2026 Long Term Care Provider State and Federal Legal Update

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Introduction

- Big Picture Concepts for the LTC Industry that help understand the legal changes implemented for 2026 and beyond
  - Continued consolidation of the industry through sales, mergers affiliations
  - Continued governmental oversight, scrutiny and reporting of ownership and desired transparency
  - Increased use of data and analytics as a means of investigating and prosecuting fraud and abuse in the industry
  - Continued financial pressure through insufficient reimbursement programs
  - Continued staffing pressures, affecting quality care, federal termination of federal staffing minimums

Federal and State Survey/Certification Updates

Top Survey Citations for 2025

Source: https://qcor.cms.gov/Citation_Freq_NHs

Year Type: Fiscal Year Year: 2025 Quarter: Full Year

Citation Frequency Report

National Tag #	Tag Description	# Citations	% Providers Cited	% Surveys Cited
Totals represent the # of providers and surveys that meet the selection criteria specified above.			Active Providers=14829	Total Number of Surveys=64940
F0880	Infection Prevention & Control	7,609	44.9%	11.7%
F0689	Free of Accident Hazards/Supervision/Devices	6,553	34.0%	10.1%
F0812	Food Procurement, Store/Prepare/Serve Sanitary	5,598	36.0%	8.6%
F0684	Quality of Care	5,089	27.3%	7.8%
F0656	Develop/Implement Comprehensive Care Plan	4,112	23.9%	6.3%
F0761	Label/Store Drugs and Biologicals	3,967	25.5%	6.1%
F0600	Free from Abuse and Neglect	3,077	15.9%	4.7%
F0609	Reporting of Alleged Violations	2,851	16.6%	4.4%
F0755	Pharmacy Srvcs/Procedures/Pharmacist/Records	2,812	16.6%	4.3%
F0677	ADL Care Provided for Dependent Residents	2,762	16.7%	4.3%
F0695	Respiratory/Tracheostomy Care and Suctioning	2,719	17.5%	4.2%
F0550	Resident Rights/Exercise of Rights	2,652	16.4%	4.1%
F0584	Safe/Clean/Comfortable/Homelike Environment	2,573	15.5%	4.0%
F0842	Resident Records - Identifiable Information	2,518	14.7%	3.9%
F0686	Treatment/Svcs to Prevent/Heal Pressure Ulcer	2,432	14.5%	3.7%
F0657	Care Plan Timing and Revision	2,326	14.8%	3.6%
F0641	Accuracy of Assessments	2,251	14.7%	3.5%
F0658	Services Provided Meet Professional Standards	2,112	12.4%	3.3%
F0610	Investigate/Prevent/Correct Alleged Violation	1,782	10.7%	2.7%
F0580	Notify of Changes (Injury/Decline/Room, etc.)	1,775	10.7%	2.7%
F0690	Bowel/Bladder Incontinence, Catheter, UTI	1,677	10.7%	2.6%
F0760	Residents are Free of Significant Med Errors	1,530	9.5%	2.4%
F0692	Nutrition/Hydration Status Maintenance	1,418	9.2%	2.2%
F0558	Reasonable Accommodations Needs/Preferences	1,410	8.8%	2.2%
F0759	Free of Medication Error Rts 5 Prcnt or More	1,364	9.0%	2.1%
F0578	Request/Refuse/Dscntnue Trmnt;Formlte Adv Dir	1,209	8.1%	1.9%
F0758	Free from Unnec Psychotropic Meds/PRN Use	1,174	7.8%	1.8%
F0804	Nutritive Value/Appear, Palatable/Prefer Temp	1,147	7.4%	1.8%
F0688	Increase/Prevent Decrease in ROM/Mobility	1,023	6.8%	1.6%
F0921	Safe/Functional/Sanitary/Comfortable Environ	1,022	6.3%	1.6%
F0756	Drug Regimen Review, Report Irregular, Act On	990	6.6%	1.5%
F0757	Drug Regimen is Free from Unnecessary Drugs	971	6.5%	1.5%
F0725	Sufficient Nursing Staff	970	5.9%	1.5%

