

2026 Annual PADONA
Conference



2026 Regulatory and Legal Update
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PENNSYLVANIA ASSOCIATION OF
DIRECTORS OF NURSING ADMINISTRATION

LATSHA DAVIS & MARSHALL



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Introduction

- In 2026, DONs and nursing staff continue to be confronted with short-term and long-term issues that will significantly affect their responsibilities to long term care facilities.
- Today, we want to focus on both the “macro and the micro”; the “big picture” and the “detail” on issues that are of importance to DONs and the facility nursing staff.
- In this session, we will review current and pending laws/regulations and issues confronting LTC providers and provide recommendations for DONs and nurses to help maintain an organization’s compliance with these changing rules.



Licensure, Survey and Certification Issues



Top Survey Citations for 2025

Year Type: Year: Quarter:

Citation Frequency Report

National Tag #	Tag Description	# Citations	% Providers Cited	% Surveys Cited
Totals represent the # of providers and surveys that meet the selection criteria specified above.		Active Providers=14829		Total Number of Surveys=64940
F0880	Infection Prevention & Control	7,609	44.9%	11.7%
F0689	Free of Accident Hazards/Supervision/Devices	6,553	34.0%	10.1%
F0812	Food Procurement, Store/Prepare/Serve Sanitary	5,598	36.0%	8.6%
F0684	Quality of Care	5,089	27.3%	7.8%
F0656	Develop/Implement Comprehensive Care Plan	4,112	23.9%	6.3%
F0761	Label/Store Drugs and Biologicals	3,967	25.5%	6.1%
F0600	Free from Abuse and Neglect	3,077	15.9%	4.7%
F0609	Reporting of Alleged Violations	2,851	16.6%	4.4%
F0755	Pharmacy Svcs/Procedures/Pharmacist/Records	2,812	16.6%	4.3%
F0677	ADL Care Provided for Dependent Residents	2,762	16.7%	4.3%
F0695	Respiratory/Tracheostomy Care and Suctioning	2,719	17.5%	4.2%
F0550	Resident Rights/Exercise of Rights	2,652	16.4%	4.1%
F0584	Safe/Clean/Comfortable/Homelike Environment	2,573	15.5%	4.0%
F0842	Resident Records - Identifiable Information	2,518	14.7%	3.9%
F0686	Treatment/Svcs to Prevent/Heal Pressure Ulcer	2,432	14.5%	3.7%
F0657	Care Plan Timing and Revision	2,326	14.8%	3.6%
F0641	Accuracy of Assessments	2,251	14.7%	3.5%
F0658	Services Provided Meet Professional Standards	2,112	12.4%	3.3%
F0610	Investigate/Prevent/Correct Alleged Violation	1,782	10.7%	2.7%
F0580	Notify of Changes (Injury/Decline/Room, etc.)	1,775	10.7%	2.7%
F0690	Bowel/Bladder Incontinence, Catheter, UTI	1,677	10.7%	2.6%
F0760	Residents are Free of Significant Med Errors	1,530	9.5%	2.4%
F0692	Nutrition/Hydration Status Maintenance	1,418	9.2%	2.2%
F0558	Reasonable Accommodations Needs/Preferences	1,410	8.8%	2.2%
F0759	Free of Medication Error Rts 5 Prcnt or More	1,364	9.0%	2.1%
F0578	Request/Refuse/Dscntnue Trmnt;Formlte Adv Dir	1,209	8.1%	1.9%
F0758	Free from Unnec Psychotropic Meds/PRN Use	1,174	7.8%	1.8%
F0804	Nutritive Value/Appear, Palatable/Prefer Temp	1,147	7.4%	1.8%
F0688	Increase/Prevent Decrease in ROM/Mobility	1,023	6.8%	1.6%
F0921	Safe/Functional/Sanitary/Comfortable Environ	1,022	6.3%	1.6%
F0756	Drug Regimen Review, Report Irregular, Act On	990	6.6%	1.5%
F0757	Drug Regimen is Free from Unnecessary Drugs	971	6.5%	1.5%
F0725	Sufficient Nursing Staff	970	5.9%	1.5%



Deficiencies by Scope and Severity



Year Type: Year: Quarter: Percent by Row: [View All States](#)

