

# Quality of Care as a Compliance Imperative

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# Overview

- **History**
- **False Claims Act Theories of Liability**
- **The New and Improved CIA**
- **Operationalizing Quality as a Compliance Issue**

# History

- **OIG Compliance Guidance for Nursing Facilities**
- **OIG Work Plan**
- **Survey and Certification Process**
- **False Claims Act**

# Theories of Liability

- **Regulatory Background: OBRA/  
FNHRA 1987**
  - “promote maintenance or enhancement of the quality of life”
  - “attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident”
  - all services must meet professional standards of quality

# Theories of Liability

- **Failure of Care**
  - **Billing for Nonexistent or Worthless Services**
  - **Submitting False Certifications, Statements or Documents**
  - **Billing for Services that Violate a Statutory, Regulatory or Contractual Provision with a Nexus to Government Payment**

# Worthless Services

**“In a worthless services claim, the performance of the service is so deficient that for all practical purposes it is the equivalent of no performance at all.”**

***U.S. ex rel. Mikes v. Strauss*, 274 F.2d 703 (S.D.N.Y. 2001), following *U.S. ex rel. Lee v. Smithkline Beecham, Inc.* 245 F.3d 1048 (9th Cir. 2001)**

# U.S. v. GMS Management-Tucker

- **Settled for \$575,000 in damages**
- **Consent judgment:**
  - **imposition of temporary independent monitor to oversee chain's operations and make recommendations for improvement**
  - **specific protocols required to improve care, particularly in problem areas such as wound care, diabetes management, weight loss, and the monitoring of lab values**

# Worthless Service

“ ‘the risk of harm was sufficiently unreasonable, and the risks of harm known by [the facility] were sufficiently frequent and blatant, that it was improper for [the facility] to admit government insured patients into such an environment and to bill the Government Payors for the care of these patients’ ”

*U.S. ex rel., Aranda v. Community Psychiatric Center*, 945 F. Supp. at 1489 (W.D. Okla. 1996), quoting *Second Am. Compl.* at 7, PP 28-29



# False Certification

“[W]here the government has conditioned payment of a claim upon a claimant's certification of compliance with, for example, a statute or regulation, a claimant submits a false or fraudulent claim when he or she falsely certifies compliance with that statute or regulation.”

***U.S. ex. rel. Thompson v. Columbia/HCA Healthcare Corp., 125 F.3d 899, 902 (5th Cir. 1997)***

# Regulatory Violation→Nexus to Payment

**“NHC agreed to provide ‘the quality of care which promotes the maintenance and the enhancement of the quality of life.’ ... [A] provider of care can cease to maintain this standard by failing to perform the minimum necessary care activities required to promote the patient’s quality of life.”**

***U.S. v. NHC Health Care Corp.*, 163 F.Supp.2d 1051, 1056-57 (W.D. Mo. 2001)**

# Regulatory Violation→Nexus to Payment

**“Statutes and regulations governing the Medicaid program clearly require health care providers to meet quality of care standards, and a provider’s failure to meet such standards is a ground for exclusion from the program.”**

***U.S. ex rel., Aranda v. Community Psychiatric Center, 945 F. Supp. at 1488 (W.D. Okla. 1996)***

# The New and Improved CIA

- **Corporate Integrity Agreement Elements**
  - **Financial compliance issues**
  - **Quality of care compliance issues**
  - **Vencor/Kindred**

# Vencor/Kindred Settlement

- **Chapter 11 filing 1999**
- **Qui Tam cases**
- **Corporate Integrity Agreement**
  - **Independent Monitor**
  - **Systemic Quality Controls**
  - **Long term solution v. short term fix**

# Vencor/Kindred CIA

- **Seeks to achieve balance between a regulatory and quality improvement approach to quality care**
- **Quality Improvement Infrastructure**
- **Quality Improvement Processes**

# Quality Monitoring Tools

- **CMS Quality Indicators and Quality Initiative**
- **Regulatory Survey Results**
- **Adverse Incident Data**
- **Compliance Audit Data (MDS/RAI)**
- **RCMS**
- **SOC**
- **Resident Satisfaction Surveys**

# We care about the quality of care in nursing homes.

How do your local nursing homes compare?  
Find this information and much more at [www.medicare.gov](http://www.medicare.gov).

	City	Percentage of residents with pressure sores	Percentage of residents with loss of ability in basic daily tasks	Percentage of long-term stay residents with pain
Alaska State Average		10%	10%	18%
Denali Center	Fairbanks	14%	11%	11%
Heritage Place	Soldotna	9%	7%	23%
Mary Conrad Center	Anchorage	7%	5%	10%
Providence Extended Care Ctr	Anchorage	10%	10%	13%
Wildflower Court	Juneau	19%	10%	31%

*Actual data of nursing homes. All figures are rounded. Homes are listed in alphabetical order. For a listing of homes in your area, please visit Nursing Home Compare at [www.medicare.gov](http://www.medicare.gov).  
A lower percentage is better for the measures of pressure sores and loss of ability in basic daily tasks. However, comparing the percentages in pain is more complex. We suggest you discuss the pain percentage with nursing homes you are visiting.*

The Centers for Medicare & Medicaid Services (CMS), an agency of the U.S. Department of Health and Human Services, believes that one way to improve the quality of care is to provide quality measures you can use to compare nursing homes.

