

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HEALTH

In the Matter of Stewartville Care Center,  
Post-Certification Revisit Exit Survey  
Date: November 6, 2006

**RECOMMENDED DECISION**

The above matter was the subject of an independent informal dispute resolution (IIDR) conducted by Administrative Law Judge Steve M. Mihalchick by paper review only. The Office of Administrative Hearings' (OAH) record closed upon receipt of Stewartville Care Center's reply brief on March 26, 2007.

Marci Martinson, IIDR Coordinator, Licensing and Certification Program, Division of Compliance Monitoring ("Division"), P.O. Box 64900, St. Paul, MN 55164-0900, represents the Division.

Susan M. Schaffer, Orbovich & Gartner Chartered, 408 St. Peter Street, Suite 417, St. Paul, MN 55102-1187, represents Stewartville Care Center ("facility").

**NOTICE**

Under Minn. Stat. § 144A.10, subd.16 (d)(6), this recommended decision is not binding on the Commissioner of Health. Under Department of Health Information Bulletin 04-07, the Commissioner must mail a final decision to the facility indicating whether or not the Commissioner accepts or rejects the recommended decision of the Administrative Law Judge within 10 calendar days of receipt of this recommended decision.

**FINDINGS OF FACT**

1. Stewartville Care Center is an 85-bed nursing home facility located in Stewartville, Minnesota.

2. Resident #31 is a 67-year-old male who was admitted to the facility on April 14, 2006.<sup>[1]</sup> The Resident suffers from diabetes, anemia, hypertension, dementia, seizures, and a history of sacral ulcers.

3. Upon admission, the facility staff completed a minimum data set for the Resident, in which they noted that the Resident's skin had abrasions, bruises, and rashes. Under skin treatments, facility staff indicated that the Resident had received the following care over the last seven days: turning/repositioning

program, ulcer care, application of dressing other than to feet, and application of ointments/medications (other than to feet).<sup>[2]</sup> Facility treatment sheets indicate that Resident #31 was turned or repositioned every two hours.<sup>[3]</sup>

4. On April 27, 2006, facility staff completed a 14-day Medicare minimum data set indicating the same skin problems and treatments, except that dressings were no longer being applied.<sup>[4]</sup> Similarly, the skin condition section of the 30-day Medicare minimum data set, completed on May 12, 2006, was substantially the same as the previous minimum data set, minus the presence of abrasions or bruises.<sup>[5]</sup>

5. Facility staff completed another minimum data set on July 19, 2006, in which the facility added as a skin treatment pressure relieving device(s) for bed.<sup>[6]</sup> That same day, the facility also performed and completed a sitting Tissue Tolerance Assessment.<sup>[7]</sup> No redness was observed and facility staff indicated that there was not a pressure reduction device on the Resident's wheelchair or sitting surface. The following day, facility staff performed a lying Tissue Tolerance Assessment.<sup>[8]</sup> No redness was observed but the staff member did note that there was a pressure reduction device on the Resident's bed.

6. On August 7, 2006, the facility Skin and Wound Assessment and Record indicated that the Resident had two small superficial skin breaks on his right buttocks.<sup>[9]</sup> The treatment sheet noted the use of a pressure reduction mattress and a Roho cushion on the Resident's bed and recliner, respectively.<sup>[10]</sup> The Skin and Wound Assessment noted that one of the areas had "resolved" on August 9, and the other healed on August 10.<sup>[11]</sup>

7. The Resident developed another small superficial skin break on his right buttocks on September 3, 2006.<sup>[12]</sup> The Skin and Wound Assessment and Record indicated that facility staff applied Duoderm cream to the area and that it had healed by September 18, 2006.

