Purpose & Intent: To develop a Baseline care plan within 48 hours of admission to direct the care team while a comprehensive care plan is developed that incorporates the resident's goals, preferences and services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being.

Admission Agreement (Checklist Audit)

To assure that the Center has all the required information (or excludes information specifically not allowed) in their admission agreement, AHCA staff recommend you use a check list to audit your admission agreement against language in the RoP. The checklist below, we believe captures all the required steps and content. You may want to customize or add additional steps but this is intended to meet the requirements. However, please note that CMS has not yet issued its interpretative guidance for this new RoP. When they do, some of the items on this check list may need to be updated.

Note: The RoP does not specify that much which needs to be in the admission agreement but it does specify a fair amount of information that must not be in an admission agreement. Also, the RoP requires a fair amount of resident notifications, many about their rights, which can be satisfied by placing many of these notifications in an admission agreement. So while many notifications are not required to be in an admission agreement, it makes sense to place them there.

Information that **must** be in an admission agreement:

- ☐ A list of available services and charges for those services that residents who are
  - eligible for Medicaid may not be charged and also may be charged that are not specified in the State plan under the term ''nursing facility services'' so long as the facility does not condition the resident's admission or continued stay on the request for and receipt of such additional services; 483.10(g)(17) & 483.15(a)
  - covered by Medicare or Medicaid or private pay, the services that are not covered by Medicare or Medicaid or by the facility's per diem rate. 483.10(g)(18)
- ☐ Notice of special characteristics or service limitations of the facility. 483.15(a)
- ☐ Notice of rights and services in a form (either orally or written in a language the understand) 483.10(g)(16) including:
  - rights and rules governing resident conduct and responsibilities during their stay
  - state-developed notice of Medicaid rights and obligations
- ☐ Right to receive a refund of any remaining funds within 30 days of discharge, transfer ro death – 483.10(g)(18)(iii & iv)
- ☐ physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under paragraph (b)(10) of this section, if the facility is a composite distinct part. 483.15(a)
  Note: §483.5 *(c) Composite distinct part—(1) Definition. A composite distinct part is a distinct part consisting of two or more noncontiguous components that are not located within the same campus, as defined in §413.65(a)(2) of this chapter.*

Information that can **NOT** be in an admission agreement:

- ☐ No request or requirement that residents or potential residents waive their rights as set forth in 483.15 and in applicable state, federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and
- ☐ No request or requirement for oral or written assurance that the resident will not apply for Medicare or Medicaid benefits.
- ☐ No request or requirement that the resident waives facility liability for losses of personal property
- ☐ No request or requirement that a third party guarantee of payment to the facility is a condition of admission or expedited admission, or continued stay in the facility.
- ☐ No precondition of admission, expedited admission or continued stay in the facility.
- ☐ No precondition of admission or continued stay charges, solicitations, acceptance, or receipt, in addition to any amount otherwise required to be paid under the State plan, or any gift, money, donation, or other consideration, when the person is eligible for Medicaid.

*Note: the admission agreement also **cannot** change or restrict any of the requirements throughout the RoP such as those related to the physical environment, services provided, activities, etc. The above list are only items that specifically are mentioned in the RoP as not being allowed in an admission agreement.*

Required Notifications that **could** (but are not required to) be in an admission agreement.
(note: these can be provided in a separate handout to resident at the time of admission rather than include in the agreement.)

- ☐ right to accept or refuse medical or surgical treatment and, at the resident's option, formulate an advance directive (483.10(g)(12)
- ☐ Right to name a representative to make decisions for them should they not be able to - 483.10(b))
- ☐ Rights to choose their physician (483.10(d)(4)
- ☐ Rights to participate, see and be informed of changes to their 48hr Baseline care plan (483.21(a)3 & 483.10(c)
- ☐ Rights to participate, see, sign and be informed of changes to their comprehensive care plan (483.21(b) & 483.10(c)(2)(v)
- ☐ Rights to participate, see and be informed of changes their discharge plan (483.21(c))
- ☐ Rights to be informed in advance, of the care to be furnished and type of care giver or professional that will furnish care, (483.10(c)(4)
- ☐ Rights to see (within 24 hour excluding weekend and holidays) and receive a copy of their medical record (within 2 working days) and the cost of any copies- 483.70(i) & 483.10(g)(2)
- ☐ Bed-hold policy upon transfer or discharge
- ☐ Readmission rights (483.15(e)(2).
- ☐ How to file grievances 483.10(j)3
- ☐ Rights to be free from physical and chemical restraints - 483.10(e)(1)
- ☐ Rights to bring and use personal possessions, including furnishings and clothing, as space permits and as long as they don't infringe on health or safety of other residents. - 483.10(e)(2)
- ☐ Right to share a room with their spouse and living in the same facility - 483.10(e)(4)
- ☐ Right to receive written notice before any change in room or roommate -483.10(e)(6)
- ☐ Right to choose activities, schedules, (including sleeping and waking times), health care and providers of health care services consistent with his or her interests, assessments, plan of care and other applicable provisions of this part-483.10(f)(1)
- ☐ Their right to refuse and appeal a transfer or discharge decision as well as room change (431.220(a)(3) & (483.10(e)(7)
- ☐ Right to refuse to perform any activities for the facility - 483.10(f)(9)
- ☐ Facility visitation policy which enumerates the right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident. - 483.10(f)(4)

