RYTES COMPANY

2016 YEAR IN REVIEW

OWNERSHIP INVESTMENT

- "The Owners/Operators of your respective facilities have endorsed this program as one of the paramount programs that exist within their respective organizations which by its very presence helps ensure quality care for the residents we serve." Owners Certification accompanying compliance manual.
- "THIS ENDORSEMENT EQUATES TO DIRECT SUPPORT FROM OWNERSHIP FOR **YOUR ROLE AND THIS PROGRAM!"**

ON OCTOBER 4, 2016, FOR THE FIRST TIME SINCE 1991, CMS PUBLISHED A SWEEPING RULE WHICH REVISED MANY OF THE REQUIREMENTS THAT LONG TERM CARE FACILITIES MUST MEET TO PARTICIPATE IN THE MEDICARE AND MEDICAID PROGRAMS

- As it relates to compliance, CMS added: "We are requiring the operating organization for each facility to have in effect a compliance and ethics program that has established written compliance and ethics standards, policies and procedures that are capable of reducing the prospect of criminal, civil, and administrative violations in accordance with section 1128(b) of the Act."
- Phase I took effect on November 28, 2016. Phases II and III are effective on November 23, 2017 and 2019 respectively. The second phase promises changes in the QIS and traditional survey process, complete with new tags

PILOT PROGRAM

Enhanced evaluation of data and trends

Enhanced Education

Enhanced Communication

Take a more Proactive Approach to discovery and better test effectiveness

Designed to build on Company's desire to grow without losing its Resident Focused-Outcome Driven Approach to Patient Care.

SOME REASONS

To Increase

Compliance

Effectiveness

- 2016 Overhaul of Requirement for Participation in Medicare and Medicaid programs mandates it.
- Litigation avoidance requires enhanced measures (Federal/State, Settlements Pending, Quality of Care a New Basis for Compliance Suit)
- Market Pressures and enhanced compliance tracking technology (Government, hospital, managed care analytic as made available to those who place Patients in Nursing Homes).
- Changing Reimbursement-managed care and shifts to value based reimburse are/will financially reward those with effective compliance programs and penalize those who do not adapt.

9/16-1/17 SELECT DOJ SETTLEMENTS

In the last few months, several top providers settled with the Federal government over compliance related issues. Additional efforts on the part of the Federal and State governments continue. New allegations are frequently asserted.

• Lifecare Centers of America +	$145M
• Genesis Healthcare	$ 52.7M
• Omnicare	$ 28.1M
• Vibra Healthcare	$ 32.7M+
• Millenium Health (Lab)	$ 256M
• North American Healthcare+	$ 30M
• Tenet Healthcare	$ 513M
• Baxter Healthcare	$18.2M
• Cardinal Health	$ 45M
• Forest Laboratories	$ 38M

SOME ADDITIONAL

FEDERAL CIVIL PROSECUTIONS OF NOTE

• Vanguard (6 SNFs + Dir. of Ops)	Unresolved
• SavaSenior Care (3 FCA actions)	Unresolved
• HCR ManorCare	Unresolved
• Kindred/Rehabcare (FCA)	$125M
• Extendicare (Substandard Nursing Care)	$ 38M
• Ensign (FCA-6 Facilities)	$ 48M
• Hebrew Homes Health Network (medical director comp=kickback)	$ 17M

IN FISCAL 2016, ALMOST 500 FEDERAL CRIMINAL PROSECUTIONS

HISTORICAL CONVICTION RATE - 95%

HISTORICAL SENTENCE AVERAGE - 4+ YEARS

CIVIL SUIT STATS

- THE DOJ CLAIMS TO HAVE RECOVERED OVER 4.7 BILLION IN FISCAL YEAR 2016
- 2.5 BILLION FROM HEALTHCARE
- WITH A PROFIT OF 61% (1.7 Billion from Healthcare)

INADEQUATE CARE

Some say difficult to prove but as more data is collected and analyzed, experts are creating models which show what would have statistically happened if you had invested more into staffing or other areas of care.