Deficiency Count Report

Region	Deficiencies by Scope & Severity											Total
	B	C	D	E	F	G	H	I	J	K	L	
(I) Boston	292	65	4,574	1,604	307	201	24	0	94	27	15	7,203
(II) New York	76	65	3,602	1,172	540	96	8	1	101	25	30	5,716
(III) Philadelphia	114	133	9,335	3,159	593	311	2	0	103	55	17	13,822
(IV) Atlanta	116	83	7,581	1,657	802	403	4	0	512	68	50	11,276
(V) Chicago	97	367	19,928	4,316	3,229	1,611	16	0	413	43	40	30,060
(VI) Dallas	62	121	8,580	5,082	635	218	39	0	705	351	29	15,822
(VII) Kansas City	53	163	5,841	2,423	1,030	328	8	0	190	21	9	10,066
(VIII) Denver	10	28	1,927	870	301	260	10	0	55	17	5	3,483
(IX) San Francisco	656	25	13,616	4,759	725	361	4	0	95	25	10	20,276
(X) Seattle	16	44	3,468	1,264	304	145	5	0	17	6	6	5,275
National Total	1,492	1,094	78,452	26,306	8,466	3,934	120	1	2,285	638	211	122,999

Enforcement Actions

Year Type: Year: Quarter: [View All States](#)

Enforcement Actions Report

Region	Number of Providers	Total Enforcement Actions	Number of Enforcement Actions												
			State Monitoring	Directed Plan of Correction	Temporary Management	Discretionary Deny Pay for New Admits	Mand. Deny Pay for New Admits - 3 Mos.	Denial of Payment for All Resident	Directed In-service Training	Civil Money Penalty	CMS-Approved Alternative or Additional	Transfer of Residents/Closure of Facility	Transfer of Residents	Discretionary Termination	Mandatory Termination
(I) Boston	145	179	0	18	0	10	4	0	1	146	0	0	0	0	
(II) New York	117	181	0	34	1	2	5	0	31	106	1	0	0	1	
(III) Philadelphia	170	232	0	20	1	15	7	0	17	171	0	0	0	1	
(IV) Atlanta	316	509	0	14	0	43	3	0	0	445	0	0	0	4	
(V) Chicago	526	826	0	106	0	186	4	0	25	503	0	0	1	1	
(VI) Dallas	517	703	0	17	0	55	1	0	4	625	0	0	1	0	
(VII) Kansas City	183	248	0	11	1	65	7	0	0	160	0	0	4	0	
(VIII) Denver	137	215	0	6	0	7	2	0	67	133	0	0	0	0	
(IX) San Francisco	212	349	0	25	0	65	6	0	27	226	0	0	0	0	
(X) Seattle	66	82	0	11	0	5	3	0	2	61	0	0	0	0	
National Total	2,389	3,524	0	262	3	453	42	0	174	2,576	1	0	0	6	



Civil Monetary Penalty Report

Year Type: Year: Quarter: [View All States](#)

Civil Money Penalty (CMP) Report

Region	Total Number of CMPs		Total Dollar Amount		Average Dollar Amount		Average Days in Effect
	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem
(I) Boston	61	85	\$ 5,677,427.87	\$ 1,195,533.73	\$ 93,072.59	\$ 14,065.10	47
(II) New York	71	35	\$ 7,017,506.22	\$ 528,993.40	\$ 98,838.12	\$ 15,114.10	63
(III) Philadelphia	96	75	\$ 6,487,688.84	\$ 1,142,672.81	\$ 67,580.09	\$ 15,235.64	54
(IV) Atlanta	133	312	\$ 13,160,182.07	\$ 3,189,842.35	\$ 98,948.74	\$ 10,223.85	40
(V) Chicago	332	171	\$ 28,309,814.73	\$ 3,130,910.06	\$ 85,270.53	\$ 18,309.42	39
(VI) Dallas	285	340	\$ 24,632,201.02	\$ 5,242,609.83	\$ 86,428.78	\$ 15,419.44	43
(VII) Kansas City	103	57	\$ 6,578,019.61	\$ 751,528.00	\$ 63,864.27	\$ 13,184.70	40
(VIII) Denver	83	50	\$ 3,006,635.34	\$ 674,109.80	\$ 36,224.52	\$ 13,482.20	32
(IX) San Francisco	142	84	\$ 8,745,209.74	\$ 1,213,308.78	\$ 61,585.98	\$ 14,444.15	42
(X) Seattle	48	13	\$ 2,706,970.55	\$ 170,494.50	\$ 56,395.22	\$ 13,114.96	48
National Total	1,354	1,222	\$ 106,321,655.99	\$ 17,240,003.26	\$ 78,524.12	\$ 14,108.02	43



Overdue Recertification Surveys

Overdue Recertification Surveys Report

Region	Number of Late Surveys	% of Active Providers
(I) Boston	792	100.0%
(II) New York	953	99.9%
(III) Philadelphia	1,350	99.9%
(IV) Atlanta	2,650	99.9%
(V) Chicago	3,180	99.9%
(VI) Dallas	2,010	99.5%
(VII) Kansas City	1,348	99.6%
(VIII) Denver	570	99.7%
(IX) San Francisco	1,410	99.7%
(X) Seattle	421	99.8%
National Total	14,684	99.8%



Survey Reports

- There continue to be significant backlogs in the survey and revisit process, which delay the verification of compliance and may extend the period during which daily civil monetary penalties (CMPs) accrue.
- The HHS Office of Inspector General is conducting an audit of CMS oversight of state survey agencies and their use of third-party contractors to conduct nursing home surveys. The audit remains ongoing and is currently expected to be completed in FY 2026.