Deficiencies by Scope and Severity

Source: https://qcor.cms.gov/Deficiency_Count_NHs

Year Type: Fiscal Year **Year:** 2025 **Quarter:** Full Year **Percent by Row:** View All States

Deficiency Count Report

Region	Deficiencies by Scope & Severity											
	B	C	D	E	F	G	H	I	J	K	L	Total
(I) Boston	292	65	4,574	1,604	307	201	24	0	94	27	15	7,203
(II) New York	76	65	3,602	1,172	540	96	8	1	101	25	30	5,716
(III) Philadelphia	114	133	9,335	3,159	593	311	2	0	103	55	17	13,822
(IV) Atlanta	116	83	7,581	1,657	802	403	4	0	512	68	50	11,276
(V) Chicago	97	367	19,928	4,316	3,229	1,611	16	0	413	43	40	30,060
(VI) Dallas	62	121	8,580	5,082	635	218	39	0	705	351	29	15,822
(VII) Kansas City	53	163	5,841	2,423	1,030	328	8	0	190	21	9	10,066
(VIII) Denver	10	28	1,927	870	301	260	10	0	55	17	5	3,483
(IX) San Francisco	656	25	13,616	4,759	725	361	4	0	95	25	10	20,276
(X) Seattle	16	44	3,468	1,264	304	145	5	0	17	6	6	5,275
National Total	**1,492**	**1,094**	**78,452**	**26,306**	**8,466**	**3,934**	**120**	**1**	**2,285**	**638**	**211**	**122,999**

Enforcement Actions

Year Type: Fiscal Year Year: 2025 Quarter: Full Year View All States Percent View

Enforcement Actions Report

Region	Number of Providers	Total Enforcement Actions	Number of Enforcement Actions												
			State Monitoring	Directed Plan of Correction	Temporary Management	Discretionary Deny Pay for New Admits	Mand. Deny Pay for New Admits - 3 Mos.	Denial of Payment for All Resident	Directed In-service Training	Civil Money Penalty	CMS-Approved Alternative or Additional	Transfer of Residents/Closure of Facility	Transfer of Residents	Discretionary Termination	Mandatory Termination
(I) Boston	145	179	0	18	0	10	4	0	1	146	0	0	0	0	0
(II) New York	117	181	0	34	1	2	5	0	31	106	1	0	0	0	1
(III) Philadelphia	170	232	0	20	1	15	7	0	17	171	0	0	0	0	1
(IV) Atlanta	316	509	0	14	0	43	3	0	0	445	0	0	0	0	4
(V) Chicago	526	826	0	106	0	186	4	0	25	503	0	0	0	1	1
(VI) Dallas	517	703	0	17	0	55	1	0	4	625	0	0	0	1	0
(VII) Kansas City	183	248	0	11	1	65	7	0	0	160	0	0	0	4	0
(VIII) Denver	137	215	0	6	0	7	2	0	67	133	0	0	0	0	0
(IX) San Francisco	212	349	0	25	0	65	6	0	27	226	0	0	0	0	0
(X) Seattle	66	82	0	11	0	5	3	0	2	61	0	0	0	0	0
National Total	**2,389**	**3,524**	**0**	**262**	**3**	**453**	**42**	**0**	**174**	**2,576**	**1**	**0**	**0**	**6**	**7**

