2019 BAIRD HOLM LLP
WESTERN NEBRASKA
Health Law Forum

FRIDAY, AUGUST 16, 2019

GREAT PLAINS HEALTH, NORTH PLATTE, NE

BH

BAIRD HOLM LLP

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August 16, 2019

WELCOME TO THE 2019 WESTERN NEBRASKA HEALTH LAW FORUM!

Thank you for joining us for the Second Annual Western Nebraska Health Law Forum. We are truly excited to spend the day with our friends and colleagues in Central and Western Nebraska for a day packed with the latest legal and regulatory trends impacting the health care industry.

As you are well aware, the pace of change in the health care industry is fast and its speed continues to increase with each passing day. Because of the pace of change, we'd like to note that the materials in this binder, as well as the day's presentations, are intended to serve as general information only, and should not be considered legal advice with respect to any particular matter.

At Baird Holm, we strive to provide practical, cost-effective and innovative solutions to the legal issues which arise in today's complex health care environment each and every day. We value our strong relationships throughout Nebraska and are proud to be a valuable contributor to your organizations. If you have questions about today's presentations or any other legal matter, please do not hesitate to contact us.

Very truly yours,

Zachary J. Buxton
Attorney
FOR THE FIRM

2019 BAIRD HOLM LLP WESTERN NEBRASKA Health Law Forum

8:00 – 8:30 a.m. **Registration and Continental Breakfast**

8:30 – 8:45 a.m. **Welcome**

Zachary J. Buxton

8:45 – 9:45 a.m. **Governance Challenges in Today's Health Care Environment**
The ACHE has awarded 1.0 face-to-face education credit for this opening program.

Recent guidance from regulatory agencies along with recent enforcement actions make it clear that expectations have increased considerably. The Goodwill case in Nebraska and the University of Maryland case are recent examples of the result when boards do not do their jobs properly. The panel will discuss these cases and specify how expectations have increased, plus describe current best practices for boards, lay out the consequences of failing to exercise proper oversight and offer suggestions for engaging the board in compliance responsibilities.

David W. Pederson, Pederson & Troshyski, North Platte, Nebraska
John R. Holdenried
Julie A. Knutson

9:45 – 10:30 a.m. **Legislative Update**

Now that the 106th Legislature of the Nebraska Unicameral has ended, it is time to delve into the new legislative changes affecting health care providers. This session will guide you through a selection of this year's newly enacted legislation and discuss the good, the bad, and the ambiguous.

Zachary J. Buxton
Sean T. Nakamoto

10:30 – 10:45 a.m. **Break**

10:45 – 11:30 a.m. **What's Up with Medicare?**

Reading the national headlines, you might think that health care is all about the political debate—repealing the Affordable Care Act, adding Medicare For All, and other such topics. But CMS has recently announced a number of initiatives that have the potential to dramatically change the focus of how CMS evaluates and pays providers for their services and to reduce the regulatory burden on providers. This session will highlight several of these initiatives and what they might mean for rural health care providers, particularly from a compliance and legal planning perspective.

John R. Holdenried
Kimberly A. Lammers

11:30 a.m. – 12:30 p.m. **Latest Trends and Developments in Employment Law**

Labor and Employment Law has experienced several changes in the Trump era at the local level. This session will highlight major changes in labor and employment law, trends and anticipated future developments.

Scott S. Moore

2019 BAIRD HOLM LLP WESTERN NEBRASKA Health Law Forum

12:30 – 1:15 p.m. **Networking Lunch**

1:15 – 2:00 p.m. **Lights…Camera…HIPAA?**

Increasingly, all aspects of health care are being recorded—on security cameras, on personal devices brought in by patients, family members, and visitors as well as body cameras worn by law enforcement officers. Can you prohibit recording? How will you enforce your policy? When can you disclose the recordings you've made? Michael and Abby will discuss the risks and benefits of permitting, restricting and disclosing recordings and offer strategies to avoid legal pitfalls, upset patients, and negative press.

Michael W. Chase
Abigail T. Mohs

2:00 – 2:30 p.m. **Accommodations in Health Care Delivery: Auxiliary Aids, Interpreters, Translators, and Service Animals**

Health care providers are pillars of their local communities often impacting a significant percentage of residents. As a result, they encounter a diverse patient base, some of whom require assistance in overcoming barriers to accessing services. This session will provide an overview of health care providers' obligations for removing barriers to access for individuals with disabilities and those with limited English proficiency, including the offer of auxiliary aids, and interpreter and translator services.

Zachary J. Buxton

2:30 - 3:00 p.m. **The Last Word**

This session includes a fast-paced discussion of a variety of current and late-breaking issues affecting health care organizations.

Sean T. Nakamoto (Moderator)

3:00 p.m. **Adjourn**

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COMMONLY USED ACRONYMS

ACRONYM	*TERM*
ACA	*Patient Protection and Affordable Care Act*
ACO	*Accountable Care Organization*
AHIA	*Association of Healthcare Internal Auditors*
AHLA	*American Health Lawyers Association*
ALJ	*Administrative Law Judge*
APM	*Alternative Payment Models*
ASC	*Amublatory Surgical Center*
BAT	*Blood Alcohol Tests*
CAH	*Critical Access Hospital*
CDAC	*Consolidated Data Analysis Center*
CIA	*Corporate Integrity Agreement*
CMS	*Centers for Medicare & Medicaid Services*
CoP	*Conditions of Participation*
D & O Insurance	*Directors and Officers Liability Insurance*
DHHS	*Department of Health and Human Services*
DME	*Durable Medical Equipment*
DOJ	*Department of Justice*
ED	*Emergency Department*
EEO-1 Report	*Employer Information Report EEO-1*
EMC	*Emergency Medical Condition*
EMTALA	*Emergency Medical Treatment and Active Labor Act*
FCA	*False Claims Act*
FFS	*Fee-for-Service*
FLSA	*Fair Labor Standards Act*
FMV	*Fair Market Value*
FPPE	*Focused Professional Practice Evaluation*
HCCA	*Health Care Compliance Association*
HIPAA	*Health Insurance Portability and Accountability Act*
IAC	*Iowa Administrative Code*
ICF	*Immediate Care Facility*
MACRA	*Medicare Access and CHIP Reauthorization Act*
MFCU	*Medicaid Fraud Control Unit*
MIPS	*Merit-Based Incentive Payment System*
MSSP	*Medicare Shared Savings Program*
NAC	*Nebraska Administrative Code*
NLRB	*National Labor Relations Board*
NPDB	*National Practitioner Data Bank*
OIG	*Office of Inspector General*
OSHA	*Occupational Safety & Health Administration*
PHI	*Protected Health Information*
PQRS	*Physician Quality Reporting System*
RUG	*Resource Utilization Groups*
SNF	*Skilled Nursing Facility*
Stark	*Physician Self-referral Law*
TCPA	*Telephone Consumer Protection Act*
UCA	*Uniform Credentialing Act*

