



# 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



#### EEOC Issues Updated COVID-19 Technical Assistance Publication

The EEOC posted an updated and expanded technical assistance publication, "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws." It contains a Q&A section of common workplace questions, and provides approaches employers may adopt as they plan for employees returning to the workplace. [Access it here.](#)

## Idaho SNF Office Manager Sentenced to 37 Months for Healthcare Fraud

A 48-year-old woman in Idaho was recently sentenced to 37 months in federal prison for healthcare fraud. She was also ordered to serve three years of supervised release following completion of her prison sentence and to pay \$611,860.86 in restitution. According to court records, from August 2007 to December 2016, she was employed as the office manager at a skilled nursing facility in Boise. On December 1, 2016, employees at the facility called law enforcement after discovering checks showing that the defendant had embezzled \$23,805.66. The resulting investigation revealed she had been defrauding the facility since at least January 2010. Between January 2010 and December 2016, using multiple schemes, she defrauded healthcare programs and social security programs, resulting in a loss of \$611,860.86. She embezzled the residents' private payments and social security payments, including from their resident trust accounts. She fraudulently billed Medicaid for services that were covered by other healthcare benefit programs, and failed to report payments to Medicaid, causing overpayments, which she then embezzled. Finally, she collected and misused the social security checks of a deceased resident.

### Compliance and Ethics Perspective:

Nursing homes frequently offer residents the option of setting up a trust fund (financial account) in which they can have funds deposited for everything from care expenses to incidentals, such as haircuts and specialty items. The requirements in the nursing home regulations at 42 CFR. Part 483 set forth protections for resident funds. These protections give the resident the right to manage his or her

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financial affairs and prohibit nursing homes from requiring residents to deposit their personal funds with the facility. If a resident chooses to deposit funds with the nursing home, the facility must hold, safeguard, manage, and provide individualized accounting for those personal funds. Facilities must purchase a surety bond to guarantee that residents will be compensated for any loss of funds the facility holds. To ensure compliance with these requirements, a facility should establish an accounting system that operates under generally accepted accounting principles (GAAP) and implement checks and balances of duties regarding receipts and expenditures of funds to prevent potential fraud and misappropriation of residents' personal funds. Employee screening checks should be conducted on prospective office employees along with periodic audits of residents' accounts to verify the use of proper documentation for recording receipts and expenditures made to and from residents' accounts as a safeguard to prevent fraud and exploitation from occurring.

#### **OSHA Cites Nursing Home for Delayed Coronavirus Reporting**

The Occupational Safety and Health Administration (OSHA), the federal agency that oversees workplace safety, announced that it had issued its first citation in the US related to the coronavirus outbreak against a Georgia nursing home that delayed reporting the hospitalization of six infected workers. The citation, dated May 18, states that the nursing home failed to report to OSHA within 24 hours the work-related hospitalizations of six employees. OSHA said the workers were hospitalized around April 19, but the agency wasn't notified until May 5.

#### ***Risk Management Perspective:***

Prior to the COVID-19 crisis, nursing homes, as covered employers, were required to report certain work-related illnesses by filing incident reports with OSHA within prescribed timeframes. An employer is obligated to contact OSHA and submit verbal or online incident reports within eight (8) hours after the death of any employee and within twenty-four (24) hours of the inpatient hospitalization of any employee due to a work-related illness. The information OSHA requires includes the nature of the illness, how the exposure occurred, and a description of how the exposure is "work-related." Failure by a facility to promptly report the hospitalization of employees makes it difficult for OSHA authorities to trace and determine if exposure to the disease was "work-related" (contracted from sources inside the facilities) or resulted from sources outside the facility. OSHA early on issued the following guidelines for employers to use in addressing the risk of exposure to COVID-19:

1. Develop an infectious disease preparedness and response plan.
2. Prepare to implement basic infection prevention measures.
3. Develop policies and procedures for prompt identification and isolation of sick people, if appropriate.
4. Develop, implement, and communicate about workplace flexibilities and protections.
5. Provide personal protection equipment.

#### **Google Detects Coronavirus-Themed Phishing Attacks by Firms in India Posing as WHO**

Hackers, many of them based in India, are creating accounts spoofing the World Health Organization (WHO) and targeting business leaders in financial services, consulting, and healthcare corporations in the US, the UK, and other countries amid the COVID-19 pandemic, according to a report by Google. Citing an example, Google said, "We have seen new activity from 'hack-for-hire' firms, many based in India, that have been creating Gmail accounts spoofing the WHO." The emails encourage individuals to sign up for direct notifications from WHO to stay informed of coronavirus-

related announcements and include a link to attacker-hosted websites that bear a strong resemblance to the official WHO website.

