



September 20, 2016

Plum Creek Healthcare Community
1505 North Adams St.
Lexington NE 68850

To Whom It May Concern:

I am writing with concerns about a recent complaint we've received about your facility.

In March, 2016, our client Courtney Shelor contacted your facility in search of a placement for her father John Shelor. Mr. Shelor was experiencing late stage Alzheimer's and his family no longer could care for him at home. Your facility indicated there was an opening—but when his medical records were transferred in preparation for his placement, Mr. Shelor's status as a person living with HIV became known. Our client was informed "We just can't take him" because of his HIV status—your facility informed the family your "air system" was not appropriate for a person with HIV.

STATE AND FEDERAL LAWS PROTECT PEOPLE WITH HIV

Nursing homes and medical facilities may not refuse access to an individual who is living with HIV or is even *suspected* of living with HIV. Rejecting an applicant for services at your facility violates both state and federal law.

Nebraska has one of the strongest state statutes forbidding discrimination on the basis of HIV status. Neb. Rev. Stat. 20-168. Anyone who experiences discrimination may sue under this state law or use the federal law to sue. The applicable federal laws are Section 504 of the Rehabilitation Act of 1973 and Title II of the American with Disabilities Act of 1990.

Because the law is so clear on this issue, the federal government and advocacy groups have begun taking action against nursing facilities and nursing homes who have rejected applicants living with HIV. Here is a sample of recent successful lawsuits against nursing homes for HIV discrimination:

- U.S. Department of Health and Human Services' Office for Civil Rights (OCR) issued a Violation Letter of Finding to Windsor Rosewood Care Center, LLC, of California, concluding that the skilled nursing facility violated Section 504 of the Rehabilitation Act of 1973 by denying admission

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to a Medicaid beneficiary because he was living with HIV.¹ This led to a settlement agreement for training and a new non-discrimination policy.²

- Lawsuit was filed against six Louisiana nursing homes after they refused to accept a stroke victim because he also had HIV. Suit was resolved with informal out of court settlement.³
- Arkansas nursing home was successfully sued after they evicted a patient with HIV who had only been living there for one day. The suit brought claims under the federal Fair Housing Act, the Americans with Disabilities Act, the Arkansas Fair Housing Act and the Arkansas Civil Rights Act.⁴

OUR REQUEST

We want to suggest several remedial steps to ensure your facility does not have another incident such as what occurred to the Shelor family:

INFORM all staff about state and federal laws prohibiting discrimination on the basis of HIV: provide a clear written memo or policy to all intake staff to ensure no applicants are turned away for having HIV.

EDUCATE all staff about HIV in general—how it is transmitted, how it is NOT transmitted, how to be sensitive to the needs of people who are living with HIV. (For example, the air system cannot spread HIV.) The Nebraska AIDS Project has an office in Kearney and they are ready and willing to provide a free training for your staff on these issues.

We ask for your written assurance regarding how you intend to address these issues.

CONCLUSION

The CDC has reported that approximately one-quarter of the people living with HIV are people who are 55 and older.⁵ That population will only continue to grow, as HIV

¹<http://www.hhs.gov/sites/default/files/ocr/civilrights/activities/examples/AIDS/windsorrosewoodlof.pdf>

²<http://www.hhs.gov/sites/default/files/ocr/civilrights/activities/examples/AIDS/windsorrosewoodagreement.pdf>

³ *Little v. Ponchatoula Nursing Home, LLC.*, 2004 WL 2686772 (E.D.La.)

⁴ *Franke, et al. v. Parkstone Living Center, Inc.*, Case No.4:09-cv-341 (E.D. Ark.), online: http://www.lambdalegal.org/in-court/legal-docs/franke_ar_20090508_complaint

⁵ Centers for Disease Control and Prevention, “HIV Among People Aged 50 and Over,” online: <http://www.cdc.gov/hiv/group/age/olderamericans/index.html>

medications are ensuring that a diagnosis of HIV no longer immediately facing imminent death. Taking steps to ensure education and compliance with the law will protect your facility from liability in the future.

I look forward to hearing from you.

A handwritten signature in blue ink, appearing to read "Amy Miller", with a stylized flourish at the end.

Amy A. Miller
Legal Director