

LK Alert

October 14, 2003

Littman Krooks LLP

Nursing Home Issues

NURSING HOMES SHOULD NOT MAKE REPRESENTATIONS REGARDING THE NUMBER OF REMAINING MEDICARE SKILLED NURSING FACILITY DAYS

A claim was made against the estate of a nursing home resident for the services rendered to her by said nursing home; however, after a plenary trial the claim was dismissed and the Court of Appeals in Tennessee affirmed that decision. The critical issue addressed in this case was whether a nursing home may be estopped from pursuing a claim for recovery when its representation to the resident's family regarding the remaining number of Medicare skilled nursing facility days was not known by the nursing home at the time to be false.

At the time of the resident's admission, nursing home employees, including the Social Director of the nursing home, represented to the resident's family, and continued to do so on various occasions up to and including the resident's date of death, that the resident had sufficient Medicare coverage. Notwithstanding the representations made to the family, it was subsequently discovered that the resident's eligibility to receive Medicare benefits had ceased because of previous payments made by Medicare to another nursing home at which the resident previously resided. Thus, Medicare withheld any future payments owed to the nursing home in order to recoup the payments incorrectly paid out on behalf of the resident to the present nursing home. As a result, the nursing home sought recovery from the resident's estate for the outstanding balance.

In this case, the appellate Court concurred with the lower court's decision that when a nursing home makes an incorrect representation to a resident's family regarding the number of available Medicare skilled nursing facility days, any potential claim for recovery may be estopped.

Please contact our office if you would like any additional information regarding this case.

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Speakers

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