

On March 30, 2016, the US Department of Justice (DOJ) [announced](#) that healthcare providers who serve the elderly in the following 10 states will have task forces looking over their shoulders: California, Georgia, Kansas, Kentucky, Iowa, Maryland, Ohio, Pennsylvania, Tennessee and Washington. Known as the Elder Justice Task Forces (Task Forces), these partnerships combine the resources of “federal, state and local prosecutors, law enforcement, and agencies that provide services to the elderly,” with an eye toward “coordinat[ing] and enhanc[ing] efforts to pursue nursing homes that provide grossly substandard care to their residents.” DOJ indicated that the Task Forces “reflect the department’s larger strategy and commitment to protecting our nation’s seniors, spearheaded by the department’s Elder Justice Initiative.”

What Practices and Providers Will the Task Forces Target?

As mentioned above, the Task Forces will focus on nursing home violations. However, in a subsequent [interview](#), a DOJ spokeswoman indicated that nursing homes could be just the beginning, explaining it was “certainly possible that [the Task Forces] may look into concerns or allegations involving other types of long-term care providers if they fall within the team’s region or jurisdiction.” The spokeswoman made clear that “[r]egardless of the provider type, the [T]ask [F]orces will take appropriate action if violations of law are identified.”

In his [statement](#) accompanying an announcement of the Task Forces’ formation, Principal Deputy Assistant Attorney General Benjamin C. Mizer mentioned the 2014 case of Extendicare Health Services as an instance where DOJ “has not hesitated to bring actions against nursing home operators who failed to provide Medicare and Medicaid nursing home residents with the services to which they are entitled.” Though it did not admit fault, Extendicare settled for \$38 million False Claims Act allegations that it billed Medicare and Medicaid while failing to (1) have a sufficient number of skilled nurses to care adequately for its residents, (2) provide adequate catheter care to some of its residents and (3) follow the appropriate protocols to prevent pressure ulcers and resident falls. In detailing another fact pattern that would likely draw the Task Forces’ ire, a March 4, 2016 [letter](#) – sent by Senator Thomas R. Carper (D-DE) to the Director of the US Department of Health and Human Services (HHS) Office for Civil Rights Jocelyn Samuels – noted “deeply concerning incidents where nursing home professionals posted disturbing and inappropriate photos or videos of residents on social media networks like Snapchat and Facebook.”

Providers should prepare to face increased scrutiny whenever they serve elderly patients because of (1) the Task Forces’ placement within the DOJ’s broader Elder Justice Initiative, (2) the combination of federal and state laws that the Task Forces’ various members are empowered to enforce and (3) DOJ’s post-announcement statement that the Task Forces will proceed “regardless of provider type.” Bases of liability will likely include the [False Claims Act](#) (when a provider bills Medicare or Medicaid for services that are either so defective as to be effectively worthless or medically unreasonable and unnecessary), [HIPAA](#) (for disseminating certain patient information such as via social media) and [state criminal law](#) (for sexual abuse, assault and failure to report other criminal acts perpetrated against elderly patients).

Task Forces: Who and Where?

The Task Forces are composed of representatives from the US Attorneys’ Offices, state Medicaid Fraud Control Units, state and local prosecutors’ offices, HHS, state Adult Protective Services agencies, Long-Term Care Ombudsman programs and law enforcement. These various organizations were selected because they all have some responsibility for dealing with the impact of, investigating and/or prosecuting abuse of elderly citizens.

While any healthcare company providing services to the elderly should be attentive to preventing fraud, providers in these districts need to be aware that task forces are aimed directly at them: Northern District of California, Northern District of Georgia, District of Kansas, Western District of Kentucky, Northern District of Iowa, District of Maryland, Southern District of Ohio, Eastern District of Pennsylvania, Middle District of Tennessee and Western District of Washington. These districts were not chosen at random, as several – including the [Southern District of Ohio](#) and [Eastern District of Pennsylvania](#) – have previously been involved in DOJ-led efforts to pursue elder care providers who seek to defraud their patients and federal programs.

Conclusion

In addition to criminal penalties and civil fines, other sanctions are available. In [previous elder abuse cases](#), HHS’s Office of Inspector General (OIG) required onerous, multi-year Corporate Integrity Agreements and mandatory, independent quality monitors. Given the success of DOJ-led task forces such as the [Health Care Fraud Prevention and Enforcement Action \(HEAT\)](#) Task Force, providers of healthcare services to the elderly should be especially mindful of the importance of strict compliance with federal and state law, including those mentioned above. Our dedicated team of compliance professionals stands ready to assist providers in understanding the implications of the Task Forces’ efforts on your business model.

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