

STATE

What happens when a hospice patient recovers?

The Pittsburgh Post-Gazette

Medicaid program.

When a patient enters hospice care, the expectation usually is that he or she is likely to die in the not-too-distant future.

But what happens when a patient who meets the criteria for hospice care begins to improve and recover?

"It's not terribly unusual for someone to come out of hospice care," said attorney Bob Wolf, of Downtown law firm Tener, Van Kirk, Wolf and Moore. Wolf wrote the Allegheny County Bar Association's living will and power of attorney brochure, and is an expert on end-of-life legal issues.

"But, generally speaking, people in hospice have a serious physical condition where it would not be surprising if the person died within a six-month period."

The case of a female patient who was treated and later discharged from Bethany Hospice Services of Western Pennsylvania after her condition improved, is wending its way through the state legal system, after the state Department of Welfare refused to pay for her care through its

The woman, who was 79 when she was admitted to Bethany in 2006, is described in court documents as being mentally challenged; she was also suffering from dementia, losing weight and bed-ridden when her family admitted her to Bethany in June 2006.

However, the patient was discharged from Bethany in June 2008, after it determined her prognosis had improved to the point she no longer met the criteria to remain in hospice care.

The DPW and Medicaid initially reimbursed Bethany for the patient's care.

But during a routine review of Bethany's patient records in 2009, the DPW retroactively denied payment for the patient's care, on the basis that Bethany's records did not document a "decline" in her condition.

"What the Department of Public Welfare was seeking was to impose an additional condition that was not part of the requirements for hospice providers," said Mary-Jo Rebelo, an attorney with Houston Harbaugh, which represents Bethany.

"They will tell you that

this issue of decline is not a new or additional component of the regulations, but in fact, it's our position that it is."

Pennsylvania's criteria for hospice care under its Medicaid program require that a patient be certified as terminally ill by a doctor of medicine or osteopathy. While the case must be re-certified every 60 days, there is no state limit on how long a patient may remain in hospice

in order to qualify for Medicaid reimbursement.

Bethany appealed the decision to deny payment for the woman's care, and after being initially denied by an administrative law judge, they won their appeal before the Commonwealth Court.

In the decision, Judge Renee Cohn Jubelirer wrote that the court was rejecting the DPW's "imposition of this additional requirement" of Bethany failing to show a

decline in the patient's condition.

"Bethany provided excellent care for these people," Ms. Rebelo said. "They felt very strongly that they complied with everything they were supposed to, and all their records were in order. This is more than just about the money for them."

Eric Kiehl, spokesman with the DPW, said the agency has asked the court to reconsider its decision, but

declined to comment further.

DPW's decision to deny payment for treatment that resulted in a positive outcome for a patient is potentially troubling, Wolf said, adding that the comfort-focused care patients receive in hospice can sometimes affects some patients better than more aggressive medical treatment does.

"You don't want people to be afraid to get appropriate care," Wolf said.



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