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PROPER PLANNING MAY CREATE PEACE OF MIND



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MEDICAID'S BED HOLD POLICY

Florida's government is looking for ways to limit the State's Medicaid budget. One of the recent legislative changes affects nursing home residents who leave the facility to be admitted to a hospital. If you have a client or, a loved one who is a nursing home resident you need to be aware of the new law. A successful advocate is one who is informed.

In order to understand the change in the law it is necessary to be aware of the prior law. The prior law required a licensed skilled nursing facility to hold a Medicaid recipient's bed for a period of eight (8) days when the resident was in the hospital. If the resident's hospitalization would exceed eight days the resident's family could pay the private pay rate in order to reserve the bed for an indefinite period of time.

In addition to state law, licensed skilled nursing facilities that agree to accept either Medicare or, Medicaid are governed by the federal Nursing Home Reform Law (NHRL). One aspect of the NHRL requires a nursing facility to readmit a Medicaid eligible resident to the first available bed so long as the resident continues to re-

quire nursing facility services. 42 U.S.C. § 1396r©(2)(D)(iii); 42 C.F.R. 483.12(b)(3). Unlike state law, the federal law has no limitation on the 'holding period' and so the length of a hospitalization has no effect on the resident's ability to be readmitted.

Florida Statute 409.905(8) has now been revised to only require a nursing facility to hold the bed if the facility has an occupancy rate of 95% or greater. There is no guarantee that the resident will return to the same room.

Here are some tips to help you advocate effectively:

1. Confirm that the facility accepts Medicare or Medicaid funding. If yes, they are bound by the NHRL.
2. Notify the facility in writing that you are acting on behalf of the resident and you intend to have the resident return preferably to the same room and, if not available then to the first available bed.
3. In the event the facility advises that the occupancy rate is less than 95% they are still obligated under the NHRL. Contact the local Long Term Care Ombudsman

"The federal Nursing Home Reform Law requires a nursing facility to readmit a Medicaid eligible resident to the first available bed."

who has authority to enter the facility and verify the occupancy rate.

Firm Facts: Stephanie is the Former Chair of The Florida Bar Elder Law Section.

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