Survey and Enforcement Issues/Updates (SOM)

- In January 2026, CMS revised Chapters 5 and 7 of the State Operations Manual to update Immediate Jeopardy guidance, clarify off-site complaint investigations, and align nursing home enforcement procedures with current policy.
- CMS updated the Special Focus Facility program (Jan. 2026) to include three-year post-graduation monitoring and to require survey agencies to consider staffing levels and resident fall prevalence when selecting SFF candidates.



Chapter 5 SOM Update

Purpose of Updates

Source: [qso-26-03-nh-original-release-date-2026-01-30.pdf](#)

Improve consistency and oversight of complaint investigations nationwide.

Align complaint procedures with current CMS policies and practices.

No new regulatory requirements; Provide more explanation/examples to promote consistency

Immediate Jeopardy (IJ) and Complaints/Incidents Updated (5075.1)

Expanded examples of situations requiring IJ prioritization.

Example: discharging a resident to an unsafe setting.

Off-Site Investigations Clarified (5075.5)

Off-site complaint reviews are rare and require prior CMS approval.

Impact for Facilities

Greater scrutiny of resident safety complaints.

More consistent investigation and prioritization standards across states.



5075.1—Immediate Jeopardy

- Regulatory Standard (42 CFR § 489.3):
 - Immediate jeopardy exists where noncompliance has caused or is likely to cause serious injury, harm, impairment, or death.
- Intake Priority Criteria:
 - Complaints/incidents are assigned Immediate Jeopardy priority where:
 - Serious harm (or likelihood) is alleged AND
 - There is an ongoing immediate risk requiring urgent corrective action
- Key Revisions Facility-Reported Incidents:
 - Now prioritized as Immediate Jeopardy if IJ may have occurred, even if the immediate risk is no longer ongoing
 - Unsafe Discharges: Explicitly includes cases where residents are discharged to settings unable to meet their medical needs, creating risk of serious harm



507.5—Administrative Review/Offsite Investigations

- General Rule: The State Agency (SA) conducts complaint reviews and may confirm findings during the next on-site survey
- Key Limitation: Offsite investigations are rare and not permitted without prior CMS approval
- CMS may allow offsite review for document-based compliance issues, including:
 - Arbitration agreements
 - Prohibition on third-party guarantees of payment
 - Charges for services covered under Medicaid
 - Other similar regulatory document reviews



Chapter 7 SOM Updates

Purpose of Updates

- Standardize survey procedures, enforcement actions, and oversight practices across all state survey agencies.

Updated guidance on:

- Survey team composition (See 7201.2)
- Survey procedures and revisits (See 7203.4)
- Off-hours surveys (See 7207.2.2)
- Exit conferences and documentation (See 7203.3.1)
- CMPs (See 7510)
- IDR/IIDR (See §§ 7212.3, 7213.10)
- Penalty Amounts (See §§ 7516.1, 7516.3)

Clarifies:

- How IJ is identified
- When IJ is considered removed
- When severity can be reduced after correction
- See 7203.3.2



Survey Process & Operations Updates

CMS clarified survey team requirements, exit procedures, and standardized severity and scope determination framework.

Team Composition (7201.2)

- No conflicts + SMQT required for independent surveying
- Non-SMQT surveyors may assist under supervision only
- Multidisciplinary teams required for standard surveys
- RN required for standard surveys (§488.314)

Exit Conference (7203.3.1)

- Communicates preliminary findings only
- Enables early corrective action by facility
- Includes leadership + optional stakeholders (MD, Ombudsman)
- CMS-2567 issued after finalization

Severity & Scope (7203.3.2)

- Clarified matrix-based framework:
 - Scope: isolated / pattern / widespread
 - Severity: minimal harm → immediate jeopardy
- Surveyors start at highest severity level first



Survey Execution, Timing & Enforcement Process

CMS strengthened survey timing, revisit focus, and dispute processes to improve consistency, transparency, and oversight.

