



CAPOZZI ADLER, P.C.

Attorneys at Law

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# Our Legal Brief



## HEALTHCARE FRAUD ALERT

### GOVERNMENT ENFORCEMENT ACTIONS RISE DRAMATICALLY IN 2015

Glenn A Parno, Esquire - glennp@capozziadler.com

Nursing care facility operators BEWARE -- Both State and Federal enforcement of Medicaid and health care fraud rose significantly in 2015 and can be expected to continue to rise through 2016. The United States Department of Justice has announced over \$1.9 billion recovered through enforcement actions instituted under the False Claims Act (FCA) alone. Additionally, the Department of Health and Human Services' Office of Inspector General reportedly recovered over \$3 billion through audits and investigations of nursing homes, and reported 925 criminal and 682 civil actions initiated in 2015. The major federal enforcement actions highlighted in 2015 include:

- *United States v. Tuomey* - \$237.5 million fine for violations of the Stark Law, Anti-Kickback Statute and FCA
- *United States v. Memorial Health, Inc.* - \$9.8 million settlement of alleged Stark Law and Anti-Kickback violations

- *United States v. Adventist Health* - \$118.7 million settlement of alleged violations of the FCA
- *United States v. North Broward Hospital District* - \$69.5 million settlement of alleged violations of the Stark Law, Anti-Kickback statute and FCA
- *United States v. Citizens Medical Center* - \$21.8 million settlement of alleged FCA violations
- *United States v. Kindred Healthcare Inc.* - \$125 million settlement of a whistleblower action alleging FCA violations

#### Pennsylvania Department of Health Ramps Up Enforcement:

Keeping pace with federal authorities, the Pennsylvania Department of Health (DOH) announced the number of fines and provisional licenses issued for regulatory

#### In This Issue



LeadingAge PA  
an association of not-for-profit senior services



violations at over 700 nursing facilities that it regulates more than tripled in the second half of 2015 compared to the first six months of that year. Meanwhile, the number of nursing home investigations initiated by the DOH as a result of public complaints rose to 2,598 in 2015 from 1,943 in 2014 – a 74% increase in one year alone. Undoubtedly contributing to the rise in investigations conducted by the Department is the recent policy decision to waive the requirement that complainants identify themselves before an investigation of a nursing facility can be initiated.

Recently, the Secretary of the DOH has publically stated that the Department intends to become more focused on regulatory enforcement moving forward. To that end, the Department has hired additional personnel to bolster its current staff of 141 inspectors responsible for conducting nursing home surveys in Pennsylvania. Finally, the Department has taken the unprecedented action of requesting that the Pennsylvania Auditor General conduct an audit of the Department's nursing home complaint and inspection process. The Auditor General's report is expected to be completed by this spring. Typically, more intense regulation follows the issuance of an audit report.

### **Pennsylvania Attorney General's Office Enforcement Actions**

Another state agency becoming more

proactive in the enforcement of nursing care facilities is the Pennsylvania Office of Attorney General. Traditionally, the Attorney General's Medicaid Fraud Control Section has exclusively investigated and prosecuted Medicaid fraud and abuse. However, in late 2015, the Attorney General's Bureau of Consumer Protection filed a comprehensive civil lawsuit against 36 nursing facilities operated by Golden Living National Senior Care, LLC alleging false advertising, substandard care, and consumer fraud.

The Attorney General's lawsuit is seeking millions of dollars in penalties, plus treble damages, for violations of the Pennsylvania Consumer Protection Act. The Bureau of Consumer Protection is continuing to issue subpoenas and investigate other nursing facilities for similar conduct, and it can be expected that civil complaints will be filed by the Attorney General's Office against additional nursing homes in the near future.

### **Strategies for Managing Enforcement Actions**

With the trend in government investigations of nursing homes rising dramatically in Pennsylvania, it is imperative that nursing home operators conduct thorough internal

investigations to ensure their facilities are in compliance with the myriad of state and federal regulations in play. It is important to note that the report of any internal investigation conducted with the assistance of counsel is typically protected from disclosure to the government by the attorney-client and/or attorney work product privileges.

Additionally, if a facility suspects it is the target of a state or federal civil or criminal investigation, legal counsel should be retained immediately to represent the interests of the facility. Counsel will be able to initiate a dialogue with government investigators, coordinate and oversee the contact between investigators and officers/employees of the facility, and manage the flow of information from the facility to the government. Keep in mind that even though a government investigation is initiated, an enforcement action may not necessarily result. The sooner counsel is involved in the enforcement process, the less likely that civil or criminal action will be taken against the facility and the greater the likelihood that a favorable resolution of the investigation can be reached.