#### *Why is this information important?*

Quality measures, along with other information can help you make decisions about nursing home care. Take for example the measure on the percentage of residents with pressure sores. While some people will get pressure sores even with good care, there are several things that nursing homes can do to prevent or treat them. Similarly, nursing homes can do things to reduce the percentage of residents in moderate/severe pain, and to maintain or improve their ability to do some basic daily activities.

#### *More information?*

Quality measures, other information on our website, and actually visiting the nursing home, can help you make decisions about nursing home care. To find out more about nursing homes in your area, visit Nursing Home Compare at [www.medicare.gov](http://www.medicare.gov) or call **1-800-MEDICARE** (1-800-633-4227). TTY users should call 1-877-486-2048.

CMS and Qualis Health, Alaska's Quality Improvement Organization, are committed to working together with consumers, their advocates, the nursing home industry, and the State of Alaska to improve the quality of care for nursing home residents.



**1-800-MEDICARE**

[www.medicare.gov](http://www.medicare.gov)

Helping you help yourself.



# Quality Monitoring Tools

- **RCMS**
  - Abuse Prevention
  - Care Plans
  - QI Process
  - Contenance Management
  - Infections
  - Falls Prevention
  - Medication Management
  - Nutrition/Hydration
  - Restraint Reduction
  - MDS/RAI
  - Skin Management
- **Standards of Care Monitoring**
  - Pressure Ulcers
  - Unexpected Weight Loss
  - Falls

# Quality Benchmarking

- **RCMS Scoring**

- **Exceptional 90-100%**
- **Standard 80-89%**
- **Marginal 70-79%**
- **Unacceptable 0-69%**

- **SOC Thresholds**

- **Weight Loss 3%**
- **Acquired PU 3%**
- **Restraints 8%**
- **Falls Incidence 15**

## History Report---Resident Care Management System (RCMS)

2/5/03

Region: **East**

**hc**

VP\_REG\_OPS **Smith, John**

Exceptional 90-100%  
Standard 80-89%  
Marginal 70-79%  
Unsatisfactory 69% or below

Area Manager **Doe, Jane**

Month from: **5**

Thru: **12**

Year: **2002**

NAME	Abuse Prev	Care Plans	QI Process	Continenence	Infection	Falls Prev	Med Mgt	Nutrition	Physical Restraints	MDS/RAI	Skin
<b>Comm A</b>											
Month: 5	83	84	80	78	80	80	80	80	80	75	85
Month: 6	85	70	75	78	85	83	85	85	85	80	90
Month: 7	79	80	80	80	78	85	80	83	80	78	88
Month: 8	84	75	85	80	80	80	75	80	75	75	85
Month: 9	82	78	85	80	80	80	75	80	78	75	85
Month: 10	85	75	83	85	80	75	80	85	75	70	82
Month: 11	82	80	80	80	75	78	82	87	79	76	83
Month: 12	80	75	85	80	85	80	80	90	75	80	85

# History Report---Standards of Care

HC

2/5/03

Region:: *East*

VP OPS: *Smith, John*

Area Manager: *Doe, Jane*

Year: *2002*

Community	Month	% of Weight Loss	% of Acq Press Ulcers	% of Phys Restraints	Incidence Falls
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		3%	3%	8%	15
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**A**

Month:	5	3	3	5	14
Month:	6	5	5	5	13
Month:	7	4	4	4	9
Month:	8	0	0	2	12
Month:	9	0	0	2	12
Month:	10	4	2	1	7
Month:	11	2	2	2	11
Month:	12	2	2	2	11

