

## ***Long Term Care and Senior Housing Hot Sheet -- Breaking Developments in Long Term Care and Senior Housing Law***

**08.31.2005**

### **CMS SNF/LTC Open Door Forum Alerts Providers to New Immunization Requirement and Possible Return of Therapy Caps**

On August 30, 2005, a Skilled Nursing Facility/Long Term Care Open Door Forum was hosted by Centers for Medicare and Medicaid Services ("CMS"). CMS highlighted two issues of interest to Skilled Nursing Facility providers: the new immunization regulation and the possible return of therapy caps.

#### **New Immunization Requirement**

CMS has proposed a new rule designed to increase immunization rates in Long Term Care facilities participating in Medicare and Medicaid. CMS anticipates adoption of the final rule prior to the start of the influenza season this fall. State surveyors are being instructed to ensure that facilities comply with this new regulation.

Under the proposed rule, Long Term Care facilities will be required to offer each resident immunization against influenza annually, from October 1 through March 31, as well as lifetime immunization against pneumococcal diseases. Long Term Care facilities will be required to ensure that each resident receives an annual immunization against influenza and receives the pneumococcal immunization once, unless medically contraindicated or the resident or the resident's legal representative refuses immunization.

CMS has announced that it expects facilities to develop protocols and procedures for obtaining previous immunization history on each resident when possible. Additionally, the rule proposes that the resident's immunization status be documented in the resident's medical record, including but not limited to, the information about the resident receiving influenza and/or pneumococcal immunizations, or that immunization was contraindicated or was refused. If the immunization was refused, documentation must include that the resident or the resident's legal representative received appropriate education and consultation regarding the benefits of influenza and pneumococcal immunization. The updating and maintaining of residents' medical records related to immunization will be a focus of state surveyors.

CMS has indicated that there will be no variations between residents who are in a facility short term or for a longer period of time. Therefore, it will be important for facilities to check the immunization status of all residents during flu season, document that the status was verified, and document that appropriate education was provided if immunization is refused.

## **Possible Return of Therapy Caps**

The current moratorium on therapy caps is due to expire on January 1, 2006. Absent action by Congress, the caps will go back into effect.

Originally the Balanced Budget Act of 1999 set financial limitations on therapy services. The Balanced Budget Refinement Act of 1999 placed a two-year moratorium on these limitations. The moratorium was extended into 2003. The caps were briefly implemented from September 1, 2003, through December 7, 2003, when the Medicare Prescription Drug Modernization Act of 2003 renewed the moratorium until the end of calendar year 2005.

If the moratorium on therapy caps is allowed to expire, the original provision will go back into effect. Under these original provisions, two caps will be implemented. One cap will limit outpatient physical therapy and speech language pathology services combined to approximately \$1,700. A separate cap of approximately \$1,700 will apply to outpatient occupational therapy services.

For more information, please contact the Long Term Care and Senior Housing Law Group at:

Lane Powell PC  
(206) 223-7000 Seattle  
(503) 778-2100 Portland  
(360) 754-6001 Olympia

[longtermcareandseniorhousing@lanepowell.com](mailto:longtermcareandseniorhousing@lanepowell.com)  
[www.lanepowell.com](http://www.lanepowell.com)

We provide the *Long Term Care and Senior Housing* hot sheet as a service to our clients, colleagues and friends. It is intended to be a source of general information, not an opinion or legal advice on any specific situation, and does not create an attorney-client relationship with our readers. If you would like more information regarding whether we may assist you in any particular matter, please contact one of our lawyers, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.

© 2005 Lane Powell PC  
Seattle - Portland - Anchorage - Olympia – London