

2026 Annual PADONA Conference



Long-Term Care Update 2026: The Year That Almost Wasn't



PENNSYLVANIA ASSOCIATION OF
DIRECTORS OF NURSING ADMINISTRATION

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- Principal and Co-Chair of Post & Schell's Health Care Practice Group
- Focuses his national practice on assisting and defending health care entities in transactional, regulatory, and litigation matters
- Counsels clients in areas including antitrust, health care reform, managed care contracting, reimbursement, fraud and abuse (Stark and anti-kickback), health information privacy and security, medical staff credentialing, licensing, change of ownership, and payer audits
- An experienced litigator, Mark defends health care providers in cases involving Patient Safety (PSQIA) privilege issues, peer review privilege, antitrust, False Claims Act, breach of privacy, and commercial disputes with other providers
- Also counsels and advises health care entities regarding health and information privacy and security under HITECH and HIPAA, governmental investigations, development of joint ventures, provider contracting issues, and medical staff bylaw and disciplinary issues



Staffing: Where Do We Stand?

- CMS Repeal – December 2025
- Big Beautiful Bill – Ten Year Moratorium
- Injunction on Enforcement
 - State of Texas v. United States Department of Health and Human Services, Civil Action No. 2:24-cv-00171Z (N.D. Tex); American Health Care Assn. v. Becerra, Civil Action No. 2:24-cv-00114Z (N. D. Texas)
 - State of Kansas, et al. v. Becerra, Civil Action No. 1:24-cv-00110 (filed Oct. 10, 2024)
- Trade Group Challenges



PA Requirements

Eff. Date	Day Shift	Evening Shift	Overnight	All Shifts
7/1/2023	1 aide/12 residents 1 LPN/25 residents Charge Nurse	1 aide/12 residents 1 LPN/30 residents Charge Nurse	1 aide/20 residents 1 LPN/40 residents Charge Nurse Note: may substitute an LPN for an RN only if census is <59 and RN is on-call and within 30-minute drive	1 RN/250 residents Note: may substitute an LPN or RN for an aide, or an RN for an LPN
7/1/2023	2.87 PPD direct resident care over 24-hour period			
7/1/2024	1 aide/10 residents	1 aide/11 residents	1 aide/15 residents	
7/1/2024	3.2 PPD direct resident care over 24-hour period			



NJ Mandate

- The Health Care Ass'n of NJ v. NJ Department of Health, Superior Ct., NJ, No. MER-L-001712-24.
 - One CNA for 8 Residents
 - One direct care for every 10 on day and 14 at night
 - Violates Due Process and Constitutes Excessive fine (\$1,000) per day



SNF Revalidation: Never Mind

November 17, 2023

“Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities; Medicare Providers’ and Suppliers’ Disclosure of Private Equity Companies and Real Estate Investment Trusts”

88 FR 80141



Never Mind

- Originally December 2024
- Moved to May 1, 2025
- Moved to July 2025
- Moved to January 1, 2026
- **PERMANENTLY SUSPENDED** on December 15, 2025



Good Things Come to Those Who Wait

Q30: Does the submission deadline suspension mean that I need not respond to the MACs' request for clarifying/missing data regarding my pending application?

A: No. The deadline suspension only applies to SNFs that: (1) have not yet submitted their revalidation applications; or (2) had their previously submitted revalidation application rejected or returned and are required to resubmit one. It does not apply to pending revalidation applications. Thus, if the MAC requests that the SNF furnish additional information regarding data on the latter's revalidation application within 30 days of the request, the 30-day timeframe must be met. (See also QA: #28)



Additional Disclosable Party

Any **person** or **entity** (Employees or Vendors) who:

- Exercise **operational, financial, or managerial control** * *
- Includes consultants and vendors
- Provides policies or procedures
- Provides financial or cash management services
- Leases or subleases real property to SNF
- Owns $\geq 5\%$ percent of the total value of the real property



General Compliance Program Guidance



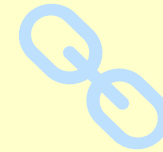
Replaces Individual Model Compliance Programs

GCPG with Industry Specific Modules
SNF Coming this Year



What's New

New approaches to role of Compliance Committee and Compliance Officer
Compliance Committee to be involved in Audits
References Information Blocking



Link:

<https://oig.hhs.gov/documents/compliance-guidance/1135/HHS-OIG-GCPG-2023.pdf>



ICPG

- Nursing Home – November 2004
- Emphasis on increased role of compliance, especially in area of quality
 - For nursing facilities that are part of a system or chain, the highest level of the corporation or management organization should develop, implement, support, and monitor compliance and quality programs to ensure a systematic and consistent approach to compliance and quality oversight. Responsibility for corporate compliance should be assigned to a compliance officer at the highest level of a corporation or management organization. A corporate-level compliance and quality function should oversee and evaluate the extent to which each nursing facility within the system or chain operates consistently under all compliance and quality standards and protocols and adheres to all laws, regulations, and rules.