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Areas of Practice

Health Care

Education

Saint Louis University School of Law, J.D., 2014

Saint Louis University College for Public Health & Social Justice, Master of Health Administration, *with distinction*, 2014

University of Northern Iowa, B.A., English and Sports Psychology, *cum laude*, 2009

Bar & Court Admissions

Iowa, 2014

Nebraska, 2015

Zachary J. Buxton concentrates his practice on health care law. He represents hospitals, health care facilities, physician practices and other health care providers in regulatory, transactional and reimbursement matters.

Zach earned a Juris Doctor from Saint Louis University School of Law in 2014 with a certificate in health law. While there, he served as a staff editor (2012-2013) and a lead editor (2013-2014) of the Saint Louis University Journal of Health Law & Policy. His comment on the ACA's changes to Community Benefit was published in the Spring 2014 issue of the journal. He was also a member of the Saint Louis University Health Law Association and earned two Academic Excellence awards in HIPAA Privacy Law and Theories of Health Law Seminar.

Also in 2014, Zach earned a Master of Health Administration, *with distinction*, from the Saint Louis University College for Public Health & Social Justice. He graduated from the University of Northern Iowa with a Bachelor of Arts in English and Sports Psychology, *cum laude*, in 2009.

Professional & Civic Affiliations

- Community Bike Project (2016-present)
- American Health Lawyers Association (2014-present)
- Healthcare Financial Management Association (2014-present)
- Iowa Society of Health Care Attorneys (2014-present)
- Health Care Compliance Association (2014-present)

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Areas of Practice

Health Care

Privacy & Data Protection

Education

Saint Louis University School of Law, J.D., 2009

Saint Louis University College for Public Health & Social Justice, Master of Health Administration, *with distinction*, 2009

Creighton University, B.S.B.A., Accounting and Finance, *summa cum laude,* 2004

Bar & Court Admissions

Iowa, 2009

Nebraska, 2009

Michael W. Chase assists clients with issues including compliance with Federal health care program fraud and abuse laws, reimbursement, clinical research and institutional review board compliance, and governance. His practice also focuses on electronic health records (EHR) technology and issues under HIPAA, HITECH, Meaningful Use and other Federal and State laws regarding privacy of data.

Michael received his law degree from Saint Louis University School of Law, with certificates in Health Law Studies and International and Comparative Law. During law school, he served as a lead editor for the Saint Louis University Journal of Health Law and Policy. In addition, he received a Masters in Health Administration, with distinction, from Saint Louis University School of Public Health.

Michael graduated from Creighton University, *summa cum laude,* with a Bachelor of Science in Business Administration in Accounting and Finance. Prior to joining the firm, he worked at the Institute for Latin American Concern in Santiago, Dominican Republic and at the Mayo Clinic in Rochester, Minnesota.

Professional & Civic Affiliations

- American Health Lawyers Association
- ICAN, Defining Leadership Class 14
- Iowa Chapter of the Healthcare Financial Management Association, Program Committee
- Iowa Society of Healthcare Attorneys
- Down Syndrome Alliance of the Midlands, Board Member
- Nebraska Court Appointed Special Advocates, Board Member
- Health Care Compliance Association
- Omaha Bar Association

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Areas of Practice
Health Care

Education
University of Michigan Law School, J.D., *cum laude*, 1975

Creighton University, B.S., Business Administration, *magna cum laude*, 1972

Bar & Court Admissions
Nebraska, 1975

Iowa, 1992

United States District Court of Nebraska, 1975

John R. Holdenried provides a full range of health law services to healthcare providers, with a concentration on regulatory, transactional, and contracting issues; managed care contracting and network formation; tax exemption; and corporate compliance issues, including reimbursement, tax, Stark, and fraud and abuse.

John was the Managing Partner of the firm from 2001-2009. From 1975 to 1977, he served as law clerk to the Honorable Warren K. Urbom, United States District Court for the District of Nebraska.

John is very active in local, regional and national health care associations, including the American Health Lawyers Association for which he serves on the Board of Directors. He was the Program Chair of the annual AHLA Tax Issues for Healthcare Organizations Program for several years and is an emeritus member of the IRS Council for Tax Exempt and Governmental Entities-Great Lakes Region.

He is a frequent presenter at programs of the American Health Lawyers Association. He has also spoken at regional and local programs sponsored by state hospital associations, state hospital attorney societies, and chapters of the Healthcare Financial Management Association and the Health Care Compliance Association. Topics on which he has spoken include duties of hospital directors, physician recruitment, physician practice acquisition, managed care, accountable care organizations, corporate compliance programs, tax exemption issues, Stark, fraud and abuse, fair market value, and rural hospital issues. Since 1991, John has been selected by his peers for inclusion in *The Best Lawyers in America*® in the field of Health Care Law. John has also been named in *Chambers USA* (© 2013) and *Great Plains Super Lawyers* since 2007 for his work in Health Care Law. He has passed the Iowa Uniform Certified Public Accounting Examination.