Informal Dispute Resolution (7212.3)

- CMS retains final authority over outcomes
- NEW: 60-day completion requirement
- NEW: Written decision + rationale required
- NEW: IDR deficiencies not counted in star rating until finalized

IIDR Process Updates (7213.10)

- Immediate IQIES entry required
- PII must be redacted in all submissions
- CMS Baltimore resolves:
 - Conflicts / unavailable IIDR entity
 - Disagreements with IIDR outcomes
- 10-day decision + 10-day facility notice timeline

Post-Survey Revisit (7203.4)

- Targeted revisits (not full re-surveys)
- Driven by Plan of Correction (POC)
- Focus on sustained compliance

Survey Timing Requirements (7207.2.2)

- $\geq 10\%$ off-hour surveys required
- $\geq 50\%$ of those must occur on weekends
- Must vary timing (day/month) from prior surveys
- Emphasis on real-world conditions (staffing, safety, meds)



Civil Money Penalties Updates

CMS clarified penalty structure while expanding flexibility to impose and increase civil money penalties.

CMP Structure & Use (7510)

- CMS may impose:
 - Per-day CMPs
 - Per-instance CMPs
 - OR both (stacking permitted)
- Used for:
 - Immediate jeopardy
 - Repeat / serious deficiencies

Penalty Ranges & Application (7516.1)

- \$1,000–\$10,000 per instance
- Multiple instances allowed within one deficiency
- Daily caps apply per day (not per survey)

Penalty Adjustments (7516.3)

- Decrease after IJ removal → continues until compliance
- Increase required for repeated deficiencies
- Repeat deficiencies = same regulatory grouping re-cited



Revisions to the Special Focus Facility (SFF) Program (Jan. 2026)

Survey Cycles

- CMS now has SAs look at the past two (2) survey cycles rather than the past three (3)

Quality Indicators

- CMS now directs SAs to consider falls and staffing more closely when selecting SFF facilities

When candidates have similar compliance histories, CMS recommends prioritizing the facility with:

- higher prevalence of resident falls, or
- lower staffing levels (staffing star rating or staffing ratio)

Data Sources

- Fall prevalence data is available through MDS 3.0 Facility-Level Quality Measure Reports in iQIES.



Admission and Discharge Issues

OAG focus on admissions of residents with opioid addictions and treating medications

- State agencies and Attorney General have taken the position is that the denial of NF admission to an individual based on an Opioid Use Disorder (OUD) or the need for medications to treat, is a violation of the ADA, licensure regulations, and state Unfair Trade Practices and Consumer Protection Laws
- Changes in federal law that eliminated the need for a waiver for physicians to prescribe treating medications for OUD; so to the agencies, a NF cannot argue that its physicians are not able to prescribe/oversee OUD residents
- Very important to review admission procedures and policies to ensure that they do not contain discriminatory practices relative to OUD



Immigration Enforcement Issues in Long Term Care



What Changed - and Why It Matters

Before 2025, the Department of Homeland Security designated health care facilities, including nursing homes, assisted living and personal care homes, as "protected areas" where immigration enforcement was presumptively prohibited.

Agents could not conduct arrests at your facility without extraordinary circumstances.

On January 25, 2025, Homeland Security rescinded the protected area policy.

Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) agents may now attempt immigration and at your facilities, including arrests of residents, visitors, and staff.

Pennsylvania DOH, DHS, and PDA jointly issued an advisory urging facilities to adopt a written response policies.

Best practice: your facility must have a written policy and have trained staff before an agent appears at your door.



HIPAA& Resident Protections – What ICE Cannot Compel

- PHI includes: resident name, date of birth, address, medical record number, diagnosis, admission and discharge dates, immigration status (when documented in medical record).
- Absent a valid judicial warrant or recognized HIPAA exception, NO PHI may be disclosed to any law enforcement officer, including immigration agents.
- Administrative warrants (ICE Forms I-200 and I-205) are NOT judicial warrants and DO NOT satisfy the HIPAA exception allowing law-enforcement access to PHI.
- Only a warrant signed by a state or federal judge triggers a HIPAA law enforcement exception. Comply strictly with the stated scope. Consult management and/or legal counsel first.



Nurses and Staff Must:

- Stay calm and professional - do not argue or obstruct.
- Ask for the agent's ID and purpose, and write it down.
- Direct agents to the lobby/reception area.
- Immediately call the Designated Point of Contact (DPC).
- Document everything using an incident log.



Nurses and Staff Must NOT:

- Confirm or deny any resident's presence (PHI).
- Produce or show any medical record, file or chart without the agent presenting a judicial warrant, judicially executed subpoena, or consent.
- Grant access to resident rooms, care areas, or nursing stations.
- Sign, except, or acknowledge any legal document.
- Give legal advice.
- Make overhead announcements that create alarm.



Employee Issues

- Personnel records are protected.
- Employee records may not be produced in response to an administrative warrant. A judicial warrant or employee consent is required.
- HIPAA generally does not protect employee records (unless they are patients of the facility itself).
- Administrative warrant: facilities not required to surrender employee or grant non-public access.
- Judicial warrant: facility may not obstruct. Escort discreetly to minimize resident disruption.
- Do NOT speak to agents about the employee's immigration status.



