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ELDER LAW MINUTE

Your 89 year old father was transferred from the hospital to ABC Nursing Home two weeks ago for rehabilitative therapy following his recent hip replacement surgery. Unfortunately, due to his dementia, the therapy is failing to produce results. ABC has informed you that Medicare will cease covering the cost of the stay since skilled care is no longer effective. You would like your father to remain at ABC for custodial care since he can no longer ambulate or transfer without assistance. However, ABC says that they do not have any long-term care rooms available and suggests that you look elsewhere. What do you do?

If ABC is your first choice in nursing homes, you refuse to take Dad elsewhere. Federal regulations require that all nursing homes that participate in the Medicare program maintain identical policies and practices regarding transfer and discharge for all individuals regardless of their source of payment. 42 CFR § 483.12. Georgia has similar provisions for all nursing homes in the State. O.C.G.A. § 31-8-108, DHR Regs. 290-5-39-.13(2). That means that a facility may not discharge your father solely because his source of payment is changing from Medicare to private pay or Medicaid.

In fact, a facility may involuntarily transfer a resident only in the following situations and only after other reasonable alternatives have been exhausted:

A physician determines that failure to transfer the resident will threaten the health or safety of the resident or other residents;

The facility ceases to participate in the program which covers the cost of the resident's care;

The resident fails to pay allowable fees; or

The resident no longer requires the nursing home level of care.

So what do you say to ABC when they ask your father to leave. You demand a *30 day notice* pursuant to O.C.G.A. § 31-8-116. In most cases, showing the facility that you know your rights will be enough to convince the facility to back off. If it is not, request a hearing on the proposed discharge. Let the U.S. Center for Medicare and Medicaid Services, the Georgia Department of Human Resources and the Georgia Department of Community Health know that ABC is violating their regulations and needs to be sanctioned.