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## Headlines in Health Law

12/8/2006

### **RESIDENT FALLS: NEW IMPLICATIONS AND CONSEQUENCES FOR LONG-TERM CARE FACILITIES**

A resident falls at a long-term care facility. Pursuant to the facility's fall prevention policies and procedures, its staff completes an event report sheet that describes the circumstances of the fall and completes a fall investigation form that contains additional information about the fall. The facility's interdisciplinary team conducts an individualized care plan review, summarizes the resident's condition, describes the interventions previously used to prevent falls, including bed and wheelchair alarms and a taco mattress, and sets forth contemplated future interventions. Although the above-described actions appear to be comprehensive, the recent decision in Bethel Center v. CMS<sup>1</sup> indicates that they would not be adequate to prevent a facility from an "Immediate Jeopardy" cite and significant Civil Monetary Penalties ("CMPs") for Medicare compliance violations. The reason? Inadequate quality assessment and assurance processes related to fall prevention.

In response to repeated resident falls, the above-described actions were routinely implemented by Bethel Center, a skilled nursing facility in Wisconsin (the "Facility"). Nonetheless, Steven T. Kessel, an administrative law judge, sustained a determination, made by the Centers for Medicare and Medicaid Services ("CMS"),<sup>2</sup> by finding that the Facility's quality assessment and assurance processes related to fall prevention failed to substantially comply with various Medicare participation requirements. In sustaining CMS's determination, Judge Kessel found that CMS was correct in assessing over \$27,000 in CMPs for "Immediate Jeopardy" and "Non-Immediate Jeopardy"<sup>3</sup> level deficiencies.

Specifically, Judge Kessel found that Bethel Center had failed to meet professional standards of quality and failed to provide its residents with adequate supervision and assistance devices to prevent accidents.

In regard to the Facility's failure to meet professional standards of quality, Judge Kessel explained that the Facility was mandated, pursuant to Medicare participation requirements, to conduct a comprehensive assessment of each resident's needs and write a comprehensive care plan explaining how such resident's needs will be met. According to Judge Kessel, the Facility failed to meet the above-described mandate because it failed to (a) assess residents' fall risks prior to and after the residents

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sustained falls; (b) thoroughly assess residents after they sustained falls to determine what interventions should be implemented to protect the residents; and (c) develop and modify care plans for its residents with individualized fall protection interventions. It was insufficient for the Facility to simply respond to and document each fall thoroughly. Rather, the Facility should have analyzed the causes of the problems and discussed what should have been done to prevent them in the future.

Additionally, Judge Kessel explained that Medicare participation requirements mandate that the Facility provide its residents with adequate supervision and assistance devices to prevent accidents. According to Judge Kessel, although the Facility regularly used devices such as bed and wheelchair alarms, it nonetheless failed to meet the above-described mandate because it relied on such devices for its fall-prone residents in lieu of intensive personal supervision despite evidence that such devices manifestly failed to protect residents from falling. Judge Kessel concluded that although alarms may enhance supervision, they may not substitute it.

The decision in Bethel Center illustrates the importance of an adequate quality assessment and assurance process that, among other things, ensures compliance with Medicare participation requirements applicable to resident falls. Key questions to be asked by the quality assessment committee and program staff in this process include: What do we know about this incident? When did we know it? What did we do about it? Such a process should, at a minimum, continually and regularly (1) identify those residents who are at risk of falling; (2) thoroughly assess each resident's risk for falling; (3) identify and evaluate the root causes of such risk; and (4) identify ways in which to reduce such risk until any such risk is averted or until all available methods have been exhausted. Such risk identification, assessment and reduction efforts should be ongoing and individualized to each resident. Finally, for residents who have a high risk of falling, intensive supervision should be utilized if all other methods of aversion ultimately fail.

The important role of a facility's meaningful and active quality assessment and assurance process will be increasingly emphasized in upcoming surveys, as a result of this significant decision and because of the new federal regulations requiring Quality Assurance Committees in long-term care facilities. To assist our clients, the Long-Term Care Practice Group of Reinhart Boerner Van Deuren s.c., will be presenting a seminar entitled "**Understanding the Quality Assessment and Assurance Process**" on Tuesday, December 12, 2006 at the Howard Johnson Hotel & Conference Center, 655 Frontage Road, Wisconsin Dells, WI. For more information or to register, contact Sherri Barsness at 608-229-2200 or [sbarsnes@reinhartlaw.com](mailto:sbarsnes@reinhartlaw.com). For online information, visit our website at [reinhartlaw.com](http://reinhartlaw.com), select "Our Services" and then "News & Events."

For more information or individualized consultation regarding your facility's quality assessment and assurance committee or processes, please do not hesitate to contact Reinhart's Long-Term Care Practice Group, including members Rob Heath, Chair of the Health Care Department, Linda Dawson, Brandon Graef, Matt McManus, Meg Pekarske, Tiffany Roepsch, and Burt Wagner. Visit our website at: [reinhartlaw.com](http://reinhartlaw.com)

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