



Michigan Department of
Health & Human Services

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Issue: The Department during the audits of nursing home Medicaid cost reports, has discovered an increasing number of nursing homes, are claiming legal fees related to obtaining a legal guardian (or a court appointment guardianship) for nursing home beneficiaries, in the nursing home's Medicaid cost report. Both the number of nursing homes incurring this expense is increasing, and the expense amount being reported is increasing significantly.

Background: Medicare requires a three-day hospital stay to receive skilled long term nursing care or long term nursing for rehab services. Individuals can still be admitted from the community (without hospital stay) for custodial care. The hospital does not usually apply for guardianship unless there is no other person available to make decisions. This "other person" does not have to have authority granted by the court to make emergency medical decisions (could be a spouse, child, or relative). That's the big difference between hospital acute care and nursing home care. In the NF setting, the facility must assure there is an authorized representative to make decision on behalf of the beneficiary – to make decisions in the best interests of the beneficiary.

Many nursing home beneficiaries are admitted without either a "POA" (power of attorney – authority ends if and when the person granting the authority becomes incapable of making his or her own decisions), "DPOA" (durable power of attorney – continues in effect if and when the person granting the authority can no longer make decisions – either temporarily or permanently. For people who want to make sure that their wishes about end-of-life medical care are followed, and who want their financial matters handled in a particular way after they can no longer make decisions, they must specifically state in their power-of-attorney documents that the authority granted is "durable" or "guardian".)

Sometimes the hospital doesn't bring the lack of an authorized representative to the attention of the nursing home at the time of nursing home admission, as the hospital is not required to obtain an authorized representative for the care provided during the limited duration of the inpatient hospital admission and having no authorized representative would hold up the discharge process. Sometimes, the family never shows up to do the admission paperwork and the nursing facility is left to obtain a legal guardian to represent the beneficiary.

Resolution: Legal expenses incurred by a nursing facility to obtain a legal guardianship for a nursing home beneficiary, is an allowable variable cost. The provider should report the expenses related to guardianship, in the appropriate nursing services cost center, as a "support" costs in the "Miscellaneous – Support" account. IF the provider is unable to track which nursing services cost center that these expense are applicable, the provider must report these expenses in the Administrative and General cost center as "support" costs in the "Legal and Accounting" account.