

# Skilled Nursing: US Court Finds Non-Compliance With Medicare/Medicaid Patient-Care Standards, Upholds Civil Monetary Penalty.

After investigating a complaint survey inspectors from the State of Maryland recommended that the US Centers for Medicare and Medicaid Services levy a civil monetary complaint against a skilled nursing facility for non-compliance with Medicare/Medicaid patient-care standards.

A penalty of \$800 per day x 44 days, \$35,200 in total was upheld by the US Court of Appeals for the Fifth Circuit.

## The Patient

The resident in question was a seventy-two year-old woman diagnosed with organic brain syndrome, dysphagia and hypertension who had a history of a stroke. She was unable to communicate with others verbally and was completely dependent upon staff for performance of her activities of daily living.

## Violation of Standards Physician Consultation

The patient's weight dropped nearly ten percent, from 93 lbs to 84 lbs over less than two months. The facility's consulting dietitian noticed the weight loss and wrote a progress note that the patient was at risk for skin breakdown and, in fact, already had a pressure sore on her back and an advanced decubitus ulcer on her coccyx. She recommended a change in the care plan to include increase in dietary intake.

Three weeks went by after the dietitian's consult before anyone informed the resident's physician of the weight loss and the dietitian's recommendations.

The survey inspectors decided the delay in notifying the physician of the patient's weight loss and the need for dietary changes was a violation of Federal regulations, specifically, Title 42 of the Code of Federal Regulations, Section 483.10(b) (11), which requires a nursing facility to consult with a resident's physician immediately following a significant change in a resident's health status, that is, a deterioration in the resident's physical, mental or psychosocial condition.

The Court discounted the physician's testimony that he felt he was being kept informed. Survey inspectors are not bound by the doctor's personal opinion.

***The skilled nursing facility violated two separate aspects of Federal patient-care standards.***

***A nursing facility is required to consult with a resident's physician immediately following a significant change in the resident's health status, that is, a deterioration in the resident's physical, mental or psychosocial status pointing to a need to alter the resident's treatment plan.***

***Ten-percent weight loss, from 93 lbs. to 84 lbs., is a significant decline in health status.***

***A nursing facility is required to assess a resident's skin integrity and provide necessary treatment and services to promote healing, prevent infection and prevent new lesions from developing.***

***A resident having a pressure lesion is not a violation per se.***

***The question is whether the resident's condition and needs were assessed, a plan of care developed and care provided to try to meet the resident's needs and, of course, whether documentation can be found in the chart that it was done.***

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
December 20, 2010

## Violation of Standards Pressure Sores

The patient was a high-risk for pressure sores and already had pressure sores on her coccyx and inner knee when she was readmitted to the facility after a hospital stay two months before the onset of her weight loss.

Over the ensuing six-month period the coccyx lesion worsened significantly and other pressure lesions developed.

Survey inspectors decided from a retrospective review of the chart that the patient's skin care violated Title 42 of the Code of Federal Regulations, Section 483.25, which requires a nursing facility to provide comprehensive assessment of the resident's needs and insure that a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

Specifically, the facility's nurses did not conduct daily inspections of the pressure sores on her coccyx and back as her care plan expressly required, allowed her to lie on a wet incontinence pad with a drying urine stain and a foul odor in violation of the care plan and the facility's own policies and did not ensure that her urinary catheter was functioning properly as required by the care plan and the facility's policies.

## Civil Monetary Penalty Upheld

Federal regulations permit survey inspectors to recommend penalties ranging from \$50 to \$3000 per day when a nursing facility is not in compliance with Federal patient-care standards.

Factors to be considered are whether the violation caused actual harm or merely had the potential to cause harm but did not. Also considered is the facility's history of non-compliance. In this case the violations not only had the potential to cause significant harm but did in fact cause harm to the resident. The facility also reportedly had a history of six prior incidents of not notifying the physician of significant changes in health status. ***Senior Rehab & Skilled Nursing Ctr. v. Health & Human Services, 2010 WL 5186658 (5th Cir., December 20, 2010).***