to the reason for the denial</td>
<td></td>
</tr>
<tr>
<td>Can the facts be restructured</td>
<td></td>
</tr>
</tbody>
</table>

Look for patterns of problems
Evaluating Lost benefits

• Have benefits been terminated or reduced
• Examine the reason **why** they were lost or reduced
• Frequently lost due to a failure to renew or provide paper
• Proving a negative
Exercise

- Sally and Alex came into see you
- Sally was an examiner in the drivers license office. She has been unable for the past year because of an anti social panic disorder and has been seeing her doctor regularly
- Alex was laid off from his job as an office manager because of budget cuts six months ago. Alex is severely depressed, and recently suffered a heart attack and had bypass surgery
- What more do you need to know?
- What options might be available
Assets

- What do they own
- Do they have assets that can be converted to cash
- Cost of maintaining assets
- Emotional attachment to assets they can not afford to keep
Home Equity Conversion Mortgage

• Reverse mortgage
  – At least age 62
  – Significant equity in home (worth at least 1/3 more than is owed on it)
  – Counsel to assure that this is a relatively long term solution
Questions?
Spending

• What are they spending their income on
• Detail is very important
• All income
• All expenditures
• Looking for:
  – Financial literacy
  – Financial Exploitation
Turning Points:

- Loss of income
- Loss of benefits
- Changes in family or household composition
- Is there an underlying legal or social issue
Debts

- Car loans
- Mortgages
- Default balances
- Credits cards
- Student loans
- Judgments or collections
Can they take away my income?

- Garnishment of income
  - Exemptions SSA, SSI, Federal Pensions
  - Exception: Debts owed to the Federal Government
  - But, even then there are limits
  - Bank accounts
  - If they have received a notice of garnishment action is time critical URGENT
  - Medicaid may claim priority
Other debts issues

• Co-signed loans
  – Student loans
  – Car loans
  – Personal loans
  – Mortgages

• Debts of a deceased spouse
  – What name is it in, did the deceased own anything at the time of death
Should they file Bankruptcy

• Are they behind and unable to pay debts
• Do they have anything at risk
• Income exemptions
• Asset exemptions (state specific)
• Medicaid claims priority over all debts
Bankruptcy Screening

• Is there any other reasonable way that they can repay the debts?
• Repay debts within 5 years?
• Or
• Lower-income cancel all debts and start over
• Higher income, partial cancellation of debts
• Are they being denied employment, housing
• Are they being driven crazy by debt collectors
• BR exemptions are state specific and vary dramatically from state to state.
Consumer styles: Seeking Help

• Seek help to make good decisions to avoid problems
• Seek help when they have a problem
• Seek help only in a moment of crisis
Urgent

• If they don’t get help within 24-72 hours:
  – The caller will lose legal rights or options
  • or
    – The caller’s health and safety are at imminent risk of harm
Find Out About Deadlines

• Start by reading the paperwork
• Filing an answer to a lawsuit
• Appealing an administrative decision
• Appealing a garnishment or attachment

• Contesting a credit card charge (30-60 days)
• Filing a lawsuit (shortest is about 6 months)
Personal Injury

• Have they been injured as a result of someone doing their job improperly, failing to follow procedure, or neglect

• Have the endured
  – A financial loss
  – Significant pain and suffering
  – Significant diminishment of quality of life?
What to do

• Refer them for evaluation by an expert in personal injury or malpractice
• The cases can be very hard to make work
• Cost v. potential damages
• Very old and frail can prevail when there is significant negligence and injury
Emergency Services

- Plan in advance with providers
- Know the capacity of the provider
- Under promise and over deliver
- Know how to get past the gatekeeper
The Importance of Training

- No one can know it all
- The rules and programs change
- Not looking to become experts
- Issue spotting for review by experts
Just the Beginning

• Impossible to cover it all
• Use this as a model
• Contact me for more ideas and information
• Send me training that you develop
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