8. On September 8, 2006, the Department of Health's Division of Compliance Monitoring completed its standard survey and cited violations of Tag F272 (comprehensive assessment), Tag F276 (quarterly review assessment), Tag F279 (comprehensive care plans), Tag F314 (quality of care), Tag F315 (urinary incontinence), Tag F332 (medication errors), Tag F367 (therapeutic diets), Tag F426 (pharmacy services-procedures) Tag F431 (labeling of drugs and biologicals), and Tag F441 (infection control). The highest scope and severity level issued for these tags was E.<sup>[13]</sup>

9. From September 30 to October 1, 2006, facility staff performed and completed both sitting and lying Tissue Tolerance Assessments on Resident #31.<sup>[14]</sup> One of the nursing staff indicated that it was difficult to keep the Resident repositioned on his side and that he had a tendency to roll again onto his back. The sitting and lying assessments revealed no redness four hours after the initial observation. These assessments included the Braden Scale for Pressure Ulcer Risk Factors.<sup>[15]</sup> The facility continued to use pressure reduction devices on the Resident's bed and sitting surface.<sup>[16]</sup>

10. On October 3, 2006, Resident #31 was admitted to the hospital with a slight fever. The hospital ran several tests and finally released the Resident back to the facility on October 6, 2006.<sup>[17]</sup> The hospital dismissal summary indicated that the Resident had a Stage II pressure ulcer on his right buttocks upon his dismissal from the hospital.

11. The facility performed an admission skin assessment upon the Resident's return from the hospital.<sup>[18]</sup> The nursing staff recorded evidence of two superficial skin breaks, one on the anterior of the Resident's scrotum and the other on his right buttocks.<sup>[19]</sup> Topical barrier creams were applied to both areas.<sup>[20]</sup>

12. Based on the results of the standard survey, some of which facility staff disagreed with, the facility took action to develop and implement a plan of correction to assure that when the revisit survey occurred, the facility would be found in substantial compliance.<sup>[21]</sup> One of the changes made by the facility involved its skin assessment procedures. The facility hired a consultant who developed a new Tissue Tolerance Assessment form and trained the facility staff on its use.<sup>[22]</sup> The facility filed its Plan of Correction with the Division on October 6, 2006, indicating a completion date of October 18, 2006.<sup>[23]</sup>

13. On October 10, 2006, facility staff completed a 5-day Medicare minimum data set indicating the presence of a Stage II pressure ulcer, abrasions, bruises, and rashes were present on the Resident's body.<sup>[24]</sup> Skin treatments being provided by the facility involved pressure relieving devices for bed and chairs, application of dressings other than to feet, and application of ointments (other than to feet).<sup>[25]</sup> That same day, the nursing staff also completed a Tissue Tolerance Evaluation on the new form created by the consultant.<sup>[26]</sup> Based on the evaluation, the facility determined that the Resident should be on a two-hour repositioning schedule for both sitting and lying and that the Roho cushion should continue to be used.

14. The Resident was hospitalized again from October 12-23, 2006, to have his gall bladder removed. Hospital staff continued to treat the Resident's Stage II pressure ulcer with barrier cream during his stay.<sup>[27]</sup>

15. The facility performed an admission skin assessment upon the Resident's return from the hospital and noted the presence of his surgical incisions along with redness on his interior buttocks.<sup>[28]</sup> The assessment included the Braden Scale for Pressure Ulcer Risk Factors.<sup>[29]</sup> The treatment sheets for October 23, 2006, indicated that the facility continued to use pressure relieving devices on his bed and chair, and reposition him every two hours.<sup>[30]</sup> It is not clear from the Treatment Sheets if the nursing staff applied barrier cream to the pressure ulcer on the Resident's buttocks and ointment to his penis immediately upon his return from the hospital. Another Tissue Tolerance Evaluation was completed on October 24, 2006, which reaffirmed the need to reposition the Resident every two hours.<sup>[31]</sup>

16. On October 27, 2006, the facility completed a minimum data set indicating the presence of a Stage II ulcer, a history of resolved ulcers,

abrasions, bruises, rashes, and surgical wounds.<sup>[32]</sup> Treatments noted and performed were turning/repositioning, ulcer care, surgical wound care, application of dressings, and application of ointments/medications.<sup>[33]</sup>

