



# Legal and Regulatory Update

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# OIG's New Approach to Compliance

- New healthcare program guidance issued November 2023
- OIG website rather than Federal Register
- Opportunity for feedback on individual industry-specific guidance
- Positive and negative of non-compliance list of risks
- Importance of policy review and risk assessments



# Medicare/Medicaid Affiliation

- Phase 1 (November 2019) – CMS searching for “triggers” of “disclosable events”
- Searching for undue risk of fraud, waste, or abuse
- Deny or revoke enrollment and bar re-enrollment for up to 10 years
- Expansion of disclosable information for nursing facilities

# Heightened Scrutiny of SNF Transactions

- CMS raised SNFs from “low” to “high” categorized risk
- Both for-profit and nonprofit
- November 2023 – “Transparency in Nursing Home Oversight”
- State law for hospital transactions



# Increased MFCU Investigations

- Patient accounts
- Drug mishandling and diversion
- Abuse and neglect and IJ survey findings
- Self-reported incidents
- Convictions, recoveries, civil settlements, and exclusions

# DOJ National Nursing Home Initiative

- March 2020 – Coordinate and enhance civil and criminal efforts directed at grossly substantive care
- Use of Federal False Claims Act
- Staffing, infection control, food, pain medication and physical or chemical restraints



# Exclusions from Medicare/Medicaid

- Mandatory and permissive exclusions
- Broad coverage
- Importance of regular OIG Exclusions List checks
- Areas for confusion/deception
- Impact for facility

# Data Breach, Privacy and HIPAA Enforcement

- Breaches reported to OCR
- Settlement payments
- Indiana data breach reporting law
- Increased Indiana Attorney General investigations and enforcement actions



# Televski Decision

- Facts – Why so important?
- Implications for damages claims
- Implications for Indiana

# ADA + Sufficient Staffing

- ADA as source for regulatory and civil liability
- Meeting needs of residents
- Staffing standards – floor or ceiling



# Granny Cams/Electronic Monitoring

- Many states adopting standards (not Indiana)
- Common statutory features
- Importance of policy
- Security video cameras
- Cell phones/cameras

# CMS Minimum Staffing Standards

- 24/7 Registered Nurse requirement
- Minimum RN and Nurse Aid Staffing
- Implementation dates
- Costs and feasibility



# Assisted Living National Developments

- Importance of state and federal privacy laws
- Resident elopement and staffing
- “Memory care” and domestic care management
- Unknown charges
- Impact of private equity

# Questions?

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