LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Health Maintenance Organizations (HMOs): Court Lets Patient's Family's Lawsuit Go Forward, Suit Alleged Substandard Care.

The patient had been diagnosed with depression and schizophrenia. She was hospitalized for six months of mental health treatment following a suicide attempt, then discharged.

At discharge she still felt suicidal and asked her HMO physician to re-admit her to the hospital. Her request was denied. She committed suicide a few weeks later.

The family sued the HMO for wrongful death. They blamed the HMO for providing financial incentives to participating physicians to discourage them from recommending treatment for persons like the deceased.

The case ended up before the US Circuit Court of Appeals for the Third Circuit. The court sided with the family and sent the case back to state court for a jury trial against the HMO over its physician's malpractice.

ERISA Blocks Many Suits Against HMOs

Many patients' lawsuits against their HMOs and other health plans have stumbled over language in the US Employee Retirement Income Security Act (ERISA) that greatly curtails the right of beneficiaries to sue.

Quality of Care Was The Issue Here

In this case the US Circuit Court saw quality of care as a different legal issue from benefit allocation, with only benefit allocation coming under ERISA. This patient's physician made a patient-care decision not to hospitalize her despite her history of mental illness, her relatively recent suicide attempt and her verbalization of current suicidal intent.

The court was not concerned about the physician's motivation in making the medical decision not to hospitalize the patient. The physician's decision was highly suspect, the court said, whether based on financial pressure from the HMO or just a plain error in medical judgment not based on financial considerations.

The family had the right to their day in court to argue their physician had committed medical malpractice, the court ruled. **Lazorko v. Pennsylvania Hospital, 237 F. 3d 242 (3rd Cir., 2000).**

Pressure Sores: Court Places Responsibility On Nursing Facility To Prove The Quality Of Its Care.

A 120-bed nursing facility saw its license downgraded to conditional because an inspection by state-agency personnel revealed five patients had pressure sores that were ruled avoidable. The nursing facility appealed, but the District Court of Appeal of Florida sided with the inspectors.

Although inspected by state authorities, long-term nursing facilities are subject to Federal regulations:

Section 483.25 Quality of Care

(c) Pressure sores. Based on the comprehensive assessment of a resident, the facility must ensure that -

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

This nursing facility's license will remain on conditional status.

The state agency has to establish that the patient developed the pressure sore after entering the nursing facility.

Then it becomes the nursing facility's burden of proof to prove that the pressure sore was unavoidable, or face possible legal sanctions.

DISTRICT COURT OF APPEAL OF FLORIDA, 2000.

Nursing Facility Must Prove Pressure Sore Was Unavoidable

Someone who wants to question the quality of care in a nursing facility may not have a difficult time making a case. A nursing facility basically has the legal burden of proof. The nursing facility must prove that the resident had the pressure sore on admission, or prove that developing the sore was clinically unavoidable with all necessary treatment having been provided, the court ruled. **Emerald Oaks v. Agency for Health Care Administration, 774 So. 2d 737 (Fla. App., 2000).**