17. The minimum data set completed on November 5, 2006, indicated that the Resident had developed another Stage II pressure ulcer.<sup>[34]</sup> The skin treatments utilized were the same as those noted in the October 27, 2006 minimum data set, with the addition of pressure relieving devices for the Resident's bed and chair. The facility treatment sheets note that the nursing staff applied Duoderm to the new pressure ulcer on the Resident's right buttocks on November 6, 2006.<sup>[35]</sup>

18. On November 6, 2006, Division surveyors returned to the facility to begin the post-certification revisit exit survey.<sup>[36]</sup> During the surveyor observation on that day, facility staff noted the presence of the third and fourth pressure ulcers on the Resident's coccyx and left buttocks.<sup>[37]</sup> One of the surveyors spoke to the Director of Nursing (DON) and the Assistant Director of Nursing (ADON) regarding concerns about the tissue tolerance assessment and the repositioning schedule.<sup>[38]</sup> The DON and the ADON expressed that they understood the surveyors concerns but did not agree with them.<sup>[39]</sup>

19. On November 28, 2006, the Division issued a Statement of Deficiencies to the facility, citing violations of Tag F272 (comprehensive assessment), Tag F276 (quarterly review assessment), Tag F280 (comprehensive care plans), and Tag F314 (pressure sores).<sup>[40]</sup> Tags F276 and F314 resulted in violations that were isolated and caused actual harm but not immediate jeopardy (scope and severity level G).

Based upon the exhibits submitted and the arguments made and for the reasons set out in the Memorandum that follows, the Administrative Law Judge makes the following:

### **RECOMMENDED DECISION**

1. The citation with regard to Tag F276 is not supported by the facts and should be RESCINDED.

2. The citation with regard to Tag F314 is supported by the facts and should be AFFIRMED as to scope and severity.

Dated: April 10, 2007.

/s/ Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: No hearing

## MEMORANDUM

The post-certification revisit exit survey completed November 6, 2006, resulted in four deficiencies, two of which are contested by the facility.

### Tag F276

According to this regulation, a facility must assess a resident using a quarterly review instrument specified by the State and approved by CMS not less frequently than once every three months.<sup>[41]</sup>

The State Operations Manual ("SOM") directs Division surveyors to consider the following questions when investigating an alleged violation of Tag F276:

- Is the facility assessing and acting, no less than once every three months, on the results of the resident's functional and cognitive status examination?
- Is the review of the resident's condition consistent with information in the progress notes, the plan of care, and the surveyor's resident observations and interviews?

The resident assessment process, which includes quarterly assessments is a complex process involving assessment, typically using a Minimum Data Set ("MDS"); decision-making, using a Resident Assessment Protocol ("RAP"); care plan development; care plan implementation; and evaluation of the resident.<sup>[42]</sup>

The quarterly assessment is used to track the resident's status between comprehensive assessments, and to ensure monitoring of critical indicators of the gradual onset of significant changes in the resident's status.<sup>[43]</sup>

The Division argues that it is proper to allege violations of Tag F276 even if the facility completed the quarterly minimum data set in a timely manner if the assessment of the resident's needs was not complete and accurate. The Division asserts that the completed tissue tolerance and Braden Scale assessments did not comprehensively assess the Resident's individualized risks for skin breakdown or his current pressure ulcer. The Division argues that the facility did not assess or provide treatment to the pressure ulcer on the Resident's buttocks upon his return from the hospital and did not document in the Resident's care plan that he should be repositioned side-to-side and not on his back. In addition, the Division contends that no tissue tolerance reassessment was completed after the Resident developed a Stage II pressure ulcer on November 5, 2006.

The facility contends that the plain language of this regulation requires no more than the completion of an appropriate review instrument at least every three months. The facility argues that it exceeded the requirements of the regulation when it completed six minimum data sets for the Resident over a period of six months. Furthermore, the facility points out that none of the survey findings under Tag F276 actually state that the facility failed to complete quarterly assessments in a timely manner. The facility also accurately points out that Tag F276 is not listed as a *Potential Tag for Additional Investigation* in the interpretive guidelines when surveyors are investigating Tag F314 issues.<sup>[44]</sup>

The Administrative Law Judge concludes that the facility has presented sufficient evidence to demonstrate that the results of the survey were incorrect. The Division has admitted that its statement related to the repositioning of the Resident every 2 to 3 hours was inaccurate. No deficient practice exists that constitutes a violation of this regulation at level G. The facility completed the required comprehensive assessments of Resident #31 in a timely manner using the required MDS forms, and the reassessments were accurate. Accordingly, Tag F276 should be rescinded.