Source: https://qcor.cms.gov/Enforcement_Actions_NHs

Civil Monetary Penalty Report

Year Type: Fiscal Year Year: 2025 Quarter: Full Year View All States

Civil Money Penalty (CMP) Report

Region	Total Number of CMPs		Total Dollar Amount		Average Dollar Amount		Average Days in Effect
	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem	Per Instance	Per Diem
(I) Boston	61	85	$ 5,677,427.87	$ 1,195,533.73	$ 93,072.59	$ 14,065.10	47
(II) New York	71	35	$ 7,017,506.22	$ 528,993.40	$ 98,838.12	$ 15,114.10	63
(III) Philadelphia	96	75	$ 6,487,688.84	$ 1,142,672.81	$ 67,580.09	$ 15,235.64	54
(IV) Atlanta	133	312	$ 13,160,182.07	$ 3,189,842.35	$ 98,948.74	$ 10,223.85	40
(V) Chicago	332	171	$ 28,309,814.73	$ 3,130,910.06	$ 85,270.53	$ 18,309.42	39
(VI) Dallas	285	340	$ 24,632,201.02	$ 5,242,609.83	$ 86,428.78	$ 15,419.44	43
(VII) Kansas City	103	57	$ 6,578,019.61	$ 751,528.00	$ 63,864.27	$ 13,184.70	40
(VIII) Denver	83	50	$ 3,006,635.34	$ 674,109.80	$ 36,224.52	$ 13,482.20	32
(IX) San Francisco	142	84	$ 8,745,209.74	$ 1,213,308.78	$ 61,585.98	$ 14,444.15	42
(X) Seattle	48	13	$ 2,706,970.55	$ 170,494.50	$ 56,395.22	$ 13,114.96	48
National Total	**1,354**	**1,222**	**$ 106,321,655.99**	**$ 17,240,003.26**	**$ 78,524.12**	**$ 14,108.02**	**43**

Source: https://qcor.cms.gov/Enforcement_Actions_NHs

Overdue Recertification Surveys

Overdue Recertification Surveys Report

Region	Number of Late Surveys	% of Active Providers
(I) Boston	792	100.0%
(II) New York	953	99.9%
(III) Philadelphia	1,350	99.9%
(IV) Atlanta	2,650	99.9%
(V) Chicago	3,180	99.9%
(VI) Dallas	2,010	99.5%
(VII) Kansas City	1,348	99.6%
(VIII) Denver	570	99.7%
(IX) San Francisco	1,410	99.7%
(X) Seattle	421	99.8%
National Total	**14,684**	**99.8%**

Source: https://qcor.cms.gov/Enforcement_Actions_NHs

Survey Reports

- There continue to be significant backlogs in the survey and revisit process, which delay the verification of compliance and may extend the period during which daily civil monetary penalties (CMPs) accrue.
- The HHS Office of Inspector General is conducting an audit of CMS oversight of state survey agencies and their use of third-party contractors to conduct nursing home surveys. The audit remains ongoing and is currently expected to be completed in FY 2026.

Survey and Enforcement Issues/Updates (SOM)

- In January 2026, CMS revised Chapters 5 and 7 of the State Operations Manual to update Immediate Jeopardy guidance, clarify off-site complaint investigations, and align nursing home enforcement procedures with current policy.
- CMS updated the Special Focus Facility program (Jan. 2026) to include three-year post-graduation monitoring and to require survey agencies to consider staffing levels and resident fall prevalence when selecting SFF candidates.

Admission and Discharge Issues

- OAG focus on admissions of residents with opioid addictions and treating medications
    - State agencies and Attorney General have taken the position is that the denial of NF admission to an individual based on an Opioid Use Disorder (OUD) or the need for medications to treat, is a violation of the ADA, licensure regulations, and state Unfair Trade Practices and Consumer Protection Laws
    - Changes in federal law that eliminated the need for a waiver for physicians to prescribe treating medications for OUD; so to the agencies, a NF cannot argue that its physicians are not able to prescribe/oversee OUD residents
    - Very important to review admission procedures and policies to ensure that they do not contain discriminatory practices relative to OUD

Key Legal Themes From 2025 DAB SNF Decisions

It is fair to say that the overwhelming majority of appeals filed with the Department Appeals Board and federal courts with respect to survey issues are decided in favor of the government, and not the provider.

Across these cases, the DAB consistently reaffirmed several principles governing nursing facility enforcement:

1. "Substantial Compliance" Standard. Facilities are noncompliant if deficiencies create more than minimal harm risk to residents.
2. Deference to CMS Enforcement. The Board generally defers to CMS enforcement decisions unless the facility shows clear factual or legal error.
3. Immediate Jeopardy. Immediate jeopardy findings are upheld unless clearly erroneous.
4. Importance of Care Plans. Failure to follow physician orders, facility policies, individualized care plans can establish regulatory violations.
5. Limited Scope of Review. Facilities generally cannot challenge CMS's choice of enforcement remedy, only whether the facility was in substantial compliance.

