



## MED-NET CONCEPTS LETTER

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

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.

The full Med-Net Concepts letter can also be found online [here](#).

### **Former Massachusetts Nursing Home Admissions Director Indicted in Connection with Embezzlement Scheme**

A former admissions director at a Massachusetts nursing home was indicted in connection with a scheme to steal hundreds of thousands of dollars from an elderly resident. According to the Attorney General's Office, from August 2018 until May 2019, the admissions director at the facility engaged in a scheme whereby she misappropriated over \$230,000 of an elderly resident's funds and spent the money on personal expenses such as repairs to her home, restaurants, cash withdrawals, and vacations for her and her family. Investigators also allege that she used a forged signature for various promissory notes, letters, and checks in order to perpetuate the scheme and in an attempt to cover up the theft.

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

Misappropriation of resident property, under the US Code of Federal Regulations 42 CFR § 483.5 - f Definitions, means "the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent." It is the facility's responsibility to perform comprehensive employee checks to eliminate persons with records of criminal behavior and to have stringent policies and procedures prohibiting the misappropriation of residents' property. However, some employees may choose to use their positions of trust to steal the identities of residents and use that information for personal financial gain. Staff should be trained to report any reasonable suspicion of a crime either to a supervisor or through the facility's Hotline. Residents, family members, and responsible parties should be educated about how to protect personal identity and access to financial information (bank accounts, debit/credit cards), and to periodically audit and report to the administrator unauthorized withdrawals or use. The following examples of misappropriation of resident property include, but are not limited to:

- Identity theft
- Theft of money from bank accounts
- Unauthorized or coerced purchases on a resident's credit card
- Unauthorized or coerced purchases from resident's funds
- A resident who provides a gift to a staff member in order to receive ongoing care, based on the staff member's persuasion
- A resident who provides monetary assistance to a staff person after that person made the resident believe he or she was in a financial crisis

Two Tennessee caregivers were arrested and charged with neglect of a patient. They left a 69-year-old client in a hot shower for an extended amount of time without conducting mandatory checks, which resulted in burns that required her to be airlifted to a hospital for treatment.

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

While the temperature of the water for a shower or bath does not generally pose a safety hazard for most adults, for persons with impaired senses and slower movement capability like many elders, it is a risk that requires monitoring. Overall, the organization, managers, and care staff share responsibility for checking as far as possible that safe bathing procedures are in place. The maintenance department should perform periodic testing of water temperatures throughout the facility, and care staff should also be trained about how to check the water temperature prior to a resident's bathing or showering without compromising the resident's privacy. The resident's care plan should reflect any sensitivity observed to water temperatures.

#### **Florida Home Health Company Agrees to Pay \$300,000 to Resolve Allegations of Illegal Kickback Scheme**

A Florida home healthcare company agreed to pay \$300,000 to resolve allegations that it engaged in a kickback scheme related to the referral of Medicare patients for home health services. The settlement resolved allegations that between August 1, 2013 and March 31, 2017, the company illegally paid its medical director in order to induce him to refer Medicare patients to their company for services that were billed to the United States. The medical director entered into a related settlement agreement in December of 2018. The United States alleged that these financial arrangements violated the physician self-referral law, commonly known as the "Stark Law," and the Anti-Kickback Statute, giving rise to liability under the False Claims Act.

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

Medicare, Medicaid, and other federal healthcare programs are protected by Anti-Kickback Statutes and the federal Stark Law. The purpose of these laws is to discourage and punish schemes that would result in fraudulent abuse of Medicare and Medicaid claims, and to protect beneficiaries of these programs by punishing and preventing the fraud and abuse of such schemes as overutilization of medical services, increased costs, poor-quality medical services, and unfair competition. Nursing homes should review their policies and procedures to ensure they clearly forbid the facility and/ or any facility employee, e.g., a medical director, physician, or vendor with access to Medicare/ Medicaid beneficiaries, from entering into a financial arrangement prohibited under Anti-Kickback Statutes and the Stark Law.

