

MDS Alert

Compliance: Beware: New DOJ Task Forces Are Cracking Down On Your Compliance

Why one industry stakeholder calls initiative a 'smokescreen' for cost-cutting.

The top federal government watchdog agency is taking aim at nursing homes' quality of care. Find out how the feds are planning to ratchet-up their investigative and enforcement efforts in the long-term care (LTC) arena.

Coordination Should Bring More Enforcement Actions

Heads up: On March 30, the **U.S Department of Justice** (DOJ) announced that it will launch 10 regional Elder Justice Task Forces to coordinate and bolster efforts to hunt down nursing homes that provide "grossly substandard care" to their residents. The creation of these task forces falls under the DOJ's Elder Justice Initiative, which will provide litigation support and training to the Elder Justice Task Forces.

The DOJ "has a long history of holding nursing homes and [LTC] providers accountable when they fail to provide their Medicare and Medicaid residents with even the most basic nursing services to which they were entitled," said Principal Deputy Assistant Attorney General **Benjamin Mizer**, head of the DOJ's Civil Division, in the March 30 announcement. "By bringing everyone to the table, we will be able to more effectively and quickly pursue nursing homes that are jeopardizing the health and well-being of their residents."

Also in the recent announcement, Acting Associate Attorney General **Stuart Delery** specified that the new task forces will target "nursing home owners or operators who put their own economic gain before the needs of their residents."

What this means: "The task forces combine federal, state and local prosecutors, law enforcement and other agencies to root out and prosecute such providers for Medicare and Medicaid fraud," explained attorneys **William Mateja** and **Jason Hoggan** of **Polsinelli PC** in an April 8 report. These new task forces will effectively decrease the DOJ's "historic reliance on whistleblower allegations for such claims."

If you fall short of Medicare's quality-of-care standards, you could face potential liability under the False Claims Act (FCA) and even prison time, Mateja and Hoggan stated. "These task forces will increase the Department's scrutiny on nursing home operations and could lead to more FCA cases and prosecutions for the Department nationwide."

Is Care Quality Really the Issue at Hand?

But major industry stakeholders like the **American Health Care Association** (AHCA) aren't happy about the DOJ's creation of the Elder Justice Task Forces, to say the least. In a March 30 statement, AHCA President and CEO **Mark Parkinson** blasted the DOJ's suggestion that nursing home quality of care is plummeting.

"We support any effort to improve overall care and weed out bad actors, but today's announcement mistakenly conveys that quality is on the decline," Parkinson argued. "It is a smokescreen aimed at finding cost-cutting measures that would threaten life-improving post-acute and [LTC] services for millions of seniors."

Parkinson also pointed to recently released data from the **Centers for Medicare & Medicaid Services** (CMS) showing

that deficiencies are declining, which indicates that quality is improving (see www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/NHS.html). "Creating task forces under the guise of fraud and abuse is actually pointing a finger at a flawed Medicare payment system," he noted.

Find Out If Your Jurisdiction Made the List

These special task forces will be comprised of representatives from the U.S. Attorney's Offices, state Medicaid Fraud Control Units, state and local prosecutors' offices, the **U.S. Department of Health and Human Services** (HHS), state Adult Protective Service agencies, LTC Ombudsman programs, and law enforcement.

They will participate in the Elder Justice Task Forces through "joint investigations, sharing information, and regular meetings," according to a March 30 statement by **Keesha Mitchell**, President of the **National Association of Medicaid Fraud Control Units** and the Director of the **Ohio Medicaid Fraud Control Unit**.

The DOJ will launch the 10 regional Elder Task Forces in the following districts:

- Western District of Washington;
- Northern District of California;
- Northern District of Georgia;
- District of Kansas;
- Western District of Kentucky;
- Northern District of Iowa;
- District of Maryland;
- Southern District of Ohio;
- Eastern District of Pennsylvania; and
- Middle District of Tennessee.

All providers should be concerned, and the DOJ didn't choose these 10 districts at random, according to an April 17 analysis by attorneys **Thomas Zeno**, **Robert Nauman** and **James Hafner** of **Squire Patton Boggs LLP**. Several of the chosen districts "including the Southern District of Ohio and Eastern District of Pennsylvania" have previously been involved in DOJ-led efforts to pursue elder care providers who seek to defraud their patients and federal programs."

Watch Out for Tougher Consequences

What's more: Also, beware that sanctions won't be limited to criminal penalties and civil fines "in previous elder abuse cases, the **HHS Office of Inspector General** (OIG) "required onerous, multi-year Corporate Integrity Agreements and mandatory, independent quality monitors," the attorneys wrote. "Given the success of DOJ-led task forces such as the Health Care Fraud Prevention and Enforcement (HEAT) Task Force, providers of healthcare services to the elderly should be especially mindful of the importance of strict compliance with federal and state law."

Trend: And there's no doubt that the DOJ's investigations in recent years have upped the ante when it comes to fines, government oversight, and even prison sentences. A case in 2014 resulted in the LTC provider and its subsidiary paying the government \$38 million to settle allegations of insufficient nurse staffing, inadequate catheter care, and failure to follow appropriate preventive protocols, according to Mateja and Hoggan.

Another case that same year a nursing home owner received a 20-year prison sentence in part for "deplorable" facility conditions, including leaky roofs and fly infestations, according to Mateja and Hoggan. And given the DOJ's "increased focus on nursing homes and [LTC] facilities, providers and owners should take the opportunity to review their practices and procedures and ensure compliance."

Resource: For more information on the new Elder Justice Task Forces and the DOJ's Elder Justice Initiative, go to



www.justice.gov/elderjustice.