Case Law Updates

Generations at McKinley Place v. CMS, DAB No. 3211 (11.06.2025)

- Board affirmed noncompliance where facility failed to follow food safety cooling standards, creating immediate jeopardy risk, and upheld $18,500 per-instance CMP based on undisputed facts.
- Takeaway: Failure to follow food safety protocols creates actionable risk regardless of actual harm; facilities are liable for staff actions, and strong policies or training do not excuse violations.

West Caldwell Care Center v. CMS, DAB No. 3210 (10.10.2025)

- Board upheld noncompliance where facility failed to follow care plan and physician orders preventing pressure sores, affirming summary judgment and per-day CMP for resulting avoidable ulcer.
- Takeaway: Failure to implement care plans or physician orders defeats “unavoidable” defense; documentation matters, and general practice claims won’t create factual disputes to avoid summary judgment or penalties.

Case Law Updates

<u>Oak Ridge Center v. CMS</u>, DAB No. 3195 (06.17.2025)

- Board upheld immediate jeopardy finding and CMP where nursing staff repeatedly failed to follow diabetes care orders, creating systemic risk of serious harm despite conflicting expert testimony.
- Takeaway: Repeated failure to follow physician orders and protocols can support immediate jeopardy findings; facilities must show such noncompliance clearly unlikely to cause serious harm to overturn CMS determinations.

<u>Lake Worth Nursing Home v. CMS</u>, DAB No. 3194 (06.17.2025)

- Board upheld noncompliance findings and $1,375 daily CMP where facility failed to report resident-on-resident abuse, prevent further assaults, and maintain proper food safety standards.
- Takeaway**:** Facilities must report and stop resident-on-resident abuse regardless of perpetrator intent or visible injury; expired and improperly stored food also supports noncompliance and daily penalties.

Case Law Updates

Golden Living Center – Morgantown v. CMS, DAB No. 3192 (06.16.2025)

- Board upheld immediate jeopardy CMPs where facility failed to prevent known resident-to-resident abuse and implement effective interventions, resulting in harm and ongoing risk to residents.
- Takeaway: Facilities cannot tolerate recurring abusive behavior or set limits on frequency; they must prevent it entirely and implement care plans effectively to avoid immediate jeopardy findings.

Golden Living Center – Mountain View v. CMS, DAB No. 3190 (05.16.2025)

- Board found facility noncompliant with accident prevention and administration rules based on repeated falls, failure to implement care plans, and environmental hazards, supporting immediate jeopardy.
- Takeaway: Facilities must implement care plans and address hazards; repeated falls and ignored interventions show systemic failure, supporting immediate jeopardy even without staffing-based violations.

Case Law Updates

<u>Pennsylvania Nursing and Rehabilitation Center v. CMS</u>, DAB No. 3185 (05.12.2025)

- Board upheld CMPs where facility failed to follow care plan, monitor bowel status, and prevent neglect, causing immediate jeopardy and resident death from untreated bowel obstruction.
- Takeaway: Failure to follow care plans and document care equals neglect; resident rights do not excuse noncompliance, and risk of harm alone supports immediate jeopardy and penalties.

<u>Park Valley Inn Health Center v. CMS</u>, DAB No. 3181 (04.24.2025)

- Board upheld CMS setting enrollment effective date at survey completion, rejecting earlier date despite facility readiness, because compliance is determined only when CMS confirms all requirements are met.
- Takeaway: Effective date hinges on CMS determination of full compliance, not provider readiness; choosing new enrollment over assignment delays billing and courts won't apply equitable or constitutional relief.

Case Law Updates

- Sligo Creek Center v. CMS, *pending in 4th Circuit* (June 12, 2025)
  - SNF challenges CMS CMPs for infection control violations and alleged immediate jeopardy in the amount of $1.5 million.
  - Takeaway: Major infection control violations may trigger large CMS penalties and significant enforcement actions, so the question here is whether the provider is entitled to a jury trial, rather than before an ALJ.

