

Sec. 17b-262-8. Legitimate non-discriminatory reason

(a) In any case in which a home health care agency is required to provide written justification based upon legitimate non-discriminatory reasons in accordance with this section, the home health care agency shall be afforded an opportunity to demonstrate, and shall have the burden of demonstrating, that it had a legitimate, nondiscriminatory reason for its actions, including but not limited to:

- (1) The patient's non-compliance with the plan of care;
- (2) Lack of staff qualified for the client's particular medical needs; and
- (3) Immediate danger to the health or safety of home health care agency personnel.

(b) Immediate danger to the health or safety of home health care agency personnel shall not constitute a legitimate, non-discriminatory reason unless:

(1) There is timely, substantial and objective evidence demonstrating that the provider has a well-founded belief that there is an immediate danger to the health or safety of home health care agency personnel in providing services at the particular time and location at which the home health care services were requested, or in accessing such location, which prevents the agency from delivering services;

(2) All reasonable efforts to protect the home health care agency personnel have been made prior to refusing service, including but not limited to the use of escorts, coordination with community patrols, and coordination with public and housing authority law enforcement;

(3) The refusal to serve covers an area no larger than necessary to avoid the immediate danger to the health and safety of the home health care agency personnel; and

(4) The refusal to serve is limited in duration so as to be no longer than necessary to avoid the immediate danger to the health or safety of the home health care agency personnel.

(c) Proof of a legitimate non-discriminatory reason, including immediate danger to the health and safety of home health care agency personnel, shall be documented in writing and be based on timely, objective and substantial evidence. Such proof may include, but not be limited to, records maintained pursuant to Department of Public Health's regulations. Proof of immediate danger to the health and safety of home health care agency personnel, such as documented observation of significant drug dealing, criminal gang activity or threatening use of weapons or police department reports of ongoing criminal activity, shall relate to the particular location in question, or the means of access to that location.

(d) All proof of legitimate non-discriminatory purpose submitted pursuant to subsection (c) of section 17b-262-8, Legitimate Non-Discriminatory Reason, shall be investigated and evaluated by the department to ensure that they are not pretextual. For purposes of this section, an allegedly legitimate non-discriminatory purpose is pretextual when:

(1) The home health care agency is unable to offer timely, substantial and objective proof of its alleged legitimate non-discriminatory purpose; or

(2) Timely, substantial and objective evidence exists which demonstrates that there were alternative, neutral means of accomplishing the alleged purpose and that the home health care agency knew or should have known of the existence of such alternative, neutral means.

The department shall issue its findings and recommendations in writing at the conclusion of its investigation.

(e) If the home health care agency is unable to demonstrate a legitimate

Regulations of Connecticut State Agencies

nondiscriminatory purpose, or if the department finds an alleged legitimate non-discriminatory purpose to be pretextual, the department shall issue a notice of violation and refer the case to the U.S. Department of Health and Human Services Office of Civil Rights.

(Effective June 4, 1996)