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ELDER LAW MINUTE

Last week I wrote about patients being dumped on hospitals by nursing homes. This week I want to continue with the illegal discharge theme.

It has become commonplace for a resident of a nursing home to be told that her need for skilled rehabilitation was over and therefore she must take her possessions and leave. What if she stills need 24/7 nursing care? *Sorry, we are just a rehab. center. You will need to find a long-term care nursing home.*

In addition to the possible FAIR HOUSING ACT violation which we explored on December 28, 2009, the *Rehab. Center* is violating the BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES, O.C.G.A. § 31-8-100 *et seq.*

...[A] facility may involuntarily transfer a resident only ... after other reasonable alternatives have been exhausted [and *inter alia*] ... nonpayment of allowable fees has occurred. The conversion of a resident from private pay status to Medicaid eligibility due to exhaustion of personal financial resources or from Medicare to Medicaid does not constitute nonpayment of fees. O.C.G.A. § 31-8-116(a)(3).

The DHR regulations also address this issue:

When a resident has been converted from full or private pay status to Medicaid eligibility due to exhaustion of personal financial resources, nonpayment of allowable fees has not occurred so long as the facility participates in the Medicaid program. Similarly, conversion from Medicare/Medicaid eligibility status does not constitute nonpayment of allowable fees.... Where space permits, the resident must be given the option of staying in the facility, if the facility is certified to provide the new level of care. DHR Regs. § 290-5-39-.11

Next week we will look at the various remedies for this violation.

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