- Most cases assert False Claims Act or Anti-Kickback Statute violations.
- Importantly, the Extendicare & Genesis Suits were settled to resolve inadequate care claims.

STATES JOIN LITIGATION: PROFIT AT THE EXPENSE OF PATIENT WELLBEING

States like New Mexico, New York, Pennsylvania & Maryland have joined the Federal Government in desiring to turn accusations of poor care into state revenue.

- Medford Multicare Center for Living sued by NY AG for profit while reducing care and a cover up relating to a resident's death; settled for 28 Million on June 22, 2016.
- New Preferred Care sued by New Mexico AG for creating profit at the expense of its residents. In June of 2016, the Judge ruled that the case may proceed to trial which is set for April 2018. The State has hired out of State Law Firms to handle the matter and is using complex modeling to show what would have been different if staffing were the industry norm.
- NMS sued by Maryland AG (5 SNFs) (filed 12/21/16) sued for creating profit over care of residents in large part resulting from inappropriate discharge when quality-payer-source expired.
-

PENNSYLVANIA SUES SKILLED NURSING CHAINS FOR FALSE ADVERTISING

PA seeks restitution and a laundry list of operational promises—Reliant ceased operating.

- Grane Healthcare (10 Facilities) Pending
- Golden Living (25 Facilities) Pending
- Reliant Senior Care (22 Facilities) $ 2M+ enumerated Staffing & Quality improvements

AS PATIENT OUTCOMES AND COMPARATIVE STATISTICS BECOME MORE READILY USABLE SUITS WILL INCREASE.

STATES ARE ADDING AGENCIES AND PERSONNEL TO PURSUE CLAIMS.

- For positive revenue streams and/or concerns about care, other States seem to be adding investigators and lawyers.
- Example: April of 2016, Illinois, by executive order of the Governor, created its Healthcare Fraud Elimination Task Force.

HOSPITALS AND MANAGED CARE COMPANIES JOIN THE FIGHT FOR QUALITY AND EFFICIENCY

Medicare 1 Star Facilities have more difficulty securing HMO contracts than do 5 Star Facilities.

Hospitals are increasingly concerned about discharging to poor performers.

- HMOs, Hospitals, and increasingly members of the General Public are tracking your performance to determine whether to send you residents.
- While each determines "quality" differently, poor outcomes are consistently viewed as poor performance.

FIVE STAR QUALITY RATING SYSTEM REVISED AUGUST 1, 2016

Uses 4Q data instead of 3Q

5 Star Nursing Home Quality Rating System Added five new measures:

- Percentage of short-stay residents who were successfully discharged to the community (claims-based)
- Percentage of short-stay residents who have had an outpatient emergency department visit (claims-based)
- Percentage of short-stay residents who were re-hospitalized after a nursing home admission(claims-based)
- Percentage of short term residents who made improvements in function (MDS-based)
- Percentage of long stay residents whose ability to move independently worsened (MDS-based)

ADDITIONAL QUALITY DATA COLLECTED FOR 5 STAR QUALITY RATING SYSTEM

% needing help with ADLs has increased (long)

% high risk residents with pressure ulcers (long)

% who had catheter inserted and left in bladder (long)

% physically restrained (long)

% urinary tract infections (long)

% experiencing one or more falls w/ major injury (long)

% who receive an antipsychotic medication (long)

% who receive anti-anxiety or hypnotic medication (long)

% who lose control of their bowels or bladder (long)

% who lose too much weight (long)

% who have depressive symptoms (long)

% with pressure ulcers that were new or worsened (short)

% who newly received an antipsychotic medication (short)

% who report moderate to severe pain (long)(short)

% assessed and given the pneumococcal vaccine (long)(short)

% assessed and given the seasonal influenza vaccine (long) (short)

THE IMPACT ACT

PAMA

- Federal Legislation and increased technological capabilities have and will exponentially continue to make your performance a matter of public and governmental knowledge.

IMPACT ACT

EFFICIENCY MATRIX FOR PART A & B EXPENDITURES

CAN CALCULATE HOW PROFICIENT ANY PAC PROVIDER IS IN SPENDING $.

