

Hospice Services In Long-Term Care: New CMS Regulations.

New regulations from the Centers for Medical and Medicaid Services (CMS) affecting hospice services in skilled nursing facilities and nursing facilities take effect August 26, 2013.

The new regulations apply when a resident who requests hospice services receives hospice services in the long-term care facility from a hospice service provider rather than being transferred out to a hospice facility.

When hospice services are provided in a long-term care facility there must be a detailed written agreement between the facility and the hospice service provider delineating each side's responsibilities to meet the resident's care needs and to fulfill the legal requirements for the services to which the resident is entitled.

CMS's June 27, 2013 announcement from the Federal Register is available on our website at <http://www.nursinglaw.com/CMS062713.pdf>

The actual regulations begin on page twelve of the thirteen-page document, Federal Register page 38605.

FEDERAL REGISTER June 27, 2013
Pages 38594 - 38606

Health Insurance: Court Allows Suit For Delayed Decision.

The patient was in the hospital receiving care after his first stroke.

His caregivers wanted to transfer him to a nearby university hospital for an urgent carotid endarterectomy to prevent another stroke. Another major stroke did occur while they were waiting for authorization from the health insurer.

The insurer's case managers finally authorized the transfer four days later to a hospital other than the university hospital. That decision was allegedly based on cost considerations and the delay allegedly was caused by the time it took for the case managers at the insurer to contact various hospitals to obtain their rates.

The District Court of Appeal of Florida ruled the patient had legal grounds for a negligence lawsuit against his health insurer, assuming it could be proven that the case managers' delay in authorizing transfer for surgery was the cause of his second stroke.

The Court ruled the case was not medical malpractice and was not subject to medical malpractice law. **Acosta v. Healthspring, __ So. 3d __, 2013 WL 3723310 (Fla. App., July 17, 2013).**

Public Health: Nurse Was Denied Reasonable Accommodation For Arthritic Condition.

The nurse worked as a child welfare nurse specialist.

Her job required her to drive from her home office to field offices in several other cities.

When arthritis in the nurse's back reached a disabling level of severity she submitted a request in writing to her supervisor to have one of the field offices be designated as her home office.

That change, she explained, would put her closer to the clinic where she received physical therapy for her back, allowing her to work a full day at her job and still have time for therapy.

Her supervisor came into her office and threw her written request down on her desk. He said it looked like she was no longer able to do her job, which the nurse interpreted as a threat she was going to be fired.

The nurse really did not voluntarily leave her job.

When an employer denies a disabled employee's request for reasonable accommodation, and the employee is forced to quit, the law terms that constructive discharge.

The employee has the same right to sue the employer for constructive discharge as if fired for his or her disability.

UNITED STATES DISTRICT COURT
ILLINOIS
June 7, 2013

The nurse went through channels but could not get the accommodation she sought. She retired at age seventy and sued for disability discrimination.

The US District Court for the Northern District of Illinois ruled that her ostensibly voluntary retirement did not preclude a lawsuit for disability discrimination.

When a disabled employee requests an accommodation that is reasonable, and the employer refuses to consider the employee's request or unreasonably turns down the request, and the employee is essentially forced to quit, that situation is considered constructive discharge.

Constructive discharge gives the employee the same rights as if the employee was terminated. **Blickle v. Dept. of Children and Family Svcs., 2013 WL 2467641 (N.D. Ill., June 7, 2013).**