

Sometimes “No” is the Correct Answer: Legal and Regulatory Issues Regarding Admissions

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Today's Goals

- Saying No *may* be in everyone's best interests
- Risks of improper admissions
- Challenges faced by SNF/AL providers
- Regulatory, legal and practical limitations



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Today's Issue:

- Taking an admission that is not proper
- Clinical needs exceed staff (in both numbers, training and qualifications)
- Clinical needs exceed equipment/facility
- Non-clinical needs not compatible with setting



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Today's Issue:

- Just because you are *licensed* to provide, does not mean you can/should
- Short term thinking can produce long range problems
- Tangible and intangible costs of wrong decision



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The Challenge

- Concern of cutting off facility from future referrals
- Pressure to maintain census
- Compassion/mission does not = appropriate setting



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Risks

- Poor resident outcomes, up to and including serious harm to residents for whom you are responsible



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Risks

- Regulatory liability
 - Citations/fines
 - Vicious circle of enforcement
 - Impact of citations well beyond immediate impact
 - Loss of contracts
 - Loss of referrals
- Reputation used as a measuring stick well beyond intended purposes


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Risks

- Staff
 - Loss/retention
 - Safety: injury, illness, well being
 - Professional and licensure liability


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Risks

- Operations
 - Costs higher than capable
 - No easy solution if wrong placement: Where and how do you transfer?


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Risks

- Civil liability
- False claims
- DOJ Enforcement
- District attorney interest
- Repayment

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Risks

- Cutting off of future referrals (the exact opposite of goal)
 - Harm to MCO member = less likely to place others in future
 - Re-hospitalization = possible penalties to referral source
 - Alternative payment models-costs incurred that could or should have been avoided = less likely to work with you in future if you cost them for not hitting targets

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Regulatory Limitations

- First step in not taking inappropriate admissions begins with your licensure requirements.
 - Know who you can and cannot even consider
 - Do your referral partners understand also?

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Regulatory Limitations

- SNF: Cannot admit a resident that:
 - Requires care or services above what the facility is licensed to provide,
 - Who are known to be destructive of property, self-destructive, disturbing or abusive to other residents, or suicidal, shall not be admitted or retained, unless the facility has and uses sufficient resources to appropriately manage and care for them.
 - a person under the age of 18, unless certain documentation procedures are met and the facility obtains permission from DHS.


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Regulatory Limitations

- SNF: In addition, a nursing home may not admit
 - a person who has a developmental disability
 - a person under 65 who has a mental illness unless certain conditions are met relating to the license of the specific facility or if the facility obtained permission for the resident admission from a specified county department.


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Regulatory Limitations

- SNF: If adjudicated incompetent, must have protective placement order

- No facility may refuse to admit new residents solely because of the day of the week.


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Regulatory Limitations

- CBRF: License limitations
 - Ambulatory status
 - Client group identified
- Program Statement
- A CBRF may not provide more than three hours of nursing care per week per resident and may not admit a resident who requires care above the level of basic care that is required by a person who has a long-term illness or disability that has reached a relatively stable plateau.



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Regulatory Limitations

- CBRF: May not admit a person who is destructive to property or self, requires 24-hour supervision by a nurse or care above the level of intermediate nursing care, requires chemical or physical restraint, is incapacitated, or whose ambulatory and cognitive status is incompatible with the CBRF class or program statement. A CBRF licensed for 16 or more residents may not admit a person who has been found incompetent without a court-ordered protective placement.



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Regulatory Limitations

- RCAC: May not admit any:
 - a person who has a court determination of incompetence and is subject to guardianship;
 - a person who has an activated power of attorney for health care;
 - or a person who has been found by a physician or psychologist to be incapable of recognizing danger, summoning assistance, or making care decisions, unless a person who has legal responsibility for that individual shares the apartment.



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Regulatory Limitations

- RCAC:
 - Must have adequate staff to provide resident services
 - Resident's service needs may not be met at the facility;
 - Resident requires more than 28 hours of services per week;
 - The resident's behavior poses an immediate threat to anyone's health or safety;


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Regulatory Limitations

- AFH: An adult family home is a place where three or four adults reside and receive care, treatment, or services above the level of room and board, and only minimal nursing care.
 - No more than two residents in a certified adult family home may routinely receive nursing care over seven hours per week.
 - No resident of a licensed adult family home may receive more than seven hours of nursing care per week.
 - Must plan activities and services in accordance with the resident's service plan to accommodate the individual resident's needs and preferences.


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Practical Limitations

- Current Staff-availability and skills
- Open beds/units
- Composite of current residents
- Specialized populations: bariatric, medications, mobility


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Look Before You Leap

- Ideally, in-person assessment
 - Do not rely upon word of others for what will be your responsibility
- Discharge/long term resident goals
 - Increasingly important to referral sources
- Conversion of care/stay


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Look Before You Leap

- Options are far greater *prior* to admission than after
- Far fewer legal/regulatory prohibitions re: declination of admission than basis for discharge
 - Basis
 - Timing
 - Alternative placement


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Look Before You Leap

- Unique issues of direct placement
 - Due diligence on information
 - Record review critical


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Saying No, now, but open later

- Transparent, clear, honest
- Identify and engage referral sources: MCO, hospital, ADRC, NH/AL
- Identify partners goals, concerns, priorities
- Internal assessment: Identify, describe and develop capabilities (and limitations) list
- Share capabilities with partners
- Identify where and how your capabilities or limitations fit in with referral sources
- Partner with them to achieve mutual goals
- Improve transitions in care



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Saying No, now, but open later

- Transparent, clear, honest
 - Commitment to review and assess referrals
 - Rapport with partners
 - Establish credibility, particularly for when you have to say no



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Saying No, now, but open later

- Identify and engage referral sources: MCO, hospital, ADRC, NH/AL, Med Advantage
 - Look back
 - Look forward
 - Request to and for participation
 - Networks in area



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Saying No, now, but open later

- Identify partners goals, concerns, priorities
 - What are their challenges and needs
 - Clinical population, payment systems
- Expect increasing data: be able to converse on same plane



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Saying No, now, but open later

- Internal assessment: Identify, describe and develop capabilities (and limitations) list
 - Do not expect partners to understand your abilities or limitations
 - Wide variety of capabilities, even within licensed types
 - Begin with available tools



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Saying No, now, but open later

- Share capabilities with partners
 - Identify partner's particular methods/processes
 - Match their methods and processes
 - Explain your strengths and limitations



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Saying No, now, but open later

- Identify where and how your capabilities or limitations fit in with referral sources
 - What needs of theirs can you meet



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Saying No, now, but open later

- Partner with them to achieve mutual goals



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Saying No, now, but open later

- What is better received:
 - No, I don't want...
 - "As we have discussed, our capabilities don't match this particular resident's needs because..."
 - "As you know, while we typically could take...base on the current [acuity/number of X residents/recent staff turnover], now we are not a good fit..."



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Resources

- INTERACT
- MetaStar
- Transitions in Care Coalition
- WCRC


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Future

- Process for “saying no” positions you for the future.
- Family Care 2.0
- Alternative payment model
 - 30% Medicare by 2016
 - 50% by 2018


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 **Questions**

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