LEGAL ISSUES
Janet K. Feldkamp, JD, RN, LNHA

Legal and Regulatory Risks With Involuntary Discharges

News articles on patient dumping by skilled nursing facilities have been making flashy headlines across the country, and they have raised advocates’ concerns for patient safety. In recent years, state regulatory agencies have cited both facilities and their owners for these alleged improper actions, and residents, families, and advocates have been filing lawsuits as well.

The clinical and operational leaders of nursing facilities must understand the laws, regulations, and requirements related to involuntary discharges as well as the ramifications of failing to comply when moving residents out of a facility without their consent. Several recent lawsuits highlight the consequences of such improper resident discharges.

Lawsuits in the News
In March 2017, a California facility was sued for wrongful death related to a resident discharge. The resident, originally admitted from a local county jail, had resided in the facility for several years. The resident had numerous medical conditions — including blindness, bipolar disorder, and dementia. The complaint alleged that the resident was dropped at a local hotel with a 30-day paid room, and was provided with his medication, some food, and the promise of home health care visits during that time. Allegedly no home health care visits occurred; he was found dead 4 days after his discharge. The coroner’s report listed his cause of death as lack of oxygen to the brain caused by cardiac arrest. The facility allegedly failed to notify the individual’s family of the discharge, provide them with appeal instructions, or take all the necessary steps for a safe discharge. The lawsuit was resolved in July 2017 with a confidential settlement.

Another lawsuit filed early in 2018 in California alleged that a nursing home company routinely fails to provide its residents with the required advance written notice of discharge, including information on the resident’s right to appeal. The facility denies the allegations of violating any individual rights. The suit specifically alleges patient dumping occurred of two residents who were unable care for themselves, and who were not provided the proper notice as required by state and federal laws and rules.

The AARP Foundation filed a lawsuit in 2016 against yet another California nursing home alleging that the facility refused to allow the return of a combative female resident from the hospital after an evaluation. The suit sought an injunction against the facility to force readmission of this resident and is seeking damages for each day that the facility violated the admission and discharge requirements.

Planning for Compliance
For success in the complex area of involuntary discharge, facility leaders should consider several actions:

- Carefully review potential residents before admission to ensure that the facility can provide the necessary care and services, to avoid unnecessary discharges later.
- Understand the ramifications of failing to comply with state and federal rules after moving or discharging SNF residents without their consent and without meeting the regulatory notice and preparation requirements.
- Review, understand, and train SNF staff to implement the state and federal requirements related to discharge notices. Failing to observe all the statutory and regulatory state and federal requirements or to provide the required notice may invalidate a discharge at any later discharge hearing.
- Educate staff members to ensure their competency in the documentation and other requirements related to discharges.
- Work cooperatively with the resident and family to identify any discharge concerns early, and to develop a workable, appropriate discharge plan that includes adequate discharge preparation for everyone.

Despite a facility’s best efforts to meet a resident’s needs, involuntary discharges are sometimes necessary. Changing conditions might require acute hospitalization or a need for services that cannot be provided at the facility. Facilities should strictly follow the state and federal notice and documentation requirements, which may include physician documentation. The resident and family should be educated about the necessity of the transfer and the safe discharge plan. Facilities also should communicate as required with the SA and the ombudsman. Don’t be the next facility to make the headlines over a poorly planned or unsafe discharge.

This column is not to be substituted for legal advice. Ms. Feldkamp practices in various aspects of health care, including long-term care survey and certification, certificate of need, health care acquisitions, physician and nurse practice, managed care and nursing related issues, and fraud and abuse. She is affiliated with Benesch Friedlander Coplan & Aronoff LLP of Columbus, OH.