Intended to change/improve Medicare's Post-Acute Care Services and how they are reported

- The Improving Medicare Post Acute Transformation Act enacted October 6, 2014 requires the implementation of a quality reporting program for SNFs—Beginning 2018 Nursing Home that fail to submit quality data to CMS will be financially penalized (2%).
- Skin integrity, Incidence of Major Falls, Functional Status, Cognitive Function and Changes in function and Cognitive Function. (10/1/16 implementation)
- Medication Reconciliation, Patient Preference (10/1/18 implementation)

PAMA

Ties Medicare Payments to:

Hospital Re-admission measures (First all cause and then an adjusted to weigh potentially preventable.)

Note: There are no regional adjustments.

- Section 215 of the Protecting Access to Medicare Act of 2014 authorizes the creation of the SNF Value-Based Purchasing Program

SOME STATES, AND LIKELY MORE, WILL IN THE FUTURE MOVE TOWARDS "VALUE BASED REIMBURSEMENT SYSTEMS" AND INCENTIVES AS WELL

Minnesota is a leader in this movement--Better care more reimbursement

- As of Jan 2016 the maximum direct care component of the Medicaid Rate is adjusted using a facility specific "quality score" (also effects rates that can be charged for private pay).
- Minnesota DHS also publishes a Facility Report Card based on survey of residents by independent contractor, MDH surveys and quality indicators that DHS derives from MDH assessments.
- The PIPP(2006) and QIIP(2013). While PIPP is a competitive process and QIIP open to every provider, reimbursement under both is in part dependent upon successful demonstration of quality improvement.

SOME FEDERAL COMPLIANCE LAWS AND REGULATIONS

- OBRA
- Anti-Kickback Statute
- False Claims Act
- Reverse False Claims Act
- HIPPA
- HITECH
- STARK
- Elder Justice Act
- Social Security Act

COMPLIANCE LAWS AND REGULATIONS

MICHIGAN COMPLIANCE STATUTES:

- Admission and retention of residents. Mich. Admin. Code R. 325.1922
- Policy regarding rights and responsibilities of patients or residents 333.20201.
- Michigan Anti-Kickback Statute, *M.C.L.A. §§ 400.604; 752.1004; 752.1006; 752.1010*
- Michigan Self-Referral Act, *M.C.L.A. §§ 333.16221(e); 333.16226*
- Michigan Prohibition Against Fee Splitting, *M.C.L.A. §§ 333.16221(d)(ii); 333.16226*
- State Health Care Fraud Civil and Criminal Laws
- Michigan False Claims Act, *M.C.L.A. §§ 400.607 et seq.*
- False Statements or Representations in Applications, *M.C.L.A. § 400.603*
- False Statements or Representations With Respect to Conditions or Operation of Institution or Facility, *M.C.L.A. § 400.605*
- Agreements to Defraud State by Means of False Claim, *M.C.L.A. § 400.606*
- Agreements, Combinations, or Conspiracies to Defraud Health Care Corporations or Insurers, *M.C.L.A. §§ 752.1005; 752.1006; 752.1010*
- Michigan False Claims Act, *M.C.L.A. § 400.610a-c*
- Whistleblower Protection Act, *M.C.L.A. §§ 15.361 et seq.*

COMPLIANCE LAWS AND REGULATIONS (CONT.)

ILLINOIS COMPLIANCE STATUTES

- Nursing Home Care Act. 210 I *ILCS § 45/1*
- Illinois Anti-Kickback Statute;Vendor Fraud and Kickbacks, *305 ILCS § 5/8A-3*
- Illinois Health Care Worker Self-Referral Act, *225 ILCS §§ 47/1 et seq.*
- Illinois Prohibition Against Fee Splitting, *225 ILCS §§ 60/22(A)(14); 60/22.2*
- State Health Care Fraud Civil and Criminal Laws
  - Illinois False Claims Act, *740 ILCS §§ 175/1 et seq.*
  - Illinois Recipient Fraud Law
  - Unauthorized Use of Medical Assistance
  - Administrative Malfeasance
  - Prohibited Acts; Application;Violations; Rules and Regulations
- Managed Health Care Fraud, *305 ILCS § 5/8A-13*
  - Bribery and Graft in Connection with Health Care, *305 ILCS § 5/8A-14*
  - False statements relating to health care delivery, *305 ILCS § 5/8A-15*
  - Unfair or Deceptive Marketing Practices, *305 ILCS § 5/8A-1*
- Whistleblower Protections
  - Illinois False Claims Act, *740 ILCS § 175/4*
  - Whistleblower Protection Act, *740 ILCS §§ 174/1 et seq.*

