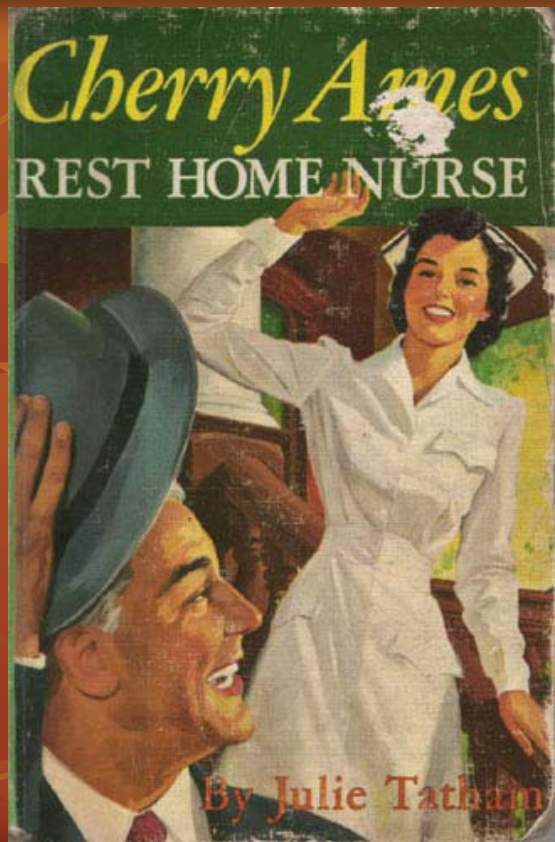


Legal Issues in an Age of Aging –Tort Issues

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April 25, 2019

Someone you
can trust





Injurious Custodial Failures v. Unavoidable Morbidity and Mortality

- Pressure Ulcers
- Fall injuries – fracture, loss of mobility
- Aspiration pneumonia
- Chronic use of urinary catheters - UTIs
- Medication errors – overdose, missed dose, drug vs. drug
- Weight loss or dehydration
- Elopement
- Sexual, physical or mental abuse

First Steps in a Claim vs. a LTC Facility

- Who is the client
 - Spouse, executor, unity among heirs
- Statute of Limitations
- Estate opened for deceased resident
- Living resident's location – new facility?
- Records to review
- Regulatory history – www.medicare.gov/nhcompare

Department of Health oversight

- State surveyors inspect yearly or upon a complaint to determine compliance with regulations – state and federal
- Issue “Deficiency Findings” that are published on Dept. of Health website
- <http://sais.health.pa.gov/commonpoc/nhLocator.asp>

DEPARTMENT OF HEALTH AND HUMAN SERVICES
BUREAU OF HEALTH FINANCING ADMINISTRATION

PRINTED: 4/10/17
FORM APPROVED
2017 L

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (SOC)	(ALL PROVIDERS/PLANS/HEALTH IDENTIFICATION NUMBER)	EXT MULTIPLE CORRECTIONS: A. BLDG. # _____ B. WING _____	ON-SITE SURVEY COMPLETED: 06/15/2017
FACILITY PROVIDED OR SURVEYED BY		STREET ADDRESS, CITY, STATE, ZIP CODE	
STATE LICENSE NUMBER: 437782			
DEFICIT PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	NO PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (DATE CORRECTIVE ACTION SHOULD BE COMPLETED REFERENCED TO THE APPROPRIATE DEFICIT TAG)
F 0000	INITIAL COMMENT Based on an Abbreviated survey in response to a complaint and a State Monitoring survey completed on January 15, 2017, it was determined that [REDACTED] was not in compliance with the following requirements of 42 CFR Part 483, Subpart B, Requirements for Long Term Care and the 28 PA Code, Commonwealth of Pennsylvania Long Term Care Licensure Regulations for the Health portion of the survey process.	F 0000	
F 0224		F 0224	
SS-1			

LABORATORY DIRECTOR'S OR PROVIDER/PLANS REPRESENTATIVE'S SIGNATURE _____ TITLE _____ DATE _____

Any deficiency statement ending with an asterisk (*) denotes a deficiency which may be excused from correction providing it is determined that other safeguards provide sufficient protection to the patient. The findings stated above are dischargeable whether or not a plan of correction is provided. The findings are dischargeable within 14 days after such information is made available to the facility. If deficiencies are cited, an approved plan of correction is required to maintain program participation.

This form is a printed electronic version of the CMS 2567c. It contains all the information found on the standard document in much the same form. This electronic form once printed and signed by the facility administrator and appropriately printed will satisfy the CMS requirement to post survey information found on the CMS 2567c.

CHS 2567c VCE011 W/CONFIGURATION SHEET Page 1 of 41

First Steps in a Claim vs. a LTC Facility

- Who is the client
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- Statute of Limitations
- Estate opened for deceased resident
- Living resident's location – new facility?
- Records to review
- Regulatory history – www.medicare.gov/nhcompare
- Damages – severity of harm
- Coherence of story

For the Elder Law Attorney

- At or before admission:
 - Advise/revise Power of Attorney and review Admission Agreements (prohibit authority to waive right to jury and/or cross out arbitration clauses)
 - Research skilled nursing facilities on Medicare website - NHcompare
 - Limited inspection reports for ALFs from DPW
 - Educate family
 - Right to select doctor and review resident record
 - Alert family to warning signs of neglect



Signs of Neglect

- Unintended Weight loss –
 - 5% in one month or 10% for three months
- Multiple falls without injury or bruises of unknown origin-precursor to trouble
- Sudden change in mental status or behavior
 - UTI
 - Assault or abuse
- Injuries to skin (aka “bed sores”)
 - Non-blanchable redness, blister or skin breaks on sacrum, buttocks, heel or body parts in contact with support surface

For the Elder Law Attorney

- After an event:
 - Review admission contract – arbitration?
 - Obtain records:
 - SNF/ALF (after estate raised)
 - Hospital record
 - Without estate -28 Pa. Code § 115.29
 - Costs of CD ROM per HITECH act -45 CFR 164.524(c)(4)(i)
 - Report event:
 - ALF to DHS – 877-401-8834
 - SNF to DOH – 800-254-5164
 - **Two year statute of limitations!**

