

# Bulletin

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## Discontinuation of Home Care Services: Patient Abandonment by Any Other Name . . .

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As the treatment phase of health care services moves more into the home setting, home health providers may find themselves in the position of questioning the appropriateness of continuing a patient's home care. Concern may arise due to increased acuity, inappropriate or abusive patient behavior, lack of support by the family, or inability to pay for the services. Any action to discontinue services, however, must be carried out consistent with a policy which ensures even-handed application.

The relationship between a patient and healthcare provider is presumed to continue until terminated with the consent, or at least mutual understanding, of both parties. A relationship can be terminated by the patient at any time. However, premature termination of treatment by a provider may be the subject of a legal cause of action known as "abandonment." Abandonment is defined as the unilateral termination of a physician/patient or health professional/patient relationship by the healthcare provider without proper notice to the patient when there is still the necessity of continuing medical attention.

Elements which must be present for a cause of action for the tort of abandonment are: (1) healthcare treatment that was unreasonably discontinued; (2) contrary to the patient's will or without the patient's knowledge; (3) with the healthcare provider failing to arrange for care by another appropriate provider; (4) the healthcare provider should have reasonably foreseen that harm to the patient would arise from the termination of the care (proximate cause); and (5) the patient must have suffered harm or loss as a result of the discontinuation of care.<sup>1</sup>

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Since most of the principles of abandonment derive from case law involving physicians, a brief review of these principles follows. The types of actions that may lead to liability for abandonment include premature discharge of the patient by the physician, failure to provide proper instructions before discharging the patient, a statement by the physician to the patient that the physician will no longer treat the patient (without adequate referral to one who will), the refusal to respond to calls or to further attend the patient, and failure to follow-up on post-surgical care.

Generally, abandonment does not occur if the physician responsible for the patient arranges for a substitute physician to take his place in the event of vacations, retirement, illness, or distance from the patient's home. As long as an appropriately trained physician, sufficiently knowledgeable of the patient's special conditions, if any, has been arranged, the courts usually will not find abandonment has occurred. Even where a patient refuses to pay for the care or is unable to pay for the care, the physician is not at liberty to unilaterally terminate the relationship. The physician must take steps to have the patient's care assumed by another or give a sufficiently reasonable period of time to locate another physician, prior to discontinuing care.

### Abandonment by the Home Health Provider

Similar principles as those which apply to physicians apply to the home health provider. A home health provider, as the direct provider of care to the homebound patient, may be held to the same legal obligation and duty to deliver care that addresses the patient's needs as is the physician. Furthermore, since the care is provided pursuant to a physician's plan of care, if the patient sues the physician for abandonment because of the actions, or inactions, of the home health provider's staff, the physician may seek indemnification from the home health provider.

When a home health provider furnishes treatment to a patient, the duty to continue providing care to the patient is a duty owed by the provider itself. The provider does not have a duty to continue providing the same nurse, therapist, or aide to the patient, so long as the provider continues to use appropriate, competent personnel to administer the course of treatment consistent with the plan of care. Of course, from the perspective of patient satisfaction and continuity of care, it may be in the best interests of the provider and patient to attempt to provide the same individual practitioner.

If the patient requests replacement of a particular nurse, therapist, technician, or home health aide, the provider still has a duty to provide care to the patient, unless the patient also specifically states he or she no longer desires the provider's service. Supervisors should always follow up on such patient requests to determine the reasons regarding the dismissal, to detect "problem" employees, and to ensure no incident has taken place which might give rise to liability. The home health provider should continue providing care to the patient until told not to do so by the patient.

### Coping with the Abusive Patient

Home health provider personnel may encounter an abusive patient. This abuse may or may not be a result of the patient's medical condition. If the patient poses a physical danger to the individual provider, he or she should leave the premises and immediately document the facts surrounding the visit. Supervisory personnel should be informed and should complete an internal incident report. If it appears a criminal act has taken place, such as a physical assault, attempted rape, or other such act, this act should be reported to local law enforcement agencies. The provider should also notify both the patient and the physician that the provider will terminate its relationship with the patient, and an alternative provider for these services should be obtained.

Other somewhat abusive circumstances may lead the provider to decide to terminate its relationship with a particular patient. Examples include verbally abusive patients, patients who solicit the provider professional to break the law (for example, to provide illegal drugs or provide noncovered services and equipment and bill them as something else), consistently noncompliant patients, or patients who fail to pay for the services or equipment provided. However, once treatment has begun, the provider is usually obliged to continue providing services until the patient has had a reasonable opportunity to obtain a substitute provider.

Patients who continually misuse or abuse the home health provider's equipment may cause the provider to terminate care of the patient. If efforts to educate, demonstrate, or otherwise teach proper use of the equipment fail, the provider may be justified in terminating treatment to protect its equipment and preserve it for use by others.

### Risk Management Policy

Home health personnel should have training on how to handle the difficult patient. Arguments or emotional comments should be avoided. If it becomes clear a certain practitioner and patient are not compatible, a substitute should be tried. If it appears the problem lies with the patient and the provider decides to terminate its relationship with the patient, the following steps should be taken: (1) The circumstances should be documented in the patient's record; (2) The home health provider should give or send a letter to the patient explaining the circumstances surrounding the termination of care; (3) The letter should be sent by certified mail, return receipt requested or other measures taken to document that the patient has received it, placing a copy of the letter in the

patient's record; (4) If possible, the patient should be given a certain period of time to obtain replacement care. Usually 30 days is sufficient, unless abuse warrants immediate discontinuation; (5) If the patient has a life-threatening condition or a medical condition which might deteriorate in the absence of continuing care, this condition should be clearly stated in the letter. The necessity of the patient's obtaining replacement home healthcare should be strongly emphasized; (6) The patient should be informed of the location of the nearest hospital emergency room. The patient should be told to either go to the nearest hospital emergency room in case of a medical emergency or to call the local emergency number for ambulance transportation; (7) A copy of the letter should be sent to the patient's attending physician via certified mail-return receipt requested.

Before such steps are taken, the patient's case should be thoroughly discussed with the home health provider's risk manager, legal counsel, medical director, and the patient's attending physician. Review from all of these perspectives may help the provider avoid liability for the increasing number of instances in which it wishes to discontinue services to a patient.

### NOTE

1. For discussion of this topic, see Chapter 1, Section 3, *Home Health Care Law Manual*, Martha Dale Nathanson, ed., Aspen Publishers, 1996.

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