

LITIGATION UPDATE	DISCRIMINATION IN LTC	PRIVACY ISSUES	LTC ACRONYMS	EMPLOYMENT UPDATES	LTC POTPOURRI
			\$400		\$400
			\$800		\$800
			\$1200	\$1200	\$1200
			\$1600	\$1600	\$1600
		\$2000	\$2000	\$2000	\$2000

PRIVACY - \$2000

STATE AND FEDERAL
LAWS THAT PROTECT
PERSONAL INFORMATION

WHAT ARE
**OTHER PRIVACY
LAWS**



PA PRIVACY LAWS

- Pennsylvania Breach Law
 - Any entity that maintains, stores or manages computerized data that includes personal information must provide notice

- Personal Information
 - Includes Health Information

- Must Encrypt Information
 - Annually review Policy



FTC RED FLAG RULES

- If you do any of these things, you are a Creditor and subject to Rules:
 - Defer payment for goods and services or bill customers?
 - Grant or arrange credit?
 - Participate in the decision to extend, renew, or set the terms of credit?



FTC RED FLAG RULES

If So, Do You . . .

- Get or use consumer reports in connection with a credit transaction?
- Give information to credit reporting companies in connection with a credit transaction?
- Advance funds to - or for - someone who must repay them, either with funds or pledged property (excluding incidental expenses in connection with the services you provide to them)?

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EMPLOYMENT UPDATES - \$1200

A PLANNED SET OF
ACTIVITIES FOR
IMPARTING KNOWLEDGE
TO EMPLOYEES



WHAT IS
**EMPLOYEE
TRAINING**



STAFF TRAINING – 28 Pa. Code 201.20

- Annual in-service under 42 C.F.R. 483.95:
 - Communication
 - Resident's rights and facility responsibilities
 - Abuse, neglect, and exploitation
 - Quality assurance and performance improvement
 - Infection control
 - Compliance and ethics
 - Nurse-aide specific training
 - Feeding assistant specific training
 - Behavioral health
- Additional topics:
 - Accident prevention
 - Restorative nursing techniques
 - Emergency preparedness (42 C.F.R. 483.73(d))
 - Fire prevention and safety (42 C.F.R. 483.90)
 - Resident rights, including nondiscrimination and cultural competency
 - Training needs identified through facility assessment



STAFF TRAINING – 28 Pa. Code 201.20

- Orientation to:
 - The facility
 - Its policies
 - The position and duties
 - Prevention, detection and reporting of resident abuse
 - Dementia management
 - Communication skills

- Records
 - Must maintain records of training content and staff attendance

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EMPLOYMENT UPDATES - \$1600

THE NUMBER OF STAFF
NEEDED TO ENSURE SAFE
AND QUALITY CARE

WHAT IS

**MINIMUM
STAFFING**



PA MINIMUM STAFFING — 28 Pa Code 211.12

- July 1, 2023 (2.87 HDPR)
 - Nurse Aides
 - Day: 1 NA per 12 residents
 - Evening: 1 NA per 12 residents
 - Overnight: 1 NA per 20 residents
 - LPNs
 - Day: 1 LPN per 25 residents
 - Evening: 1 LPN per 30 residents
 - Overnight: 1 LPN per 40 residents
 - RNs
 - All Shifts: 1 RN for 250 residents
- July 1, 2024 (3.2 HDPR)
 - Nurse Aides
 - Day: 1 NA per 10 residents
 - Evening: 1 NA per 11 residents
 - Overnight: 1 NA per 15 residents



CMS MINIMUM STAFFING

- Sept. 2023: Proposed Rule “Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting”
 - .55 HPRD for RNs; 2.45 HPRD for NAs
 - 24/7 RN On-Site Requirement
 - Updates to Staffing Assessment requirements
- Sept. 2026: Proposed Deadline for Finalization
- March 2024: House Weighs and Means Committee Votes to Bar Minimum Staffing Rule

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EMPLOYMENT UPDATES - **\$1600**

