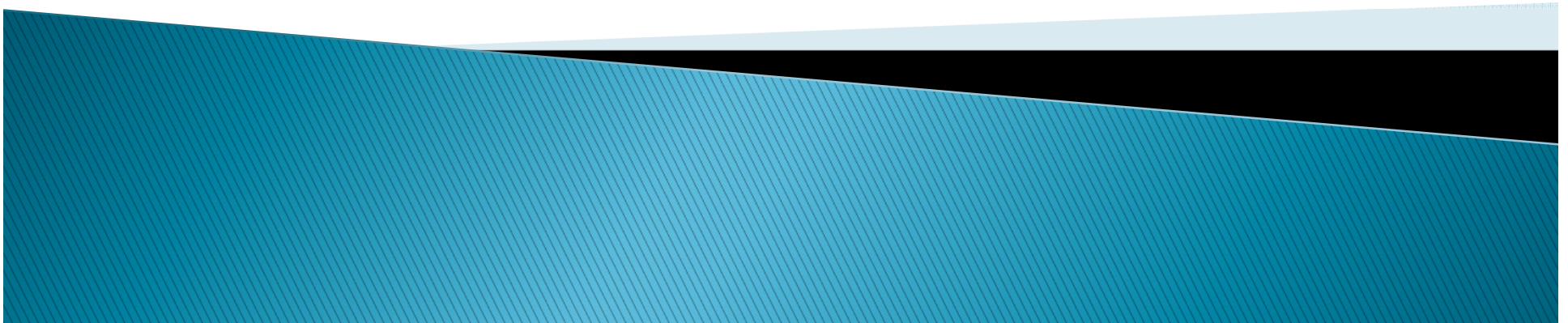


Understanding Resident Rights

Mike Weeks, CELA
The Weeks Group, LLC
St. Charles, MO

May 19, 2016



Resident Rights

- ▶ Key law is the Nursing Home Reform Act
 - Requires individualized care plan
 - Requires care plan meetings/ assessments
- ▶ But how are we supposed to do this when we don't enough staff?



Discharging a Resident

- ▶ Only 6 possible reasons for discharge
- ▶ The transfer/discharge is necessary to protect the resident's welfare, and the facility is unable to protect the resident
- ▶ The resident's health has improved to a point where it is no longer medically necessary to reside in the facility
- ▶ The safety of other residents is in endangered by the resident being discharged.



Discharging A Resident

- ▶ The health of other residents is in endangered by the resident being discharged.
- ▶ The resident has failed, after being given ample opportunity, to pay for services or to take steps to have Medicare or Medicaid to pay for the services.
- ▶ The facility ceases to operate.



Discharging a resident

▶ Proper Notification

- In writing
- Reason for discharge
- Where they are being discharged to
- Effective Date (at least 30 days in advance)
- They have the right to appeal
- Contact information for LTCOP/VOYCE
- Address and phone number of DHSS Appeals Unit
- Notification that during appeal resident can stay in the facility



Appeals Process

- ▶ Hearing Officer
- ▶ Circuit Court
- ▶ Appeals Court
- ▶ Most Discharges fail for technical reasons



Scenario #1

- ▶ Resident has Alzheimer's, male, and is frequently verbally abusive to staff and occasionally attempts to hit staff, particularly later in the day
- ▶ Facility sends out for psychiatric evaluation, and informs wife that he will not be allowed back because they can not meet his needs
- ▶ At hospital, before discharge, social worker informs family that facility is refusing to readmit



Scenario #2

- ▶ Resident of facility, who is wheelchair bound and cannot transfer on own. Has been a resident for 15 months when one day she states that she is going to hang herself by the mini-blinds if the aids don't start coming more quickly.
- ▶ Facility issues discharge letter stating the resident is a danger to themselves



Scenario #3

- ▶ Resident is in Medicaid bed, receiving benefits. Resident receives \$45,000 from a lawsuit against nursing home.
- ▶ Facility wants to move Resident out of Medicaid bed since she will not be receiving benefits for the next few months.
- ▶ Is this OK? Does resident have to consent?



Bedholds

- ▶ Proper Notice
 - Admission
 - Hospitalization
 - In Writing– Everytime!
- ▶ Medicaid pays... sometimes
- ▶ Must inform resident of rights if they don't pay for bedhold to get the next available bed, regardless of where they are at that time.
- ▶ Burden is on facility to prove notice or else can't hold patient liable

