

Home Health: Delay Proposed For New Regulations.

On April 3, 2017 the US Centers for Medicare and Medicaid Services published in the US Federal Register a proposal to delay the effective date of its comprehensive new conditions of participation for home health agencies from July 13, 2017 to January 13, 2018.

This recent announcement from CMS is available at <http://www.nursinglaw.com/CMS040317.pdf>

The new conditions of participation are available at <http://www.nursinglaw.com/CMS011317.pdf>

See also *Home Health: New CMS Conditions Of Participation*. Legal Eagle Eye Newsletter for the Nursing Profession (25)2 Feb. '17 p.8.

As a US Federal agency, to change its regulations CMS must first publish a proposal in the US Federal Register, invite public comments and consider any public comments it receives before going ahead with the change.

FEDERAL REGISTER April 3, 2017
Pages 16150 - 16152

Hospital Bed: Visitor Trips On Old-Style Hand Crank.

The Missouri Court of Appeals upheld the jury's verdict in a lawsuit filed by a family member visitor to a nursing facility who tripped on the hand crank protruding from below the foot of an old-style manual hospital bed.

The verdict split fault 70% to the facility and 30% to the visitor herself. The court record did not reveal the dollar amount.

The main witness for the patient was an LPN who had worked at the facility. She herself had often bumped her shins on the hand cranks. She said it was common for staff to neglect to put the cranks back under the beds. The usual excuse was that they were too busy with their patients and simply forgot.

The visitor's case got an unexpected boost from two prospective jurors who blurted out during pre-trial questioning that they had worked at the same facility and experienced the same problem. The Court nevertheless accepted their promises that their personal experiences would not influence their deliberation of the case. **Mar-tin v. Mercy**, __ S.W.3d __, 2017 WL 1365371 (Mo. App., April 12, 2017).

Whistleblower Law: Terminated Aide Unable To Make Out A Case Of Employer Retaliation.

When she made rounds at the start of her shift an aide found a resident of the long-term care facility sitting in her chair in her room with all four of the rails raised on her bed.

The resident said she had to slide out at the foot of the bed because no one came to help her to the bathroom.

The aide told her supervisor and later during her shift turned in a written report of the incident she saw as abuse or neglect of the resident by the aide on duty during the previous shift.

Her written report resulted in a self report to the state Department of Health by management first thing the following Monday morning.

The facility started an investigation that same Monday which found no abuse or neglect. Nevertheless the facility promptly increased its existing

The aide phoned in the incident to the state hotline four weeks after it happened and two weeks before she was terminated.

However, there is no proof her superiors knew about her phone report before they fired her.

The aide continued pursuing the issue long after the facility had reported the incident to the State, investigated the incident and completed remedial measures.

COURT OF APPEALS OF OHIO
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efforts to provide in-service training to its non-licensed staff in the care of dementia patients.

Six weeks later the aide was terminated based on a series of disciplinary issues that went back several years before the bed-rail incident.

The aide sued claiming her report of the bed-rail incident qualified her as a whistleblower with the right to legal protection from employer reprisals.

The Court of Appeals of Ohio pointed out the facility was not defensive about it and did not try to hide the incident and promptly did more than it was required by way of correction.

The aide's documented history of disciplinary issues which started long before the incident in question was the real reason for her firing. **O'Malley v. MetroHealth**, 2017 WL 1365429 (Ohio App., April 13, 2017).