***Risk Management Perspective:***

Phishing attacks directed at healthcare providers are intended to allow the perpetrator to gain access to the provider's operating system for purposes of hijacking the system to obtain ransom payments and the private health information (PHI) of an organizations' patients/residents which can be used to steal identities, to defraud Medicare and Medicaid, and to obtain controlled medications based on the stolen PHI. The Health Insurance Portability and Accountability Act (HIPAA) Security Rule requires that healthcare providers conduct a risk assessment of their healthcare organization to ensure it is compliant with HIPAA's administrative, physical, and technical safeguards. Risk assessments also help to identify areas where a healthcare provider's PHI could be at risk. Also, healthcare providers can download the HHS Office for Civil Rights (OCR) Security Risk Assessment (SRA) Tool to help healthcare providers conduct a security risk assessment. The tool can be downloaded from <https://www.healthit.gov/sites/default/files/SRA-Tool-3.1.msi>.

**Iowa Nurse Anesthetist Sentenced to Nearly Three Years in Federal Prison for Drug Tampering and Diversion**

A certified nurse anesthetist (CRNA), 46, from Charles City, Iowa, who secretly tampered with vials of fentanyl in a hospital's surgery and birthing centers, was sentenced to 34 months in federal prison, fined, and ordered to pay costs and restitution. He began working as a CRNA at the hospital in 2017. From February 2018 through September 7, 2018, he used his State of Iowa nursing licenses to gain access to two controlled substances, fentanyl and sufentanil, and used them himself. In order to avoid getting caught, he perforated tamperproof paper around the vials, carefully opened them, replaced the drugs in the vials with saline, glued the vials shut, and placed them back in the hospital's secure dispensaries. The hospital discovered his scheme on September 7, 2018, when a hospital visitor discovered him passed out in a public bathroom. He had a rubber tourniquet and empty and full vials of propofol, another drug used in anesthesia, in his coat pocket. After the hospital declined his request to keep his drug theft scheme "internal," he told the hospital's pharmacist that she needed to remove vials of what were supposed to contain narcotics in the surgery center because he did not want those adulterated narcotics used on patients. The pharmacist found tampered vials of fentanyl in the surgery center. However, over the ensuing weekend, the pharmacist also checked the hospital's birthing center and found tampered vials there too. In total, the hospital discovered 28 tampered vials of fentanyl and 15 tampered vials of sufentanil in the dispensaries. The former CRNA must also serve a three-year term of supervised release after the prison term. The district court also ordered him to forfeit his two State of Iowa nursing licenses because he used them to further his drug diversion scheme.

***Compliance and Ethics Perspective:***

Misappropriating controlled substance medications for personal use and/or monetary gain and replacing them with saline solutions poses a serious risk for medication errors and endangers lives, along with causing unnecessary pain and suffering to patients. Healthcare providers are required by the Centers for Medicare & Medicaid Services (CMS) to have a system in place to store and account for receipt and dispersal of controlled substances, and to regularly review, reconcile, and note any discrepancies and discover any tampering of stored medications, i.e., tampered packaging indicating the potential replacement of medications with solutions like saline. For complete details of CMS rules

on the management of controlled substances, see Med-Net Compliance, LLC, article at: <https://www.mednetcompliance.com/cms-management-of-controlled-substances/>. Med-Net Academy offers a course, [Drug Diversion: What Every Nursing Facility Needs to Know](#).

**California Medical Clinic Agrees to Settle Allegations It Violated Federal Law by Not Providing Access to the Deaf or Hard of Hearing**

A company that operates seven medical offices in Riverside County, California, has agreed to resolve allegations that it violated the Americans with Disabilities Act (ADA) by failing to provide effective communication to deaf and hard-of-hearing patients. The settlement resolves allegations that the company failed to provide a qualified sign language interpreter or other appropriate form of auxiliary aid or service to a patient who is deaf and her family, instead relying on a video remote interpretation system that often failed to work. The ADA requires medical providers to ensure effective communication for patients who are deaf or hard of hearing. The settlement requires the company to provide appropriate auxiliary aids and services free of charge so that people who are deaf or hard of hearing have full and equal access to treatment at its offices. Under the settlement agreement, the company must:

- provide appropriate auxiliary aids and services necessary for effective communication to patients and their companions who are deaf or hard of hearing
- advertise the availability of auxiliary aids and services
- conduct individualized assessments for patients who are deaf or hard of hearing to determine what auxiliary aids and services are best suited for their needs
- pay \$5,000 in compensation to the complainant and a \$1,000 civil penalty to the United States

