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Sam Orbovich

Commissioner Reverses Vulnerable Adults Act Neglect Finding In Nursing Home Stairwell Death

Legal Update

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By Sam Orbovich

On July 28, 2011, Patricia Winget, the Adviser to the Minnesota Commissioner of Health, reversed a maltreatment determination issued by the Office of Health Facility Complaints (OHFC). OHFC incorrectly asserted that a large, non-profit Minneapolis skilled nursing facility committed neglect of supervision when a resident in a wheelchair died from injuries sustained in a fall down a stairwell. Nursing home staff reached the resident within seconds after the resident gained access to the stairwell, but were unable to prevent the death.

The Commissioner's Office rejected OHFC's claims that the death resulted from insufficient care planning and inadequate staff supervision. In an appeal hearing initiated under the Minnesota Vulnerable Adults Act (VAA), the facility proved that at least five different staff interacted with the resident in the seventy-five minutes immediately prior to the fall. The Commissioner concluded that, despite imperfections in care planning and documentation, the facility's staff were actively aware of the resident's wandering behavior and closely monitored the resident's whereabouts. The facility's care plan told staff what to do if the resident demonstrated exit-seeking behaviors, but the resident exhibited none of those behaviors that day.

At hearing, the facility proved the resident gained access to the stairwell by triggering a mandated emergency exit system. The facility's alarm system, and the electronic door locks, which had been tested that morning, were found to be in good working order, and were compliant with the federally-required Life Safety Code. That Code requires that magnetically locked exit doors used in geriatric skilled nursing homes must have an irreversible, unlocking mechanism. The door is unlocked 15 seconds after anyone – including a cognitively impaired resident – triggers the egress mechanism by holding the door handle down for as little as one full second. The Commissioner concluded "Centers for Medicare and Medicaid Services (CMS) rightly holds nursing homes to high standards of proper staff supervision but relying on the absence of human error as the last defense against easily entered stairwells is tantamount to accepting that some vulnerable adults will fall....Appellant's complying with CMS's regulations should not be grounds for penalty when...a very mobile but

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determined resident eludes staff supervision...”

Fredrikson & Byron attorney Sam Orbovich represented the skilled nursing facility in its successful VAA appeal. “This case should be a good reminder that what appears to be a benign safety device could turn deadly, through no fault or blame of the hard working nursing home staff,” Sam said.

Perhaps this decision will prompt Minnesota Department of Health and the Minnesota Legislature to take a fresh look at the requirements for locked units, which may be one reasonable response to address the inherent risks in CMS’s enforcement of the Life Safety Code. In the meantime, Sam says facilities with similar door systems may want to consider seeking a waiver to increase the unlocking delay from 15 to 30 seconds. Sam may be reached at 612.492.7376 or sorbovich@fredlaw.com.