

Federal Courts: CMS Standards Do Not Create Federal Cases.

The son of a nursing-home resident filed suit as legal guardian on his father's behalf against the nursing home.

The lawsuit sought damages for neglect leading to dehydration, malnutrition and a late-stage skin lesion on the resident's buttocks.

The nursing home's attorneys' legal strategy involved trying to have the case transferred out of the local county court of common pleas to the US District Court for the Eastern District of Pennsylvania because the son's lawsuit alleged violations of Federal statutes and CMS regulations for long-term care.

Federal courts are courts of limited jurisdiction.

Federal subject-matter jurisdiction is for cases arising under US Federal statutes.

The US Social Security Act and CMS regulations establish the standards for long-term care, but that does not confer jurisdiction upon the Federal courts for civil personal injury cases involving allegations of neglect or abuse in nursing homes.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
April 5, 2005

The court ruled that those Federal statutes and regulations do not confer subject-matter jurisdiction on the Federal courts. State courts will remain the proper venues for personal injury cases alleging abuse, neglect or negligence in nursing homes. Ratmansky v. Plymouth House Nursing Home, Inc., 2005 WL 770628 (E.D.Pa., April 5, 2005).

Medicare/Medicaid: New Standards, Fire Safety In Healthcare Facilities, Verbal Orders In Hospitals.

The Centers for Medicare and Medicaid Services (CMS) has announced that new fire safety standards will take effect May 24, 2005 as conditions of participation for the Medicare and Medicaid programs.

The new standards apply to containers for dispensing alcohol-based hand rubs in healthcare facilities, following the CDC's recommendation for use of alcohol-based hand rubs as an effective infection-control measure.

CMS will now also require smoke detectors in residents' rooms in long-term care facilities and a maintenance program, unless there is an existing hard-wired central smoke detection system in place.

CMS has separately-worded regulations on fire-safety standards for alcohol-based hand-rub dispensers in ambulatory surgical centers, hospices, hospitals, long-term care facilities and intermediate-care facilities for the mentally retarded, etc.

The new fire safety standards are on our website at <http://www.nursinglaw.com/firesafety.pdf>.

FEDERAL REGISTER March 25, 2005
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On March 25, 2005 the US Centers for Medicare and Medicaid services (CMS) published new standards for fire safety that will take effect on May 24, 2005 in healthcare facilities.

The new fire safety rules apply to containers of alcohol-based hand rubs, recommended by the CDC for infection control.

There is also a new requirement from CMS that battery operated smoke detectors be placed and systematically maintained in residents' sleeping rooms in long-term care facilities, starting May 24, 2005.

Authentication of Verbal Orders

On March 25, 2005 CMS also published a proposed new regulation, which is not yet mandatory at this time, that in hospitals all verbal orders will have to be dated, timed and authenticated by the practitioner issuing the order.

CMS is accepting public comments on this new condition of Medicare/Medicaid participation for hospitals until May 24, 2005.

The new regulation, if adopted, will appear in Title 42 of the Code of Federal Regulations, Section 483.23, dealing with nursing services in acute-care hospitals. That would seem to imply that it will be a nursing responsibility to get practitioners such as physicians and advance-practice nurses to sign off on their orders.

CMS noted it is current practice that verbal orders are to be used in hospitals only infrequently and must be authenticated by the person who took the order if not by the person who issued the order.

CMS says forty-eight hours will be the time deadline under Federal regulations for verbal orders to be authenticated by the practitioner who issued the order, unless state law requires it sooner.

CMS says the new regulation, if adopted, will be phased in over a period of five years.

We have this proposed regulation on our website at <http://www.nursinglaw.com/verbalorders.pdf>.

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