



When a Sex Offender Resides in Your Health Care Facility: Know Your Rights and Obligations

Over the past several years, our firm has fielded an influx of concerns from health care facility clients who have learned that there is a registered sex offender living amongst their resident population. Pursuant to the Sex Offender Registration Act (SORA), individuals who have been convicted of the most severe offenses are designated “Level 3” offenders – classified as having a high risk of repeat offending – and are required to register as a sex offender every year for the rest of their lives. As these individuals age, a percentage of this population will seek admission to independent living communities for seniors, assisted living facilities and skilled nursing facilities, while bearing this classification.

A skilled nursing facility can find itself in a precarious and uncomfortable position when it learns, after the fact, that it has unknowingly admitted a registered sex offender to its facility, particularly when it is discovered by another resident. Pursuant to New York State Correction Law § 168-1, nursing homes are specifically included as one of the groups of “vulnerable persons” in the community who must be notified by the state when a registered sex offender lives in or moves into a community. However, assisted living facilities and independent living communities serving the senior population are not automatically notified. Once a registered sex offender is already residing at the independent living community or assisted living facility, they have limited options in how to address concerns regarding residents’ safety beyond diligent monitoring of the sex offender’s activities, addressing any behavioral issues, and, when possible or appropriate, seeking to transfer the registered sex offender to another facility.

Non-Discrimination

There is no law or regulation directing skilled nursing facilities to either admit or deny admission to a registered sex offender and, as sex offenders are not a “protected class” under the Constitution, adopting a policy of prohibiting sex offenders from being allowed admission to a health care facility does not constitute unlawful discrimination. **As such, skilled nursing facilities are free to enact policies barring admission to registered sex offenders.** One caveat to adopting such a policy is that it must be administered uniformly; otherwise, admitting one sex offender while denying admission to another could constitute discrimination on different grounds.

Standard Operating Procedures

Recommendations for best practices for residential health care facilities include conducting a routine screening of the Sex Offender Registry for any prospective resident prior to admission as part of your standard operating procedure, as well as adopting a uniform policy for whether or not

residential health care facilities will admit registered sex offenders into your facilities, incorporating this policy into your Admissions Agreements or Residency Agreements, as the case may be.

Suffolk County Alert: Suffolk County nursing home operators are required to review the New York State Sex Offender Registry: (i) to determine whether there are any current residents listed in the registry; (ii) to determine whether any prospective resident is a registered sex offender listed in the registry (prior to admission); and (iii) to notify employees and residents, and residents' next of kin, when there is a registered sex offender residing at the facility.

In other counties, some or all of these practices may be adopted by residential health care facilities in an effort to mitigate risk of harm to other residents and alleviate liability concerns for the facility. The only time a resident's sex offender status is protected from disclosure by HIPAA is in the unlikely event that the information is contained only in the resident's medical chart; in other cases, the information may be shared publicly, provided that the facility also protects the resident from harassment or abuse from others as a result of such disclosure. At all times, residential health care facility operators should be guided by their obligation to ensure the safety of their residents when making policy decisions regarding the admission of sex offenders to their facilities and communities.

Our experienced attorneys at Cona Elder Law assist residential health care facilities, including assisted living facilities, independent living communities, CCRCs and SNFs, in navigating these complex issues and compliance concerns regarding sex offenders in the aging population. Please contact us for your free virtual "Best Practices" seminar specifically for LeadingAge New York members. Contact Christina Pecoraro at 631.390.5000 or cpecoraro@conalaw.com to schedule yours today.

Cona Elder Law PLLC is an award-winning Elder Law and Health Care Law firm. In practice for over two decades, Cona Elder Law offers unsurpassed expertise in Health Care Facility Reimbursement and Recovery, Elder Law, litigation and collections. Health care facilities turn to Cona Elder Law for innovative strategies and cutting-edge solutions regarding complex Medicaid eligibility matters, Guardianship proceedings, PRUCOL matters, collections, litigation, and other matters related to resident financial accounts and the facility's bottom line. Representing over 200 skilled nursing facilities, CCRCs and assisted living facilities throughout New York and New Jersey, Cona Elder Law is a preeminent law firm in this practice area. The firm has been ranked the #1 Elder Law Firm by Long Island Business News for eight consecutive years and received the Business Achievement Award from the Hauppauge Industrial Association (HIA-LI). For additional information, visit www.conaelderlaw.com.

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