Selected Practice Highlights
- Establishing and advising PHOs, PPOs, and other managed care entities
- Assisting clients in negotiating and reviewing managed care and shared risk contracts
- Drafting physician employment compensation plans and contracts
- Drafting and negotiating physician co-management arrangements
- Counseling tax-exempt clients on compliance issues
- Counseling hospital boards on fiduciary and compliance duties
- Counseling physician groups on structure, contracts and operational issues
- Representing clients in transactions for purchase, sale, and affiliations of healthcare providers

- Counseling on corporate organization and structure issues of tax-exempt organizations
- Drafting and counseling on hospital-physician joint ventures

Professional & Civic Affiliations

- American Health Lawyers Association, Board of Directors, former Program Chair of Tax Program, and Vice Chair of Tax and Finance Practice Group
- Iowa Society of Healthcare Attorneys, former President
- Nebraska Chapter of Healthcare Financial Management Association
- IRS Council for Tax Exempt and Governmental Entities- Great Lakes Region
- New Cassel, Inc., Board of Directors
- Prior community activities include board membership of Alzheimer's Association of the Midlands Chapter (President), One World Community Health Center, Inc. (President), South Omaha Affordable Housing (Board Secretary), St. Margaret Mary Parish (Board of Education, Parish Council, and Finance Committee), Family Housing Advisory Services (President), Big Brothers-Big Sisters of the Midlands (President), Leadership Omaha participant (1983-1984), and Instructor for Legal Research and Writing, Creighton University School of Law (1981-1987)

Selected Recent Publications

- Tax Issues; AHLA Representing Hospitals and Health Systems Handbook, 2017
- Fair Market Value Issues. Avoiding Trouble; *Health Law Handbook*, 2014 Edition, Thomson Reuters
- "ACOs—IRS Notice Leaves Many Questions," AHLA Connections, August 2011
- "Tax and Tax Exemption in Transactions," *Health Law Practice Guide*, American Health Lawyers Association.
- "Hospital Compensation of Employed Physician—Hospitals Struggle with Compliance and Economics", *Insights*, Willamette Management Associates, 2005

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Areas of Practice

Health Care

Education

Creighton University School of Law, J.D., 1993

University of Nebraska at Omaha, M.S.W., 1980

Creighton University, B.A., 1974

Bar & Court Admissions

Nebraska, 1993

Iowa, 1995

Publications

Editor, *Health Law Advisory*, Baird Holm LLP

Julie Knutson's practice primarily focuses on providing health care facility and physician/provider practice clients with advice and representation concerning a wide variety of regulatory compliance, reimbursement, contracting, medical staff, licensure and behavioral health issues. Prior to joining the firm, she spent 18 years working in the health care industry as a manager, internal consultant and trainer.

Julie is active in legal associations related to her field in both Nebraska and Iowa. She is also a member of the American Health Lawyers Association and the Health Care Compliance Association. Since 2001, Julie has been selected by her peers for inclusion in *The Best Lawyers in America®* in the field of Health Care Law and has been ranked by *Chambers & Partners USA* (© 2013). Additionally, she is "AV" rated by *Martindale-Hubbell.*

Ms. Knutson is a frequent speaker and resource on health care topics including many aspects of regulatory compliance and investigations; complex capacity, consent and substitute decision-making issues, medical staff, physician contracting, behavioral health law, credentialing and human subject research and IRB issues.

Selected Practice Highlights

- Training and consultation for boards, senior management and compliance committees regarding compliance matters including conflict of interest policies and reimbursement and billing matters
- Advises clients regarding a wide variety of health care compliance and operational issues
- Development and negotiation of physician contracts
- Representation of clients in regulatory investigations, self-disclosures, voluntary repayments and implementation of corporate integrity agreements.
- Assists hospitals in developing medical staff bylaws, rules and regulations and policies
- Consultation and advice regarding human subject and IRBs.

Professional & Civic Affiliations

- Health Care Compliance Association, Member
- Iowa Society of Health Care Attorneys, Past President
- Latino Center of the Midlands, Past Executive Committee and Board Member
- Community Alliance, Inc., Past President
- Leadership Omaha, Class 6 (1984) and Past President, Leadership
- Intercultural Senior Center, Past President, Board of Directors
- Lifetime Fellow of the Nebraska Bar Foundation

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Areas of Practice

Health Care

Education

Creighton University School of Law, J.D., *summa cum laude*, 1997

University of South Dakota, B.A., Political Science and Classics, *magna cum laude with University honors,* 1994

Bar & Court Admissions

Nebraska, 1997

Iowa, 2005

Kimberly A. Lammers assists clients with advice and representation for issues relating to Federal health care program fraud and abuse laws, regulatory compliance, Medicare and Medicaid reimbursement, clinical denials and appeals including RAC audits, contracting, medical staff, licensure, credentialing, conflict of interest, and human subject research and IRB issues. Prior to joining the firm, she spent 13 years working for a large health system in the areas of compliance and revenue cycle, and most recently served as that health system's Vice President of Compliance.

Kim is also a Certified Professional Coder through the American Academy of Professional Coders, and has completed ICD-10 proficiency testing through the AAPC.

Kim is licensed in both Iowa and Nebraska, and is active as a member of various legal associations, including the American Health Lawyers Association and the Health Care Compliance Association.

Kim received her law degree from Creighton University School of Law, *summa cum laude*, and received her undergraduate degree from the University of South Dakota, *magna cum laude, with University honors*.

Professional & Civic Affiliations

- American Health Lawyers Association, Member
- Health Care Compliance Association, Member
- American Academy of Professional Coders, Certified Professional Coder

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Areas of Practice

Health Care

Privacy & Data Protection

Education

Hamline University School of Law, J.D., 2010

Creighton University, B.A., History, *magna cum laude*, 2007

Bar & Court Admissions

Minnesota, 2010

Missouri, 2011

Nebraska, 2015

Abigail T. Mohs' practice focuses on regulatory, transactional, and reimbursement matters for health care providers with a special emphasis on electronic health records, and issues under HIPAA and other Federal and State laws regarding privacy of data.

Prior to joining the firm, she worked in insurance compliance and health IT compliance where she gained valuable experience navigating the changing landscape of legal and regulatory matters.

Abby received her undergraduate degree from Creighton University in 2007 and her law degree from Hamline University School of Law in 2010. She served as staff editor of the Hamline Journal of Public Law and Policy. Additionally, she participated in the William E. McGee National Civil Rights Moot Court competition.

Professional & Civic Affiliations

- American Health Lawyers Association
- Healthcare Financial Management Association
- Mutual First Federal Credit Union, Board of Directors

Selected Recent Publications

- "Large and In Charge of Their Employment Discrimination Destiny: Whether Obese Americans Now Qualify as Disabled Under the Americans with Disabilities Act Amendments Act of 2008," Hamline Journal of Public Law & Policy, Fall 2009

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Scott S. Moore | Partner

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Areas of Practice

Immigration

International Services

Labor & Employment Law

Education

University of Nebraska College of Law, J.D., *with high distinction*, Order of the Coif, 1992

University of Nebraska at Lincoln, B.A., *magna cum laude*, 1989

Bar & Court Admissions

Colorado, 1993

Iowa, 2004

Nebraska, 1992

South Dakota, 2013

Utah, 2013

United States Court of Appeals, Eighth Circuit

United States District Court, District of Colorado, 1993

United States District Court, District of Nebraska, 1992

Scott S. Moore regularly represents employers in various industries with respect to labor relations and employment matters, including personnel policies and decisions, labor negotiations, preventive planning, immigration, workplace investigations, workplace safety, equal opportunity, and the defense of employment-related claims. He has represented employers on labor and employment matters throughout the United States. Scott received his Juris Doctor from the University of Nebraska College of Law, with high distinction in 1992.

