

**BUCKLE YOUR SEATBELTS  
RISK TURBULENCE AHEAD  
FOR LTC PROVIDERS**

PACAH 2024 Spring Conference  
Pelican Update | April 15, 2024

# JEOPARTY!



# YOUR HOSTS . . .

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

A DECISION ON A  
DISPUTED ISSUE  
IN A CIVIL CASE

WHAT IS A  
**JURY  
VERDICT**



# PHILA PLAINTIFF'S VERDICTS

- \$976 million – Car Dealership
- \$182.7 million – Hospital
- \$174 million – Large Company
- \$26.2 million – Clemmons v. Lehr



# PUNITIVE LTC VERDICTS

Del. Co. PA

- Facts
  - Resident fall resulting in hip fracture
  - Developed pressure ulcers leading to death
- Jury Award: \$19 Million
  - \$4 Million Compensatory Damages
  - \$15 Million Punitive Damages





# PUNITIVE LTC VERDICTS

Estate of Patterson v. Providence Operations, LLC (IL)

- Facts
  - Death of 80-year-old resident with life expectancy of 6 months
  - Failed to provide Oxygen, no power in room,
  - Searched 20 minutes for nurse, lack of staffing
- Jury Award: \$5.5 Million



# PUNITIVE LTC VERDICTS

## Tarpley v. Red Bluff (TX)

- Facts
  - Patient fell on nursing home assistant
  - Employee claimed facility failed to warn of dangers of transferring bariatric patients
  - Counsel failed to appeal
- Jury Award: \$7 Million
- PAY ATTENTION TO DEADLINES



# PUNITIVE LTC VERDICTS

## Redding v. Parklands Facility, Inc. (FL)

- Facts
  - Alleged negligence for failing to treat bedsore
  - Infection spread to blood and bones
  - Facility claimed death due to multiple other conditions (hypertension, Parkinson's, malnutrition, anemia, diabetes)
- Jury Award: \$2.3 Million
- TAKE YOUR RESIDENT AS YOU FIND THEM



# SOME GOOD NEWS?

Estate of Weaver v. Timely Mission Nursing Home (IA)

- Reversal of \$6 Million verdict
  - Trial Court improperly admitted evidence from staff that CNA had physically abused residents
  - Trial Court held that evidence went to facility's failure to investigate abuse
  - Appellate Court held that evidence was not admissible – not specific, rumors
  
- DON'T DISCOUNT RUMORS



# SOME GOOD NEWS?

Briggs v. Life Care Centers of America (WA)

- Nursing Home Not Liable for COVID Deaths
  - Seattle Jury found that nursing home was not liable for deaths of two residents at facility rocked by COVID deaths
  - Alleged failure to address respiratory symptoms
  - Case brought under Washington Abuse of Vulnerable Adults Act

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DISCRIMINATION IN LTC - \$200

A PROBLEMATIC PATTERN OF  
OPIOID USE LEADING TO  
CLINICALLY SIGNIFICANT  
IMPAIRMENT OR DISTRESS

WHAT IS  
**OPIOID USE  
DISORDER**





# ADA REFRESHER - RESIDENTS

42 U.S.C. §12182(a)

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.



# 2022 DOJ GUIDANCE

- ADA protects individuals in treatment for Opioid Use Disorder (OUD)
  - DOES protect participation in rehab or drug treatment program
  - DOES protect use of medications for opioid use disorder (MOUD - methadone, buprenorphine and naltrexone) and medication assisted treatment (MAT)
  - Does NOT protect current use of illegal drugs
- Guidance: [https://archive.ada.gov/opioid\\_guidance.pdf](https://archive.ada.gov/opioid_guidance.pdf)



# 2022 DOJ GUIDANCE

- Example A:

A skilled nursing facility refuses to admit a patient with OUD because the patient takes doctor-prescribed MOUD, and the facility prohibits any of its patients from taking MOUD. The facility's exclusion of patients based on their OUD would violate the ADA.



