



PA ATTORNEY GENERAL CASES

- Nurse Charged With Neglect And Assault Of 80-Year-Old Resident
 - Employee charged with felony and misdemeanor counts of neglect of care-dependent person, abuse and assault
- Two Nurses Charged With Neglect After Resident Died
 - Charges against two nurses (64-year-old RN; 71-year-old LPN) who allegedly neglected their duty to care for a resident who died

LITIGATION UPDATE	DISCRIMINATION IN LTC	PRIVACY ISSUES	LTC ACRONYMS	EMPLOYMENT UPDATES	LTC POTPOURRI
		\$200	\$200	\$200	\$200
		\$400	\$400	\$400	\$400
		\$600	\$600	\$600	\$600
		\$800	\$800	\$800	\$800
\$1000		\$1000	\$1000	\$1000	\$1000

LITIGATION UPDATE - **\$1000**

**THIS AGENCY IS CHARGED
WITH PROVIDING AID TO
PERSONS 60 AND OLDER**

WHAT IS THE
**DEPARTMENT
OF AGING**



PERPETRATOR ENFORCEMENT

- Recent uptick in Perpetrator Enforcement
- Report of Potential Abuse Triggers AAA Investigation
- Seven of 52 Agencies deemed “non-compliant”
 - Receives report of hospitalization due to abuse
 - Placed in another license facility after abuse
 - Employee at licensed facility reported for abuse
 - Older adult died at licensed facility
- Mantra: Err on side of older adult



TRIGGERS

- Receives report of hospitalization due to abuse
- Placed in another licensed facility after abuse
- Employee at licensed facility reported for abuse
- Older adult died at licensed facility.



PROCESS

- Local AAA receives report
- Investigates and Conducts Interviews
- Perpetrator Can Appeal
 - Informal Appeal; no record
 - Findings have no real repercussions unless reported for Criminal Prosecution
- Formal Appeal



COMMERCIAL BREAK



**DOUBLE
JEOPARTY!**

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EMPLOYMENT UPDATES - \$400

A RECORD OF AN
EMPLOYEE'S WORK
HISTORY WITH AN
EMPLOYER

WHAT IS A
**PERSONNEL
FILE**



PERSONNEL FILES – 28 Pa. Code 201.19

1. Job description, educational background and employment history
2. Performance evaluations, including documentation of any monitoring, performance, or disciplinary action
3. Documentation of credentials, including, at a minimum, current certification, registration or licensure, if applicable
4. A determination by a health care practitioner that the employee, as of start date, is free from the communicable diseases or conditions
5. Records relating to a medical exam, if required, or attestation that the employee is able to perform the employee's job duties
6. Documentation of employee's orientation to the SNF facility and the assigned position prior to or within 1 week of employee's start date



PERSONNEL FILES – 28 Pa. Code 201.19

7. Documentation of employee's completion of required trainings, including documentation of orientation and other trainings.
8. Copy of the final report received from the PA State Police and FBI, as applicable, in accordance with the OAPSA, the APSA, and applicable regs
9. In the event of a conviction prior to or following employment, documentation that the facility determined the employee's suitability for initial or continued employment in the position to which the employee is assigned.
10. The employee's completed employment application



PERSONNEL FILES – Best Practices

General

- Job description
- Job applications, resumes
- Educational docs
- Credentials, licensure
- Handbook/policy acknowledgments
- Benefit enrollment forms
- Orientation and training records
- Performance evals
- Disciplinary action, PIPs
- Separation records
- UC documents
- Tax withholding (W-4)
- Authorizations for payroll deductions

ADA requires that medical information be kept separate from general personnel file.

Medical

- FMLA records (requests and notices)
- ADA records (interactive process records)
- Leave of absence records
- Results of medical and physical exams
- Genetic info
- Drug test results
- Doctor's notes*
- WC records
- Benefit claim records

Should not be accessible to managers and supervisors.