**PROXY SATISFACTION SURVEY 2002  
(TOP 2 BOX SCORES)**

	Overall	Area	A	B	C	D	E	F	G
Overall Satisfaction	82%	82%	86%	83%	81%	72%	86%	86%	79%
Would Recommend	89%	88%	88%	94%	82%	86%	88%	88%	85%
Overall Value for the Cost	70%	69%	74%	76%	63%	48%	75%	81%	67%
Services Promised Resident	77%	81%	92%	85%	87%	61%	80%	90%	78%
Help with Hygiene	74%	78%	88%	82%	78%	63%	78%	80%	77%
Management Professionalism	87%	88%	92%	90%	87%	75%	91%	88%	87%
Management Responsive	74%	74%	80%	76%	75%	55%	77%	83%	76%
Who to Complain To	76%	78%	92%	77%	75%	63%	76%	88%	75%
Aides Responsive	74%	74%	85%	85%	59%	63%	64%	85%	80%
Aides Knowledgeable	77%	80%	88%	94%	77%	67%	69%	93%	79%
Aides Care	85%	89%	88%	98%	83%	80%	90%	95%	88%
Aides Handle Resident	85%	83%	88%	94%	75%	73%	81%	93%	80%
Like Home	77%	72%	80%	72%	68%	60%	77%	76%	64%
Free of Odors	85%	87%	96%	83%	80%	84%	86%	90%	87%
Informed of Changes	80%	82%	84%	88%	75%	76%	73%	91%	92%
Dining Room Service	80%	83%	85%	88%	88%	51%	86%	87%	100%
Food Quality	70%	69%	71%	73%	83%	41%	71%	61%	85%
Staff Availability	74%	74%	83%	84%	72%	51%	70%	81%	78%
Activities	79%	84%	90%	82%	74%	82%	86%	82%	87%
Clean	83%	85%	96%	85%	85%	78%	81%	88%	85%
Well Maintained	95%	95%	100%	94%	93%	92%	97%	98%	94%
Billing Resolution	84%	85%	93%	83%	89%	74%	91%	90%	73%
Billing Timeliness	88%	91%	100%	94%	81%	88%	94%	100%	100%
HC Nurses Responsive	78%	79%	100%	82%	77%	70%	72%	75%	83%
HC Nurses Care	86%	89%	87%	97%	89%	82%	83%	100%	92%
HC Nurses Knowledgeable	84%	83%	75%	94%	89%	74%	72%	91%	83%
HC Nurses Professionalism	87%	88%	88%	97%	94%	82%	83%	82%	73%
Transportation	71%	76%	93%	73%	40%	75%	79%	76%	63%

Community	Area Director of Human Resources	Leadership Index Score (Fall 2002)	Management Turnover % (thru 12/31/02)	Management Retention Rate (thru 12/31/02)	Hourly Turnover % (thru 12/31/02)	Hourly Retention Rate (thru 12/31/02)	Actual 13th Period Registry Usage	House Profit Variance to Budget (YTD as of 13th Period)
A	John Doe	79	0.0%	100.0%	45.7%	70.6%	\$ -	\$ (497,199)
B	John Doe	66	35.3%	57.1%	73.3%	61.8%	\$ 974	\$ (383,206)
C	John Doe	73	0.0%	100.0%	43.2%	67.9%	\$ (1,257)	\$ 29,140
D	John Doe	72	11.4%	100.0%	56.9%	69.1%	\$ 328	\$ (181,426)
E	John Doe	71	0.0%	100.0%	29.0%	80.5%	\$ -	\$ 309,119
F	John Doe	68	31.6%	71.4%	72.5%	57.8%	\$ -	\$ (422,580)
G	John Doe	75	11.0%	88.2%	31.7%	68.0%	\$ 1,651	\$ 810,102
H	John Doe	68	5.2%	94.1%	65.0%	64.8%	\$ 2,224	\$ (436,913)
I	John Doe	88	23.5%	87.5%	56.5%	66.7%	\$ -	\$ (2,609)
J	John Doe	78	8.3%	84.0%	32.3%	71.0%	\$ (628)	\$ 446,310
K	John Doe	78	17.1%	83.3%	52.8%	57.9%	\$ -	\$ 22,407
L	John Doe	78	14.9%	90.9%	68.6%	57.7%	\$ -	\$ 23,768
M	John Doe	71	71.3%	62.5%	33.6%	85.2%	\$ -	\$ 72,803
N	John Doe	82	0.0%	100.0%	17.4%	77.0%	\$ -	\$ (92,733)
O	John Doe	72	74.4%	45.5%	75.4%	61.1%	\$ -	\$ (876,583)
P	John Doe	59	0.0%	71.4%	70.0%	67.2%	\$ -	\$ 88,471
Q	John Doe	70	0.0%	100.0%	73.5%	51.9%	\$ -	\$ 40,465
R	John Doe	78	24.0%	75.0%	62.5%	58.3%	\$ 4,015	\$ (205,551)
S	John Doe	75	27.3%	81.8%	88.8%	47.2%	\$ -	\$ (388,906)
T	John Doe	71	27.7%	90.9%	54.7%	60.2%	\$ 15,396	\$ 192,222
U	John Doe	81	17.2%	83.3%	38.0%	73.9%	\$ -	\$ (132,412)
V	John Doe	65	38.7%	83.3%	58.9%	60.8%	\$ -	\$ 32,320
W	John Doe	74	18.9%	90.0%	65.4%	52.4%	\$ 1,802	\$ 217,877
X	John Doe	71	35.3%	66.7%	47.7%	66.7%	\$ -	\$ 44,811
Y	John Doe	71	30.9%	66.7%	56.1%	62.8%	\$ -	\$ (626,902)
Z	John Doe	74	5.7%	77.8%	21.1%	86.3%	\$ (861)	\$ 2,715,932
AA	John Doe	74	27.5%	81.8%	103.0%	45.9%	\$ 2,870	\$ 102,614
BB	John Doe	67	9.5%	80.0%	65.8%	56.9%	\$ 7,650	\$ 466,264
CC	John Doe	72	30.5%	70.0%	77.2%	58.7%	\$ -	\$ (115,668)

# Critical Success Factors

- **Embrace Quality of Care**
- **Collaboration**
- **Automation**
- **Balance**