



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



In September, the Centers for Medicare & Medicaid Services (CMS) announced that they took action to comply with the new Omnibus Burden Reduction (Conditions of Participation) Final Rule. The CMS Emergency Preparedness Rule was affected by this Burden Reduction action. HHS ASPR, the Technical Resources, Assistance Center, and Information Exchange (TRACIE) updated their facility-specific requirement overviews to reflect this change. You can access them and related resources on their CMS Emergency Preparedness Rule Resources Page.

Former Business Manager of Assisted Living Facility Sentenced to 27 Months in Prison for Stealing Nearly a Quarter Million Dollars from Elderly Victim

The former business manager of an assisted living facility was sentenced to 27 months in prison for stealing approximately \$237,000 from an elderly victim under her care. Beginning in December 2016, the business manager agreed to help manage her victim's financial affairs and pay for her care. She was granted limited access to the victim's checking account. Without the knowledge of the victim or the victim's guardian, she already had fraudulently gained access to the victim's credit card account and had several new cards issued in her name. She used the credit cards for personal expenditures, including luxury clothing, jewelry, automobiles, dental work, rent, and utilities. She paid the credit card bills with checks drawn on the victim's checking account without permission. In addition to the prison term, she was sentenced to three years of supervised release and must pay restitution of \$237,258.

Compliance and Ethics Perspective:

A facility is required to protect and manage the personal funds of its residents by ensuring that the accounting and recordkeeping of those funds are done according to generally accepted accounting principles (GAAP). Strong policies and procedures with protocols for separating the duties involved in receipt and disbursement of residents' funds should require periodic audits to help ensure residents' funds are not misappropriated.

68,000 Hospital Patients Impacted by Phishing Attack

In June 2019, following the detection of suspicious activity in an employee's email account, a Gary Indiana-based hospital group discovered an unauthorized individual had gained access. An investigation revealed two email accounts had been compromised as a result of employees responding to phishing emails. It took until August 7, 2019, for forensic investigators to determine that a breach had occurred and patient information had been compromised.

Risk Management Perspective:

HIPAA regulations require healthcare providers to have phishing defenses in place and to take steps to reduce risk to a reasonable and acceptable level. Defenses should include a combination of technological solutions to prevent the delivery of phishing emails and block access to phishing URLs. Employees must also receive regular, ongoing security awareness training to help them identify and correctly deal with phishing emails.

83-Year-Old Charged with Murder in Killing of 76-Year-Old Man inside Massachusetts Nursing Home

An 83-year-old man was arrested and charged with murder in the killing of a 76-year-old man inside a Massachusetts nursing home. Police were called around 7:35 p.m. October 5 to the nursing home for a report of an "assaultive patient at the facility," the district attorney's office said. Police found a 76-year-old man who had been beaten. He was taken to a nearby hospital where he was pronounced dead.

Compliance and Ethics Perspective:

Statistics indicate that most incidents of abuse experienced by a resident involve another resident, often with dementia and cognitive impairment. Prevention is the key to avoiding abuse. This makes assessments of residents upon admission, and on an ongoing basis, critical for staff to gain awareness of triggers and changes in a resident's behavior that signal potential for aggressive behaviors. Incidents between residents should be fully investigated and documented, with appropriate follow-up and preventive actions.

Three NC Assisted Living Facility Employees Accused of Encouraging and Filming Resident Fights

Three employees at a North Carolina assisted living facility were arrested after police say they encouraged residents to fight each other and allegedly abused two elderly women with cognitive disabilities. The police department's Criminal Investigations Division and the Department of Health and Human Services investigated and learned that certain employees were encouraging residents to fight each other, and an employee physically assaulted a 73-year-old woman by shoving her into her room. Two other employees filmed the encounter and did not help. During a separate incident, court documents say that the 73-year-old woman began to fight with a 70-year-old woman. The three employees were accused of watching, filming, and encouraging the fight.

Compliance and Ethics Perspective:

Abuse related photographs and recordings by nursing home or assisted living facility staff violate residents' rights to privacy and freedom from abuse, neglect, and exploitation. Facilities are required to develop and implement written policies and procedures to ensure that physical, mental, and verbal abuse are prohibited. A photograph or recording does not have to be distributed on social media to be considered abuse. Any unauthorized photograph or recording of a resident that is retained, distributed on social media, or transmitted through multimedia messaging by staff may be considered abuse.

EEOC Sues Tennessee Healthcare System for Disability Discrimination

Clarksville Health System, G.P. d/b/a Tennova Healthcare, a hospital in Clarksville, TN, violated federal civil rights laws by denying a registered nurse reasonable accommodation for her disability and firing her, the US Equal Employment Opportunity Commission (EEOC) charged. The nurse reportedly suffered an on-the-job injury to her knee. After surgery and recovery, her doctor placed her on permanent intermittent sedentary activity for a third of the day. Tennova refused to allow her to continue working as a nurse, and gave her ten

days to find another job at its hospital before firing her. Despite having vacant jobs for which the nurse was qualified, Tennova failed to reassign her to one of them as a reasonable accommodation. Rather, Tennova required her to apply and interview for the positions, and then declined to hire her. After firing her, Tennova offered her a registrar job that paid one third of what the nursing positions paid. This alleged conduct violates the Americans with Disabilities Act (ADA).

