

Substandard Nursing Care: Court Upholds Penalties Imposed On Rehab Facility.

The US Circuit Court of Appeals for the Sixth Circuit has upheld civil monetary penalties imposed on a rehab facility for violations of Federal Medicare participation standards.

The facility had filed an appeal with the court to argue, as it has the right, that the violations imposed by state inspectors were not justified by the evidence.

Personal Privacy

A state surveyor observed that a patient was left uncovered during personal care while the door was open to the room, allowing other residents visual access.

The court ruled this violates 42 CFR § 483.10(e) which says that, “... the resident has the right to personal privacy and confidentiality of his or her personal and clinical records. Personal privacy includes ... personal care.”

The court said the gist of the violation was not that the resident was uncovered but simply that the door to the room should have been closed.

Call Light

Inspectors observed one particular resident’s call light lying on the floor where he could not reach it, five times in two days. The resident needed assistance to walk and his care plan called for a call light so he could ask for assistance.

The court ruled this violates 42 CFR § 483.15(e)(1) which says that, “... a resident has the right to ... reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered.”

According to the court, it is not a violation of Federal regulations for a resident’s call light button to be out of reach on an isolated occasion. The gist of this violation was the fact the call light was observed to be out of the resident’s reach and thus unavailable to him on multiple occasions over a two-day period.

Frayed Leg Brace

State survey inspectors found that the canvas cover on a resident’s leg brace was frayed to the point that the metal bars were rubbing against her leg and causing sores. In addition, her care plan failed to address the issue whether the leg brace had to be used while she was in bed. Staff also had not been fully trained, in the inspector’s judgment, how to place this resident on a shower bed without hurting her.

The court ruled this violates 42 CFR § 483.25 which says that, “... each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychological well-being, in accordance with the comprehensive assessment and plan of care.”

Supervision of High Fall-Risk Patients

The court upheld the surveyor’s judgment that the facility was not providing adequate supervision and assistance to three specified high fall-risk patients. The court record did not elaborate further.

The court ruled this violates 42 CFR § 483.25(h)(2) which says that, “... the facility must ensure that ... each resident receives adequate supervision and assistance devices to prevent accidents.”

The courts have ruled in general terms that a facility is not required to do everything in its power to prevent accidents – a misinterpretation of the regulations – but must take reasonable steps to ensure that a resident receives supervision and assistance devices designed to meet his or her assessed needs and to mitigate foreseeable risks of harm from accidents.

Shower Bed

The court also ruled that placing a resident on a shower bed with her head at the wrong end deprives a patient of personal dignity and amounts to a violation of Federal standards. **Ivy Woods Healthcare and Rehabilitation Center v. Thompson, 2005 WL 2660425 (6th Cir., October 19, 2005).**