

Pressure Sores: Court Upholds Sanctions Imposed On Nursing Facility By CMS Inspectors.

Federal regulations require long term care facilities to ensure that a resident who enters the facility without a pressure sore does not develop a pressure sore unless the resident's clinical condition demonstrates that it was unavoidable.

The US Circuit Court of Appeals for the Sixth Circuit pointed out that the administrative law judge required the nursing facility to prove the patient's pressure sores were unavoidable, rather than requiring the CMS inspectors to prove they were avoidable.

The court said that may contradict the US Administrative Procedures Act which in general places the burden of proof on the government. However, the court declined to make this case a definitive precedent on that issue.

A nursing facility can appeal a violation of Federal standards.

The state inspector's ruling can be appealed to a Federal administrative law judge, then to the Department Appeals Board within the Department of Health and Human Services, then to the US Court of Appeals.

The court, however, gives great deference to the inspector's judgment.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
October 7, 2005

The court found specific deficits in the patient's care which justified the \$2,800 fine imposed on the facility:

The patient had to be placed on a psychoactive medication. The medication tended to decrease his mobility, but his plan of care was not amended for almost two months to take into consideration his new increased susceptibility to breakdown of skin integrity.

The new care plan called for daily skin assessments, but the physician wrote orders only for weekly assessments and only that was done.

Only sporadic repositioning could be found in the nursing records at the time the patient was starting his psych med and was most vulnerable to skin breakdown. **Sanctuary at Whispering Meadows v. Thompson, 2005 WL 2470997 (6th Cir., October 7, 2005).**