

Health Care Compliance Association's
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**An Enforcement Perspective on
Quality**

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Overview

- Legal authorities
- Quality of Care Corporate Integrity Agreements (CIAs)
- Recent developments in CIAs
- Recent Cases
- OIG/AHLA Guidance for Health Care Boards of Directors
- OIG/HCCA Roundtables
- 2008 Supplemental Compliance Program Guidance for Nursing Facilities

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Legal Authorities

- Mandatory exclusion for conviction of a criminal offense related to patient abuse or neglect.
 - 42 U.S.C. § 1320a-7(a)(2).
- Permissive exclusion for failure to meet professionally recognized standards of health care.
 - 42 U.S.C. § 1320a-7(b)(6)(B).
- Permissive exclusion for fraud, kickbacks, and other prohibited activities.
 - 42 U.S.C. § 1320a-7(b)(7).
- Civil liability for submitting false claims to the federal government.
 - 31 U.S.C. §§ 3729-33

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False Claims Act Liability

- **Failure of care/worthless services:** When a defendant knowingly bills the government for goods or services that were:
 - Not rendered
 - Medically or otherwise worthless
 - Violated a statutory, regulatory or contractual provision with a nexus to payment

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When does OIG get involved in Failure of Care?

- Evidence of especially egregious care
- Systemic or widespread problems
- Evidence of actual harm to residents
- Quality of Care cases are NOT:
 - Medical malpractice
 - Isolated incidents of poor care
 - Duplication of CMS and state survey agency functions

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OIG's role in Failure of Care cases

- Investigate nursing home quality of care cases.
- Work on civil and criminal prosecutions.
- Exclude appropriate individuals and entities.
- Negotiate quality of care CIAs as part of the settlement of False Claims Act cases.
- Monitor implementation of CIAs.

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Adverse Events Reporting

- What is adverse events reporting (“never events”)?
- OIG Reports on Adverse Events Reporting
 - OIG Report No. OEI-06-07-00470, Dec. 1, 2008
 - OIG Report No. OEI-06-07-00471, Dec. 1, 2008
 - OIG Report No. OEI-06-08-00220, Dec. 1, 2008

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OIG Work Plan - Fiscal Year 2009

- Skilled Nursing Facility Consolidated Billing
- Accuracy of Coding for Medicare Skilled Nursing Facility Resource Utilization Groups’ Claims
- Part B Services in Nursing Homes: Mental Health Needs and Psychotherapy
- Calculation of Medicare Benefit Days
- Oversight of Nursing Home Minimum Data Set Data
- Medicare Hospice Care For Nursing Home Residents Services and Appropriate Payments

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Quality of Care CIAs

- 30 quality of care CIAs (as of 2/4/09)
- Different from other CIAs
 - Independent Monitor
 - Quality Assurance Monitoring Committee
 - Internal Audit Requirements
 - Extensive policies and procedures
 - Intensive training requirements
 - Reporting

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Purpose of Quality of Care CIA

- Focus on systemic issues, not individual problems.
- Focus on provider's internal system of quality assurance and improvement.
- Cross state boundaries with chain-wide perspective.
- Role of the independent monitor

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New CIA Provisions

- Policy and Procedure defining role of Medical Directors
- Training must be competency-based
- Reportable events include insolvency
- Certification from President/CEO/Board of Directors
- Meeting with OIG after each annual report

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Quality of Care CIAs

- CEOs of nursing home chains under Quality of Care CIAs have reported to the OIG that providing good quality:
 - Improved reputation
 - Decreased exposure to liability
 - Increased staff retention
- OIG Assessment of CIA effectiveness

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Recent Settlements – FCA Settlement

Rosalind Lavin

- Owner of 5 personal care homes
- Allegations:
 - Dangerous housing and substandard care;
 - Provision of insufficient food and nutrition; and
 - Diversion of Social Security benefits from use for the care of beneficiary-residents to the owners' own use and benefit, including for payment of the owners' personal expenses and salaries, etc.
- Results:
 - Settled for \$700,000
 - Lavin was permanently excluded from participation in Federal health care programs
 - All personal care homes were closed

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Recent Settlements – FCA Settlement

Ciena Healthcare Management

- Michigan nursing home chain (30+ facilities)
- Allegations:
 - Resident-on-resident abuse
 - Excessive pressure sores and contractures, inadequate pain management, etc.
- Results:
 - Settled for \$1.25 million
 - 5-year CIA
 - Quality of care CIA requires independent monitor selected by OIG, role of medical director

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Recent Settlements – Resolution of Complaint for Injunctive Relief

Holland-Glen

- Licensed as a community group home for mentally retarded persons – resident age ranged from infancy to adults in their mid-20s
- Allegations:
 - Failed to properly respond to patient respiratory alarms;
 - Substandard wound care;
 - Inadequate pain management and assessment;
 - Improper administration of medications;
 - Failed to perform employee background checks; and
 - Falsified both resident medical records and records of billings to governmental and other payors.
- Results:
 - Consent Order requiring the appointment of a temporary manager and sale of the entity.

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OIG/HCCA Government/Industry Long-Term Care Roundtable

- “Driving for Quality in Long-Term Care: Board of Directors Dashboard”
- Washington, DC -- December 6, 2007
- Provided representatives from the long-term care industry an opportunity to share experiences and inform OIG/HCCA of challenges surrounding boards of directors’ oversight of quality of care.

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Purpose of Roundtable

- Discuss issues surrounding boards of directors’ oversight of quality of care
- Share ideas about how to improve boards of directors’ oversight of quality of care
- Generate ideas for a “Quality of Care Dashboard”
- Purpose was NOT to set forth any specific standard of care

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Roundtable Breakout Discussions

Four Discussion Areas

- Commitment to quality
- Processes related to monitoring and improving quality of care
- Outcome measures for quality of care
- Challenges and opportunities in using a Quality of Care Dashboard

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Supplemental OIG Nursing Home Compliance Guidance (CPG)

- CPG for the nursing facility industry published on March 16, 2000
- CPG will discuss the benefits of compliance programs and an ethical corporate culture:
 - enhancing resident satisfaction and safety;
 - improving the nursing facility's reputation for integrity and quality;
 - preventing unlawful and unethical behavior;
 - ensuring accurate claim submission; and
 - demonstrating a commitment to honest and responsible corporate conduct

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Supplemental OIG Nursing Home Compliance Guidance

- Discussion of major Medicare and Medicaid fraud and abuse risk areas:
 - quality of care;
 - accurate claims submission; and
 - Kickbacks.
- Focus on quality of care concerns:
 - inadequate staffing;
 - poor care plan development; and
 - patient neglect and abuse.

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Speakers

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