Legal Issues Facing Homecare Agencies:

Protecting Your Business, Intellectual Property and Bottom Line

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Ground Rules

- Let me sound like a lawyer . . .
  - Disclaimer: Information, not legal advice
  - Federal and state laws apply
  - Questions: No privilege
Contract Language Basics

○ “The party of the first part . . .”
  ● Use plain language and avoid legalese — except when absolutely necessary
  ● Make sure you and your clients understand your contract

Contract Language Basics

○ Say what you’re going to do
  ● What does client want from you?
  ● What will you do for client?
  ● What are the client’s responsibilities?

○ Promises, promises
  ● Be careful what you say
  ● “reasonable efforts according to applicable law”
Briefly Describe Your Services

- Non-medical companionship care
- Not skilled nursing services; not required to diagnose and treat
- Client must notify agency if caregiver does not adhere to job duties

Briefly Describe Your Services

- Duties *may* include . . .
- Not necessary to list everything
State The Client’s Responsibilities

- Provide information necessary for care
- Provide accurate insurance or financial information
- Notify agency of changes
- Confidentiality of caregiver information

Complaints

- Establish a complaint procedure
- Require client to notify you of problems
- Have an appeal process
Money, Money, Money

- Clearly state your fees
  - Registration fee
  - Hourly rates
  - Minimums

- If overtime, outline when it applies

Money, Money, Money

- Holidays – spell out
- Deposits
- Right to modify
- Expense reimbursement
- Credit card guarantees and authorizations
Money, Money, Money

- I hope it doesn’t have to come to this, but . . .
  - Interest
  - Collections
  - Returned check and other fees

Live-Ins

- Define hours worked and off duty time, if any
- Sleeping time rules
- Client must notify agency if not adhere to rules
- If using a per diem rate, make sure that it meets minimum wage requirements for all hours worked
Cancellation and Service Interruption

- Cancellation policy: “At least X hours notice . . .” or pay!
- Service interruption policy: “reasonable efforts”

The Legalese Exception

- Risk Management
  - Disclaimer: At your own risk and no guarantees
  - Indemnification
  - Limits on damages and liability
Lions and Tigers and Lawyers – Oh, My!

- Lawyers – Ugh!
  - Attorneys’ fees
  - Arbitration or small claims court

Boring But Important

- Miscellaneous – zzzzzzzzzzzzzzzzzzzzz
  - Choice of law
  - Venue
  - Entire agreement
  - Modification
  - Severability
  - Assignment
  - Waiver
Terminating the Agreement:
Breaking Up Is NOT Hard To Do

- Mutual prior written notice
- Exceptions when you can leave sooner
- All fees due at time of termination
- Reminder re continuing obligations

Implementing the Contract

- Autographs from everyone
- Client and responsible party signatures if possible
- Copies for everyone
Other Issues

- Initials
- Just say “no” to notarizing
- Online contracts
  - Pros and cons
  - Demonstrating agreement
  - Ability to print and save

Employee Agreements: The Basics

- Different from handbooks
- Strong at-will statement
  - Only modified in writing
  - Supersedes any prior policies
Employee Agreements:
Job Duties for Caregivers

- If working in private homes, add job
duties to reflect companionship exemption
- 80/20 rule
- No regular medical procedures
- Caregiver must notify agency if not
  adhere to these working conditions

Employee Agreements: Conflicts

- Avoiding conflicts of interest while
  employed with agency
  - Employees owe a duty of loyalty to
    agencies
  - Give examples, and agency determines
    conflicts
Employee Agreements:
Protecting Your Trade Secrets

- Definitions and examples
- Company property and can't use for personal or competitive purposes
  - Includes using agency information to solicit clients
- . . . even after the employee leaves
- Policy against using others' trade secrets

Restrictions on Employees

- Non-compete agreements – be careful
- Easier to enforce restrictions against clients than caregivers
Employee Agreements: Termination and Return of Property

- Return all property
- No copies
- Repay all debts
- Provide new employer contact information

Employee Agreements: The Rest

- Miscellaneous section
- End with “Important Continuing Obligations” for emphasis
Parting Advice

- “Whenever you got business trouble, the best thing to do is get a lawyer. Then you got more trouble, but at least you got a lawyer.”
  - Chico Marx, *At the Circus* (1939)
- Translation: Consult an attorney

Contact Information

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Contact Information

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