LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Home Health: Face-To-Face Rule For Medicaid Effective July 1, 2016.

On February 2, 2016 the US Centers for Medicare & Medicaid Services (CMS) announced a final rule effective July 1, 2016.

For the initial ordering of Medicaid home health services and medical equipment the ordering the physician must document that a face-to-face encounter related to the primary reason the beneficiary requires home health services occurred no more than 90 days before or 30 days after the start of services.

The required face-to-face encounter with the patient may involve a physician, nurse practitioner, clinical nurse specialist, physicians assistant or certified nurse midwife.

We have posted CMS's February 2, 2016 announcement from the Federal Register on our website at http://www.nursinglaw.com/CMS020216.pdf

The new regulations start on page 38 of the PDF document, Federal Register page 5566.

FEDERAL REGISTER February 2, 2016
Pages 5530 - 5567

Freedom Of Religion: Patient's Involuntary Medication Continued.

The patient was involuntarily committed to a mental health facility after he was found not competent to stand trial on criminal charges of telephone misuse.

During his hospitalization periodic reviews were held of his involuntary psychiatric medications and his medications were continued.

In the context of the latest of those reviews the patient raised the issue that he is a practicing Muslim whose religion mandates that he fast at certain times. Fasting meant abstaining from food and also from oral medications.

The US District Court for the District of Maryland ruled against the patient, on the grounds that he never communicated his religious need to abstain from food and oral medication before the issue of continuing his medications came up for periodic review.

His caregivers, who at the time were not informed of the patient's alleged religious convictions were not wrong to see his refusal to eat and take meds as continuing evidence of mental illness requiring involuntary medication. **Jiggets v. State, 2016 WL 509421 (D. Md., February 4, 2016).**

Nursing Home Admission: US District Court Declines To Enforce Arbitration Agreement.

The husband of a now-deceased nursing home resident sued the facility claiming his wife's death was caused by the negligence of the facility's staff.

As a preliminary matter the nursing home petitioned the US District Court for the Northern District of Mississippi to enforce the arbitration agreement signed by the patient at the time of admission by referring the case to arbitration and taking it off the Court's civil trial docket.

The Court declined to enforce the arbitration agreement.

The Court first looked at the evidence surrounding the patient's mental status when she signed the agreement at the time of her admission.

The cognitive component of the facility's fall-risk assessment indicated she was forgetful and tended to downplay her own limitations. She was alert and oriented at times but at other times was confused and forgetful.

The arbitration agreement is legally flawed and thus unenforceable for two reasons.

There is evidence the patient was not mentally competent to enter into a binding legal contract at the time she signed.

The agreement was presented to her on a non-negotiable take-it-or-leave-it basis as a mandatory condition for admission.

UNITED STATES DISTRICT COURT
MISSISSIPPI
February 8, 2016

She had not been managing her own affairs, did not have a bank account or a credit card and did not pay her own bills.

The Court next looked at the arbitration agreement itself and found it legally problematic.

The arbitration agreement had to be signed in order for the resident to receive services. The courts routinely throw out as unconscionable any nursing home arbitration agreement presented on a non-negotiable take-it-or-leave-it basis. The patient sorely needed care and only a limited number of spaces were available locally. **Dalon v. Ruleville, 2016 WL 498432 (N.D. Miss., February 8, 2016).**