Scott is one of the few employment lawyers regionally who is a Fellow of The College of Labor and Employment Lawyers, the premier peer-selected organization of labor and employment lawyers in North America. Admission is by invitation only, after a rigorous screening process.

Scott has been selected by his peers for inclusion in *The Best Lawyers in America*® in the fields of Employment Law, Immigration Law, and Labor Law and was named the *Best Lawyers'* 2018 Labor Law – Management "Lawyer of the Year" for Omaha. He has been listed in the *Great Plains Super Lawyers*, has been recognized as one of Nebraska's top employment defense lawyers in *Chambers USA*, and is "AV" rated by *Martindale-Hubbell*.

Scott is the founder of the Best Places to Work in Omaha and the award for the Best Places for the Advancement of Women.

Scott is the Council Chair of the Labor Relations Committee and serves on the Board of Directors for the Nebraska State Chamber of Commerce & Industry. He is a former Special Assistant Attorney General for the State of Nebraska, the former Chair of the Labor and Employment Section of the Nebraska State Bar Association, serves on the University of Nebraska College of Law Dean's Advisory Board.

Selected Practice Highlights

- Investigator and Counsel for Workplace Fraud and Compliance Investigations
- Implementation of successful labor negotiations and labor strategies for private and public employers
- Development of corporate wide-incentive programs
- Creation of executive recruitment strategies, agreements and incentive plans
- Integrating foreign businesses into the United States Labor Market
- Coordinating and providing direction for multi-national downsizings
- Advising and representing numerous employers on EEO matters against numerous state and federal equal employment opportunity agencies
- Advising corporate boards on CEO and executive selection processes
- Routinely advising and pursuing work-related authorization for employers on behalf of key immigrant employees, especially J-1 Waivers, H-1B and Green Cards for physicians

- Establishing work-related dispute resolution systems, including pre-dispute arbitration agreements
- Successfully defending against numerous wage and hour investigations by the Department of Labor, including multiple site/organization-wide wage and hour compliance audits
- Successfully defending numerous union organizing campaigns ranging from small shops to large multi-location facilities including campaigns by the Teamsters, UFCW, AFSME and SEIU
- Effectively litigating much watched NLRB matter regarding representation units in multi-location environment

Professional & Civic Affiliations

- Founder, Best Places to Work in Omaha, sponsored by the Omaha Chamber of Commerce
- Chairman, NSBA Labor and Employment Section, 2005-2007
- Chairman, Nebraska Lung Association Leadership Council, 2007-2008
- Board of Directors, Central States American Lung Association, 2006-2008
- Board of Directors, Conestoga Public Schools
- SHRM Nebraska State Council member, 2007-2010
- Legislative Director, SHRM Nebraska, 2007-2010
- Legal Counsel Human Resources Association of the Midlands
- Former Committee Chair and Board Member for the Human Resources Association of the Midlands
- Legal Counsel, Central Human Resources Management Association
- Corporate Chairman, 2007 Asthma Walk
- Corporate Chairman, 2007 Corporate Cup
- Executive Committee and Board member, Heartland Chapter of the American Red Cross, 2000-2006
- Former Board member for Omaha Theater Company for Young People
- ICAN Focus Leadership Graduate 1999
- American Bar Associations' Sections on Labor and Employment
- American Immigration Lawyers Association
- Chairman, Labor Council Nebraska State Chamber of Commerce
- Board of Directors, Nebraska State Chamber & Industry
- Special Assistant Attorney General, State of Nebraska
- Former Chairman, Labor and Employment Section of the Nebraska State Bar Association

Selected Recent Publications

- Scott is formerly the Chapter Chairman and Editor for BNA's employment discrimination law treatise, Employment Discrimination Law, and a Contributing Editor for BNA's leading labor law treatise, The Developing Labor Law. He has written several law review articles addressing the equal opportunity laws, the Americans with Disabilities Act and the drafting of pre-dispute arbitration agreements. He has been cited by the Wall Street Journal, Bloomberg, and the Associate Press on employment law issues.

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Areas of Practice

Health Care

Intellectual Property, Copyright & Trademark

Technology & E-Commerce

Privacy & Data Protection

Education

Creighton University School of Law, J.D., *magna cum laude*, 2017

University of Washington, B.S., 2013

Bar & Court Admissions

Nebraska, 2017

Iowa, 2019

Sean T. Nakamoto practices in the area of health care and information technology. He represents clients with regard to health care compliance matters, data privacy and security compliance (e.g., HIPAA, FERPA, and GDPR), and transactional issues. Sean also represents clients with regard to information technology matters including licensing agreements, technology acquisitions and related contracts, emerging technologies (e.g., IoT, Blockchain, and Wearables), and general information security.

Sean graduated from the Creighton University School of Law, *magna cum laude*, in 2017. While in law school, he earned the CALI Excellence for the Future Awards in Health Care Insurance Law, Alternative Dispute Resolution, Health Law Survey, Legal Issues in E-Commerce, and Taxation of Business Enterprises. He was also the Research Editor of the Creighton Law Review, and a student tutor for Legal Writing and Civil Procedure I & II. Sean graduated from the University of Washington with a Bachelor of Science in Biology in 2013.