The legal staff at Capozzi Adler, P.C. includes former government attorneys with extensive experience conducting civil and criminal investigations of health care fraud and abuse. Our attorneys have a proven track record of successfully managing government investigations and defending enforcement actions.

*If you have any questions or concerns, please contact Glenn A. Parno, Esquire, Chair of the Government Investigations Section, 717-303-5112, glennp@capozziadler.com.*

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# BEATING THE TAX MAN WITH HOME OWNERSHIP

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*Nicholas Luciano, Esquire*  
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It's that time of year again. The long doldrums of winter are melting away. The fresh hope of spring is just around the corner bringing forth the hope of spring, and yet one fact is inescapable—the IRS is going to come knocking at your door. As all taxpayers desperately rifle through the 1040 Instructions seeking any deduction for which they may qualify, it is important to remember that the home and real estate you own can provide some of the best, and often over-looked, tax advantages you possess.

## **Mortgage Interest is Tax Deductible**

Most are aware that mortgage interest paid on their home is tax-deductible; however, mortgage interest is also deductible on any other

mortgaged property you own, including second or vacation homes, so long as you spend more than 14 days at that property.

## **Property Taxes Tax Deductible**

Any and all property taxes that you pay on property that you own, whether your primary residence or not, are deductible from your income taxes.

## **Appreciation is Often Tax-Free**

This point is key when you go to sell your home. Provided that the property has been your primary residence for at least 2 of the previous 5 years, the first \$250,000.00 for an individual, or \$500,000.00 in the case of a couple filing jointly, is completely tax-free. How does this play out? If a married couple purchased a house at \$250,000.00 in 2010, and sold

that same house for \$320,000.00 in 2016, the entire amount of the \$70,000.00 appreciation of the home's value is completely tax-free.

## **When You Move—Keep the Receipts!**

Under some circumstances, you can even deduct the costs of moving. You have to be moving to be closer to the place of your employment, and the move has to be outside of a 50 mile radius from your previous residence, but if you work full-time in your new location for at least 39 weeks of the next year, you qualify.

It is important to remember that tax rules are impacted by a number of factors, so it is always best to seek the advice of a tax professional before filing.

*If you would like more information, you may contact Nicholas Luciano, [Nicholasl@CapozziAdler.com](mailto:Nicholasl@CapozziAdler.com) at our firm. Or, call us at (717) 233-4101.*



# MANAGING AND COLLECTING YOUR ACCOUNTS RECEIVABLE: A STRONG ADMISSION AGREEMENT IS IMPORTANT

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*Joseph J. Gentile, Esquire – [JohnG@capozziadler.com](mailto:JohnG@capozziadler.com)*

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*This is the 13th installment of our firm's series known as "Take Control of your Resident Accounts Receivable". As you are already aware, the financial survival of most nursing facilities in Pennsylvania depend on how aggressively and effectively their business office managers administer their accounts receivable. This series is devoted solely to the design, management, and improvement of your accounts receivable program and collections efforts. Also, here we share with you tips, legal updates, personal observations, and "lessons learned" to help you improve the effectiveness of your accounts receivable management program.*

As many Business Office Managers know, a small nursing home balance can



spiral into a massive bill very quickly. The cause is often an uncooperative family that is not available to make financial and medical decisions on your resident's behalf. Frequently, your resident is not able to gather financial documents required for a Medicaid application. When your resident's family is uncooperative, you find that your hands are tied.

The most powerful tool for the facility is the Admission Agreement. The majority of Admission Agreements that we see, however, are improperly executed or weakly drafted Admission Agreements.

### A. Improperly Executed Admission Agreements

An improperly executed Admission Agreement can cause thousands of dollars in losses. Most Admission Agreements have several sections that must be signed by both the resident and the resident's Legal Representative. In fact, several states require that certain addendums be included as part of the Admission Agreement, requiring multiple signatures by the same party.

**Missed Signatures:** But, when Admission Agreements have multiple signature lines, it is more likely for some of the lines to be missed. Similarly, sometimes the Admission Agreement is completely absent as the Admission Staff has failed to ensure that the document is executed.

