

May 17, 2010

Eric Stone
Acute Unit
Health Facilities Inspection Division
555 Ferguson Drive, Suite 320
City of Commerce, CA 90022

RE: Transfers of Motion Picture Home Residents

Dear Mr. Stone:

I am writing to provide additional information on one of the complaints raised by the family council of the Motion Picture and Television Fund's skilled nursing facility during its meeting with James Lawson of your office on April 21, 2010. I understand that your office is preparing to investigate the family council complaints.

Residents, families and CANHR are concerned that many of the residents who have been transferred or discharged by MPTF since it announced the planned closure of the skilled nursing facility in January 2009 have not been properly notified of their transfer and discharge rights. At least 40 residents have been transferred or discharged since the closure was announced.

As you know, federal regulations at 42 CFR section 483.12 require skilled nursing facilities to provide at least 30 days advance written notice to residents whenever the facility initiates a transfer or discharge. The written notice must contain the following information:

- (i) The reason for transfer or discharge;*
- (ii) The effective date of transfer or discharge;*
- (iii) The location to which the resident is transferred or discharged;*
- (iv) A statement that the resident has the right to appeal the action to the State;*
- (v) The name, address and telephone number of the State long term care ombudsman;*
- (vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and*
- (vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.*

The CMS guidance to surveyors on the transfer and discharge requirements clarifies that these obligations exist anytime a facility initiates a transfer or discharge, regardless of whether a resident agrees to the facility decision. The guidance states:

This requirement applies to transfers or discharges that are initiated by the facility, not by the resident. Whether or not a resident agrees to the facility's decision, these requirements apply whenever a facility initiates the transfer or discharge.

CMS State Operations Manual, Appendix PP, Guidance to Surveyors for Long Term Care Facilities, at page 42.

Contrary to this requirement, MPTF has taken the position that it will not issue legally required transfer notices except to those residents who refuse to go along with its plans to evict them. I'm attaching an internal MPTF memo that contains the following statement:

The legally required "notice of transfer" letters will be issued on an incremental basis ONLY TO THOSE INDIVIDUALS WHO STILL REFUSE TO BEGIN THE PROCESS OF IDENTIFYING NEW FACILITIES AND ONLY WHEN AN APPROPRIATE BED HAS BEEN IDENTIFIED.

MPTF officials are well aware of their legal responsibilities to give all residents advance written notice of their transfer and discharge rights before they are moved. The MPTF's relocation plan that it submitted to you on January 14, 2009 includes this statement:

Prior to the commencement of any transfer/discharge initiated pursuant to the closure, the resident will receive a written notice of transfer/discharge which shall provide 30 days notice of the date of transfer/discharge.

I am attaching a list of dozens of residents who MPTF has transferred or discharged from the skilled nursing facility since January 2009 as part of its effort to close the facility. In your investigation, please determine whether each resident was properly notified in writing of his or her transfer and discharge rights in a timely manner.

Please notify me of your findings. Thank you for your cooperation.

Sincerely,

Michael Connors
Advocate

Enclosure