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    - State agencies and Attorney General have taken the position is that the denial of NF admission to an individual based on an Opioid Use Disorder (OUD) or the need for medications to treat, is a violation of the ADA, licensure regulations, and state Unfair Trade Practices and Consumer Protection Laws
    - Changes in federal law that eliminated the need for a waiver for physicians to prescribe treating medications for OUD; so to the agencies, a NF cannot argue that its physicians are not able to prescribe/oversee OUD residents
    - Very important to review admission procedures and policies to ensure that they do not contain discriminatory practices relative to OUD

Immigration Enforcement in Senior Housing and Care Facilities

What Changed - and Why It Matters

- Before 2025, the Department of Homeland Security designated health care facilities, including nursing homes, assisted living and personal care homes, as "protected areas" where immigration enforcement was presumptively prohibited.
- Agents could not conduct arrests at your facility without extraordinary circumstances.
- On January 25, 2025, Homeland Security rescinded the protected area policy.
- Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) agents may now attempt immigration and at your facilities, including arrests of residents, visitors, and staff.
- Pennsylvania DOH, DHS, and PDA jointly issued an advisory urging facilities to adopt a written response policies.
- Best practice: your facility must have a written policy and have trained staff before an agent appears at your door.

Self-Evaluation of Risk

- Providers should conduct a critical self-evaluation of risk:
  - What is the demographic make-up of facility staff?
  - What is the demographic make-up of facility resident population?
  - What is the political climate in the provider's geographic area?
  - Have other health care facilities in the area previously been subject to an ICE raid?
- Depending on these factors, the risk of an ICE raid may or may not be likely; Nevertheless, it is important for the facility and staff to be prepared, in the event of an actual event.

Understanding and Applying Legal Concepts

- The “target” of the visit is important for purposes of applying the law and conducting an analysis
  - Is the target a resident or a staff member/employee
- What actions are ICE trying to take?
  - Are they requesting information/asking questions about a resident/staff member?
  - Are they seeking documentation from the Facility?
  - Are they seeking to arrest a resident/staff member?
- The documentation presented by/relied upon by ICE matters:
  - Judicial Search or Arrest Warrant/Subpoena
  - Administrative Warrant/Subpoena

Resident vs. Employee/Staff Member

- HIPAA protections apply only to a resident (unless the staff member is also, somehow, a patient/resident of the Facility)
- PHI includes: resident name, date of birth, address, medical record number, diagnosis, admission and discharge dates, immigration status (when documented in medical record).
- Absent a valid judicial warrant or recognized HIPAA exception, NO PHI may be disclosed to any law enforcement officer, including immigration agents.
- Administrative warrants (ICE Forms I-200 and I-205) are NOT judicial warrants and DO NOT satisfy the HIPAA exception allowing law-enforcement access to PHI.
- Only a warrant signed by a state or federal judge triggers a HIPAA law enforcement exception. Comply strictly with the stated scope of the document. Consult management and/or legal counsel first.

Operational Continuity – Resident Arrest

- Assess whether the event triggers reporting obligations.
- Potential reporting obligations include
  - Notification to the DOH (or DHS for PCH) under applicable incident reporting regulations if the arrest or removal constitutes an unexpected or involuntary discharge or transfer, or otherwise affects resident safety or care delivery;
  - Notification to DHS or OLTL if the resident is Medicaid-enrolled and the event affects the facility's ability to meet its obligations under its provider agreement (highly unusual);
  - Notification to the resident's responsible party or legal representative, consistent with HIPAA and applicable resident rights requirements;
  - Notification to the facility's liability insurer and outside legal counsel.
- Any required report should be made as soon as practicable and within the timeframe specified by the applicable regulatory authority.

Resident vs. Employee/Staff Member

- Personnel records are protected under law, though not via HIPAA.
- Employee records may not be produced in response to an administrative warrant. A judicial warrant or employee consent is required.
- HIPAA generally does not protect employee records (unless they are patients of the facility itself).
- Administrative warrant: facilities not required to surrender employee or grant non-public access.
- Judicial warrant: facility may not obstruct. Escort discreetly to minimize resident disruption.