- ☐ The right to organize and/or participate in resident groups and family groups- 483.10(f)(5)&(6)
- ☐ Right to manage their own financial affairs 483.10(f)(10)
- ☐ Right to communicate with other privately, including access to telephone (including TTY and TDD), mail, internet, video communications and email - 483.10(g)(6-9)
- ☐ Right to receive notices orally or in writing (including in braille) in a format and language the resident understands 483.10(g)(4), which includes the following notices:
    - Protecting of personal funds
    - Requirement and procedures for establishing Medicaid eligibility
    - List of names, addresses (mailing & email), and telephone of all
        - pertinent state regulatory agencies such as
            - State Survey Agency
            - Mental Health Authority
            - Developmental Disability Authority
        - ombudsman program
        - adult protective services
        - "local contact agency for information about returning to the community
        - Medicaid Fraud Control Unit
        - Aging and Disability Resource Center
        - Any other "No Wrong Door Program"
    - Statement about resident's ability to file a complaint with the State Survey Agency
    - Contact information on how to file a grievance about any violation of state or federal regulations
- ☐ Right to refuse to release of personal and medical records except as required 483.10(h)(3)(i)

Note: There is more information that a Facility may want to include in their admission agreement; this section lists information that the facility must at some point provide to the resident (and/or their representative), which may make sense to include in the admission agreement but are not required.

Admission Policy (Rop Language)

The facility must establish and implement an admissions policy. *[Note: the RoP does not specify what must be in the admission policy; however, the RoPs state what can **NOT** be in the admission policy.]*

The RoP language for 483.15(a) & 483.70(n) is as follows:

(1)The Facility must establish and implement an admission policy.
(2) The admission policy must
(i) **Not** request or require residents or potential residents to waive their rights as set forth in this subpart and in applicable state, federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and
(ii) **Not** request or require oral or written assurance that residents or or will not apply for, Medicare or Medicaid benefits.
(iii) **Not** request or require residents or potential residents to waive potential facility liability for losses of personal property
(3) The facility must **not** request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources

(4) In the case of a person eligible for Medicaid, a nursing facility must **not** charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,—

(i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term ''nursing facility services'' so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and

(ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(5) States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

(6) A nursing facility must disclose and provide to a resident or potential resident prior to time of admission, notice of special characteristics or service limitations of the facility.

(7) A nursing facility that is a composite distinct part as defined in § 483.5 must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under paragraph (b)(10) of this section.

The RoP language for 483.70(n) is as follows:

(n) *Binding arbitration agreements*4 83.70(n). (1) A facility must **not** enter into a pre-dispute agreement for binding arbitration with any resident or resident's representative nor require that a resident sign an arbitration agreement as a condition of admission to the LTC facility.

> *Note: AHCA along with MS affiliate and three SNFs filed a law suit against CMS's ban against arbitration. The court granted an initial preliminary injunction motion, thus halting the Centers for Medicare & Medicaid Services (CMS) from enforcing its arbitration regulation banning pre-dispute arbitration agreements until the court determines if the agency has overstepped its statutory authority. In granting the motion, Judge Mills has not only temporarily blocked CMS' final arbitration rule from going into effect on November 28, 2016; but he also raises significant doubts about CMS' authority to issue a regulation that overrides the Federal Arbitration Act (FAA). The injunction allows all nursing care centers nationwide to use binding arbitration agreements after the November 28, 2016, implementation date, and until there is a final decision to AHCA's original complaint (AHCA v Burwell).*