

Improper Discharge Practices Subject of Recent Lawsuit Against Nursing Home

Skilled nursing facilities (SNFs) face a dizzying array of state and federal regulations. Recent class action litigation and the resultant media attention illustrate the critical need for SNFs to strictly comply with regulations governing discharge practices. By learning from the mistakes of others, SNFs can minimize their risk of becoming the defendant in a high profile lawsuit or the focus of unwanted media attention.

A class action lawsuit recently filed against a chain of California SNFs alleges the SNFs routinely "dumped" residents in violation of state and federal regulations. *Mou v. SSC San Jose Operating Co.*, No. 5:18CV01911 (N.D. Cal. filed Mar. 28, 2018). If a SNF improperly discharges a resident in favor of a new resident admission the SNF believes will pay more, offers less of a payment risk, or requires less care or staff time, it is called "resident dumping." The plaintiffs allege that the SNFs discharged some residents without timely notice and others without medical clearance to leave. *Mou v. SSC San Jose Operating Co.*, No. 18CV323735 (Cal. Super. Ct. Santa Clara Cty. Feb. 20, 2018). The plaintiffs describe the SNFs' reasons for discharging as "purely monetary" and having "nothing to do with whether [the patients] were fit to leave" or whether the SNFs had complied with legal discharge procedures. The suit seeks an injunction prohibiting the SNFs from wrongfully discharging more residents, appointment of a monitor to ensure the SNFs stop violating the law, statutory damages under California law of \$500 per plaintiff and each member of the class, and attorney's fees and costs.

While state and federal regulations permit SNFs to discharge residents for a variety of reasons, SNFs must follow the correct procedure for every discharge. *Prior to discharge*, SNFs must document in detail the reason for the discharge and ensure the reason is permissible under state and federal regulations. Under Wisconsin law, the facility must follow certain procedures prior to discharging a resident such as providing 30 days' advance notice of the discharge. *See Wis. Admin. Code ch. DHS 132.53(3)*. With limited exceptions, the facility must also ensure an alternative placement is arranged for the resident. *See Wis. Admin. Code ch. DHS 132.53(2)(b)*. Additionally, the facility must hold a discharge planning conference in advance of the impending discharge. *See Wis. Admin. Code ch. DHS 132.53(3)(b)*. Of course, SNFs are permitted to discharge residents who fail (after reasonable and appropriate notice) to pay for their stay at the SNF.

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However, as most administrators are aware, SNFs are not permitted to discharge residents whose financial resources are dwindling to the point where they are likely to soon apply for Medicaid—absent an additional, permissible reason for discharge.

Reinhart's Post-Acute Care and Long-Term Services team is experienced in advising clients regarding compliance with state and federal regulations, including regulations governing discharge practices. If you have questions or concerns regarding your discharge practices, or other regulatory issues, contact Bob Lightfoot, Rob Heath, or your Reinhart Boerner Van Deuren s.c. attorney today.

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