Employee Issues: The I-9 Form

- An I-9 (Employment Eligibility Verification form) is the federal form that every U.S. employer must complete for each new hire to verify the employee's identity and authorization to work in the United States.
- I-9s are a distinct legal category that sits outside HIPAA but is still protected from warrantless disclosure.
- ICE has specific statutory authority to inspect these records via a Notice of Inspection (NOI).
- The NOI requires production within three business days.
- Best practice is to not produce an I-9 without the DPC/legal counsel review.
- Store I-9's separately from personnel files in a dedicated binder or secured system.

Operational Continuity – Employee Arrest

- If a staff member is arrested mid-shift, immediately activate emergency staffing protocols.
- Do NOT tell residents or families why, say only that a staffing adjustment is being made.
- Assess whether if the arrest results in a staffing deficiency that affects resident safety or care delivery, consistent with applicable DOH/DHS guidance on staffing.
- Consult employment counsel on wage obligations and adverse action risks.

Know Your Warrants

Document Type	Issued By	Authorizes Entry?	Authorizes PHI Disclosure?
Judicial Search Warrant	State or Federal Judge	**✓ YES — specific spaces only**	**✓ YES — items listed in warrant**
Judicial Arrest Warrant	State or Federal Judge	Limited — to locate named individual only	**✗ NO — does not authorize PHI access**
Judicial Subpoena	State or Federal Court	**✗ NO**	Possible — if signed by judicial officer; consult counsel
Administrative Warrant (ICE Form I-200 / I-205)	ICE / DHS Official (NOT a judge)	**✗ NO — cannot enter non-public areas**	**✗ NO — does not satisfy HIPAA exception**

What Spaces Are Protected from Entry?

Non-Public Areas

ICE CANNOT enter without judicial warrant or exigent circumstances

- Resident rooms and suites
- Inpatient and memory care units
- Therapy and treatment rooms
- Nursing stations
- Administrative offices
- Medication storage areas
- Medical records rooms

Public Areas

ICE may be present in these areas — staff cannot exclude them

- Parking lots
- Building entrances
- Lobby and main reception
- Public waiting rooms

If agents conduct enforcement in public areas:
Do not physically interfere. Notify DPC immediately.
Document the activity. Notify local law enforcement if safety is threatened.

The Designated Point of Contact (DPC): Your Key Position

DPC Responsibilities

- Respond to all immigration enforcement activity on premises
- Review and evaluate warrants, subpoenas, and legal documents
- Contact outside legal counsel when needed
- Make real-time compliance decisions (access, disclosure, consent)
- Document all interactions in the Incident Log
- Lead post-event communications to staff, residents, and families

Staff First-Response — 5 Steps

1. **Stay Calm**
   Do not argue or make promises
2. **ID & Purpose**
   Ask for badge and state their purpose; write it down
3. **Do Not Consent**
   "Our policy requires contacting our legal representative first."
4. **Call DPC Now**
   Primary DPC → Backup DPC → Outside counsel
5. **Document Everything**
   Agent names, badge numbers, documents shown, time

Scenario Response Guide

	Scenario	Response
A	Agents request info about a resident or visitor	Do not disclose PHI. Admin warrant → no disclosure. Judicial warrant → contact DPC and counsel before any disclosure.
B	Agents seek to enter non-public areas	Admin warrant only → deny politely, direct to lobby. Judicial search warrant → DPC reviews, escort through stated areas only. If they proceed without authority → document as non-consensual; do not physically obstruct.
C	Enforcement in public area (lobby, parking lot)	Do not interfere. Notify DPC and security. Document. May calmly note impact on resident care. Alert local law enforcement if safety threatened.
D	Agents claim exigent circumstances	Do not independently evaluate the claim. Call DPC immediately. Document all agent statements about the claimed exigency. Do not obstruct if they enter.
E	Agents seek to arrest a facility employee	Admin warrant → not required to surrender employee or grant non-public access. Judicial arrest warrant → may not obstruct; escort discreetly. Activate staffing contingency plans immediately.