Confidential

- Background checks
- Credit checks
- Driver's license checks
- Garnishment orders
- Domestic violence info



EMPLOYMENT FILES – Best Practices

Compliance
Reports

I-9
Forms

Benefit Plan
Records

Payroll
Records

Safety
Records

Investigation
Records



RECORD RETENTION POLICY

- Policy should identify retention periods
 - Some retention periods mandated by law
 - Some retention periods based on best practices, statutes of limitation, etc.
- Must conform HRIS/electronic purge schedule to policy

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PRIVACY - \$400

THIS LAW REQUIRES
PROTECTION OF
SENSITIVE PATIENT
HEALTH INFORMATION

WHAT IS

HIPAA



HIPAA REFRESHER – Covered Entities

- Covered Entity
 - Health plan
 - Health care provider (that transmits any health information in electronic form in connection with a covered transaction – one for which HHS has adopted standards)
 - Clearing houses

- Not quite a Covered Entity
 - Business associates



HIPAA REFRESHER – Covered Entities

- Skilled Nursing – Yes
- Assisted Living – Probably Not
 - Does it provide Health Care and electronically bill?
- Personal Care Home – Likely Not
- CCRC – Very Likely Not



HIPAA REFRESHER – Business Associates

- A person or entity that:
 - Performs an activity or function on behalf of a covered entity (including claims processing, data analysis, utilization review, and billing) that involves the use or disclosure of PHI; or
 - Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for such covered entity for a covered entity that involves the use or disclosure of PHI; and
 - Excludes members of the Covered Entity's workforce (employees, volunteers, trainees, etc.)

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PRIVACY - \$800

INFORMATION IN A
PERSON'S MEDICAL RECORD
THAT CAN BE USED TO
IDENTIFY THE PERSON

WHAT IS

**PROTECTED HEALTH
INFORMATION (PHI)**



HIPAA REFRESHER – PHI

- **PHI** is health information that:
 - Is created or received by a health plan, health care provider, employer or health care clearinghouse; and
 - Relates to the payment for health care of an individual, or the past, present or future physical or mental health or condition of an individual, or the provision of health care to an individual; and
 - Identifies the individual or provides a reasonable basis to believe that the information can be used to identify the individual; and
 - Is transmitted by, or maintained in, any electronic media or any other form (including orally or in writing)

- **Electronic PHI (ePHI)** is PHI that is transmitted by or stored in electronic media



HIPAA REFRESHER – PHI Identifiers

- Name
- Address (street, city, county, zip code)
- Telephone number
- Fax number
- SSN
- All elements of dates (except for years)
- E-mail address
- Health plan beneficiary number
- Medical record number
- Account number
- Certificate/license number
- Vehicle identifier and serial number
- Device identifier and serial number
- URLs
- Internet Protocol (IP) address numbers
- Biometric Identifiers
- Full face photograph
- Any other unique identifying number or characteristic



HIPAA REFRESHER – Use/Disclosure

- **Use** - The sharing, employment, application, utilization, examination or analysis of individually identifiable health information by any person working for or under the direction of a CE
- **Disclosure** - Any release, transfer, provision of access to or divulging in any other manner of individually identifiable health information to persons not employed by or working under the direction of a CE



HIPAA REFRESHER – Use/Disclosure

When are Uses/Disclosures of PHI Authorized?

- **With individual consent** (presumed) - most commonly, for “treatment, payment or health care operations” (TPO)
- **Where individual consent is primarily irrelevant** (national priority purposes) – e.g., mini privacy rules for public health, oversight, litigation, etc.
- **With individual authorization** (consent obtained)
- When “incidental” to a permitted disclosure
- **Everything else is PROHIBITED**



HIPAA REFRESHER – Use/Disclosure

- **Mandatory Disclosures:** PHI must be disclosed in two situations:
 - Upon request of the individual who is the subject of the information
 - To HHS in connection with its HIPAA enforcement activities
- **Permitted Disclosures:** PHI may be used and disclosed without authorization from an individual:
 - To the individual
 - For TPO purposes
 - Incidental to a permissible disclosure
 - To a Business Associate pursuant to a BAA



HIPAA REFRESHER – Use/Disclosure

- Other uses/disclosures are permitted **without authorization**, subject to certain requirements, if:
 - Required by law
 - About decedent
 - About victims of abuse, neglect or domestic violence
 - Cadaveric organ, eye, or tissue donation
 - For Public health activities
 - Research purposes
 - For Health Oversight activities
 - For law Enforcement Purposes
 - For Judicial or administrative proceedings
 - Specialized government functions
 - To avert a serious threat to health or safety
 - Workers' compensation

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EMPLOYMENT UPDATES - \$800

PROCESS USED VERIFY
IDENTITY, CREDENTIALS,
EDUCATION, AND
CRIMINAL HISTORY

WHAT IS A

**BACKGROUND
CHECK**



CRIMINAL BACKGROUND CHECKS

Older Adult Protective Services Act (OAPSA)