### **Tag F314**

Based upon the comprehensive assessment of a resident, the facility must ensure that:

- (1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individuals' clinical condition demonstrates that they were unavoidable; and
- (2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

CMS revised the interpretive guidelines for pressure ulcers in November 2004. The Division delayed the enforcement of those guidelines until the end of May 2005 to assure that all providers had an opportunity to learn the guidelines and implements them. Prior to enforcement, the Division conducted multiple training sessions throughout the state.

The new, revised guidelines provide a definition for "avoidable" pressure ulcers as follows:

"Avoidable" means that the resident developed a pressure ulcer and that the facility did not do one or more of the following:

- (1) evaluate the resident's clinical condition and pressure ulcer risk factors;

- (2) define and implement interventions that are consistent with resident needs, resident's goals, and recognized standards of practice;
- (3) monitor and evaluate the impact of the interventions; or
- (4) revise the interventions as appropriate.<sup>[45]</sup>

Conversely, an "unavoidable" pressure ulcer is one that occurs even though the facility did each of the four things stated above.

The guidelines indicate that because a pressure ulcer can develop within 2 to 6 hours of the onset of pressure, the at-risk resident needs to be identified and have interventions implemented promptly to attempt to prevent pressure ulcers.<sup>[46]</sup> Pressure intensity, pressure duration, and tissue tolerance are significant indicators of the potential for pressure ulcers.<sup>[47]</sup> Examples of risk factors include impaired/decreased mobility and decreased functional ability; resident refusal of some aspects of care and treatment; exposure of skin to urinary and fecal incontinence; malnutrition or dehydration; and a history of pressure ulcers.

Pressure ulcer investigative protocol states that non-compliance with this regulation is based on failure to do one or more of the following: 1) accurately or consistently assess a resident's skin integrity on admission and as indicated thereafter; 2) identify a resident at risk of developing a pressure ulcer; 3) identify and address risk factors for developing a pressure ulcer or explain adequately why they could not or should not do so; 4) implement preventive interventions in accord with the resident's need and current standards of practice; 5) provide clinical justification for the unavoidable development or non-healing/delayed healing or deterioration of a pressure ulcer; and 6) provide appropriate interventions care and treatment to an existing pressure ulcer to minimize infections and to promote healing.<sup>[48]</sup>

The Division argues that "failure of the facility to provide appropriate care and services to prevent pressure ulcers or heal existing pressure ulcers is more than minimal harm."<sup>[49]</sup> The Division maintains that the Resident's history of recurring ulcers in a short span of time on the same area of the Resident's body should have alerted the facility to the Resident's high risk of further ulcers in the same approximate area.

In addition, the Division contends that the facility did not assess or provide treatment to the identified pressure ulcer on the Resident's buttocks upon his return from the hospital, as argued above under Tag F276. The Resident's medical records indicate that the facility nursing staff attempted to position him on his side when lying in bed, but that the Resident would not stay positioned that way. The Resident continued to have reddened buttocks and continued to sit and lie on that area. The Division points out that there is no evidence as to what interventions were used to assist the Resident to stay on his side, no evidence of an evaluation of those interventions to determine if they were appropriate, and no evidence of development of alternate interventions to

promote healing of the reddened areas. The Division argues that the facility's failure to reevaluate the adequacy of the plan for preventing pressure ulcers caused the Resident to develop additional pressure ulcers, which were unavoidable and caused actual harm to the Resident.

The facility maintains that it complied with each of the four points used in determining whether a pressure ulcer was "avoidable" by completing tissue tolerance assessments, skin and wound assessments, resident care plans, admission skin assessments, treatment sheets, evaluations for pressure ulcer risk, and nutritional interventions. The facility contends that because it examined and implemented each of the four points and the Resident still developed pressure ulcers, that the ulcers were unavoidable.