Documentation and Post-Event Communications

Incident Log — Capture Every Event

Retain logs for minimum 5 years (HIPAA requirement; longer if litigation pending).

- Date, time, and exact location on premises
- Agent names, titles, agencies, badge numbers
- Legal documents presented (type, issuing authority, scope)
- Information or access requested vs. granted
- HIPAA exception cited for any PHI disclosed
- DPC determination and actions taken
- Outcome and follow-up required

Post-Event Communications

Staff:

Confirm situation addressed. Reinforce policy. Prohibit speculation. Remind staff to direct questions to DPC.

Residents & Families:
Be compassionate and accurate. Do NOT disclose one resident's information to another. Maintain HIPAA compliance throughout.

Media:

ALL media inquiries → designated media contact only. Staff may NOT comment without prior authorization.

Reporting Agencies:
Governing board within [X] hours. Liability insurer per policy terms. Outside counsel immediately. DOH / DHS / OLTL if staffing or care was impacted.

Policy and Training: What You Need to Have in Place

Written Policy

Adopt a facility-specific Immigration Enforcement Response Policy — approved by governing body, reviewed by counsel, updated annually and after any enforcement event.

Designate Your DPC

Name a Primary and Backup DPC by name and direct phone number. Communicate these contacts at onboarding and at every annual policy review.

Tiered Training Program

All staff: initial + annual training. Front-line staff: scenario exercises using Quick Reference Card. HR/supervisors: NOI response, I-9 records, and employment law. I-9 specialists: periodic audit training.

I-9 Proactive Compliance

Store I-9s separately. Conduct annual self-audits with counsel. A compliant I-9 program is your best defense against ICE enforcement exposure — and an enforcement event at your facility should prompt immediate review.

Quick Reference Card

Post Attachment B (Front-Line Staff Quick Reference Card) at reception, security, and nursing stations. The card reduces variance in first response across shifts.

Employee Rights Notice

Post the bilingual Employee Rights Notice (English/Spanish) in break rooms and locker areas. This protects the facility from retaliation liability and supports your workforce.

Key Takeaways for Providers

1. **The changed landscape is real.**
   ICE can now come to your facility. Your job is to be ready before they arrive.

2. **Administrative warrants cannot compel disclosure.**
   PHI, personnel records, and access to non-public areas all require a judicial warrant — not an ICE administrative form.

3. **Your nurses' first job is to call the DPC.**
   Front-line staff should not evaluate documents, grant access, or make disclosures. One call is the right answer.

4. **Resident identity and location are PHI.**
   Confirming or denying that a resident is present is a HIPAA disclosure. Train your staff on this — it is non-obvious.

5. **Employee arrests have immediate operational impact.**
   Activate staffing contingency plans first. Document and report. Consult employment counsel before any adverse action.

Nurses and Staff Must:

- Stay calm and professional - do not argue or obstruct.
- Ask for the agent's ID and purpose, and write it down.
- Direct agents to the lobby/reception area.
- Immediately call the Designated Point of Contact (DPC).
- Document everything using an incident log.

Nurses and Staff Must NOT:

- Confirm or deny any resident's presence within the facility (PHI).
- Produce or show any medical record, file or chart without the agent presenting a judicial warrant, judicially executed subpoena, or consent.
- Grant access to resident rooms, care areas, or nursing stations.
- Sign, accept, or acknowledge any legal document.
- Give legal advice.
- Make overhead announcements that create alarm or could be construed as a means of “obstruction” by law enforcement.

Fallout

- An ICE visit will become front-page news in all likelihood
- Providers should be prepared to respond to inquiries from families and the media, and may want to have consultants/media relations firm on retainer in such events to help be proactive with these communications
- It will be important for the facility to convey the message that residents and staff remain safe, and that the facility has complied with all of its legal obligations
- Expect significant post-visit interaction with a variety of governmental agencies and advocacy groups