#### **Illinois Nurse's Lawsuit Alleges Health Department Asked Her to Violate HIPAA**

An Illinois nurse filed a lawsuit against a county health department, alleging that she was fired for refusing to give law enforcement agencies the names and addresses of people with COVID-19. She said that it would have been illegal for her to take such action under federal and state laws that protect patient privacy and that she could have faced disciplinary action, including the loss of her nursing license. The lawsuit says that she is protected from retaliation under the state's Whistleblower Act for refusing to violate the Illinois Medical Patient Rights Act and Nurse Practice Act, and the federal Health Insurance Portability and Accountability Act (HIPAA).

#### ***Human Resource Perspective:***

Numerous federal laws protect employees against retaliation from their employer, and an employer may not terminate or otherwise take adverse action against workers who engage in activities protected by the law. Employees are required to demonstrate that they were retaliated against in an unlawful manner by providing direct written or verbal evidence. Protected activities fall into two broad areas: reporting unlawful or potentially unlawful behavior, and participating in an investigation, lawsuit, or hearing regarding potentially illegal practices of their employer.

Under the federal Health Insurance Portability and Accountability Act (HIPAA), healthcare providers are prohibited from disclosing personal health information (PHI), but there are circumstances when PHI can be provided to law enforcement. However, that provision is usually only applicable in situations involving suspected criminal activity, for "national security and intelligence activities," and as "protective services" for the President and others.

A facility should review its policies and procedures regarding the forbidding of retaliation against employees, and provide training to staff with hiring and termination responsibilities to prevent violations of laws protecting employees from unlawful termination.

#### **Missouri Woman Sentenced to 17.5 Years in Prison for Death of Man Found in Concrete**

A Missouri woman was sentenced to 17.5 years in prison for causing the death of a developmentally disabled resident, 31, of a care facility, and then trying to cover up his death. The resident was reported missing April 17, 2017, and his remains were found six days later encased in concrete in a storage unit, though an investigation determined he had actually died in 2016. The former employee of the facility pleaded guilty to one count of depriving the resident of his civil rights — by willfully failing to provide necessary medical care to him resulting in injuries that eventually led to his death — and one count of healthcare fraud arising from her efforts to hide his death.

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

Failure by a care facility participating in Medicare/Medicaid reimbursement programs to provide the food

and nutrition (including additional supplements) that are prescribed to meet a resident's dietary needs, and to prevent declining health that ultimately results in death, clearly violates both state and federal regulations and constitutes provision of substandard quality of care, in violation of the resident's civil rights. Unlawfully disposing of the resident's body and then reporting the person as missing in order to continue illegally submitting false claims to Medicaid for reimbursement is a violation of state and federal False Claims Acts, all of which may result in a criminal conviction and imprisonment.

### **Oregon Medical Practice Employee Pleads Guilty to Tax Crimes, Bank Fraud**

A former office manager and bookkeeper of an Oregon medical practice pleaded guilty to filing a false personal income tax return, falsely impersonating an IRS employee, aggravated identity theft, and bank fraud as a joint resolution for two criminal cases. Beginning on or about January 2011 and continuing until her termination in December 2015, she used her position and access to the medical practice's finances to steal money from the practice by, among other means, writing business checks to herself or for her own benefit. She used the stolen funds to make payments on personal credit cards and to pay other personal expenses. In an attempt to hide her illicit actions, she prepared and maintained false business financial records, overstating expenses and estimated tax payments. She also opened a business bank account in the medical practice owner's name, deposited a business check payable to the Oregon Department of Revenue into her own personal account, gave the practice owner falsified property tax statements with total due balances of zero, and convinced the practice owner to grant her limited power of attorney to handle the practice's pending IRS tax collection action. In perhaps her most brazen attempt to conceal her embezzlement activity, she created a fictitious identity as an IRS Taxpayer Advocate, aka Linda Gibson; established a phone number and voicemail account for the fictitious identity; and purported to assist the medical practice owner with his IRS tax collection issues while impersonating "Linda Gibson."