Human Resource Perspective:

The Americans with Disabilities Act (ADA) requires employers with 15 or more employees to comply with the law. Under the ADA, should a qualified employee become disabled, the employer must provide reasonable accommodation to enable the employee to continue doing his or her job. However, in this case, the nurse's need to have "intermittent sedentary activity" for one-third of her time on the job might be considered a barrier to her being able to perform her responsibilities as a nurse, which could be considered an undue hardship for the hospital. If there were other available jobs within the hospital that the nurse was qualified to perform that accommodated her disability, it would be reasonable to reassign the nurse to one of those positions without requiring her to go through the application process.

New Jersey Nurse Sues Hospital, Says Co-workers Secretly Sedated Patients

A nurse who worked at a New Jersey hospital is suing the owner, claiming a boss retaliated after she reported that staff members were sedating patients with Benadryl at night, in violation of hospital policy. The nurse told her supervisors that several nurses in her unit were intentionally giving patients Benadryl in order to make them drowsy or fall asleep and did not include the medication in the patients' records. The lawsuit also alleges that the nurse's direct supervisor launched a campaign of retaliation after her report.

Compliance and Ethics Perspective:

This incident involves giving residents non-prescribed medication to sedate them and retaliating against an employee for reporting the possible violation. The Centers for Medicare & Medicaid Services (CMS) require that residents' drug regimens are free from unnecessary drugs (F757). CMS prohibits psychotropic drugs from being given to residents unless they are "necessary to treat a specific condition as diagnosed and documented in the clinical record." Benadryl, an antihistamine, is considered a psychotropic drug, and is an unnecessary medication when given without a physician's order for a specific condition. The Whistleblower Protection Act prohibits those who report violations from retaliation. The person making the disclosure is often referred to as the "whistleblower."

Texas Woman Charged in Medicare Kickback Conspiracy

A 44-year-old Texas woman was charged with conspiring to pay illegal kickbacks to physicians and marketers in exchange for the referral of Medicare and Medicaid beneficiaries. The indictment charges her with engaging in a conspiracy from 2011 through 2016. The woman and her co-conspirators allegedly paid kickbacks to physicians and various others in exchange for beneficiary referrals and certifications and for services and supplies billed to Medicare and Medicaid. According to the indictment, the woman delivered cash payments in return for the referral of beneficiaries to a home health agency and other providers with whom she was associated.

Compliance and Ethics Perspective:

Paying physicians and others to provide Medicare and Medicaid beneficiary referrals and certifications and billing Medicare and Medicaid for services and supplies, using those referrals, violates three

federal laws: the Anti-Kickback Statute, the Stark Law, and the False Claims Act. The Anti-Kickback Statute prohibits offering, paying, soliciting, or receiving anything of value to induce or reward referrals, or generate business with a federal healthcare program. The Stark Law prohibits a physician from referring Medicare beneficiaries for designated healthcare services to an entity with which the physician has a financial relationship. The False Claims Act involves knowingly submitting a false or fraudulent claim to a government program like Medicare or Medicaid.

Security IT Director at Georgia Assisted Living Community Arrested for Stealing Jewelry

A security IT director at an assisted living home in Georgia was arrested and charged with stealing thousands of dollars in jewelry from residents. The county sheriff said the security IT director took advantage of his position to steal thousands of dollars' worth of jewelry from unsuspecting victims. The man had easy access to rooms at the assisted living and memory care center. "He would make sure the key fobs and everything, the security systems, and computerized security systems, worked at the memory care center," the sheriff said. The investigation revealed the Security IT Director gained access to rooms and stole approximately \$35,000 worth of jewelry.

Compliance and Ethics Perspective:

Residents in nursing homes and assisted living facilities have a right to keep personal property in their possession, and to be free from misappropriation of that personal property by anyone using his/her position to access residents' rooms and steal their belongings. Careful background checks of all potential employees are required, especially for those with broad access to all areas of the facility. Past employment and references should be checked and verified. A facility can mitigate the potential for misappropriation of residents' personal property by providing locked drawers for storing valuables. Residents and their family members should periodically be reminded to report missing items immediately to administration.

Yours truly,



David S. Barmak, JD, CEO.

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NEW MED-NET ACADEMY E-LEARNING COURSES

Med-Net Compliance offers our clients' employees the opportunity to expand their knowledge of healthcare compliance rules and regulations. The courses are authored by Betty Frandsen, Vice President of Professional Development, and her staff, and are password protected, ensuring use only by client staff members. If you are not a client, click [HERE](#) to learn how you can become one.

The following new courses are key to getting ready for Phase 3 implementation November 28th:

HUMAN RESOURCES

- Keeping Nursing Staff Competent
- Recruiting New Employees: Paving the Road to Obtaining Competent Staff
- Meaningful Communication for Direct Care Staff

REGULATORY

- Completing Your Facility Assessment
- QAPI — Engaging Your Team Around Quality

SAFETY

- Emergency Preparedness Requirements for Nursing Homes

FRAUD, WASTE, AND ABUSE

- Elements of a Compliance Program and Code of Conduct



COMPLIANCE