Professional & Civic Affiliations

- Creighton Law Young Alumni Council, Board Member, (2017-present)
- Nebraska State Bar Association, Member, (2017-present)
- Omaha Bar Association: Young Lawyers Division, Social Chair, (2018-present)
- American Health Lawyers Association: Tax and Finance Practice Group, Social Media Coordinator, (2018-present)
- Nebraska Infragard (an association of businesses, academic institutions, state and local law enforcement agencies, and the FBI created to help protect the critical national infrastructure)

Speaker Introduction

David Pederson

DAVID PEDERSON was born in Oklahoma City, Oklahoma in 1955, and was raised in North Platte. His father, Donald Pederson, practiced law in North Platte starting in 1957. Following his graduation from the University of Nebraska School of Law in 1980, David joined his father in practice with the firm of Murphy, Pederson, Piccolo and Anderson. David has served as a Bankruptcy Trustee and on numerous committees of the Nebraska State Bar. His 30+ years in the legal profession have provided him with the experience and expertise necessary to meet his clients' legal needs.David is married to Judy, and has three children. He has served as Chairman of the Boards of the Great Plains Health, Mid Plains Community College, the North Platte Public Schools, Church Council, and the North Platte Chamber. He has also coached his children's football, basketball, baseball, and soccer teams.His practice is concentrated in the areas of business transactions, estate planning, and probate. He represents numerous banks and creditors across the state of Nebraska.

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Governance Challenges in Today's Health Care Environment

John R. Holdenried

Julie A. Knutson

David W. Pederson,
Pederson & Troshyski, North Platte, Nebraska

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Governance Challenges in Today's Health Care Compliance Environment

Julie A. Knutson, Baird Holm
John R. Holdenried, Baird Holm
David W. Pederson, Pederson & Troshynski

Agenda

- Introduction and Brief Overview of Directors' Duties of Care, Loyalty and Obedience – John Holdenried
- Summary of Government Expectations of Boards for Compliance Oversight – Julie Knutson
- Panel Dialogue About Governance Challenges

The Role of the Board

Fiduciary Duties

- Duty of Care
  - Includes duty to oversee compliance
- Duty of Loyalty
  - Includes management of conflicts of interest
- Duty of Obedience
  - Includes attention to corporate mission and purpose

IRS Governance Guidance

- IRS : A well governed charity is more likely to obey the tax laws, safeguard charitable assets, and serve charitable interests than one with poor or lax governance

Best Practices for a Nonprofit Organization, Nebraska Attorney General's Office, Consumer Protection Division (2018)

- Grew out of AG Investigation of Goodwill
- Topics include:
  - Board size and diversity
  - Board training and orientation
  - Transparency in operations
  - Executive Compensation Policy
  - Conflict of Interest Policy
  - Making a difference and measuring outcomes

Government Expectations: A Consistently Rising Bar

- Updated Guidance on the Evaluation of Corporate Compliance Programs (April 30, 2019) Updated version of 2017 guidance
  - Used to vet compliance programs related to charging decisions by the DOJ
  - Provides additional detail and provides new emphasis on certain aspects of compliance programs:
    - Risk assessment
    - Codes of conduct
    - Employee discipline for compliance infractions
    - Culture of compliance

Government Expectations: A Consistently Rising Bar

- New DOJ Guidance on Cooperation Credit in False Claims Act Investigations (May 7, 2019) (based on Yates Memo issued September 9, 2015)
  - Outlines expectations for cooperation credit by a corporation including voluntary identification of individual who committed wrongdoing
  - General practice of no individual waivers of liability in settlement agreements
  - OIG parallel (unwritten) rule, will not release any entity or party that is has not investigated

New Guidance

- New Guidance adds to:
  - Practical Guidance for Health Care Governing Boards on Compliance Oversight (OIG: April 20, 2015)
    - Should be part of Board training
    - Discusses structure and process for compliance
    - Emphasizes compliance expertise by board members or access to expertise
    - Expectation that Board is actively engaged in overseeing compliance, not passive listeners
  - Measuring Compliance Program Effectiveness (OIG/HCCA: March 27, 2018)
    - A number of elements related to the Board including a recommendation for quarterly compliance reports to the Board

What Does It All Mean?

1. Communicate to the Board that expectations for compliance oversight have drastically increased and becoming much more specific. Provide copies of current guidance to the Board along with training.
2. Boards are expected to be generally well-informed about health care compliance and must either recruit members with compliance expertise or arrange for the availability of expertise.

What Does It All Mean?

3. Boards must be actively engaged in overseeing the compliance program and learning about the compliance risks and activities of the organization. This includes asking for particular information and reports and holding listening sessions with the compliance officer without senior management present.

What Does It All Mean?

4. Boards should specifically review the budget and other resources allocated to compliance and evaluate whether or not they are adequate for the size and complexity of the organization.

What Does It All Mean?

5. Boards should assure that the compliance program is objectively evaluated on a regular basis.
6. Boards should understand how the compliance program is rolled out to all levels of the organization.

What Does It All Mean?

7. Boards should receive reports of corrective actions taken as a result of compliance investigations, e.g., repayments, self-disclosures, disciplinary action.
8. Boards should be conversant on the principal compliance issues for their organization and the risk assessment process

Discussion Topics

- Can a Board delegate compliance to Finance (or other) Committee?

Discussion Topics

- Board should evaluate whether the organization is "modeling its own compliance and ethics programs on existing, well-regarded compliance and ethics programs and best practices of similar organizations."
- How does the Board do that?

Discussion Topics

- "Boards should develop a formal plan to stay abreast of the ever-changing regulatory landscape and operating environment." Necessary to:
  - Be in a position to ask more pertinent questions of management
  - Make informed strategic decisions
- How should Boards do this?

Discussion Topics

- "Boards can raise their level of substantive expertise with respect to regulatory and compliance matters by adding to the Board or periodically consulting with an experienced regulatory, compliance, or legal professional."
- How can rural Boards respond to this recommendation?

Discussion Topics

- "The Board may wish to consider conducting regular 'executive sessions' (i.e., excluding senior management) with leadership from the compliance, legal, internal audit, and quality functions to encourage more open communication."
- Does the Board hold executive sessions with compliance?
  - What goes on in executive session?
  - Who is present?

Discussion Topics

- "A Board may assess employee performance in promoting and adhering to compliance" which is then used to "either withhold incentives or to provide bonuses based on compliance and quality outcomes."
- Does the Board include compliance in evaluating the CEO? Is compliance considered when determining salary increases and bonuses?

Discussion Topics

- How does the Board demonstrate its commitment to compliance to the Government?
  - What's in the Board packet?
  - What's in the minutes?
  - How does the Board assess the compliance culture?