Program Risk Areas

- Proactive Risk Management
- Quality of Care:
 - Staffing Levels
 - Appropriateness of Resident Care Plans and Activities
 - Challenges due to Demographic Changes
 - Medication Management
 - Appropriate use of Medications: Psychotropics



Quality of Care

- Minimizing Conflicts of Interest
- Resident Safety
- Infection Control
- Facility Initiated Discharges



Proactive Risk

- Medicare and Medicaid Billing Requirements:
 - Focus on PPS
 - Value-Based Programs
 - Medicare and Medicaid Managed Care
 - Medicare Part D
 - Medicare Health Plan Enrollment



QAPI Role

- Compliance should have role in:
 - Resident, family, guardian, and staff complaints
 - Resident, family, guardian, and staff satisfaction surveys and any other internal surveys
 - Staffing turnover and exit interview reports
 - State and Federal surveys
 - Resident outcomes and care delivery
 - Events reporting
 - Staffing and nursing hours reports
 - Hotline calls
 - Disclosure logs
 - CMS quality indicators
 - Financial indicators



New SNF Final Payment Rule

- Increases in Payments
 - PPS Up by 4.2%
- CMPs For Non-Compliance
 - Expanded to allow for Per Instance and Per Day CMPs at same time
 - Allow Multiple CMPs for same violation



Litigation

- But-For Test in AKS
 - U.S. v. Regeneron Pharmaceuticals, Inc., 128 F.4th 324 (1st 2025)
 - First Circuit (MA, RI, NH, ME) joins the Sixth (MI, OH, KY and TN) and Eight (ND, SD, MN, IA, MO, NE, AR) in adopting test
 - Third Circuit (PA, DE, NJ) use “tainted” approach
- State of New York v. Abraham Operations Assoc., LLC et al., 2024 Slip Op 32948 (NY Supreme Ct.) - \$83M Fraud Case
- Hospice Settles for \$3.8 Million



False Claims Act

- *U.S. ex rel Goebel v. Anchorage SNF, LLC*, No. JKB-17-00722 (D. Md. Oct. 10, 2025)
 - Qui Tam Case against SNF and Parent
 - Allegations of Improper Billing by Therapy Provider
 - Barred by First to File Rule
 - Part of a number of cases filed throughout the country, including in PA



Quality of Care: Worthless Services

- *U.S. v. American Health Foundation Inc.*, Case No. 2:22-cv-02344 (E.D. Pa. Jun. 3, 2025)
 - \$3.6 Million Settlement
 - Alleged grossly substandard care that failed to meet appropriate requirements and housed residents in dirty, pest-infested buildings, gave improper medications and subjected them to verbal abuse among other things
 - The defendants also agreed to a CIA



OIG AUDITS

- OIG found that Pinnacle MultiCare failed to meet Medicare requirements during the 2020 to 2021 period and, as a result, was responsible for \$31.2 million in overpayments made to it
 - Random Sample of 100:
 - 95 claims contained errors in Health Insurance Prospective Payment System coding, with unsupported reimbursement rate codes; 88 claims had unsupported nursing case mix group classifications; 63 involved speech-language pathology errors, 38 contained physical therapy and occupational therapy coding issues, and 31 had non-therapy ancillary classification problems
 - 54 deficient claims were for individuals who did not meet Medicare skilled nursing coverage criteria
 - Two claims failed to meet appropriate documentation requirements, including records to support the need for skilled services and MDS requirements



OIG AUDITS

- An August report from OIG found that an Alabama nursing home systematically failed to perform background checks of its employees
- A September 18, 2025, report by the OIG found nursing homes failed to report approximately 43% of falls with injury leading to hospitalization for Medicare residents
 - This failure, according to the OIG report reflected poor overall compliance with CMS's fall reporting requirements
 - For Profits had higher rates



Other Issues



- Billing Medicare Part D Drugs under Part A
- Section 1557 Discrimination on Hold
 - Related to gender, language requirements still apply



COVID Cases

- *James v. Geneva Nursing and Rehabilitation Center*, 2024 IL 130042 (Oct. 18, 2024). (COVID Immunity)
- *James v. Geneva Nursing and Rehabilitation Center*, 2024 IL 130042 (Oct. 18, 2024). (COVID Vaccines)
- *Emerson v. Andover Subacute Rehab*, 2025 U.S. Dist LEXIS 217888 (D. NJ) (PREP Act)



Real Time Medical Sys., Inc. v. Pointclickcare Tech., Inc.