Employee Issues: The I-9 Form

- An I-9 (Employment Eligibility Verification form) is the federal form that every U.S. employer must complete for each new hire to verify the employee's identity and authorization to work in the United States.
- I-9s a distinct legal category that sits outside HIPAA but is still protected from warrantless disclosure.
- ICE has specific statutory authority to inspect these records via a Notice of Inspection (NOI).
- The NOI requires production within three business days.
- Best practice is to not produce an I-9 without the DPC/legal counsel review.
- Store I-9's separately from personnel files in a dedicated binder or secured system.



Operational Continuity – Employee Arrest

If a staff member is arrested mid-shift, immediately activate emergency staffing protocols.

Do NOT tell residents or families why, say only that a staffing adjustment is being made.

Assess whether if the arrest results in a staffing deficiency that affects resident safety or care delivery, consistent with applicable DOH/DHS guidance on staffing.

Consult employment counsel on wage obligations and adverse action risks.



Operational Continuity – Resident Arrest

- Assess whether the event triggers reporting obligations.
- Potential reporting obligations include
 - Notification to the DOH (or DHS for PCH) under applicable incident reporting regulations if the arrest or removal constitutes an unexpected or involuntary discharge or transfer, or otherwise affects resident safety or care delivery;
 - Notification to DHS or OLTL if the resident is Medicaid-enrolled and the event affects the facility's ability to meet its obligations under its provider agreement (highly unusual);
 - Notification to the resident's responsible party or legal representative, consistent with HIPAA and applicable resident rights requirements;
 - Notification to the facility's liability insurer and outside legal counsel.
- Any required report should be made as soon as practicable and within the timeframe specified by the applicable regulatory authority.



Know Your Warrants

Document Type	Issued By	Authorizes Entry?	Authorizes PHI Disclosure?
Judicial Search Warrant	State or Federal Judge	✓ YES — specific spaces only	✓ YES — items listed in warrant
Judicial Arrest Warrant	State or Federal Judge	Limited — to locate named individual only	✗ NO — does not authorize PHI access
Judicial Subpoena	State or Federal Court	✗ NO	Possible — if signed by judicial officer; consult counsel
Administrative Warrant (ICE Form I-200 / I-205)	ICE / DHS Official (NOT a judge)	✗ NO — cannot enter non-public areas	✗ NO — does not satisfy HIPAA exception



What Spaces Are Protected from Entry?

Non-Public Areas

ICE CANNOT enter without judicial warrant or exigent circumstances

- Resident rooms and suites
- Inpatient and memory care units
- Therapy and treatment rooms
- Nursing stations
- Administrative offices
- Medication storage areas
- Medical records rooms

Public Areas

ICE may be present in these areas — staff cannot exclude them

- Parking lots
- Building entrances
- Lobby and main reception
- Public waiting rooms

If agents conduct enforcement in public areas:
Do not physically interfere. Notify DPC immediately.
Document the activity. Notify local law enforcement if safety is threatened.

The DPC: Your Key position

DPC Responsibilities

- Respond to all immigration enforcement activity on premises
- Review and evaluate warrants, subpoenas, and legal documents
- Contact outside legal counsel when needed
- Make real-time compliance decisions (access, disclosure, consent)
- Document all interactions in the Incident Log
- Lead post-event communications to staff, residents, and families

Staff First-Response — 5 Steps

1

Stay Calm

Do not argue or make promises

2

ID & Purpose

Ask for badge and state their purpose; write it down

3

Do Not Consent

"Our policy requires contacting our legal representative first."

4

Call DPC Now

Primary DPC → Backup DPC → Outside counsel

5

Document Everything

Agent names, badge numbers, documents shown, time

Scenario Response Guide

A	Agents request info about a resident or visitor	Do not disclose PHI. Admin warrant → no disclosure. Judicial warrant → contact DPC and counsel before any disclosure.
B	Agents seek to enter non-public areas	Admin warrant only → deny politely, direct to lobby. Judicial search warrant → DPC reviews, escort through stated areas only. If they proceed without authority → document as non-consensual; do not physically obstruct.
C	Enforcement in public area (lobby, parking lot)	Do not interfere. Notify DPC and security. Document. May calmly note impact on resident care. Alert local law enforcement if safety threatened.
D	Agents claim exigent circumstances	Do not independently evaluate the claim. Call DPC immediately. Document all agent statements about the claimed exigency. Do not obstruct if they enter.
E	Agents seek to arrest a facility employee	Admin warrant → not required to surrender employee or grant non-public access. Judicial arrest warrant → may not obstruct; escort discreetly. Activate staffing contingency plans immediately.