Medicare and Medicaid Reimbursement Update

Medicare

- FY 2027 SNF PPS Proposed Rule (released April 2, 2026)
  - 2.4% increase in rates based on proposed SNF Market Basket of 3.2% (note, the increase was 3.2% for FY 2026)
  - No structural overhaul to PDPM, but there are ICD-10 coding refinements
  - Value Based Purchasing (VBP) program increases quality measures to include hospital readmissions, staffing metrics, and infection measures
  - SNF Quality Reporting Program continues to shift focus toward outcome based measures; Continues the 2% payment penalty for noncompliance
- Medicare continues to shift toward a quality and outcomes driven payment system

Medicaid

- Budget Adjustment Factor (BAF)
  - Awaiting results of legislative action
  - Will the BAF be reformed, revised or eliminated?
- Supplementation Payments
  - Will they continue or be adjusted/expanded?
- Will Chapter 1189 be reformed to address payment issues?
- Will DHS address payment delays due to delays in MA eligibility determinations at the CAOs?
- DHS continues to “bid out” CHC MCOs; Will more be retained in 2026?

Fraud and Abuse/Compliance Update

Fraud and Abuse/Compliance Update

- CMS is actively expanding its efforts to combat and address fraud issues
  - Increased use of data analytics to determine/identify issues
  - Increased scrutiny of enrollment information
  - Increased review of ownership and related-party transactions
  - Increased audits of
    - Therapy claims
    - Hospice relationships
    - Managed care billing

Fraud and Abuse/Compliance Update

- The DHS OIG is evaluating the SNF/Medical Director relationship:
  - Hours worked by Medical Directors
  - Ability to fulfill the duties outlined in Part 483
  - What additional regulatory oversight may be warranted
  - Whether any “better” funding mechanisms should be explored
- DHS concerned that reporting of Medical Director hours in PBJ have raised questions about whether they are integral to implementing resident care policies, coordination, quality assurance
- Concerned about “sham” arrangements and lack of documentation of services
- Report expected in 2026

HIPAA Update

HIPAA Update

- Substance Use Disorder (“SUD”) updates to Notice of Privacy Practices required by February 16, 2026
  - SUD records given a “separate and higher” level of protection, and not immediately subject to TPO exception
  - To be disclosed, residents must provide a written consent allowing disclosure of SUD records for treatment, payment, and health care operations
  - Once properly disclosed under a valid consent, SUD information may be redisclosed by HIPAA-covered entities for permitted purposes (except SUD counseling notes and legal proceedings).
  - Unauthorized disclosure of SUD records is now subject to HIPAA breach notification requirements.
    - Patients must be informed of:
    - Complaint rights
    - Restrictions on use and disclosure
    - Privacy protections for SUD treatment information

HIPAA Update

- HHS proposed many updates to the Security Rule in 2025, and we are currently expecting a final rule at some point mid-to-late 2026
- If finalized:
  - Many “addressable” safeguards will become mandatory
  - Multi-factor authentication
  - Encryption
  - Formal incident response plans
  - Regular vulnerability scanning and penetration testing
  - Annual compliance audits and risk assessments
- No new privacy rules, but OCR is increasing oversight and enforcement

Miscellaneous Legal Updates

Miscellaneous Updates

- CMS is becoming much more aggressive in its enrollment enforcement practice
  - CMS is terminating SNFs for their affiliations with terminated providers
  - For example, if the SNF contracts with a physician/medical director who has been terminated, the SNF may receive a termination notice itself
  - SNF with common ownership/control of a terminated provider (such as a HHA or Hospice) could also face termination
  - Failures to timely revalidate or report changes (via the 855A) have led to deactivations or “stays of enrollment”
  - “Stay of Enrollment” – new enforcement tool for lower level noncompliance
    - 60 day window where claims will be rejected
    - 15 day window to rebut a notice of stay of enrollment

Recommendations

- Stay updated on state and federal regulatory changes
- Implement robust risk management and quality assurance programs
- Foster a culture of compliance through staff education
- Regularly review and audit resident care practices and documentation
- Develop strong policies around resident privacy and data security

Conclusions

- The legal landscape for nursing facilities continues to evolve. There are many pending changes at the moment, so it is important to stay informed.
- Focus on compliance, risk management, and safeguarding resident rights.
- Provide education to staff on current issues and regulatory updates
- Questions?

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