Legislative Update

Zachary J. Buxton

Sean T. Nakamoto

Legislative Update

Sean T. Nakamoto
Zachary J. Buxton

2019 Unicameral

- 106th Legislature, 1st Session
- January 9th through June 6th
- 739 bills introduced
- 257 signed by Governor Ricketts
- Overview of those impacting health care

Paging Dr. Speed

- LB8 - Allow physician medical directors to display certain vehicle lights as prescribed

Carol Blood
District 3

Paging Dr. Speed

- Amends Ch. 60 Motor Vehicles; Article 6 Nebraska Rules of the Road
- Physician medical directors can affix emergency lights to vehicle
  - Proper training
  - Authorized in writing by county sheriff
- Only applies to medical directors of EMS (NRS § 38-1210)

Fee Waivers under UCA

- LB112 – Provide for waiver of certain occupational and licensing fees as prescribed

Sara Howard
District 9

Fee Waivers under UCA

- Amends Ch. 38 Health Professions; Article 1 Uniform Credentialing Act
- Waives all fees for the initial credentials under the Uniform Credentialing Act for
  - Low-income individuals
  - Military families and
  - Young workers (18-25; some exceptions)
- Does not waive cost of fingerprinting and criminal background check

Nursing Facility CMP Cash Fund

- LB22 - Change provisions relating to the Nursing Facility Penalty Cash Fund

Mark Kolterman
District 24

Nursing Facility CMP Cash Fund

- Amends Ch. 71 Public Health and Welfare; Article 20 Hospitals
- Nebraska Dep't of Health and Human Services can assess CMPs against nursing facilities that violate federal regulations
- Prior statute limited use of funds to four (4) instances; LB22 mirrors broader language in Social Security Act and Medicaid regulations

Telehealth

- LB29 – Provide and eliminate telehealth provisions

Mark Kolterman
District 24

Telehealth

- Amends Ch. 38 Health Occupations and Professions; Article 1 Uniform Credentialing Act
- Allows providers to establish provider-patient relationship through telehealth
- Providers can prescribe drugs to patients through telehealth
- Repealed NRS § 38-2063

Trichomoniasis Education

- LB62 – Provide for education regarding and treatment of trichomoniasis

Sara Howard
District 9

Trichomoniasis Education

- Amends Ch. 71 Public Health and Welfare; Article 5 Diseases
- Allowed physicians, physician assistants, nurse practitioners, and midwives to prescribe or provide treatments for sexual partners of patients with:
  - Chlamydia
  - Gonorrhea
- Adds trichomoniasis

Pharmacy Technicians

- LB74 – Provide for validation by certified pharmacy technicians

Matt Williams
District 36

Pharmacy Technicians

- Amends Ch. 38 Health Occupations and Professions
- Amends the supervision of pharmacy technician provisions, allowing pharmacy technicians to validate stocks of prepackaged medications in automated medication systems or medication carts using certain verifiable technology

Peer Review

- LB119– Provide for confidentiality and immunity for professional health care service entities

John Arch
District 14

Peer Review

- Amends the Health Care Quality Improvement Act
- Adds professional health care service entities to the health care providers covered under the Health Care Quality Improvement Act

Patient Safety Cash Fund

- LB25 – Provide for creation of the Patient Safety Cash Fund

Mark Kolterman
District 24

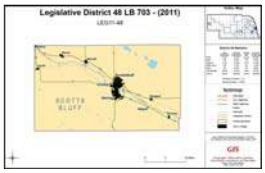
Patient Safety Cash Fund

- Amends Ch. 38 Health Occupations and Professions
- Implements a $50 Patient Safety Fee for physicians; $20 for physician assistants
- Patient Safety Cash fund shall only be sued to support the activities of a patient safety organization

EMS Students

- LB135 – Relating to students in emergency medical services training

John Stinner
District 48



EMS Students

- Amends Ch. 38 Health Occupations and Professions
- Allows students enrolled in out of state EMS education programs to practice clinical training rotations in Nebraska

Pharmacy Benefit Fairness and Transparency Act (PBFTA)

- LB316 – Protects pharmacies for providing cost information to patients

Mark
Kolterman
District 24

Pharmacy Benefit Fairness and Transparency Act (PBFTA)

- Pharmacists or contracted pharmacies shall be protected from penalties or removal from a network or plan for sharing cost, price, or copayment information with a covered individual or their caregiver
- Insurers offering health plans that cover prescription drugs cannot require a covered individual to pay an amount that exceeds the lesser of:
  - Covered individual's copayment, deductible, or coinsurance for the drug; or
  - The amount any individual would pay for the drug in cash.

Changes to the PDMP

- LB556 – Provide for changes to the PDMP

Sara Howard
District 9

Changes to the PDMP

- Provides for multiple changes designed to make the PDMP more interoperable with state agencies, other state HIEs and PDMPs, and federal healthcare organizations
- Adds an exemption for hospice and palliative care or a cancer diagnosis

Questions?

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What's Up with Medicare?

John R. Holdenried

Kimberly A. Lammers

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What's Up With Medicare?

John R. Holdenried
Kimberly A. Lammers

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicare and Medicaid Innovation (CMMI)

- Authorized by Affordable Care Act ACA
- Tasked with designing and testing new health care payment models to address rising costs, improve quality of care, and reduce inefficiencies in spending

Center for Medicare & Medicaid INNOVATION

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CMMI

- Has authority to expand the scope and duration of a model being tested through rulemaking, including the option of testing on a nationwide basis
- Models must either reduce spending without reducing quality of care, or improve quality of care without increasing spending, and must not deny or limit coverage or provision of any benefits

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CMMI

- Current **priorities**:
  - Testing new payment and service delivery models, including Quality Payment Program Advanced Alternative Payment Models
  - Evaluating results and advancing best practices
  - Engaging a broad range of stakeholders to develop additional models for testing

Seven Categories

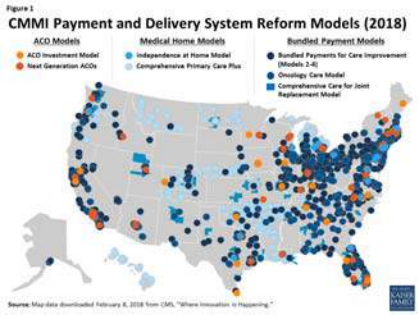
- Accountable Care
- Episode based payment
- Primary care transformation
- Initiatives for Medicaid population
- Initiatives focused on enrollees
- Initiatives for best practices
- New service delivery models

Innovation Models

- 45 Ongoing
- 20 Various stages of development
- 26 No longer active

Center for Medicare & Medicaid INNOVATION

Payment Innovation Models



What's in Nebraska?

