

Long-Term Care Insurance: Federal Court Wrestles With The Definition Of A Nursing Home, Denies Benefits To Policyholder Residing In Personal Care Home.

An individual purchased a Long Term Care Insurance Nursing Home Indemnity Policy from a major insurance company in 1989. In 2001 he began residing in a facility licensed by the state as a residential care home.

After the insurance company denied his claim for benefits under his long-term care insurance policy, he sued in Federal court.

The Federal District Court upheld his claim and entered judgment against the insurance company.

However, in a very recent opinion, the US Circuit Court of Appeals for the Tenth Circuit overruled the Federal District Court and denied his claim.

The gist of Tenth Circuit Court's decision is that a residential care home is not a nursing home, when it comes to deciding what the phrase "nursing home" means in a long-term care insurance policy.

Language of the Insurance Policy

A lawsuit for insurance benefits is a lawsuit for breach of contract. The contract is the insurance policy itself. The language of the contract itself is the focal point for the court in analyzing whether it will rule in favor of one side or the other in a breach of contract case.

A suit for insurance benefits is a suit for breach of contract. The contract is the insurance policy.

The court must determine what the parties to the contract intended the contract to mean and must not rewrite the contract to mean what the court thinks it ought to have meant.

The insurance contract was meant to pay a daily benefit for the beneficiary's stay in a nursing home.

State law does not define the term "nursing home."

However, the state licenses nursing facilities and personal care homes.

A nursing facility, licensed as such by the state, is what the insurance contract contemplated as the care setting for which a beneficiary's stay would qualify for the policy's daily nursing home insurance benefit.

A personal care home, licensed as such by the state, is not a nursing facility and does not qualify as a "nursing home" under the language of the long-term care insurance contract.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
December 12, 2005

The insurance policy defined a nursing home as:

A facility or distinctly separate part of a hospital or other institution which is licensed by the appropriate licensing agency to engage primarily in providing nursing care and related services to inpatients and:

Provides 24 hour a day nursing service under a planned program of policies and procedures which was developed with the advice of, and is periodically reviewed and executed by, a professional group of at least one physician and one Nurse; and

Has a Doctor available ... in case of emergency; and

Has at least one Nurse who is employed there full time ...; and

Has a Nurse on duty or on call at all times; and

Maintains clinical records for all patients; and

Has appropriate methods and procedures for handling and administering drugs and biologicals.

NOTE: The above requirements are typically met by licensed skilled nursing facilities, comprehensive nursing care facilities and intermediate nursing care facilities as well as some specialized wards, wings and units of hospitals. Those requirements are generally NOT met by: rest homes; homes for the aged; sheltered living accommodations; residence homes; or similar living arrangements.

The court saw it as the intent of the insurance policy to rule out payment for stay in a personal care home or assisted living facility.

The court editorialized that a hospital is also not a "nursing home," as hospitals provide care for persons with higher acuity levels than patients in nursing homes. **Gillogly v. General Electric Capital Assurance Co.**, ___ F. 3d ___, 2005 WL 3367053 (10th Cir., December 12, 2005).

Newsletter Available Online.

If you would like to receive the online edition of our newsletter please send an email containing your email address to info@nursinglaw.com.

Please include your name and postal mailing address for identification.

All subscribers continue to receive a monthly print copy of the newsletter in addition to online access.