

Seizures: SNF Violated CMS Regulations, Civil Monetary Penalty Upheld By US Court.

Centers for Medicare and Medicaid Services regulations for skilled and long-term nursing care require:

The facility must develop and implement written policies and procedures that prohibit mistreatment, abuse and neglect of residents and misappropriation of resident property.

Simply maintaining documents in a file, without also implementing the policies contained therein and regulating staff actions to assure compliance, does not satisfy the regulation.

The facility must also immediately inform the resident, consult with the resident's physician and, if known, notify the resident's legal representative or an interested family member when there is a significant change in the resident's physical, mental, or psychosocial status.

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
April 17, 2009

The fifty-four year-old patient was admitted to a skilled nursing facility with diagnoses of end-stage diabetes mellitus, depression, congestive heart failure, renal insufficiency, hypothyroidism and a history of stroke.

Patient's Care Plan / End of Life Care

The resident's care plan, among other things, called for staff to watch for shortness of breath, drowsiness, confusion, numbness or tingling, to monitor her blood pressure and to notify her physician of any signs or symptoms of a hypertensive crisis.

Her care plan also called for caregivers to watch for changes in cognitive function that might be indicative of a repeat stroke, and notify her physician.

Patient's Seizures

When the patient had her first seizure staff members tried to reach the on-call physician but were unable to get through. They called the hospice, but all the hospice did was have someone stop by the next day to look at her necrotic big toe.

After the next seizure two days later the on-call physician was not called for three hours and the resident was sent to the E.R. two and one-half hours after that.

Surveyors Issue Notice of Deficiency

The facility was cited for violations of the Federal regulations which apply to care of residents under Medicare in skilled nursing facilities and under Medicaid in long term nursing care.

The US Court of Appeals for the Tenth Circuit upheld the citations issued against the facility.

The facility was not guilty of or even cited for abuse or neglect. Nevertheless, the court pointed out, the facility still violated regulations which require implementation of written policies and procedures to prohibit neglect and abuse.

In a nutshell, the resident had a good solid care plan but the care plan was not followed. The resident was not monitored closely and changes in her health status were not reported to her physician as promptly as they should have been. **Cox Retirement Properties v. Johnson, 2009 WL 1028045 (10th Cir., April 17, 2009).**