

# Health Law Alert

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and friends  
of the firm

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## OIG AUDITS NURSING FACILITY COMPLIANCE WITH STATE AND FEDERAL LAWS FOR STAFFING LEVELS AND BACK- GROUND CHECKS

Skilled nursing facilities should be aware that the Office of Inspector General ("OIG") of the Department of Health and Human Services is performing audits to determine compliance with federal and state laws and regulations for minimum required staffing levels and for timely performance of background checks for new employees. Nursing facilities also might see surveyors engage in increased scrutiny in these areas during certification surveys in the upcoming months. Facilities that have not performed recent internal audits of their own adherence to these requirements should do so now to avoid deficiency findings by survey agencies and other potential enforcement actions by the OIG.

In a recently released report of its audit of WillowBrooke Court at Southampton Estates, a not-for-profit nursing facility located in Southampton, Pennsylvania, OIG auditors found that the facility generally complied with federal and state staffing laws, but failed to comply with state background check requirements for six employees. The OIG selected this facility for auditing based on its analysis of data from the Centers for Medicare & Medicaid Services' Online Survey Certification and Reporting System, known as the OSCAR reports. OIG did not reveal the factors that led to the facility's selection, and an analysis of CMS's Nursing Home Compare website shows that the facility had no previous staffing deficiencies. Nursing Home Compare did, however, indicate that the facility had nurse staffing

hours per resident per day that were slightly lower than the overall state average, but only because its LPN hours were low. Its RN and CNA nursing hours per resident per day were higher than the state average.

OIG auditors looked at staffing schedules, time and attendance records and payroll records for three two-week periods, and found that the facility met federal staffing requirements that require a facility to have a licensed nurse designated as a charge nurse on each tour of duty; a registered nurse for at least eight consecutive hours a day, seven days a week; and a registered nurse designated to serve as the director of nursing on a full-time basis. The facility also met Pennsylvania's minimum staffing requirement to provide 2.7 hours of direct nursing care per resident per day and to have one registered nurse on each shift for 24 hours a day.

OIG also reviewed the facility's adherence to the state's requirement to obtain a state background check within 30 days for each new job applicant who had resided in the state within the previous two years, or a federal background check within 90 days if the applicant had not resided within the state at any time during the previous two years. The auditors reviewed the files of all 92 direct care staff and found that the facility obtained only county, rather than state, background checks for four employees and failed to obtain background checks for two employees within the required timeframes.

The OIG found that the facility's internal procedures for obtaining background checks had not been followed. Although the facility subsequently completed background checks of all its employees and no disqualifying offenses were found, the OIG recommended that the facility strengthen its internal controls to assure that it obtain state background checks on all new employees, and that when background checks are not received within the required timeframes, new employees should be prohibited from working directly with residents until the required information is received.

We recommend that facilities that have not conducted recent internal audits of their compliance with federal and state staffing requirements and background checks take the following steps as soon as possible:

- review all direct care staff employees' files to insure that the facility has documented proof of background checks;
- if background checks have not been obtained in a timely manner for any direct care staff, the employee must be removed from direct resident care until background checks are completed;
- if noncompliance is identified, revise internal auditing policies to assure that background checks are completed in a timely manner and documented in employee files. The OIG accepted the WillowBrooke facility's plan to set up an internal tracking system by issuing a quarterly report on the completion of backgrounds checks to be submitted to the facility's Quality Assurance Committee;
- review all direct care staff employee files to insure that the facility has up-to-date professional licensing information; and
- if your facility does not already do so on a regular basis, verify that the facility meets or exceeds minimum state nursing hours per resident day requirements, as well as the minimum federal requirements, by using a random sample of two or three payroll periods since your last survey.

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