The result of this is that the Nursing Home is only able to pursue compensation from the resident personally. Many residents have few funds or are non-responsive. Further, if a family member has not executed an Admission Agreement, the Medicaid application process is that much more difficult. A family may be under no duty to assist the Nursing Home in completing the application.

**Proper training is Key:** Of course, it's easy to tell Admissions staff to do better jobs of getting properly executed Admission Agreements. But, when a



family wheels in a sick parent in need of care, in all the stress, the last thing on the family's mind is an Admission Agreement. This is why it is vitally important to have your Admissions staff trained in the execution of your Admission Agreement. Staff should have the contract ready when a new resident arrives. Staff should be readily familiar with which pages require signatures. This way, it is less likely for areas to be missed. Most critically, it is important for staff to understand the importance of getting family members to sign the Admission Agreement.

### B. Weakly Drafted Admission Agreements

An Admission Agreement should be drafted as strongly as possible to protect your facility as a creditor. Too often the Admission Agreement is thought of as a mere list of services provided or merely as a piece of paper used in collections. The Admission Agreement is a contract that provides leverage when a family is not responsive or cooperative.

**Key Admission Agreement Sections:** Of course, the Admission Agreement should create a duty for the resident and Legal Representative to remit resident's income. In

addition, the Admission Agreement should create a duty for the Legal Representative to cooperate by notifying the facility when resident asset levels are low enough to qualify a resident for Medicaid, to aid in the Medicaid application process, and to be present at Medicaid hearings.

These terms are useful when a problem arises. But, they are also useful in avoiding problems at the onset. If a Legal Representative is aware that it is his or her responsibility to apply for Medicaid on behalf of the resident or else he or she may face liability, a Legal Representative is much more likely pro-active and cooperative during the application process. An Admission Agreement is not simply a vehicle to instigate litigation, but rather, it can be a tool to bring all parties to a clear understanding of duties and responsibilities.

Yet, this is only the tip of the iceberg. Admission Agreements have multiple segments, including Medicare issues, resident income issues, and Arbitration issues, which need to be specifically tailored to a Nursing Home's needs.

*If you would like more information on how your Admission Agreement can be used to protect your facility as a creditor, you may contact Joseph J. Gentile (JohnG@capozziadler.com) or Andrew Eisemann (AndrewE@capozziadler.com) at our firm. Or, call us at (717) 233-4101.*

# PREPARING FOR THE TRANSITION TO MANAGED LONG TERM CARE REIMBURSEMENT

*Daniel K. Natirboff, Esquire and Erin E. Anthony*

Implementation of Managed Long Term Care is on the minds of all Medicaid certified providers today as there are many unanswered questions. What we do know is that the new system titled Community HealthChoices by DHS will be implemented in three phases. Beginning January 1st, 2017 Community HealthChoices will be implemented in the Southwest Region for Allegheny, Beaver, Butler, Lawrence, Washington, Greene, Armstrong, Westmoreland, Fayette, Indiana, Cambria, Somerset, Blair and Bedford Counties. On January 1st, 2018 implementation begins for the Southeast Region for Philadelphia, Bucks, Montgomery, Chester and Delaware Counties. Implementation for all remaining Counties begins on January 1st, 2019. DHS to date has not released any detailed information as to how rates will be set. We can speculate how the rates will be set by evaluating those states that have already implemented their Managed Care Systems and what they utilized in developing the new rates. We have found that many states used the last rates set in their previous reimbursement system only allowing for annual inflation increases. Some states have continued to set rates which were then paid by the Managed Care Organizations (“MCO”) by a “pass through” payment. If rates will be set based on the latest DHS rates and trended forward, Providers must prepare for this transition and make sure all costs are captured and reimbursed appropriately. This is of particular concern for providers with a December 31 year-end. These providers must consider when to file their cost reports, audit findings by DHS, and appealing those audit findings.

Providers with a December 31 year-end deadline have a challenge when determining if they should file before the March 31st deadline, which is the deadline for audits to impact the following year’s July 1st rates. Pursuant to 55 Pa. Code §1187.73, 12/31 filers have until April 29 to file or 120 days from the fiscal year end. Based on the one year DHS auditing requirement, providers who delay until the final deadline for filing miss the submission of their costs in the following year’s database. For the Southeast Region for 12/31 Year End filers it is likely that providers may have already filed their



last cost report that could be used the set rates prior to the implementation of Managed Care. Cost Reports filed prior to March 31, 2016 should be audited by March 31, 2017 and will be used to set rates beginning July 1, 2017 and may very well impact Managed Care Rates that will be implemented beginning 1/1/18. These Providers should consider appealing all contested audit adjustments. Upon successful resolution of an appeal a corrected audit will be issued and utilized in the rates for July 1st, 2017, but only if the corrected audit is issued before March 1st, 2017.