Documentation and Post-Event Communications

Incident Log — Capture Every Event

Retain logs for minimum 5 years (HIPAA requirement; longer if litigation pending).

- Date, time, and exact location on premises
- Agent names, titles, agencies, badge numbers
- Legal documents presented (type, issuing authority, scope)
- Information or access requested vs. granted
- HIPAA exception cited for any PHI disclosed
- DPC determination and actions taken
- Outcome and follow-up required

Post-Event Communications

Staff:

Confirm situation addressed. Reinforce policy. Prohibit speculation. Remind staff to direct questions to DPC.

Residents & Families:

Be compassionate and accurate. Do NOT disclose one resident's information to another. Maintain HIPAA compliance throughout.

Media:

ALL media inquiries → designated media contact only. Staff may NOT comment without prior authorization.

Reporting Agencies:

Governing board within [X] hours. Liability insurer per policy terms. Outside counsel immediately. DOH / DHS / OLTL if staffing or care was impacted.

Policy and Training: What You Need to Have in Place



Written Policy

Adopt a facility-specific Immigration Enforcement Response Policy — approved by governing body, reviewed by counsel, updated annually and after any enforcement event.



Designate Your DPC

Name a Primary and Backup DPC by name and direct phone number. Communicate these contacts at onboarding and at every annual policy review.



Tiered Training Program

All staff: initial + annual training. Front-line staff: scenario exercises using Quick Reference Card. HR/supervisors: NOI response, I-9 records, and employment law. I-9 specialists: periodic audit training.



I-9 Proactive Compliance

Store I-9s separately. Conduct annual self-audits with counsel. A compliant I-9 program is your best defense against ICE enforcement exposure — and an enforcement event at your facility should prompt immediate review.



Quick Reference Card

Post Attachment B (Front-Line Staff Quick Reference Card) at reception, security, and nursing stations. The card reduces variance in first response across shifts.



Employee Rights Notice

Post the bilingual Employee Rights Notice (English/Spanish) in break rooms and locker areas. This protects the facility from retaliation liability and supports your workforce.



Key Takeaways for Directors of Nursing

1

The changed landscape is real.

ICE can now come to your facility. Your job is to be ready before they arrive.

2

Administrative warrants cannot compel disclosure.

PHI, personnel records, and access to non-public areas all require a judicial warrant — not an ICE administrative form.

3

Your nurses' first job is to call the DPC.

Front-line staff should not evaluate documents, grant access, or make disclosures. One call is the right answer.

4

Resident identity and location are PHI.

Confirming or denying that a resident is present is a HIPAA disclosure. Train your staff on this — it is non-obvious.

5

Employee arrests have immediate operational impact.

Activate staffing contingency plans first. Document and report. Consult employment counsel before any adverse action.

Case Law Updates



Key Legal Themes From 2025 DAB SNF Decisions

It is fair to say that the overwhelming majority of appeals filed with the Department Appeals Board and federal courts with respect to survey issues are decided in favor of the government, and not the provider.

Across these cases, the DAB consistently reaffirmed several principles governing nursing facility enforcement:

1. “Substantial Compliance” Standard. Facilities are noncompliant if deficiencies create more than minimal harm risk to residents.
2. Deference to CMS Enforcement. The Board generally defers to CMS enforcement decisions unless the facility shows clear factual or legal error.
3. Immediate Jeopardy. Immediate jeopardy findings are upheld unless clearly erroneous.
4. Importance of Care Plans. Failure to follow physician orders, facility policies, individualized care plans can establish regulatory violations.
5. Limited Scope of Review. Facilities generally cannot challenge CMS’s choice of enforcement remedy, only whether the facility was in substantial compliance.



Case Law Updates

Generations at McKinley Place v. CMS, DAB No. 3211 (11.06.2025)

- Board affirmed noncompliance where facility failed to follow food safety cooling standards, creating immediate jeopardy risk, and upheld \$18,500 per-instance CMP based on undisputed facts.
- Takeaway: Failure to follow food safety protocols creates actionable risk regardless of actual harm; facilities are liable for staff actions, and strong policies or training do not excuse violations.

West Caldwell Care Center v. CMS, DAB No. 3210 (10.10.2025)

- Board upheld noncompliance where facility failed to follow care plan and physician orders preventing pressure sores, affirming summary judgment and per-day CMP for resulting avoidable ulcer.
- Takeaway: Failure to implement care plans or physician orders defeats “unavoidable” defense; documentation matters, and general practice claims won’t create factual disputes to avoid summary judgment or penalties.



