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A Year into the Elder Justice Task Force: Is Your Community a Target?

Authors: Christy T. Crider, Caldwell G. Collins

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On March 30, 2016, the Department of Justice issued a press release announcing its launch of ten Elder Justice Task Forces in the 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, Middle District of Tennessee and Western District of Washington. Their purpose is "to coordinate and enhance efforts to pursue nursing homes that provide grossly substandard care to their residents." Now that the new task forces have been in place for over a year, we know more about the red flags that attract their attention. Is your community a target?

Grossly Substandard Care. It is no secret that quality of care is the Task Forces' primary concern. Their end goal is to bring a distinct kind of lawsuit under the False Claims Act, 31 U.S.C. § 3729, for "worthless services," in which they will seek to prove that the care provided at the subject facility was so deficient that it was akin to providing no care at all. Facilities more likely to garner task force scrutiny are (1) those with a *pattern* of receiving F-tags on surveys in key areas (pain management, physical restraints, psychotropic medications, pressure ulcers, falls, UTI prevention, staffing, poor charting and care planning); (2) those which consistently score in the bottom quartile on care-related quality indicators; and (3) those in communities with multiple corporate integrity agreements.

Up-Coded or Medically Unreasonable Therapy. Some of the [recent high-profile False Claims Act cases](#) have involved allegations that the community provided therapy services that were not reasonable, necessary or skilled. Examples of what the Task Forces look for include (1) a high percentage of patients with Ultra High Resource Utilization Group (RUG) rates for long periods of time without significant progress; (2) poor or missing documentation; (3) a pattern of providing therapy minutes within two percent of the minimum required minutes for the RUG level; and (4) a pattern of manipulating minutes of other disciplines to inflate therapy minutes to meet the RUG without supporting documentation.

Forged/Altered Certifications. Pre-admission evaluations (PAEs) require the signature of a nurse and a physician before submission to the Centers for Medicare & Medicaid Services (CMS) for reimbursement. Confusion over signature originality requirements seems to be common in long term care facilities, especially given that medical directors are unable to visit at the time of every admission. A community that submits signatures that are unoriginal or photocopied – even without ill intent – may draw attention from the Task Forces.

Is a DOJ Investigation Looming? Take a close look at your community's operations to determine whether you are the target of the Elder Justice Task Forces. Have your survey scores shown any care-related deficiency patterns? Are you regularly scoring in the bottom quartile on quality indicators for falls or pressure sores? Is your admissions team confused about whether or not they need an original physician signature before submitting a PAE to Medicare? Do you have multiple facilities already on the government's radar? As the Task Forces increase their activity, providers must be more diligent in evaluating the effectiveness of their operations.

If you receive any indication that your community is the subject of an Elder Justice Task Force investigation, notify your counsel immediately. A quick response may prevent a notice of payment suspension or a complaint being filed against you.

If you have questions regarding this or other Department of Justice issues related to long term care, please contact Christy Crider, Caldwell Collins or a member of our [Long Term Care Team](#).