

Skin Care: Nursing Care Found Substandard, Court Upholds Civil Monetary Penalties.

The US Court of Appeals for the Sixth Circuit, in an unpublished opinion, upheld a civil monetary penalty of \$10,500 (\$500 x 11 days) levied by state department of health surveyors who inspected the long term care facility on behalf of the US Centers for Medicare & Medicaid Services (CMS) for violations of the CMS participation requirements relating to pressure sores.

The Court went into detail as to why each of five residents in question did not receive the required level of care.

Peripheral Vascular Disease

The Court rejected the argument that pressure sores on a resident's leg were clinically unavoidable due to her medical condition which placed her at high risk for skin breakdown.

Her pressure sore condition was not addressed by the nursing staff until ten days after pressure sores were first observed. A special mattress ordered by her physician was not provided, in direct violation of her care plan.

Obesity, Incontinence, Total Care

The Court agreed that an obese total-care patient who is incontinent presents a special risk of skin breakdown, as the resident must be allowed to sleep only on her back.

Code of Federal Regulations Title 42, Section 483.25(c) states:

Pressure sores. Based on the comprehensive assessment of a resident, the facility must ensure that —

1. A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

2. A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

A civil monetary penalty of \$500 per day is appropriate for the eleven days during which these residents' care was found substandard.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
UNPUBLISHED OPINION
August 24, 2004

However, inspectors observed an aide feeding the resident her breakfast while she was still lying on her back on urine-soaked sheets. That is substandard care, the Court ruled, which likely explains the avoidable pressure sores on her back.

No-Harm, No-Foul Rule Rejected

The resident had a pressure sore on his big toe. The facility could not show that it was unavoidable, but argued that since there was no harm other than the lesion itself, the facility should not be penalized.

The Court reiterated that the focus of the Federal CMS regulations is to prevent patterns of care which have the potential for harm. Not providing the best practicable pressure relief is considered substandard care.

No Pressure Relieving Devices

For two additional residents inspectors observed that the pressure relieving devices required by their care plans were not in use. One was to have a heel cradle boot while in bed and the other was to have a cushion under him while sitting in his wheelchair.

Each was seen on at least one occasion without their protective devices and each had a pressure sore on the related area of his body. Livingston Care Center v. Dept. of Health & Human Services, 2004 WL 1922168 (6th Cir., August 24, 2004).

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