- Advance Payment ACO Model – SERPA-ACO, LLC (upfront & monthly payments)
- Bundled Payment Care Initiatives (defined episodes of care)
  - Bryan, St. Elizabeth, Methodist, Nebraska Spine, OrthoWest, Alegent
- Bundled Payment Care Initiatives, Model 2
  - Good Samaritan, St. Elizabeth

What's In Nebraska?

- Comprehensive Primary Care Plus (aligned with BCBSN, includes care management fees and a performance-based incentive)
  - Physician groups in Fremont, Omaha, Lincoln, Lexington, Hastings, McCook, David City, South Sioux City, Papillion, Kearney, Grand Island, York, North Platte, Columbus, Ogallala

What's In Nebraska?

- FQHC Advanced Primary Care Practice Demonstration – Gering (patient centered medical home in FQHC)
- Oncology Care Model –Omaha
- Rural Community Hospital Demonstration – Columbus
- Strong Start for Mothers and Newborns Initiative – Bellevue

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What's in Nebraska?

- Medicare Shared Savings Program—statutory rather than CMMI, but demonstration models added
  - 5 based in Omaha
  - 3 based in Lincoln

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Regulatory Sprint to Coordinated Care

Alex M. Azar, II (R)
Secretary, HHS

- Four priorities for HHS:
  - Individual health insurance market
  - Prescription drugs
  - Opioid crisis
  - Value and outcomes over procedures and spending

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Regulatory Sprint to Coordinated Care

"Our country's **thicket of health care regulations** has gotten in the way of each of these [four] goals in complicated ways, and HHS has committed itself to solving this problem."

Eric Hargan (R)
Deputy Secretary, HHS

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Why is HHS Sprinting?

- Coordination of care
  - Involves referrals of patients along a continuum of care
  - Often involves remuneration between or among providers coordinating care
  - Remuneration is often value-based

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Regulatory Sprint to Coordinated Care

- Attempting to alleviate regulatory impediments to coordinated care "as soon as possible"
- Proposed Stark Rule – Modernizing and Clarifying the Physician Self-Referral Regulations (CMS-1720-P)
  - "This rule is necessary to facilitate the successful transition from volume-based to value-based payment for health care services and promote care coordination among health care providers and suppliers . . . This rule is also necessary to bring needed clarity and flexibility for parties subject to the physician self-referral law's prohibitions on referrals and Medicare claims submission."
- Notice of Proposed Rulemaking for Anti-kickback Statute – OIG proposals for Revisions to the Safe Harbors under the Anti-Kickback Statute and Beneficiary Inducements Civil Monetary Penalties Rules Regarding Beneficiary Inducement

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Comments from Requests for Information

- Transition to value-based care delivery and payment
- Increasing cybersecurity threats
- Need for guidance and clarity on key terminology and agency policy
- Flexibility for non-abuse arrangements
- Reconsider statutory intent and give meaning to certain statutory exceptions to Stark Law
- Permit beneficiary supports
- Consider rural providers and patients

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Drug Pricing

- Proposed rule to eliminate discount safe harbor protection for formulary rebates
- **HHS Secretary Azar's Keynote Address**:
  - "Any approach to drug pricing that does not tackle the issue of rebates – whether through our proposed approach or otherwise – will simply not get list prices down. If you stand for rebates, you stand for ever-higher list prices, and against transparency and lower patient out-of-pocket costs at the pharmacy. It's that simple."

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Substance Abuse Treatment

SAMHSA

- Concern that impact of Part 2 may be impeding high quality care, particularly in light of opioid crisis
- Providers are hesitant to include information on substance abuse disorders in medical records for fear of inadvertent disclosure in violation of Part 2
- Proposed rules are pending – currently under review at OMB

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Reducing Regulatory Burden

- CMS has been seeking input from providers regarding how to reduce regulatory burden on providers
- HHS Secretary Azar states CMS will continue to "take a bold approach to reforming regulations"

Change in Attitude Toward Providers

- Goals of CMS Administrator Selma Verma:
  - Simplify Medicare requirements
  - Make them easier to understand
  - Get rid of requirements no longer needed
  - Seek input from stakeholders (focus groups)
  - Challenge the way things have always been done

Telehealth

- CMS has expanded ability to use telehealth, although are still limits that prevent reimbursement for full utilization
- CMS has developed "Telehealth Analyzer" tool to help providers verify whether a site meets requirements as an originating site
- Must not fall within MSA or if it is within MSA, must be in a rural area and be in a Primary Care or Mental Health geographic HPSA

Medicare Telehealth Payment Eligibility Analyzer

- Link to Analyzer website:
- https://data.hrsa.gov/tools/medicare/telehealth

Medicare Telehealth Payment Eligibility Analyzer

- Check if an address is eligible for Medicare telehealth originating site payment:
- Input address: 601 W Leota St., North Platte, NE, 69101
  Geocoded address: 601 W Leota St, North Platte, Nebraska, 69101
- Yes
- **Yes, the geocoded address is eligible for Medicare telehealth payment**.

Questions

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Health Law Forum

Latest Trends and Developments in Employment Law

Scott S. Moore

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Lights…Camera…HIPAA?

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Abigail T. Mohs

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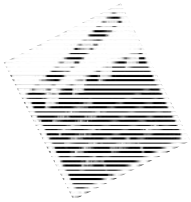
Lights…Camera…HIPAA?

Michael W. Chase
Abigail T. Mohs

Agenda



- Common hypotheticals
- Where does HIPAA come in?
- Practical takeaways
- Things you might not have thought about
  - But are (most likely) happening in most facilities

Remember This?

Utah nurse reaches $500,000 settlement in dispute over her arrest for blocking cop from drawing blood from patient

https://www.sltrib.com/news/2017/10/31/utah-nurse-arrested-for-blocking-cop-from-drawing-blood-from-patient-receives-500000-settlement/

30+ Minutes of Body Cam Footage

https://www.youtube.com/watch?v=9Piuenvb-Zg

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Did You Hear About This One?