**WORKERS WHO ARE
ENGAGED THROUGH A
THIRD-PARTY**

WHAT ARE
**AGENCY
PERSONNEL**



OUTSIDE RESOURCES — 28 Pa. Code 20I.2I

- **Written Agreements Required**
 - Requirements of 42 C.F.R. 483.70(g)
 - Responsibilities, functions, objectives and terms of agreements related to outside resources shall be delineated in writing and signed and dated by the parties

- **Verification That External Staff Are:**
 - Free from the communicable diseases and conditions listed in § 27.155 (restrictions on health care practitioners)
 - Able to perform their assigned job duties



JOINT EMPLOYMENT

- Joint Employment Typically Found Between Host Employer and Staffing Company
- Joint Employer Determination Trumps Contract Terms Identifying the “Employer”
- **CAN** Contract To Protect Against Liability
 - Indemnification for wrongful/unlawful acts of Staffing Company (discrimination, wage violations, regulatory violations, safety violations, etc.)
 - Insurance Requirements (required policies, coverage amounts, proof of insurance)

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LTC POTPOURRI- \$400

ROADMAP OF
THINGS OIG
IS GOING AFTER

WHAT IS A

WORK

PLAN



CMS WORKPLAN

- What is it?
- What does it say?
 - Thirty-Five Open Items regarding Nursing Homes
 - Accuracy of Fall Reports
 - Nursing Home Overdoes
 - Background Checks
 - Optometrist Billing
 - Use of Third-Party Contracts



CMS WORKPLAN

- What Else?
 - Emergency Preparedness
 - Nursing Home Staffing Hours
 - Emergency Power Systems
 - Nursing Home Discharges
 - State Survey Oversight
 - Use of Antipsychotic Drugs
 - Percent Revenue Spent on Patient Care

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LTC POTPOURRI- \$800

THIS REGULATION PERMITS
EMPLOYEES TO HAVE A
REPRESENTATIVE DURING
AN OSHA INSPECTION

WHAT IS THE
“WALKAROUND”
RULE



OSHA “WALKAROUND” RULE

- Worker Walkaround Designation Process (Effective May 31, 2024)
- Employees may select a third party to accompany them during OSHA inspection
- Concerns:
 - Access to union representatives in non-unionized workplaces
→ organization concerns
 - Conflicts with current union representatives
 - Resident/patient privacy

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LTC POTPOURRI- **\$1200**

**COMPREHENSIVE
GUIDANCE ON KEY
COMPLIANCE
CONSIDERATIONS**

WHAT IS THE
**GENERAL COMPLIANCE
PROGRAM GUIDANCE**



HHS – General Compliance Program Guidance

- Replaces Individual Model Compliance Programs
 - GCPG with Industry Specific Modules
 - SNF Coming this Year
- What's New
 - New approaches to role of Compliance Committee and Compliance Officer
 - Compliance Committee to be involved in Audits
 - References Information Blocking

- **Link:**

<https://oig.hhs.gov/documents/compliance-guidance/1135/HHS-OIG-GCPG-2023.pdf>

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LTC POTPOURRI- **\$1600**

**THIS FEDERAL AGENCY
ENFORCES WAGE AND
HOUR LAWS**

WHAT IS THE
**DEPARTMENT
OF LABOR**



FLSA ENFORCEMENT

DOL v. Next Step Healthcare LLC (D. Mass. 2023)

- Suit Against Operator of 25 Nursing Homes
 - Auto-deduction of 30-minute breaks
 - Failure to pay all hours worked
 - Failure to pay OT premium for hours worked over 40
- Potential Exposure
 - 3-year limitations period for willful conduct
 - Liquidated damages
- **Must** Have Process to Override Auto-Deduction

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THIS STATUTE PROVIDES
AN INDIVIDUAL RIGHT TO
SUE STATE AND LOCAL
GOVERNMENT OFFICIALS

WHAT IS
SECTION
1983



PRIVATE RIGHT OF ACTION

- Health and Hospital Corp. of Marion County v. Talevski
 - Supreme Court allowed claim for improper restraint under section 1983
 - Applies to government owned facilities subject to section 1983



**FINAL
JEOPARTY!**

NO WRONG
ANSWERS!

FINAL JEOPARDY

**NEW
GOVERNMENTAL
POLICIES**



WHAT ARE

**THINGS THAT KEEP
US UP AT NIGHT**

QUESTIONS?

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