



# MED-NET CONCEPTS LETTER ©

*Where Compliance and Ethics, Risk Management/Safety, Quality Assurance and Performance Improvement, Reimbursement and Law Come Together.*

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**Dear Colleague,**

Awareness is the first step toward an effective Compliance, Risk Management, Quality Assurance, Performance Improvement, and Law program. The following true reports are intended to broaden your understanding and awareness of potential exposures of liability throughout healthcare settings with the expectation that, as a starting point, forewarned is forearmed.

We believe a first-hand opinion of our sector of healthcare provides invaluable insight into the daily challenges facing our community.

Remember, it is important to immediately report any abuse of residents/patients, no matter the circumstances.

Please contact us for additional information as well as to discuss potential proactive programs to detect, prevent, and mitigate potential exposures and damages.

## ALERTS



Effective October 1, 2019, the Patient Driven Payment Model (PDPM) will be used under the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) for classifying SNF patients in a covered Part A stay. The Centers for Medicare & Medicaid Services (CMS) has provided a site which includes a variety of educational and training resources to help you prepare. You can access it [here](#).

CMS also released the final RAI Manual, which can be accessed [here](#).

### Vietnam Vet Dies after Mass Ant Attack in Nursing Home Bed

A Vietnam War veteran was bitten more than 100 times by ants while he lay in poor health in his nursing home bed on the campus of an Atlanta Veterans Affairs hospital just days before he passed away. His daughter had been visiting him and she noticed her father's hands were swollen and his body was covered with red bumps. She said she was worried and confused because that wasn't how he looked when she'd last seen him, so she alerted a member of staff to her father's new ailments. The staff member told her it was from ants and said, "When we walked in here, we thought [he] was dead. We thought he wasn't even alive, because the ants were all over him." After the incident, according to his daughter, the facility workers bathed him and cleaned his room, but the next day, the ants came back. He was then moved to a new room where he later died.

### ***Compliance and Ethics Perspective:***

Failure of a facility to provide a safe, functional, sanitary, and comfortable environment for its residents that includes their being free from any form of pest infestation may be considered the provision of substandard quality of care. A facility is required to maintain an effective pest control program and the discovery of a gravely ill resident with more than 100 bites from ants should signal an immediate need for pest control. The fact that the resident's room was infested with ants again the following day may be considered abuse, neglect, and provision of substandard quality of care in violation of state and federal regulations.

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### **West Virginia Man Pleads Guilty to Six Counts of Illegally Accessing Medical Records**

A West Virginia man pleaded guilty to illegally accessing the medical records of six veterans. The man, 39, an employee of the Veterans Benefits Administration in Huntington, pleaded guilty to six counts of unauthorized access of a computer. He further admitted that he took a picture of the medical records of former West Virginia State Senator Richard Ojeda, and then sent the picture to an acquaintance. He faces up to one year in prison on each of the six counts of fraud in connection with computers when he is sentenced on December 9, 2019.

#### ***Compliance and Ethics Perspective:***

The medical records of veterans, known as personally identifiable information (PII), are protected by the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act (HIPAA). The Privacy Act protects all of a veteran's information (not just health information) that is maintained in the agency's system of records and covers all written and verbal communication of such information. The Veterans Benefits Administration may be considered in violation of both the Privacy Act of 1974 and HIPAA by failing to prevent an employee from the unauthorized access of the PII/PHI of veterans.

### **Fire at Oklahoma Nursing Home Leaves Dozens Displaced**

A fire in an Oklahoma nursing home caused the complete evacuation of residents. The 41 residents were taken by community members to a nearby hospital. Residents stayed there overnight, and the following day many of them were moved to other nursing homes. No residents were seriously hurt in the fire, and firefighters were able to save most of the building, thanks to a working sprinkler system, which kept flames under control until the fire department arrived.

