

Skin Care, Skilled Nursing: Civil Monetary Penalties Upheld.

A skilled nursing facility was cited and assessed a civil monetary penalty for violations of three separate Federal regulations in the care of one particular resident, which was upheld by the US Court of Appeals for the Fifth Circuit.

Development, Progression Of

Skin Lesions Is A

Significant Change in Health Status

The resident developed two Stage II pressure ulcers, then two more two weeks later. A week after that one worsened to Stage III and a week later another worsened to Stage IV.

Facility staff did consult with the dietitian to see if changing the resident's diet might help with the problems with her skin. The Court saw this as an indication there was a realization that there had been a significant change in her health status requiring a comprehensive re-assessment of her needs, which was never done.

No Documentation That Skin Lesions

Were Unavoidable

The initial care plan on admission two years earlier called for lotion to the extremities twice daily, weekly skin assessments, turning and repositioning every two hours, an air mattress, whirlpool baths, nutritional supplements and use of a Hoyer lift for transfers. Basically none of this being done was documented in the chart.

A pressure sore can be considered unavoidable and not a violation of Federal regulations, despite the outcome, if routine preventive care was provided. However, according to the Court, routine care being in the care plan and routine care actually being done are two different things.

Assistance With

Activities of Daily Living

Call Bells Not Accessible

The Court also ruled that call bells not being accessible to this resident and several others was a violation of Federal regulations that mandate help with ADL's for residents who need help. The call bell has to be in reach, not on the floor or on the bed where the resident cannot reach it.

It is also a violation to provide a bottle of eye drops to a resident without assessing the resident's ability to self-administer. **Windsor Place v. US Dept. of Health & Human Svcs.**, 2011 WL 2437804 (5th Cir., June 17, 2011).

Federal regulations for skilled nursing facilities require the facility to complete a comprehensive assessment of a resident after it is determined, or should have been determined, that there has been a significant change in the resident's physical or mental condition.

Significant change can mean a major decline in the resident's health status that will not normally resolve itself without further intervention or implementation of standard disease related clinical interventions, that has an impact on more than one area of the resident's health status and which requires interdisciplinary review or revision of the care plan.

Federal regulations require that a resident who enters the facility without pressure sores does not develop pressure sores unless the resident's clinical condition demonstrates that they were unavoidable.

Federal regulations require that a resident who is unable to carry out activities of daily living receive the personal services necessary to maintain good nutrition, grooming and personal and oral hygiene.

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

June 17, 2011