

RESPONSIVE RECORD #22-4735

In response to the litigation filed by the City against CMS, CMS has agreed to extend the availability of Medicare and Medicaid payments by lengthening the term of Laguna Honda's closure plan by two months, to November 13, 2022. In addition, transfers and discharges of residents will remain paused for this same duration, but residents who choose to be discharged may do so. DPH and Laguna Honda hope that we will continue to be able to work with CMS and CDPH to resolve all pending issues.

The City's litigation alleges that CMS forced the City to implement an unworkable closure and transfer plan that denies the City due process and puts Laguna Honda patients at risk. Laguna Honda has also filed appeals before an administrative law judge that challenge CMS's decision to terminate Laguna Honda's Medicare and Medicaid provider agreements. And the class action lawsuit filed on behalf of patients by the Renne Public Law Group alleges that the closure of Laguna Honda and rushed transfer process violate the Americans with Disabilities Act and deny patients and their families substantive and procedural due process. The litigation filed by the City, the administrative appeals filed by Laguna Honda, and the new class action lawsuit by patients against CMS and CDPH all remain pending and cannot be discussed in more detail in open session.

In relation to the issue of the number of patients in each room, CMS has previously expressed its view that the termination of Laguna Honda's provider agreement means that, if it seeks recertification to participate in the Medicare and Medicaid programs, Laguna Honda will have to comply with federal regulations as if it was a new facility. If true, this means Laguna Honda would not be able to have three patients sharing a suite as is currently the case at Laguna Honda. It is not clear if the litigation and appeals will have any impact on CMS's position on this issue.