# DOJ ENFORCEMENT

- Aug. 2021: Genesis HealthCare Inc.
  - Allegation: 12 SNFs in RI and MA denied admission to prospective residents prescribed medication for OUD
  - Settlement Agreement between DOJ, HHS and Genesis
  - Civil Penalty: \$60,000 (\$50,000 forgiven if SNFs comply with terms of agreement)



# DOJ ENFORCEMENT

- Sept. 2021:
  - Allegation: 4 health care facilities that operate/ manage SNFs denied admission to prospective residents prescribed medication for OUD
  - Settlement Agreement between DOJ, HHS and CareOne Realty, LLC, Hebrew Senior Life, Inc., Sheehan Health Group, LLP, and Wingate Healthcare
  - Civil Penalty: \$55,000 (\$35,000 forgiven if SNFs comply with terms of agreement)



# DOJ ENFORCEMENT

- Nov. 2023: North End Rehab and Healthcare Center
  - Allegation: SNF denied admission to prospective residents prescribed Suboxone
  - Settlement Agreement between DOJ, HHS and North End
  - Civil Penalty: \$111,614 (all but \$10,000 forgiven if North End complies with terms of agreement for two years)



# PA REGULATIONS — 28 Pa Code 201.29(c)(4)

A resident has the right to care without discrimination based upon race, color, familial status, religious creed, ancestry, age, sex, gender, sexual orientation, gender identity or expression, national origin, ability to pay, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the resident or because the resident is a handler or trainer of support or guide animals.



# PA ATTORNEY GENERAL

- Sept. 2023:
  - AG received complaint from man prescribed Suboxone for OUD, who was denied acceptance at multiple SNFs in HBG area
  - AG secured commitments from 38 facilities to comply with federal and state disability laws
  - Recovered \$6,000 in restitution damages for complainant, \$4,000 in costs for AG's office for public protection



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DISCRIMINATION IN LTC - \$400

ACCOMMODATION THAT  
ALLOWS EMPLOYEES TO  
TAKE TIME OFF FOR  
TREATMENT

WHAT IS A  
**LEAVE OF  
ABSENCE**



# ADA REFRESHER - EMPLOYEES

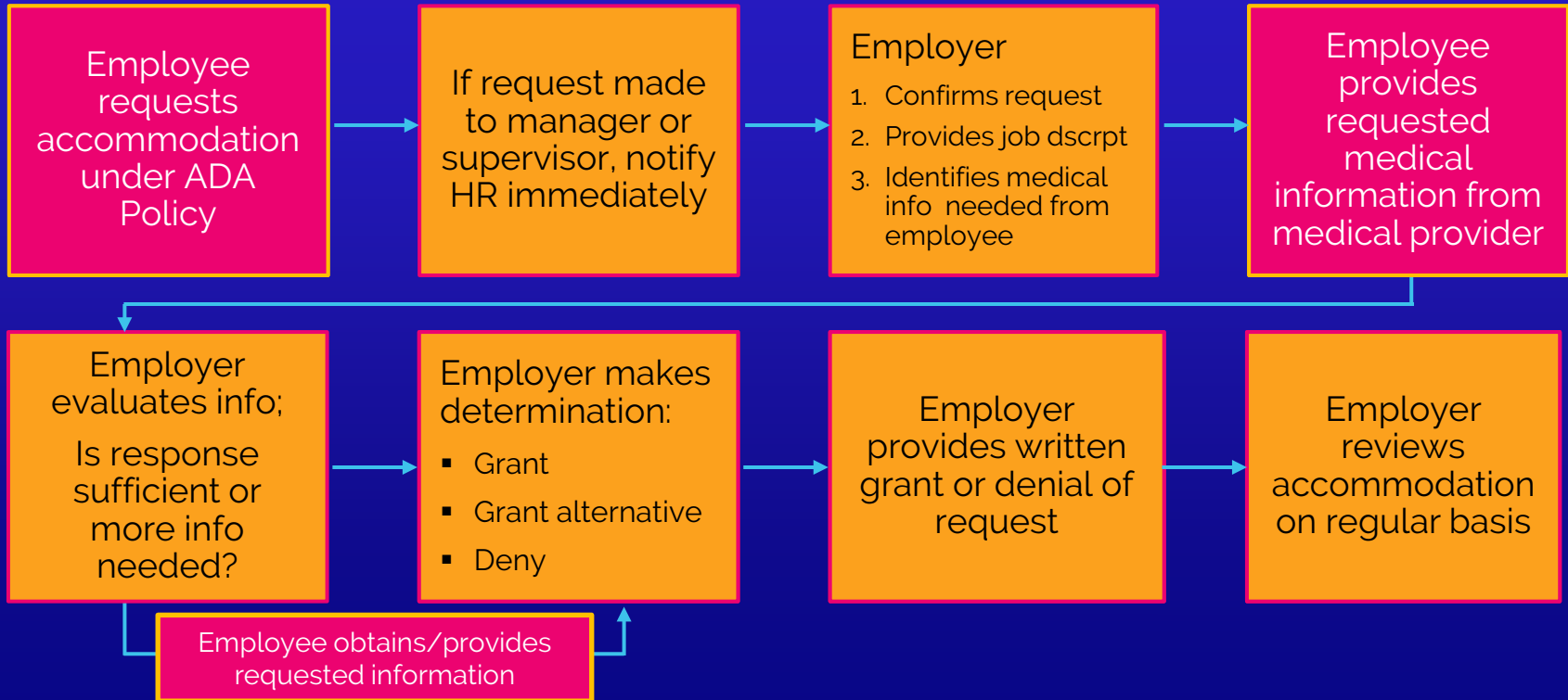
- Covered Employers:
  - Private employers with 15 or more employees
  - Public Employers regardless of number of employees
- Protected Employees:
  - Qualified individuals with disabilities who can perform the essential functions of the job with or without reasonable accommodation
- Reasonable Accommodation:
  - Any modification or adjustment to a job/work environment that will enable a qualified employee with a disability to perform essential job functions