The Administrative Law Judge agrees that the facility did recognize and assess factors placing the Resident at risk for developing pressure ulcers. These findings are well documented in Resident #31's medical record. Furthermore, the Administrative Law Judge concurs that the facility defined and implemented interventions for pressure ulcer relief and prevention through the use of a repositioning schedule, barriers creams, and pressure relieving devices for his bed and chair. As to the third and fourth points, the facility did also monitor the interventions that it implemented, but there is no evidence that the facility evaluated those interventions and revised them as appropriate. The facility continued to use the same interventions, sometimes in different combinations, but the Resident continued to develop pressure ulcers in the same areas. The medical record demonstrates that the facility sought, without success, to keep the Resident positioned on his side in bed, but it does not explore or explain ways in which the staff could have kept him on his side or why that might have been impossible.

The plain language of the regulation requires the facility to ensure that a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing. If pressure ulcers do develop and do not heal, the facility must demonstrate that the Resident's clinical condition made the pressure ulcers unavoidable. The Resident developed multiple pressure ulcers over a six-month period and the facility has not shown that those ulcers were unavoidable. Actual harm came to the Resident, and the scope and severity level of Tag F314 should be upheld.

**S. M. M.**

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<sup>[1]</sup> Exhibit Q.

<sup>[2]</sup> Ex. C1.

- [\[3\]](#) Ex. J1.
- [\[4\]](#) Ex. C2.
- [\[5\]](#) Ex. C3.
- [\[6\]](#) Ex. C4.
- [\[7\]](#) Ex. H.
- [\[8\]](#) Ex. H.
- [\[9\]](#) Ex. F.
- [\[10\]](#) Ex. J1.
- [\[11\]](#) Ex. F.
- [\[12\]](#) Ex. F.
- [\[13\]](#) Ex. N.
- [\[14\]](#) Ex. H.
- [\[15\]](#) Ex. D.
- [\[16\]](#) Ex. I.
- [\[17\]](#) Ex. A.
- [\[18\]](#) Ex. G.
- [\[19\]](#) Ex. F.
- [\[20\]](#) Ex. G.
- [\[21\]](#) Affidavit of Brad Haugen, R.N. Mr. Haugen is the Director of Nursing at Stewartville Care Center.
- [\[22\]](#) Affidavit of Sharlla Regehr.
- [\[23\]](#) Ex. N.
- [\[24\]](#) Ex. C5.
- [\[25\]](#) Ex. C5. Under the Skin Condition section, the facility staff also noted a foot problem and care provided to the Resident to address that problem.
- [\[26\]](#) Ex. H.
- [\[27\]](#) Ex. B.
- [\[28\]](#) Ex. G; *see also* Ex. E.
- [\[29\]](#) Ex. D.
- [\[30\]](#) Ex. J2.
- [\[31\]](#) Ex. H.
- [\[32\]](#) Ex. C6.
- [\[33\]](#) Exs. C6 and G.
- [\[34\]](#) Ex. C7.
- [\[35\]](#) Ex. J2.
- [\[36\]](#) Ex. O.
- [\[37\]](#) Exs. F and O.
- [\[38\]](#) Ex. O.
- [\[39\]](#) Affidavits of Brad Haugen, R.N. and Mary Barber, R.N.
- [\[40\]](#) Ex. O.
- [\[41\]](#) 42 C.F.R. § 483.20(c).
- [\[42\]](#) Ex. 5-1 and 5-2.
- [\[43\]](#) Ex. 5-5.
- [\[44\]](#) The Division likely meant to cite to Tag F272, which is included as a *Potential Tag for Additional Investigation* in the interpretive guidelines.
- [\[45\]](#) Ex. 8-2.
- [\[46\]](#) Ex. 8-6.
- [\[47\]](#) Ex. 8-7.
- [\[48\]](#) Exs. 9-6 and 9-7.
- [\[49\]](#) Ex. 9-12.