

Patient Discrimination in Admission and Discharge: What Have We Learned?

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Program Focus

- Admission and discharge risks
- Anti-discrimination laws
- Risk management techniques
- Responding to complaints/litigation

Pressures in Play

- Financial
- Staff Shortages
- Competencies
- “Bad” patients
- Competition

Pressures: Financial

- Affects both admission and discharge decisions
- Payment method may incentivize acceptance or rejection
- Payment method may encourage premature discharge or denial of readmission
- Distinguish between increasing profits and avoiding losses

Pressure: Financial

- Medicare HPPS
- Encourages admission of therapy patients
- Discourages admission of daily care or heavy care patients
- Encourages discharge of heavy care patients

Pressure: Financial

- Medicare Hospice
- Encourages admission of patients with informal caregiver support
- Discourages admission of patients with high, unmet personal care needs or high cost pharmaceutical needs

Pressures: Staff Shortages

- Lack of sufficient staff affects admission decisions
- Staff rationing or discrimination against highly disabled with great care needs?
- Lack of staff may trigger discharges
- Who is discharged first?

Pressures: Competencies

- Admission rejections can be based on the lack of staff competencies
- Is this an explanation or an excuse?
- E.g., wound care patient with daily skilled nursing needs

Pressures: “Bad” Patient

- “Bad”= noncompliant, abusive to staff, environmental risks,etc.
- “Bad”= staff safety issues, staff burnout, staff refusal to serve
- Is the “bad” patient one that comes with the health care territory?
- Can refusal to serve relate to disability-based discrimination?

Pressure: Competition

- Accept all referrals?
- Reject “costly” referrals?
- Specialize?

Legal Issues Presented

- Americans with Disabilities Act (ADA)
- Rehabilitation Act of 1974
- Medicare Ant-Discrimination rule
- State Civil Rights laws
- State Licensure
- Medicare CoPs
- Malpractice
- Abandonment

Americans with Disabilities Act

- Prohibits discrimination based on the existence or extent of disability
- Disability defined by diagnosis or condition
- Is the service accessible to the person in the absence of the disability?

Section 504 of the Rehabilitation Act of 1974

- Prohibits discrimination based on a handicapping condition
- Applies to federally funded programs such as Medicare, Medicaid, TRICARE, Older Americans Act

Medicare Anti-Discrimination Rule

- Prohibits admission or care actions directed solely to Medicare patients
- Prohibits actions against Medicare patients that are not taken against non-Medicare patients
- Grounds for termination of the Medicare provider agreement

Case Examples

- Morris v. North Hawaii Hospital and Adventist Health, 37 F.Supp. 2d 1181(D. HI.1999)
- Keating v. Holyoke Visiting Nurse Association, Inc. (MA)

Morris case

- Factual Allegations
- Morris was a quadriplegic with indwelling Foley catheter, confined to an power wheelchair
- Morris required monthly skilled nursing and daily aide services
- HHA informed Morris care was to be reduced and then stopped

Morris case

- HHA explained change due to Medicare IPS (gave a copy of NAHC Report)
- Later explained that Morris not homebound
- Morris claimed that discharge was due to financial reasons

Morris case

- Legal Claims
 - Breach of Contract
 - Tortious Breach of Contract
 - Unfair or Deceptive Trade Practices
 - Section 504 of the Rehabilitation Act of 1973

Morris case

- Court Ruling
- Preliminary Injunction granted
- Found Morris met homebound standard
- 504 claim had likelihood of success because Morris otherwise qualified for services and discharge due to the extent of his disability

Morris case

- What do we learn?
- Courts protect disabled patients against the loss of care
- Inconsistent actions reduce defense strength
- Discharge reason will be tested to see if it is a pretext
- If there is a financial incentive to discharge, presumption against provider
- Correct processes must be followed

Keating case

- FACTUAL ALLEGATIONS
- Keating: 68 years old, blind diabetic, renal failure
- POC: 3xD SN for scheduled insulin injections
- On service for 7 years
- Refused readmission following hospitalization
- Keating has insufficient funds to cover cost of care
- HHA has policy of refusing or terminating care to long term intensive need patients

Keating case

- LEGAL CLAIMS
- Medicare law—no notice
- ADA and 504 Rehabilitation Act-integration mandate
- ADA and 504-Discriminatory impact on disabled
- ADA and 504-failure to accommodate
- Due Process
- Breach of Contract

Keating case

- HHA Response
- Inadequate staff to safely serve patient's needs
- Chronic nurse shortage
- Staff alienated by patient
- Schedule impossible to meet

Keating case

- Court Action
- Temporary Injunction issued
- Settlement reached (temporary continuation of care)
- Case dismissed due to settlement

Keating case

- What do we learn?
- Patients will go to court when no other option
- Courts protect patient with continued care at least temporarily
- Courts prefer parties to compromise over issuing a ruling
- Courts can understand a valid basis for refusing care

Absolutes

- Admit only those patients that HHA can safely and effectively meet needs
- Recognize that this duty is a continual obligation
- Adhere to professional standards of care
- Adopt reasonable and valid admission and discharge policies

Discrimination Do's and Don'ts

- Do Not!
- Single out a specific disease or disability
- Ignore mental disabilities
- Use subterfuge for discrimination

Discrimination Do's and Don'ts

- Do!
- Assess HHAs abilities, competencies, and resources
- Limit service based on abilities, competencies, and resources
- This allows consideration of staff availability, financial resources, impact on HHA mission

Three Step Analysis

- Assess Agency Mission
- Assess Availability of Clinical Resources: short and long term; linkage to financial resources
- Establish Plan of Action; Allocation of resources; Service adjustments

Service Adjustments

- Accommodation vs. Structural Change
- Disciplines of care
- Alternative service
- Care oversight
- Teaching
- Telehealth care
- Service Area

Service Determination

- Admission decision is critical
- Comprehensive patient/environment evaluation
- Mission consistent action
- Needs=Resources
- Consistent decisionmaking
- Communication

Discharge Management

- Ongoing evaluation
- Limit surprises
- Patient need/safety focus

Admission/Discharge Action

- Patient partnering
- Physician involvement
- Adequate and accurate notice of actions
- Conform action to policies and procedures
- Alternative patient assistance and support

Managing Expectations and Perceptions

- Thorough and accurate communications
- Show respect and understanding
- Share understandings with patient (staff availability, financial, safety, etc.)
- Referral source education

Conclusion

- Lessons
 - These risks come with the territory
 - Being sued and losing are separate and distinct
 - Patient has the early advantage
 - Emotions do not help
 - Honesty and integrity do help