

What To Do When Patients Don't Want Caregivers of Certain Races or Nationalities

The Equal Employment Opportunity Commission (EEOC) sued ACARE HHC, Inc.; doing business as Four Seasons Licensed Home Health Care Agency in Brooklyn, New York. The EEOC claimed that the Agency removed home health aides from work assignments based on their race and national origin to accommodate clients' preferences in violation of the Civil Rights Act of 1964 [*EEOC v. ACARE HHC d/b/a/ Four Seasons Licensed Home Health Care*, 23-cv-5760 (U.S. District Court for the Eastern District of New York)].

This case recently settled, and Four Seasons will pay a whopping \$400,000 in monetary relief to affected home health aides! The Agency must also update its internal policies and training processes related to requirements of the Civil Rights Act, stop assigning home health aides based on clients' racial or nationality preferences, and provide semi-annual reports to the EEOC about any reports or complaints received about discrimination.

According to the EEOC, Four Seasons routinely responded to patients' preferences by removing African American and Latino home health aides based on clients' preferences regarding race and national origin. Aides removed from their assignments would be transferred to new assignments, if available, or, if no other assignments were available, would lose their employment altogether. The lawsuit asked for both compensatory and punitive damages, and for an injunction to prevent future discrimination based on race and national origin. The EEOC says that "Making work assignment decisions based on an employee's race or national origin is against the law, including when these decisions are grounded in preferences of the employer's clients."

As many providers know, patients' preferences for certain types of caregivers are common. Experienced managers have been asked by patients not to provide caregivers who are, for example, "foreign." Such requests should generally be rejected, especially when they involve discrimination based upon race, national origin, religion, or any other basis commonly used to treat groups of people differently. Legally and ethically, providers should not engage in such practices.

There is one exception to this general rule that occurs when patients ask for caregivers of the same sex as the patient based upon concerns about bodily privacy. It is then

acceptable to assign only same-sex caregivers to patients who have made such requests.

In addition to concerns about discrimination, providers must also be concerned about risk management when they honor such requests. Especially in view of increasing staff shortages, limitations on available caregivers may mean that patients' needs cannot be met by staff members who are acceptable to patients. In view of staffing shortages, the fewer caregivers who are permitted to care for certain patients, the more likely it is that patients' needs will go unmet. Unmet patient needs are, in turn, likely to significantly enhance the risk associated with providing care to patients.

Perhaps the pressure to honor patients' requests is at its greatest when patients receive services at home. Patients who will accept any caregiver assigned to them in institutional settings somehow feel that they have the right to decide who may provide services in their homes. On the contrary, with the exception noted above, staff assignments should be made without regard to client preferences for services rendered at home, just as assignments are made in institutional settings.

How should managers respond when patients tell them not to assign any "foreign" nurses to them? First, they should explain that the organization does not discriminate and that to avoid assignments based on cultural or racial background may constitute unlawful discrimination. Then staff should explain that if limitations on caregivers were acceptable, the provider may be unable to render services to the patient at all because they may not have enough staff. The bottom line is that staff will be assigned without regard to patient preferences in order to prevent discrimination and to help ensure quality of care.

Patients' requests and managers' responses must be specifically documented in patients' charts. Documentation that says patients expressed preferences for certain caregivers or rejected certain types of caregivers is too general. Specific requests and responses of management must be documented.

After patients have expressed what may amount to prejudice against certain groups of caregivers, managers must follow up and monitor for inappropriate behavior by patients directed at caregivers who are not preferred. Managers should be alert to the potential for this problem and should follow up with patients and caregivers to help

ensure that caregivers are receiving the respect they deserve. Follow-up activities and on-going monitoring should also be specifically documented.

A representative of the EEOC said:

“Employers cannot make job assignment decisions based on a client’s preference for a worker of a particular race or national origin. It is imperative for employers to have policies, training and other safeguards in place that help prevent a client’s prejudices from influencing their employment decisions.”

Caregivers are a scarce commodity. Providers cannot afford to lose or alienate a single caregiver based upon discrimination or inappropriate behavior by patients.

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