# LEAVE FOR OUD TREATMENT

- Unpaid leave must be considered as a reasonable accommodation
  - Even if employee not eligible for/has exhausted FMLA or other employer-provided leave
- Employers must consider leave to participate in drug/alcohol rehab and treatment programs
- EEOC Guidance:  
<https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act>

# INTERACTIVE PROCESS REFRESHER



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LITIGATION UPDATE - \$400

LAW THAT PROHIBITS  
SUBMISSION OF  
INACCURATE CLAIMS TO  
GOVERNMENT PAYER



WHAT IS THE  
**FALSE  
CLAIMS ACT**



# FCA BASICS

- Treble (3x) damages
- Civil Penalties
  - \$13,508 Minimum
  - \$27,018 Maximum
  - PER CLAIM SUBMITTED
- Whistleblowers
  - Collect between 15-30% of recovery



# LTC COMMON CLAIMS

- Worthless Services v. Worth Less
  - Services were so bad that they were consistent with not providing any services
- U.S. ex re. Absher v. Momence Meadows Nursing Home
  - 1,700 false claims x 3
  - Reversed because “worth less” ≠ “worthless”



# WORTHLESS SERVICE

- US ex re. Jackson v. DePaul Health Sys.
  - Alleged Worthless Service
- US v. American Health Foundation, Inc.
  - Alleged Worthless Service
- US ex re. Hunter v. Fillmore Cap. Part.
  - Alleged lack of Staff



# RECENT FCA CASES

- Carson v. Select Rehab
  - Whistle blower action brought by former employee
- US v. Molina Healthcare
  - Insurer failed to provide SNF services
- US v. Dynamic Med. Sys.
  - Supplied Products to SNFs



# RECENT FCA CASES

- US v. Apple Health Care Inc.
  - Unnecessary Therapy Services
- Shouse v. Catholic Charities of NE Kan.
  - Kickback allegations
- US v. Heritage Operations
  - Dispensing of controlled substances



# FCA RECOVERIES

- \$691M → Hospitals
- \$700M → Med Device
- \$194M → Physicians
- \$447M → Labs
- \$54M → LTC
- \$37M → Home Health
- \$294K → Cyber



# FCA BY THE NUMBERS

- Over 700 Qui Tam Cases Filed Last Year
  - Whistleblowers took home \$349 Million
- DOJ Instituted 500 Cases on its Own
- Largest Recoveries in Health Care
  - \$1.8 Billion
- PA Eastern District Third = \$6.8 Billion
  - Behind MA and NY