Providers in the rest of the Commonwealth have a deadline of March 31st, 2017 to file their cost reports and have those costs impact the database for their first year of Managed Care beginning 1/1/19. All of these providers need to make sure that all costs are claimed in the cost report(s) and take advantage of the best methods to accurately report the claimed costs. We recommend finding a cost report preparer that has worked closely in handling the settlement of appeals. Those cost report preparers can assist with maximizing the provider’s costs by utilizing their past experience from the appeal process. The remaining providers that are a December 31st, 2016 year end should consult with their cost report preparer when filing the cost report before the March 31st, 2017 deadline.

The DHS audit of the cost reports is the next area of concern for ensuring that the providers are reimbursed appropriately. Providers need to be prepared for the auditors to ensure that all the information requested is provided in a timely manner. If not, the auditor will consider the costs unsubstantiated and the costs will be disallowed. For rented Major Movable Equipment Providers should have rental contracts that show the allowable maintenance percentage in the rental charge for each piece of equipment. This will allow the maintenance portion of the rented equipment to be claimed. The cost report preparer should have claimed both the allowable rental calculation and the maintenance portion of the rental costs. If it is not filed in this manner, suggest a change to the auditor. Consult with legal counsel and reimbursement consultants that have handled settlements in this field to challenge any questionable cost disallowances and reclassifications prior to issuance of the final audit. There remain many areas of controversy with respect to how DHS interprets their reimbursement regulations that can only be resolved by challenging audit adjustments.

After the final audit is released providers have thirty-three days to appeal the audit findings. Provider needs to make sure that they are aware of the reimbursement impact of all audit adjustments. Remember that these audit findings not only have the potential to affect your rates in the future under Managed Care, but will also continue to have an impact in all years that the current case-mix reimbursement system is in place. When considering appealing the audit, we recommend that you find a law firm that has experience and knowledge in this area and a proven track record of successfully resolving appeals. The specialized rules contained in DHS' Medical Assistance Provider Appeal Procedures are filled with procedural deadlines and other pitfalls for the unwary that can result in waiver of issues and the dismissal of claims. Also in almost all circumstances DHS' Bureau of Hearings and Appeals require that you be represented by legal counsel in filing and prosecuting an appeal.

As DHS provides more information regarding how rates will be set under Community HealthChoices, we will keep you updated on how the new system will be implemented. DHS' timeline for implementation is

aggressive and it is uncertain if all can be accomplished over the next three years. Providers should take action now to be prepared for the unknown future and protect your reimbursement rates.

*If you have cost reporting questions, you may contact Timothy T. Ziegler at [timz@capozziadler.com](mailto:timz@capozziadler.com) or Erin E. Anthony at [erinm@capozziadler.com](mailto:erinm@capozziadler.com). If you have questions regarding appeals, you may contact Daniel K. Natirboff at [dann@capozziadler.com](mailto:dann@capozziadler.com).*



## IMPORTANT:

### HIPAA COMPLIANCE AUDITS TO BEGIN; ENFORCEMENT ACTIONS EXPECTED

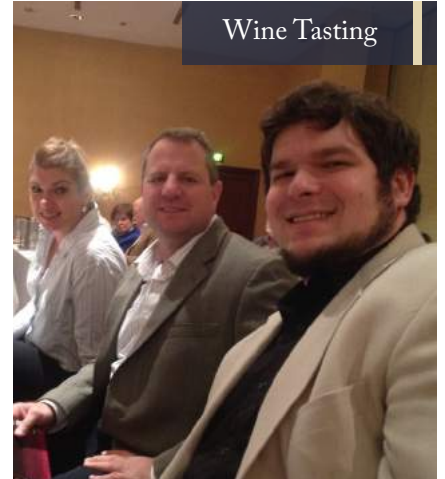
The U.S. Department of Health and Human Services Office of Civil Rights recently announced that it will conduct a new round of HIPAA compliance audits to be performed in 2016. This new phase of audits follows a first phase that was conducted between 2011 and 2012 that focused solely on health providers' internal compliance, and resulted in a total of \$11 million in enforcement actions. The current round of audits is to look at not just health providers, but also their business partners. The audits will primarily be desk audits, but some on-site audits are expected. Again, the OCR is anticipating that these audits will result in enforcement actions, including monetary penalties. *If selected by the OCR for review, contact Andrew R. Eisemann at [AndrewE@CapozziAdler.com](mailto:AndrewE@CapozziAdler.com) for legal guidance through the audit process.*