#### ***Safety Perspective:***

Providing a safe environment for residents involves having an effective Emergency Preparedness Plan (EPP) in place with protocols for responding to a fire emergency where residents must be evacuated and relocated to other facilities to ensure the continuation of their care. The facility should periodically review the policies and procedures in place for implementing its EPP and ensure that staff are thoroughly trained in the protocols to be used should an emergency or disaster occur. To further ensure the adequacy of the facility's EPP, the local fire department should be contacted requesting an annual consultation and assistance in reviewing the plan for any needed modifications (19 CSR 30-85.022(33) Fire Drills and Emergency Preparedness).

### **Would-Be Burglar Occupational Therapist Jailed for Opioid Fraud and Theft Crime Wave**

A licensed occupational therapist, 33, who improperly accessed the private health and residence information of at least 1,900 patients, and then entered or burglarized thirteen homes across North Central Iowa in repeated attempts to steal prescription opioids from vulnerable and elderly persons, was sentenced to more than one year in federal prison. From at least July 2017 through June 2018, the therapist illegally accessed the private health and residence information of no less than 1,900 patients at the hospital. She also similarly accessed such information from one of the therapy companies no less than 1,572 times. She then used this information to locate and travel to some of the residences and attempted to obtain the patients' prescription pain medication on the pretense that she was a public health worker. On other occasions, the therapist used a crowbar to break down the patients' doors and commit burglaries to obtain the narcotics.

#### ***Compliance and Ethics Perspective:***

A licensed occupational therapist has an ethical responsibility not to illegally access and use protected health information (PHI) of patients for personal gain. Therapy companies have the responsibility under the Health Insurance Portability and Accountability Act (HIPAA) to monitor and prevent unauthorized access of PHI through security interventions to detect and report unusual, frequent, and suspicious accessing of their patients' PHI. With any breach of PHI, HIPAA requires specific timing of response, reporting, and notification of the breach to patients and specified authorities. Requirements vary dependent upon the size of the breach. Therapy companies may face loss of eligibility as Medicare providers if they fail to verify licensure and

perform background checks and do not manage therapists' access to PHI when they are no longer providing services to the patients.

**Northern Arizona Orthopedics Sued by EEOC for Gender Discrimination and Retaliation**

Northern Arizona Orthopedics (NAO), a medical provider that specializes in bone, joint, and spine care in Flagstaff, Ariz., violated federal law by refusing to hire male applicants because of their gender and retaliated against a male applicant who complained about this sex discrimination, the US Equal Employment Opportunity Commission (EEOC) charged in a lawsuit. According to the EEOC's lawsuit, NAO hired women over more qualified male candidates for at least two positions. The lawsuit also charged that NAO retaliated against a male applicant that opposed the alleged discrimination when it responded to his complaint by telling him not to apply for other positions at NAO.

**Nurses Say Director Discriminated against Non-Filipino Nurses**

The Filipino director of nurses at a county owned nursing home in New Jersey discriminated against non-Filipino nurses by docking pay, wielding discipline unfairly, and offering Filipino nurses better schedules, four nurses allege in a federal lawsuit. The four nurses say that when the nursing director took over in 2015, she began to force out non-Filipino nurses. She directed overtime and favorable shifts to Filipino nurses and subjected non-Filipino nurses to added scrutiny, the lawsuit says. One of the nurses was retaliated against after she filed a written complaint about the alleged disparate treatment, including most recently a suspension without pay, according to the lawsuit.

***Human Resource Perspective:***

Federal law forbids gender or race discrimination related to any aspect of employment—hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. Consequently, hiring a less qualified female applicant over a more qualified male applicant and then retaliating when the male files a complaint may be considered gender discrimination. Showing a preference for one race over others by assigning overtime and favorable working conditions to employees of the preferred race and retaliating when a discrimination complaint is filed violates federal anti-discrimination laws. An employer is responsible to implement and enforce policies that prevent discrimination and prohibit retaliation when a complaint is filed. All employees, especially those involved in the company's employment process, should be well-trained on policies preventing discrimination or retaliation. Complaints alleging discrimination should be thoroughly investigated.

Yours truly,



**David S. Barmak, JD, CEO.**

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