On March 3, 2020, Attorney General William P. Barr announced that the U.S. Department of Justice has launched a task force, dubbed the National Nursing Home Initiative, targeting nursing homes that provide “grossly” substandard care to their residents. The Justice Department already has initiated investigations into approximately 30 individual nursing facilities in nine states as part of this effort. According to Attorney General Barr, “Millions of seniors count on nursing homes to provide them with quality care, and to treat them with dignity and respect when they are most vulnerable. Yet, all too often, we have found nursing home owners or operators who put profits over patients, leading to instances of gross abuse and neglect.”

The emphasis on nursing home care is only increasing. The National Nursing Home Initiative will focus on nursing homes that consistently fail to provide adequate nursing staff to care for their residents, fail to adhere to basic protocols of hygiene and infection control, fail to provide their residents with enough food to eat so that they become emaciated and weak, withhold pain medication, or use physical or chemical restraints to restrain or otherwise sedate their residents.

...All operators of nursing facilities are required to have a compliance and ethics program for each facility.

According to the Justice Department, “These care failures cause residents to suffer in pain and to be exposed to the[se] great indignities. Care failures cause residents to develop pressure sores down to the bone, to lie in their own waste for hours, to starve because they cannot reach the food on their trays and to remain unwashed for weeks at a time. Nursing homes that provide grossly substandard care also force vulnerable elderly residents who cannot leave the facilities to live in filthy and dangerous conditions where there are leaks in the roofs, mold is found growing and rodents [are] found living in residents’ rooms. These are some of the actions and the inactions that the department intends to pursue.”

The Initiative reflects the department’s larger strategy and commitment to protecting the nation’s seniors. The Initiative and the U.S. Attorneys’ Offices throughout the country also support the efforts of state and local prosecutors, law enforcement, and other elder justice professionals to combat elder abuse, neglect and financial exploitation, with the development of training, resources, and information. As we have indicated previously, federal authorities are also focused on suspected financial misuse and Medicaid/Medicare billing fraud in nursing homes and other health care facilities.

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BACKGROUND

A robust compliance program may not prevent government scrutiny, but it is the most effective way to contain the likelihood and scope of an enforcement action and to mitigate penalties in the event that government regulators conclude that an operator of a care facility has violated the law.

CONTACT INFORMATION

If you are an owner or operator of a nursing facility and want to learn more about the Justice Department’s Initiative, want to learn more about Murphy & McGonigle’s health care practice, or need assistance in drafting or evaluating your compliance program, please contact:

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While the Justice Department is currently conducting its investigations of approximately 30 of the “worst” nursing facilities, providers that are not currently the subject or target of an investigation still have time to take useful action. Beginning November 28, 2019, all operators of nursing facilities are required to have a compliance and ethics program for each facility. The program must be designed and implemented to effectively prevent and detect criminal, civil, and administrative violations, and promote quality care.

It is critically important to ensure that a robust compliance and ethics program is in place because it will help prevent, identify, and respond to resident care problems early before more serious, preventable violations occur. A strong program can demonstrate to government regulators, including the Justice Department, that the facility is committed to integrity and promoting quality care for its residents.

**An effective compliance program should include the following elements:**

- Implementing written policies, procedures, and standards of conduct capable of reducing criminal, civil and administrative violations; and promote quality of care for its residents;
- Designating a compliance officer or a high-level personal as a contact person who individuals may report suspected violations. Alternatively, provide a method to report anonymously without fear of retaliation;
- Conducting effective annual or periodic training and education that explains in a practical manner what is required under the program;
- Conducting periodic financial audits and examinations to prevent and detect potential financial misuse or improper Medicare or Medicaid billing practices;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly and appropriately to detected offenses and undertaking corrective action.

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1 See 42 CFR 483.85(b).