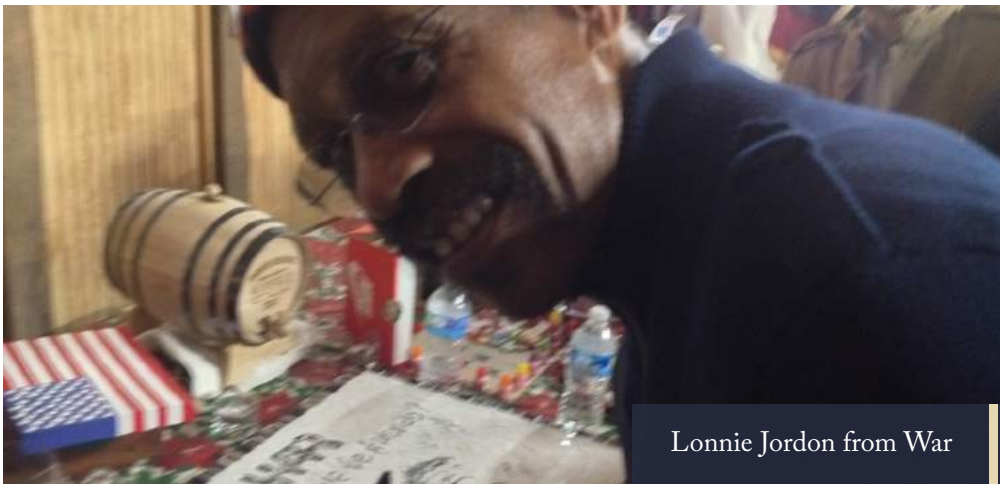
Everyone enjoying themselves!



Wine Tasting



Lonnie Jordon from War



Our Fall 2015 Seminar at Hollywood Casino



Signed War Tile



War Performing at Our Annual Christmas Party



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Enclosed is Our Semi-Annual Free Seminar Flyer

# Hour Legal Brief

Capozzi Adler, P.C. Attorneys at Law

## Hour Legal Brief

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### RECENT AND UPCOMING EVENTS

Dec.

12

Capozzi Adler, P.C. held its annual Holiday Party at "The Barn" in Carlisle, with special guest Rock & Roll Hall of Fame band "War" ("Why can't we be friends?"). Donations were raised for the United Leukodystrophy Foundation, Inc., the Boiling Springs Band Association (South Middleton School District), and South Middleton Education Foundation.

May

12

Glenn Parno, Esq. will be presenting a Webinar in cooperation with LeadingAge PA on "Government Investigations of Nursing Care Facilities"

Feb.

24

Andrew R. Eisemann, Esq. presented for the American Health Lawyers Association "Long Term Care and the Law" program in Orlando, FL on "Legal Support to Nursing Facilities to Manage and Control Resident Accounts Receivable".

Jun.

10

19th Anniversary of the Founding of Capozzi Adler, P.C. and Annual Cook Out at the Firm's Office in Camp Hill.

May

5

Capozzi Adler, P.C. Semi-Annual Continuing Education Seminar – "Current Issues in 2016 for Nursing Facilities in Pennsylvania" – at the Independence Ballroom, Valley Forge Casino Convention Center, in King of Prussia. Admission is free along with 7 continuing education credits for NHA's, lawyers, and CPA's. For a brochure and registration information, email Gabriella Marchi at our Firm: GabriellaM@CapozziAdler.com.

Jun.

17

Visit us at Booth 189 at the LeadingAge PA Annual Conference. Daniel K. Natirboff, Esq. will be presenting at the Conference on "Medical Assistance Rates and the Transition to Managed Care."

Sep.

29

Brandon S. Williams, Esq. will be presenting a Webinar in cooperation with LeadingAge PA on "Recent Developments in Labor Law and National Labor Relations Board."

Enclosed is Our Semi-Annual Free Seminar Flyer