

## Home Health: CMS Proposes To Open Referral Process To Public Scrutiny.

On November 22, 2002 the Centers for Medicare & Medicaid Services (CMS) proposed to add the following language to the Medicare regulations for hospitals that refer patients to home health agencies (HHA's):

### PART 482--CONDITIONS OF PARTICIPATION FOR HOSPITALS

Sec. 482.43 Condition of participation: Discharge planning.

\* \* \* \* \*

(c) \* \* \*

(6) If a hospital refers a Medicare beneficiary to an HHA or another entity in which the hospital has a reportable financial interest, or the HHA or other entity has a reportable financial interest in the hospital, CMS will make available to the public the following information:

(i) The name of the hospital, HHA, or other entity and the nature of the financial interest to the hospital.

(ii) The number of beneficiaries whom the hospital discharged and identified as requiring home health services.

(iii) The percentage of the referrals in paragraph (c)(6)(ii) of this section in which the hospital had financial interest in the HHA, or the HHA had a financial interest in the hospital.

CMS will accept public comments until January 21, 2003 before deciding whether to issue mandatory regulations.

The intent is to open up to public scrutiny the financial interests hospitals may have in the home health agencies to whom the hospitals refer their patients.

For more detail go to <http://www.nursinglaw.com/HHAreferrals.pdf>.

FEDERAL REGISTER, November 22, 2002  
Pages 70373 - 70376

## Patient Falls Out Of Bed: Court Says Nurse Not Responsible When Family Member Lowers Bed Rails.

A patient fell at home. Her head laceration was treated in the emergency room and she was kept in the hospital for observation. Her admitting note stated she suffered from Alzheimer's disease and syncope.

At 3:30 a.m. a nurse's aide found the patient on the floor in her room with the two bottom bed rails down.

### Nursing Documentation

The Court of Appeal of Louisiana went through the events leading to the patient's fall as reflected in the nursing notes. The court pointed out the medical review panel convened for this case had described the nursing notes as appropriate and thorough.

### Initial Assessment

The initial nursing assessment indicated the patient answered the nurse's questions appropriately but she was disoriented to time, person and place.

### Teaching Done

The nurse noted a family member was present (a fifteen year-old grandniece). She and the patient were instructed and encouraged in the use of the call bell to summon assistance.

All four bed rails were noted to be up at the point the teaching was completed.

### Patient Checked Frequently

The nurse's note for 10:00 p.m. stated the nurse's assessment of the patient was unchanged and all four bed rails were up.

At 12:00 p.m. the nurse noted the doctor was making his rounds and that new orders were written.

At 3:00 a.m. the nurse noted the patient was asleep.

### Patient Found on Floor

Five minutes after the aide found the patient on the floor the nurse made a complete chart entry, starting with the fact the aide found the patient on the floor when she checked on the patient.

The nurse assessed the patient and charted the patient was not complaining of pain and could bear weight well.

The nurse noted the granddaughter (sic) said she was present when she fell but did not hear her fall.

The nurse noted the bottom two bed rails were down. When questioned the granddaughter (sic) stated she had put them down earlier.

An incident report was prepared on the spot, the court said.

Since there was no apparent injury the doctor was not informed of the fall until 7:00 a.m. He found a fracture of the femoral head which required surgery.

### Jury Decides Nurse Was 20% At Fault Verdict Overturned On Appeal

The jury ruled the hospital 20% responsible and the family member 80% responsible. Of the \$200,000 reckoned as appropriate compensation for such an injury only \$40,000 was the hospital's responsibility. The Court of Appeal of Louisiana overturned the verdict, placing no percentage of fault on the nurse.

### Standard of Care

The Court of Appeal recited the familiar legal rule that a verdict in a professional malpractice case must be based on expert testimony establishing the standard of care for the nurse and showing that the standard of care was breached.

The patient's expert witness was silent on the issue of a nurse having to instruct a family member not to lower the bed rails after they have been raised by the nurse in the family member's presence.

Although a hospital does not have the legal burden to disprove allegations of negligence, the hospital's expert did state that teaching family members to leave the bed rails alone is not generally done. **Thomas v. Southwest Louisiana Hospital Association**, \_\_\_ So. 2d \_\_\_, 2002 WL 31761431 (La. App., December 11, 2002).