Case Law Updates

Oak Ridge Center v. CMS, DAB No. 3195 (06.17.2025)

- Board upheld immediate jeopardy finding and CMP where nursing staff repeatedly failed to follow diabetes care orders, creating systemic risk of serious harm despite conflicting expert testimony.
- Takeaway: Repeated failure to follow physician orders and protocols can support immediate jeopardy findings; facilities must show such noncompliance clearly unlikely to cause serious harm to overturn CMS determinations.

Lake Worth Nursing Home v. CMS, DAB No. 3194 (06.17.2025)

- Board upheld noncompliance findings and \$1,375 daily CMP where facility failed to report resident-on-resident abuse, prevent further assaults, and maintain proper food safety standards.
- Takeaway: Facilities must report and stop resident-on-resident abuse regardless of perpetrator intent or visible injury; expired and improperly stored food also supports noncompliance and daily penalties.



Case Law Updates

Golden Living Center – Morgantown v. CMS, DAB No. 3192 (06.16.2025)

- Board upheld immediate jeopardy CMPs where facility failed to prevent known resident-to-resident abuse and implement effective interventions, resulting in harm and ongoing risk to residents.
- Takeaway: Facilities cannot tolerate recurring abusive behavior or set limits on frequency; they must prevent it entirely and implement care plans effectively to avoid immediate jeopardy findings.

Golden Living Center – Mountain View v. CMS, DAB No. 3190 (05.16.2025)

- Board found facility noncompliant with accident prevention and administration rules based on repeated falls, failure to implement care plans, and environmental hazards, supporting immediate jeopardy.
- Takeaway: Facilities must implement care plans and address hazards; repeated falls and ignored interventions show systemic failure, supporting immediate jeopardy even without staffing-based violations.



Case Law Updates

Pennsylvania Nursing and Rehabilitation Center v. CMS, DAB No. 3185 (05.12.2025)

- Board upheld CMPs where facility failed to follow care plan, monitor bowel status, and prevent neglect, causing immediate jeopardy and resident death from untreated bowel obstruction.
- Takeaway: Failure to follow care plans and document care equals neglect; resident rights do not excuse noncompliance, and risk of harm alone supports immediate jeopardy and penalties.

Park Valley Inn Health Center v. CMS, DAB No. 3181 (04.24.2025)

- Board upheld CMS setting enrollment effective date at survey completion, rejecting earlier date despite facility readiness, because compliance is determined only when CMS confirms all requirements are met.
- Takeaway: Effective date hinges on CMS determination of full compliance, not provider readiness; choosing new enrollment over assignment delays billing and courts won't apply equitable or constitutional relief.



Case Law Updates

- Sligo Creek Center v. CMS, *pending in 4th Circuit* (June 12, 2025)
 - SNF challenges CMS CMPs for infection control violations and alleged immediate jeopardy in the amount of \$1.5 million.
 - Takeaway: Major infection control violations may trigger large CMS penalties and significant enforcement actions, so the question here is whether the provider is entitled to a jury trial, rather than before an ALJ.



HIPAA Update



Substance Abuse Disorder Records

Recent federal updates aligned 42 CFR Part 2 (confidentiality of substance use disorder records) more closely with HIPAA privacy rules.

Key Changes for Nursing Facilities

1. Residents may provide a written consent allowing disclosure of SUD records for treatment, payment, and health care operations
2. Once properly disclosed under a valid consent, SUD information may be redisclosed by HIPAA-covered entities for permitted purposes (except SUD counseling notes and legal proceedings).
3. Unauthorized disclosure of SUD records is now subject to HIPAA breach notification requirements.
4. Patients must be informed of:
 1. Complaint rights
 2. Restrictions on use and disclosure
 3. Privacy protections for SUD treatment information



Substance Abuse Disorder Records (Cont.)

Safe Harbor:

Agencies must verify Part 2 status before requesting records

Data Segregation:

No requirement to segment Part 2 records

Patient Complaints:

Right to file directly with HHS

SUD Counseling Notes:

Requires separate, specific consent

Not permitted under general TPO consent

Patient Consent Rules (**Unchanged**):

Clarified that covered entities cannot bundle consent for legal proceedings (civil, criminal, legislative, or administrative)

Not permitted under general TPO consent

Requires separate, specific consent

Must provide copy/scope of consent with disclosures

Fundraising:

Patients may opt out of communications



SUD Implementation Issues

HIPAA:

Obtain Proper Consents

- Secure broad TPO consent for SUD records
- Obtain separate consents for:
 - SUD counseling notes
 - Legal proceedings (if applicable)

Train Staff on Permitted Uses

- Clarify when SUD information can be shared (TPO)
- Emphasize prohibited disclosures without proper consent



SUD Implementation Issues

Implement Risk Controls

- Flag SUD records and identify sensitive categories
- Ensure policies address redisclosure and documentation requirements

Monitor & Audit Compliance

- Periodically review use/disclosure practices
- Address gaps in documentation, training, and consent tracking



Fraud and Abuse and Compliance Issues



“Worthless Services” Theory of Fraud

- The “worthless services” theory under the False Claims Act arises when a provider bills the government for services that are so deficient that they are effectively the equivalent of no service at all.
- Courts have held that liability may exist where services are “so substandard as to be worthless.”
- Understaffing, failure to provide/follow care plans, ignoring serious medical needs (e.g. pressure sores), death are all cases that can lead to prosecution under this theory.



