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NJ Long Term Care Planning

FALSEHOOD: "John Has To Wake Up at 6am Because We Don't Have Enough Nurses Aids to Accommodate Individual Schedules."

THE LAW: The Nursing Home Reform Law is meant to assure that residents are treated as individual human beings.

"A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life." Sec. 483.15 of Title 42 of the Code of Federal Regulations.

A resident has the right "to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered." Sections 1395i-3(c)(1)(A)(v)(I) and 1396r(c)(A)(v)(I) of the United States Code (emphasis added).

"A resident has the right to choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care." Section 483.15(b) of Title 42 of the Code of Federal Regulations.

FALSEHOOD: "We must insert a feeding tube into Fred because he is not finishing his meals during mealtime."

THE LAW: A Facility must assist a resident in maintaining the resident's ability to eat. Sec. 483.25 of Title 42 of the Code of Federal Regulations.

Surveyor's Guidelines mention specific steps that a facility might take, including: prompting the resident to eat; providing therapy to improve swallowing skills; or simply feeding the resident. Surveyor's Guideline to Section 483.25, Appendix PP to CMS State Operations Manual.

Tube feeding should be done only if absolutely necessary. Sec. 483.25(g) of Title 42 of the Code of Federal Regulations.

FALSEHOOD: "THE PATIENT'S CHILDREN CAN VISIT ONLY DURING VISITING HOURS."

THE LAW: NO!

A LIMITATION ON VISITING HOURS CONFLICTS WITH THE IDEA THAT A NURSING FACILITY SHOULD BE "HOME".

"Immediate family or other relatives" have the right to visit at any time. Sec. 483.10(j) of Title 42 of the Code of Federal Regulations.

FOR VISITS LATE AT NIGHT, THE SURVEYORS' GUIDE 483.10(j) SUGGESTS THAT VISITS MIGHT TAKE PLACE OUTSIDE OF THE RESIDENT'S ROOM.

FALSEHOOD: "WE DON'T HAVE TO RE-ADMIT FREDDIE, TO OUR NURSING HOME, WHEN HE'S RELEASED FROM THE HOSPITAL BECAUSE HIS BED-HOLD PERIOD HAS EXPIRED".

THE LAW: "MAYBE" and "MAYBE NOT"

If a patient has to leave a nursing home to enter a hospital, a certain bed-hold period is in effect. The bed-hold period guarantees that there will be a space for the patient, at the nursing home, when he/she is discharged from the hospital. Medicaid will generally pay for the bed-hold.

Note, however, that even if a bed-hold period has expired, a skilled nursing facility must re-admit a resident eligible for Medicaid reimbursement, from the hospital, if that facility has an available bed. Section 483.12(b) of Title 24 of the Code of Federal Regulations.

FALSEHOOD: ROBERTA MUST PAY ANY AMOUNT, SET BY THE SKILLED NURSING FACILITY, FOR "EXTRA CHARGES".

THE LAW: NO!

The amount of any charges are subject to the provisions set forth in the admissions agreement. These provisions are subject to the basic principles of contract law.

If Medicare and/or Medicaid enter the picture, and remit payment to the skilled nursing facility, then such remittance must be accepted as payment in full. Sec. 483.10(c) of Title 42 of the Code of Federal Regulations.

FALSEHOOD: JOHN MUST LEAVE THE FACILITY BECAUSE HE IS A DIFFICULT RESIDENT.

THE LAW: NO!

Under the Nursing Home Reform Law, there are only six legitimate reasons for eviction:

- a. The resident has failed to pay.
- b. The resident no longer needs nursing facility care.
- c. The nursing facility is going out of business.
- d. The resident's needs cannot be met in a nursing facility.
- e. The resident's presence in the nursing facility endangers others' safety.
- f. The resident's presence in the nursing facility endangers others' health.

Sec. 483.12(a) of Title 42 of the Code of Federal Regulations.

Mere "difficulty" is not just cause for expulsion or eviction. Skilled nursing facilities, by their very nature, exist to care for people who have physical or mental problems.

Our office helps people find the proper long-term care setting, get the best level of care in such setting, and pay for it without the family becoming financially devastated.

We help people find the type of long-term care they deserve, while preserving their assets within the context of the law. We are available for in-house workshops, for your staff, on the subject of long-term care planning.

James E. De Martino is licensed to practice in the State of New Jersey.

Our practice is limited to estate planning, long-term care planning, and NJ Medicaid asset protection.

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