COMPLIANCE LAWS AND REGULATIONS (CONT.)

WISCONSIN COMPLIANCE STATUTES

- Requirements for skilled nursing facilities *WI ST § 49.498.*
- Wisconsin Anti-Kickback Statute, *WI ST § 49.49(2)*
- State Health Care Fraud Civil and Criminal Laws
- Wisconsin False Claims Act, *WI ST § 20.931, WI ST § 49.485*
- Wisconsin Medical Assistance Offenses, *WI ST § 49.49(1)*
- Wisconsin Fraudulent Certification of Facilities Law, *WI ST § 49.49(3)*
- Wisconsin Prohibited Provider Charges Law, *WI ST § 49.49(3m); (3p)*
- Wisconsin Prohibited Facility Charges Law, *WI ST § 49.49(4)*
- Wisconsin Medical Assistance Offenses, *WI ST § 49.49(4m)*
- Wisconsin Public Assistance Fraud Penalties, *WI ST § 49.49(4m)*
- Whistleblower Protections
- Wisconsin False Claims Act, *WI ST § 20.931*
- Health Care Worker Protection Act, *WI ST § 146.997*

COMPLIANCE LAWS AND REGULATIONS (CONT.)

MINNESOTA COMPLIANCE STATUTES

- Healthcare Bill of Rights MN ST § 144.651
- Minnesota Anti-Kickback Statue, MN ST *§ 62J.23*
- Minnesota Fee Splitting Statue, MN ST *§ 147.091*
- Minnesota Audit s of Exempt Providers Statute, MN ST *§ 62J.23 (Subd. 5)*
- State Health Care Fraud Civil and Criminal Laws
  - Minnesota False Claims Act, MN ST *§ 15C.01 et seq.*
  - Minnesota Medicaid Fraud Statute MN ST *§ 256B.064*
  - Minnesota Permitting False Claims Against Government Law MN ST *§ 609.455*
  - Minnesota Permitting False Claims to Public Officer or Body Law MN ST *§ 609.465*
  - Minnesota Assistance Law, MN ST *§ 609.466*
  - Minnesota Financial Exploitation of Vulnerable Adult Law, MN ST *§ 609.2335*
- Whistleblower Protections
  - Minnesota False Claims Act, MN ST *§ 15C.14*
  - *Minnesota Reporting Maltreatment of Vulnerable Adults Law, MN ST § 626.557*
  - Disclosure of Information by Employees Law, *MN ST § § 181.932; 181.935 (a)*
  - *Health Care Cost Containment-Retaliation, MN ST § 62J.80*

- DEFINITION OF COMPLIANCE

WHAT IS COMPLIANCE?

- When a Facility makes decisions and takes action based upon the **needs of** its **residents** and as permitted by applicable law; and
- When Facility policies, procedures and systems are effective in supporting the foregoing.

It is generally believed that the more transparent, the more a facility is trained to and desires to discover and identify issues, examine quality and outcome data, perform predictive analysis, engage in root cause analysis, and test effectiveness of response the more the Facility will improve its outcomes.

IN 2017 WE HAVE NEW TOOLS TO MATERIALLY ENHANCE YOUR COMPLIANCE PROGRAM

- Whether you desire to beef up your Compliance Program to further your commitment to care, to help avoid or minimize the effects of litigation, to further your marketing, capitalize on Value based reimbursement, or simply to comply with the Law, if you permit us, RYTES Company believes that it can assist you in materially improving your program in 2017.