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

A healthcare provider should develop policies and procedures for ensuring proper oversight and accountability of its financial operations that include implementing GAAP along with controlling access to deposits and expenditures by having checks and balances in place. Scheduling periodic audits by a reputable CPA firm will help with early intervention and prevention of embezzlement by unscrupulous staff.

### **Patients Moved at Texas Hospital Due to Power Outage after Generator Test**

A Texas hospital had to divert new patients to other local and regional hospitals due to a partial power failure. The hospital staff had performed a generator test early one weekday morning and, when switching back to regular power, the generator switch failed, preventing the main hospital building from going back to local power. Affected patients were relocated to rooms which had power while the hospital worked to restore all power to the main building.

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

Having an effective Emergency Preparedness Plan is required by federal regulations governing healthcare facilities. Risk evaluations are required to be performed in anticipation of any perceivable emergency situation. The importance of having a continuous supply of power, e.g., generators, for healthcare facilities is well-known and demonstrated by the hurricanes in recent years that have wreaked havoc on Texas, Louisiana, and Florida nursing homes. The loss of power that occurred when switching from the generator system back to local power might not have been identified when determining various risk scenarios.

Facilities should consider including in their Emergency Preparedness Plan's risk assessments the need to consider potential problems when switching between a backup generator and the conventional power grid. Protocols should be in place to deal with outages arising from potential overloads when making such switches. Staff should be trained and be as familiar with switching back to local power as with switching to the generator system.

### **Colorado Nursing Home Residents Concerned about Sex Offender**

Residents at a large nursing home in Colorado found out that one of the other residents was a registered sex offender. His lengthy arrest record had more than two dozen charges including child sex assault, multiple DUIs, and multiple charges for failing to register as a sex offender. Several residents and staff members at the facility spoke to the media, as they were upset that they were never notified he was living in the building. The Colorado Bureau of Investigations said that there is no law that states a Colorado nursing home has to notify residents there is a sex offender living there.

#### ***Compliance and Ethics/Human Resource Perspective:***

A nursing home is required to protect all of its residents from abuse. When a facility admits a known sex offender, it creates anxiety for other residents and their families with children. While there is no federal requirement that nursing homes advise the residents, staff, family members, and responsible parties about other residents with histories of being sex offenders, that need to protect still exists. Facilities should review their policies and procedures regarding the care plan evaluation for residents who are known sex offenders to ensure they include intervention and prevention aspects with additional monitoring of that resident, particularly as it pertains to the ability to move about the facility. Failure to prevent sexual assaults against other residents may result in citations, fines, the filing of lawsuits, and a determination that the facility is providing substandard care and placing others in jeopardy.

## New NAB/NCERS- Approved Fraud CE Courses

Med-Net Academy offers a certificate program for long-term care professionals that provides education on fraud, waste, and abuse prevention with NAB/NCERS-approved CE credit for nursing home administrators. These programs are approved by the National Association of Long Term Care Administrator Boards. The certificate program consists of two eight-module sets. Credits will be granted upon successful completion of each set.

Topics covered include: Documenting the prevention of fraud, waste, and abuse; principles of the compliance reporting system; federal compliance-related laws; harassment and discrimination; violence prevention; auditing/monitoring of records; corrective actions; contracting and vendor policies, Medicare Part B consolidated billing; licensure maintenance, excluded entities; disciplinary policy; non-retaliation; residents' rights, quality improvement; reimbursement claims, and much more.

All NAB/NCERS-approved CE courses were developed and produced by the Med-Net Education Development staff. You cannot afford to be without it!

For more details, click [here!](#)

## Med-Net Concepts, LLC Affiliates

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