“Worthless Services” Theory of Fraud

St. Margaret’s Center (Albany, NY)—February 12, 2026

- Skilled Nursing Facility to pay \$1.3 million settlement to resolve **False Claims Act** allegations.
- Government alleged the facility:
 - billed for care that was “worthless” due to quality deficiencies
 - falsely certified compliance with a program promoting quality care.

Source: [St. Margaret’s Center Pays \\$1.3 Million Under the False Claims Act | Office of Inspector General | Government Oversight | U.S. Department of Health and Human Services](#)

Former Greenville CEO, Employees Indicted in Multi-Million Dollar Health Care Fraud Scheme (Greeneville, SC)—March 11, 2026

- Federal indictment alleges lab executives billed individual COVID tests despite pooled testing, manipulating processes to submit claims for virtually worthless, non-reimbursable services generating millions in fraud.
- Takeaway: Billing for services that lack independent value or eligibility supports a worthless services theory; manipulation of testing methods to inflate reimbursement creates significant False Claims Act exposure.

Source: [Former Greenville CEO, Employees Indicted in Multi-Million Dollar Health Care Fraud Scheme | Office of Inspector General | Government Oversight | U.S. Department of Health and Human Services](#)



Unlicensed Staff = Overpayment

- The provision of care by unlicensed staff may not be billed to the Medicare/Medicaid programs
- There is a “calculation methodology” found in the Self-Disclosure Protocol for determining the amount of an overpayment relating to unlicensed staff
- It is critical that facilities have systems in place to ensure that all staff are licensed, and that renewals are timely filed and received
 - Staff whose licenses have expired must be pulled from shifts and not returned until their licenses have been re-activated



Liability/Risk Issues for Nurses



Liability Issues for Nurses

- Risk Areas of Liability for LTC nurses
 - Professional liability and malpractice (including negligence)
 - Abuse/violence
 - Supervision of unlicensed staff
 - Documentation and recordkeeping compliance
 - Disciplinary Action by State Board of Nursing
 - As we know, actions by the nursing staff can bring lawsuits and governmental investigations against both the facility and the individual nurse



Liability Issues for Nurses

- Risk Mitigation:
 - Maintain Competency and Continuing Education: Stay up-to-date with nursing practices, protocols, and legal requirements. Regular and documented participation in training and continuing education ensures that knowledge is current.
 - Follow Standard of Care: Provide care that meets or exceeds the accepted standards in the profession and always act in the resident's best interest.



Liability Issues for Nurses

- Risk Mitigation:
 - Seek Supervision or Consultation When Necessary: When in doubt, seek guidance from supervisors, specialists, or more experienced colleagues. Never hesitate to ask for support in complex situations.
 - Obtain and Respect Resident Consent: Ensure that informed consent is obtained for treatments, procedures, and interventions. Clarify any risks or side effects and respect resident autonomy.
 - Communicate Clearly and Effectively: Maintain open, honest communication with residents, families, and the healthcare team. Misunderstandings or lack of communication can lead to legal disputes.



Liability Issues for Nurses

- Risk Mitigation:
 - Report Concerns Promptly: Immediately report any changes in a resident's condition or concerns about safety, compliance, or the actions of other staff members.
 - Be Cautious with Verbal Communication: Avoid making statements that could be construed as admissions of fault or guarantee of outcomes. Use clear and professional language.
 - Use Safe Practice Techniques: Follow all safety protocols for medication administration, resident handling, infection control, and other clinical procedures.



Liability Issues for Nurses

- Risk Mitigation:
 - Establish Boundaries with Residents: Maintain professional boundaries and avoid personal relationships with residents that could create conflicts of interest or perceptions of bias.
 - Ensure Proper Supervision of Unlicensed Staff: If supervising unlicensed assistive personnel (UAPs), ensure they are adequately trained and perform tasks within their scope of practice.
 - Keep Personal and Professional Information Separate: Maintain a professional relationship with residents and avoid sharing personal information or engaging in behaviors that could be perceived as inappropriate.



Conclusions

- The legal landscape for nursing facilities continues to evolve annually, so it is important to stay informed.
- Focus on compliance, risk management, and safeguarding resident rights.
- Provide education to staff on current issues and regulatory updates
- Questions?



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