- Required Checks:
 - All Applicants → PA State Police (PATCH)
 - Non-Residents of PA Past 2 Years → FBI (fingerprints)
- Disqualifying Offenses:
 - 27 enumerated PA offenses
 - Federal or out-of-state offense similar in nature
- Peake v. Comm. of PA (Cmwlth. Ct. 2015)
 - Lifetime employment ban = **Unconstitutional**



CRIMINAL BACKGROUND CHECKS

Dept. of Aging Response to *Peake*

The Department recommends that facilities subject to OAPSA requirements consult with an attorney prior to making an employment decision to ensure compliance with the Commonwealth Court's guidance regarding exercising hiring discretion on a case-by-case basis. This guidance focused on the consideration of factors such as the *nature of the crime; facts surrounding the conviction; time elapsed since the conviction; the evidence of the individual's rehabilitation; the nature and requirements of the job and the performance of individualized risk assessments.*



CRIMINAL BACKGROUND CHECKS

2023 PA Regulations – 28 Pa. Code 201.19(7)

- **“Suitability for Employment”** shall include:
 - A review of the offense
 - The length of time since the individual’s conviction
 - The length of time since incarceration, if any
 - Evidence of rehabilitation
 - Work history; and
 - The employee’s job duties



CRIMINAL BACKGROUND CHECKS

Criminal History Record Information ACT (CHRIA)

- Felony and misdemeanor convictions may be considered only to the extent to which they relate to the applicant(s) suitability for employment in the position for which he has applied
- Applicant shall be notified in writing if the decision not to hire is based in whole or in part on criminal history record information



CRIMINAL BACKGROUND CHECKS

Federal LTC Regulations – 42 C.F.R. 483.12(a)

- LTCs must not employ or engage individuals who-
 - Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law;
 - Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or
 - Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.

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PRIVACY - \$1200

RIGHTS THAT COVERED
ENTITIES ARE REQUIRED
TO HONOR UNDER HIPAA

WHAT ARE
**INDIVIDUAL
RIGHTS**



HIPAA REFRESHER – Individual Rights

Right: Access to Protected Health Information and Requests for Amendment

- Individuals have the right to access and obtain copies of their PHI that the business associate maintains in designated record sets. In addition, individuals may request to have their PHI amended.
- A CE will provide access to PHI and it will consider requests for amendment that are submitted in writing by individuals with approval from the Covered Entity/Client.
 - Designated Record Set is a group of records maintained by or for the County that includes the payment and claims adjudication records of an individual or other PHI used in whole or in part by or for the Covered Entity to make coverage decisions about an individual.



HIPAA REFRESHER – Individual Rights

Right: Requests for Alternative Communication Means or Locations

- Individuals may request to receive communications regarding their PHI by alternative means or at alternative locations
- May grant such requests if they are reasonable and the participant assures that confidentiality will not be compromised

Right: Requests for Restrictions on Uses and Disclosures of Protected Health Information

- An individual may request restrictions on the use and disclosure of the participant's PHI



HIPAA REFRESHER – Individual Rights

Right: Accounting

- An individual has the right to obtain an accounting of certain disclosures of his or her own PHI. This right to an accounting extends to disclosures made in the last six years.
- Must respond to an accounting request within 60 days. If unable to provide the accounting within 60 days it may extend the period by 30 days, provided that it gives the participant notice (including the reason for the delay and the date the information will be provided) within the original 60 day period.
- The accounting must include the date of the disclosure, the name of the receiving party, a brief description of the information disclosed and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure (or a copy of the written request for disclosure, if any).
- If a brief purpose statement is included in the accounting, it must be sufficient to reasonably inform the individual of the basis of the disclosure. The first accounting in any 12-month period shall be provided free of charge.
- The Privacy Officer may impose reasonable production and mailing costs for subsequent accountings.

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PRIVACY - \$1600

THE UNAUTHORIZED USE OR DISCLOSURE OF PHI

WHAT IS A

BREACH



SNF BREACHES

- **Aloha Nursing** - Unauthorized computer access (20,016 patients)
- **Williamsport Home** – Cyber attack
- **Majestic Care** – Unauthorized Access
- **Virtual Care Provider Inc.** – Ransomware attack affecting 100 SNFs (\$14M)
- **Catholic Health Care Services** – \$650,000 fine of BA
- **Hillcrest Nursing** – \$55k fine for lack of access