- Alleged Blocking by Defendant
 - Software reviewed medical records
 - Claimed Bots caused performance concerns
 - Pointclick began using CAPTCHAs to stop automated access



Real Time Medical Sys., Inc. v. Pointclickcare Tech., Inc. (cont'd)

- New “Unsolvable” CAPTCHA



Real Time Medical Sys., Inc. v. Pointclickcare Tech., Inc. (cont'd)

- Use of Cures Act as Foundation for Unfair Trade Claim
 - No Private Cause of Action Under Cures Act
 - Enforced by Secretary of HHS
 - \$1,000,000 per violation



New Security Rules for PHI

- Removing the distinction between “required” and “addressable” standards by making most standards “required”
- Require written documentation of all rules, procedures and analyses
- Require the development and revision of a technology asset inventory and a network map that illustrates the movement of ePHI throughout the regulated entity’s electronic information system(s) on an ongoing basis, but at least once every 12 months and in response to a change in the regulated entity’s environment or operations that may affect ePHI



HIPAA (cont'd)

Revise the requirement for a risk analysis by specifying review of the following:

- A review of the technology asset inventory and network map
- Identification of all reasonably anticipated threats to the confidentiality, integrity, and availability of ePHI
- Identification of potential vulnerabilities and predisposing conditions to the regulated entity's relevant electronic information systems
- An assessment of the risk level for each identified threat and vulnerability, based on the likelihood that each identified threat will exploit the identified vulnerabilities



HIPAA (cont'd)

- Require notification of certain regulated entities within 24 hours when key employees are terminated
- Require that business associates verify at least once every 12 months appropriate safeguards
- Require vulnerability scanning at least every six months and penetration testing at least once every 12 months



HIPAA (cont'd)

- \$100,000 in fines for failure to provide records
 - Records withheld even after receiving documents that son was personal representative
 - Essex Residential Care, LLC
- \$225,000 in fines involving behavioral health provider
 - 171,871 hacking through patient portal
 - Deer Oaks – The Behavioral Health Solution
- Updates to Privacy Notices – February 16, 2026
 - Reproductive Health Care – ENJOINED As to Certain Provisions
 - Purl v. US Dept. Health and Human Services, 2:24-CV-228-Z (N.D. Tx. June 18, 2025)
 - Mental Health



PA Act 78: Is PA the New EU?

- Uses Concepts borrowed from GDPR: “Controller” and “Processor”
 - Controller = Like a Covered Entity
 - Processor = Like a BA
- Does Not Apply to Covered Entity or Business Associate
- DOES NOT APPLY to PHI
- Does it Apply to Personal Care?
 - Is it a Controller?
 - Needs to be For Profit
 - Annual Revenue of \$10 Million
 - Sells information of 50,000 persons or derives 50% of revenue from sale of personal information
 - Processor: Manipulates data on behalf of a “Controller”



Rights Conferred on Residents, FYI

- Confirm if entity is processing personal information
- Correct inaccuracies in information
- Delete personal information
- Obtain copy of personal data
- Opt out of Processing personal data for:
 - Targeting advertising
 - Sale of personal data
 - Profiling in furtherance of solely automated decisions. – i.e., AI
- Passed PA House in October



Excessive Fine

- Right to a Hearing. *Sligo Creek Center v. Health and Human Services*, 4th Cir, Docket 25-1669.
- State Law. *In re FT, by and through Aloha Nursing Rehab Centre v. Department of Human Services*, No. SCWC-18-0000677 (Haw. Sup. Ct. July 29, 2025).



DAB Decisions

- *Morristown Post Acute Rehab and Nursing Center*, DAB No. CR6524, Doc. No. C-22-460 (August 15, 2024) (DPNA)
- *The Bishop Spencer Place*, DAB No. 2025-9, Docket No. C-25-40 (Feb. 3, 2025) (Remedy)
- *Chelsea Gardens Nursing Home*, DAB No. CR6480, Docket No. C-22-389 (May 30, 2024) (Discharge)



And a Win (Maybe?)

- *Golden Living Center – Mountain View*, DAB No. 3190, Docket No. A-21-23 (May 16, 2025)
 - Went to 6th Circuit that Reversed
 - On Remand Reduced from \$5,800 per day to \$3,600
 - As number of deficiencies were reduced so was fine



Questions



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