CLIENT ALERTS & INSIGHTS

DOJ Launches New Task Force Targeting Nursing Homes that Provide "Grossly Substandard Care"

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On March 3, 2020 the United States Department of Justice ("DOJ") announced the launch of a new task force, the "National Nursing Home Initiative", to enhance civil and criminal efforts to pursue nursing homes that provide "grossly substandard care".

The DOJ identified the following factors as indicators of "grossly substandard care": failure to provide adequate nurse staffing, failure to follow basic infection control and hygiene protocols, failure to ensure appropriate feeding and nutrition programs, withholding pain medication, and the use of physical and/or chemical restraints to sedate residents.

This task force is part of the DOJ's larger strategy and commitment to protecting the growing population of seniors in the United States, aside from the fraud enforcement activities that have garnered much attention in recent years. Operation of this task force will fall under the larger umbrella of the DOJ's "Elder Justice Task Forces", and will bring together federal, state and local agencies to target problematic providers, including the DOJ, the U.S. Attorneys' Offices, state Medicaid Fraud Control Units, HHS, state Adult Protective Services Agencies, and law enforcement.

According to the DOJ press release, approximately 30 nursing homes in nine states are already under investigation. The DOJ press release does not indicate whether there will be any correlation between nursing facilities targeted by the new task force and those nursing facilities included as participants and/or candidates for the CMS "Special Focus Facility" program.

If implemented correctly, this task force could act as a positive development for the overwhelming majority of nursing homes and nursing home owners because it would direct the attention of the government upon those 'bad players' that undermine the overwhelmingly positive care being provided day in and day out. Ultimately, however, the impact of this task force will be depend upon whether or not the government identifies the appropriate metrics and data points for evaluating quality. Maintaining the wrong focus could result in the inadvertent targeting and penalization of quality providers due to the government's overreaction to isolated incidents.

Being proactive is the first and best step for those hoping to avoid increased government scrutiny. All nursing homes should ensure that they have an active and effective QAPI program, and that they are otherwise taking steps to ensure compliance with the updates to the Requirements of Participation set forth in 42 CFR Part 483 with respect to quality of care. Avoidance is far easier, far less disruptive, and far less costly compared to correcting problems that have occurred.

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