***Risk Management Perspective:***

Healthcare facilities (i.e., hospitals and long-term care settings) and private medical sites are considered public accommodations and subject to the requirements of ADA Title III provisions requiring use of sign language interpreting services for deaf and hard of hearing patients and residents. This requirement is often more stringent than many healthcare providers realize. ADA Title III obligates physician practices, hospitals, and other healthcare providers to provide—and pay for—qualified sign language interpreters when a patient needs an interpreter to “effectively communicate” with a healthcare provider about the patient’s medical condition, treatment, or prognosis. Notably, a healthcare provider should not rely on family members for interpreting, because of the potential for conflicts of interest and confidentiality breaches. A qualified interpreter is one who is “able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.”

Penalties for noncompliance with ADA Title III are substantial. Federal regulatory agencies are empowered to impose significant fines on public accommodations that violate ADA Title III. These agencies—or the courts—may require public accommodations to undertake extensive corrective action to come into Title III compliance, and subject themselves to long-term compliance monitoring. Also, because almost all healthcare facilities and private medical practices participate in federal health programs such as Medicare and Medicaid, they can be held liable for damages in private lawsuits brought by persons with disabilities. Official policy statements made by the United States Department of Justice (DOJ) and the United States Department of Health and Human Services (HHS) make it clear that an interpreter is required when a deaf patient’s primary means of communication is sign language and the patient must have a substantive discussion with his or her healthcare provider.

### **Georgia-Based Healthcare Company Faces Lawsuit over Monthlong Data Breach**

A Georgia-based pediatric home health services provider is facing a class-action lawsuit filed by more than 100 patients impacted by a monthlong data breach which occurred in 2019. Over 166,000 patients were affected by the incident, which the breach victims claim was caused by inadequate security. In February, the provider began notifying patients of a potential data breach caused by a phishing attack first discovered on August 24, 2019. The investigation found several employee email accounts were hacked for more than a month between July 9 and August 24. Patient names, Social Security numbers, state identification, health data, and other sensitive information could have been compromised by the hackers. The lawsuit states that the company waited well beyond the HIPAA-required 60-day notification rule to begin sending notices to potential victims. The lawsuit also argues that the company inadequately safeguarded patient data.

#### ***Risk Management Perspective:***

HIPAA's Breach Notification Rule requires covered entities to notify patients when their unsecured PHI is impermissibly used or disclosed or "breached" in a way that compromises the privacy and security of their PHI. This phishing attack causing a breach of PHI in the Georgia healthcare company's system was first discovered on August 24 ("the date of discovery"). If the breach involves the unsecured PHI of more than 500 individuals, a covered entity must notify a prominent media outlet serving the state or jurisdiction in which the breach occurred, in addition to notifying HHS within 60 days from date of discovery. For breaches involving fewer than 500 individuals, covered entities are permitted to maintain a log of the relevant information and notify HHS within 60 days after the end of the calendar year. Notifications are to be made via the HHS website located at <https://www.hhs.gov/hipaa/for-professionals/breach-notification/breach-reporting/index.html>. This breach involved the unsecured PHI of over 166,000, so notification to HHS should have occurred within 60 days after August 24th. The more than six months the healthcare provider took did not constitute "reasonable notification" timing for providing notification to HHS or to the affected individuals. Penalties for HIPAA violations can be issued by the Department of Health and Human Services Office for Civil Rights (OCR) and state attorneys general. In addition to financial penalties, covered entities are required to adopt a corrective action plan to bring policies and procedures up to the standards demanded by HIPAA.

Yours truly,



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

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### COVID-19 Facility Preparation Self-Assessment Based on the CMS COVID-19 Focused Survey for Nursing Homes

The questions in this survey tool will be used by State Surveyors to investigate compliance at F880 Infection Control and determine whether the facility is implementing proper infection prevention and control practices to prevent the development and transmission of COVID-19 and other communicable diseases and infections. Facilities are expected to be in compliance with CMS requirements and surveyors will use guidance that is in effect at the time of the survey. [This self-assessment tool is adapted for facility use from information provided by the Centers for Medicare & Medicaid Services \(CMS\) Memo QSO-20-20-All, released March 23, 2020. It provides a focused review of the critical elements associated with the transmission of COVID-19. It will help staff to identify strengths and weaknesses in their response to the COVID-19 Pandemic, and enable them to identify issues needing immediate focus and prioritization of improvement activities.](#)

**COVID-19 SURVEY  
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