

## Medicare Advantage: CMS Considering URAC As Accrediting Organization.

On August 27, 2004 the US Centers for Medicare and Medicaid Services (CMS) announced that it is considering approval of the Utilization Review Accreditation Commission (URAC) as an accrediting organization for managed care organizations that wish to participate in the Medicare Advantage program.

This is analogous to HCFA's acceptance some years ago of the Joint Commission as an accrediting organization for hospitals and nursing facilities. Accreditation by the organization is considered equivalent to direct certification by Federal authorities for Medicare or Medicaid participation.

***We have placed CMS's 8/27/04 announcement from the Federal Register on our website at <http://www.nursinglaw.com/urac.pdf>.***

The minimum-allowed thirty-day public comment period will have expired on September 27, 2004.

CMS by law must announce its decision whether to accept the URAC as an accrediting organization by mid-January, 2005.

We will continue to watch the Federal Register for further developments.

FEDERAL REGISTER August 27, 2004  
Pages 52706 – 52708

## Discrimination: Insignificant Age Difference No Basis For Suit, Other Factors Present.

The fifty-five year-old nursing director of the hospital's emergency department was fired after twenty-six years in her position when new management took over the hospital. She sued for age discrimination.

***A fifty-five year-old nursing department head was replaced with an outside hire who was forty-eight.***

***Given the weakness of the other circumstantial factors, this insignificant age difference does not prove age discrimination.***

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT  
UNPUBLISHED OPINION  
August 26, 2004

The US Circuit Court of Appeals for the Tenth Circuit ruled the age difference insignificant, in light of the other factors present, and dismissed the case.

The hospital's ER was found substandard by Federal inspectors and the nursing director was unresponsive to demands she correct the problems.

New management was not impressed with her reluctance to be visible in the ER and to interact with her subordinates, particularly during non-day-shift hours.

Her thirty-eight year-old assistant director was given the job of interim director, but not promoted to director as she was not considered qualified.

The hospital flew a fifty-four year old from Florida to Oklahoma to interview her, but decided not to hire her. Perry v. St. Joseph Reg. Med. Ctr., 2004 WL 1903507 (10th Cir., August 26, 2004).

## Spider Bite: Hospital ER Staff Were Not Negligent.

While lying on an x-ray table in the hospital's emergency room a patient was bitten by a black widow spider.

The patient sued the hospital for negligence.

***Hospital employees are not expected to inspect a hospital gown for spiders before giving the gown to a patient.***

***Even if the hospital's nurses and other personnel were, as the patient claimed, not taking his complaints seriously and were joking about the chain of events, there still was no negligence by the hospital causing the spider bite, and the staff's attitude, in and of itself, caused the patient no harm over and above the effects of the bite itself.***

DISTRICT COURT OF APPEAL  
OF FLORIDA  
September 10, 2004

The District Court of Appeal of Florida sided with the hospital and dismissed the patient's case.

The hospital's maintenance department had a contract with a pest control company for regular inspection and pest-control services appropriate to the climate where the hospital was located.

Unless the hospital is known to have a problem with spiders there is no legal duty for nurses or other caregivers to anticipate a patient will be bitten by a spider and no liability for not taking steps against it. St. Joseph's Hospital v. Cowart, \_\_ So. 2d \_\_, 2004 WL 2008477 (Fla. App., September 10, 2004).