



## More Protections for Nursing Home Patients

Nursing homes can no longer require binding arbitration as a condition for becoming a resident, according to new federal regulations that aim to improve the quality of care provided to nursing home residents.

The regulations have been issued by the Centers for Medicare and Medicaid Services, and extend to nursing homes that receive Medicare and Medicaid dollars; most (but not all) will go into effect after this Thanksgiving. Some of the changes are to provide clarity to providers and to make existing regulations



more readable. Other provisions, however, are entirely new and will enhance the rights and protections of nursing home residents. The new regulations are not likely to apply to assisted living facilities, which are subject to less federal oversight.

Before, a nursing home could require a resident or a resident's family member to sign an agreement before admission that would forfeit the resident's constitutional right to a jury trial if they were injured or killed due to abuse or neglect. Now, residents and their families may still agree to binding arbitration, but only after a dispute has arisen when the resident or family is aware of the nature of the claim to be resolved. This is an important change. Contrary to conventional views, arbitrations often cost a nursing home resident far more than a jury trial. And arbitrations are private proceedings, so abuse or neglect at facilities may never come to public attention.

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Corson & Johnson is part of a national effort, **The Law & You**, which helps answer questions regarding our legal system and how it works for consumers. If you have any questions or would like more information, please **CONTACT US**.

The new regulations will also require more comprehensive care planning for each resident within 48 hours of admission. Care planning is to be centered on the individual needs of each resident. Staff is to be provided instructions in the plan on how to provide the necessary care to each resident.

There is also a new competency requirement for nursing staff. It will be based, in part, on the number of residents at the facility and the severity of their needs. New provisions are designed to reduce the use of psychotropic drugs. Such drugs are often over-prescribed in older populations and are associated with prolonged sedation, impaired cognition, and increased risk of falls.

The new provisions clarify that a physician assistant, nurse practitioner, or a clinical nurse specialist may order labs, radiology, or other diagnostic services for a patient as required and need not wait for a physician to issue the order. This is important, as delays in diagnosis result in delay of care. ■

## Brain Bucket Brigade: Bike Helmet Giveaway for Children

As part of Corson & Johnson's work to make communities safer, we sponsor a bike helmet giveaway for local school students. We use this opportunity to reach out to our community, and help spark good habits when it comes to bicycle safety and wearing a helmet.

For this fall, River Road Elementary in Eugene was selected as one of our helmet giveaway locations. Al Hongo of Paul's Bicycle Way of Life shop was on hand to pass out helmets and ensure that each child's helmet had the proper fit. A special thank you to Al and to Paul's Bicycle Way of Life! ■

## Recent Cases

### Wrongful Death: Gravel Truck Hits Motorcyclist

Since 1987, Oregon has had a \$500,000 limit on non-economic damages in wrongful death claims, an arbitrary number that hasn't been adjusted in decades. Non-economic damages are for the human losses following the death of a family member, including the loss of the love, society, and companionship that person provided to their loved ones. Regardless of the particular facts of a case, the family of a person killed by wrongful conduct can recover no more than \$500,000 for the human losses. This single limit applies regardless of the number of surviving family members, including children. These rules have denied many families from receiving the full financial support they need after the death of a loved one.

This limitation played an important role in one of our cases where motorcyclist Kevin Peschel was killed by a gravel truck that suddenly turned in front of him. Kevin was on his motorcycle traveling northbound on Highway 99 when the truck hit him.

One of the issues in the case involved visibility at the location of the crash, which happened at the crest of a small hill that impaired the view of many drivers. We were able to determine that, due to the height of the gravel truck, that driver had an unobstructed view of Kevin. Accordingly, the truck driver should have seen Kevin's oncoming motorcycle and yielded the right of way instead of turning into the motorcycle's lane and path of travel.

Given Kevin's close connections to his loved ones, we believed that we could prove that the family's non-economic damages exceeded the \$500,000 limit. We then had to turn our attention to the economic losses. Kevin worked for pay, and also provided substantial support and assistance to his wife, who had a demanding job. We worked

## Recent Cases *(continued)*

with experts to evaluate the financial value of his support and assistance, and provided that information to the adverse insurance company before the case settled for the applicable policy limits. ■

### Wrongful Death: Pickup Truck Runs Over Child in Pedestrian Safety Refuge

A seven-year-old child was run over by a full-size pickup truck while he was in a raised safety refuge for pedestrians in a grocery store parking lot. The truck driver was negligent in not negotiating the turn in a safe manner.

In the aftermath, people reviewing the incident thought the driver of the truck was likely misled by the design of the parking lot into thinking that he was turning at the appropriate location. Our investigation found that due to the height of the full-sized truck, the driver could not see what was directly to his right. When he turned, instead of turning into the exit lane, he turned over a curb and into the raised safety refuge.

The little boy, his brother, and his mother had stopped at the store after swimming and enjoying a summer afternoon. When the mother realized that she had left her reusable shopping bags in the car, the boy remained in the middle of the safety refuge, and his mother quickly walked the few steps back to her car to retrieve the bags. The boy sat down briefly on the bark mulch in the safety zone that was marked off by a yellow painted curb, while his brother stood between him and his mother. A full-sized pickup truck, turning at a stop sign in the parking lot, was driven up and over the curb and into the pedestrian area where the boy was sitting. The truck hit and killed the boy. The case against the driver was eventually settled for policy limits. ■

### School Bus Crash Injuries

A bus transportation corporation heavily litigated our case where the bus driver crashed into the back of a small car on a level, open stretch of road, resulting in serious injuries to a fourteen year old girl. Most of our office worked on the girl's case for about six years until we reached a successful result.

The company responsible for the school buses and drivers hired a driver who was known to have multiple health problems, including:

- Sleep apnea
- Psychological disorders
- Prescription drug use

On the day of the crash, the school bus driver drifted off at times, and then later that morning, the bus crashed into the rear of a Honda that had its brake lights and turn blinker on.

The girl was sitting in the back of the Honda when the bus hit. The force of the crash crushed the back of the Honda all of the way up into the passenger compartment, obliterating the rear third of the car. The girl's head and face were subjected to forces that broke her jawbone, a bone in her neck, and caused a closed head injury to the brain. She was taken by ambulance to Portland for emergency trauma services. Her medical procedures and bills still continue to pile up, now years after the crash. The case was finally settled for a confidential amount through mediation. ■