This Unlicensed Surgeon Filmed Rap Videos While Operating on Her Patients

Videos show Dr. Windell Boutte singing and dancing to everything from "Bad and Boujee" to "Brick House" while her patients appear unconscious on the operating table.

https://www.vice.com/en_us/article/a3aepz/doctor-windell-boutte-music-videos-malpractice-georgia-vgtrn

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Obviously…

The New York Times

Doctor Who Danced During Surgery Is Suspended by Georgia Medical Board

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But What About HIPAA?

- Photographs, videos and recordings contain PHI
- All of the usual HIPAA rules and protections apply
- Where is the organization recording?
- Who is allowed to record?
- How will you respond to requests for recordings?
- What *all* is being recorded?

Surveillance Videos

Surveillance Videos

- Common areas – hallways, activity rooms, waiting rooms, cafeteria, vending area, parking lot, entrance/exit
- Non-treatment areas – nursing stations, business office
- Treatment areas – exam/procedure rooms, consult rooms
- Where do patients, employees, visitors, contractors have an expectation of privacy?

Hit and Run in the Parking Lot

- It's 8:00 on Monday morning and your HIM department receives a call from the local police department. Allegedly, there was a hit and run that occurred in the hospital parking lot when a patient was being picked up after an infusion treatment on Saturday night
- Police want the license plate number and make/model of a white pickup truck
- They ask for a copy of the video from 8:00 p.m. Saturday to 8:00 a.m. Sunday

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Protected Health Information (PHI)

- Names (of individual and household/family members)
- Geographic subdivisions smaller than a State
- All elements of dates (except year) for dates directly related to an individual
- Telephone numbers
- Fax numbers
- E-mail addresses
- Social Security numbers
- Medical record numbers
- Health plan beneficiary numbers
- Account numbers
- Certificate/license numbers
- **Vehicle identifiers and serial numbers (including license plate)**
- Device identifiers and serial numbers
- Web URLs
- IP addresses
- Biometric identifiers
- **Full-face photographic images**
- Any other unique number, characteristic or code

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Identification and Location Exception?

- 45 CFR 164.512(f)(2): may disclose PHI
  - *In response to a law enforcement official's request* for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person.
  - May only disclose the following information:
    - Name and address
    - Date and place of birth
    - Social Security Number
    - ABO blood type and rh factor
    - Type of injury
    - Date/time of treatment
    - Date/time of death
    - Description of physical characteristics
    - May not disclose DNA, dental records, or analysis of body fluids (e.g., blood alcohol)

No license plate?

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Law Enforcement Requests

- In compliance with
  - Court order, court-ordered warrant, or a subpoena or summons issued by a judicial officer
  - Grand jury subpoena
  - Administrative request (subpoena, summons, civil investigative demand), provided that
    - **The information sought is relevant and material to a legitimate law enforcement inquiry; and**
    - **The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which it is sought; and**
    - **De-identified information could not reasonably be used**.

DOCUMENT!

What If...

- After completing her shift and getting in her car to head home, a clinic nurse sees her last patient storm out of the back door, grab an object from his pocket, and casually walk down a line of cars scratching every car on the way
- The clinic has a surveillance camera showing everyone who enters and exits the building
- Can the clinic turn over the surveillance video to law enforcement?
  - What about all of those other individuals on the video?

Crime on Premises Exception

- May disclose PHI that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises
- Do you need to disclose the whole video?
  - A screenshot?
- Nebraska Wounds of Violence Reporting
  - LB 677 (March 2012)
  - Assault on a health care professional

Teenager attacked while waiting in emergency room

Surveillance footage caught a teenager getting brutally attacked in an emergency room in Michigan.

Updated:

https://www.nbc-2.com/story/37853066/teenager-attacked-while-waiting-in-emergency-room

Other Requests (Individual or Attorney)

- Is it possible to obtain the patient's HIPAA authorization?
- If not, they will likely need a subpoena or court order
- What if the video includes multiple/many patients?
  - You might need to object to the subpoena
  - Judge might ask/order that the video is reviewed in chambers

Surveillance Takeaways

- Balance between patient privacy needs and organizational safety/security
- Most requests for surveillance footage will require a subpoena or court order
- Recording device security issues
  - Include in Security Risk Analysis process
  - Firewalls? Anti-virus software? Back-ups?
  - Who can access the recordings?

Body Cameras

Body Cameras

- Seemingly widespread adoption by law enforcement agencies
- Useful for criminal investigations and influencing officer behavior
- But how do facilities control when the cameras are turned "on" within the facility?

Disorderly Patient Accompanied by Law Enforcement

- The hospital is used to its most interesting patient encounters happening on weekend nights, and this Saturday was no different. Two law enforcement officers brought in a belligerent patient who had been involved in a fight at a popular bar. It's safe to say the injuries confirmed that account. The ED staff knows law enforcement is wearing body cameras, but there is another patient nearby who is being wheeled to imaging
- ED staff isn't sure…should they tell the officers to turn off the body cam? Can they?

HIPAA Implications?

- Law enforcement is appropriately accompanying the belligerent patient
- BUT, the hospital has an obligation to reasonably safeguard PHI
- What is reasonable?

Similar but Different Circumstances

- The hospital calls law enforcement (disclosures required by law, crime on the premises, etc.) and law enforcement reports to the hospital with the body camera actively recording
- Law enforcement brings in a patient who is not acting in a combative manner, but law enforcement's body camera is recording
- Others?

Body Camera Takeaways

- Cultivate a good working relationship with law enforcement
  - Could help law enforcement assist in avoiding other patients/information
  - Could help limit the further disclosures, if certain PHI is unintentionally captured
- Determine if (and under which circumstances) the organization will request law enforcement to limit the use of body cameras

Patients and Visitors Recording

The Prudent Patient

- A divorcee in her mid fifties is undergoing an operation where she will be put under general anesthesia. Her 21 year old son is responsible to drive her home, but because of the nature of the procedure, she doesn't want to "creep him out" and have him attend any pre- or post-operative appointments
- The physician begins to explain possible complications and she stops him so she can ask Siri to "start recording audio"

Visitors Without Boundaries

- A resident at a nursing facility has a teenage granddaughter who loves all things social media, but especially Snapchat. She regularly "snaps" pictures and videos of the patient, who just loves it. Unfortunately, some of these snaps are in the dining hall and common/activities room
- Another resident's son is annoyed by this and doesn't want his father recorded

Implementing a Process

- Develop a Policy
  - Determine what's permitted practice (e.g., photos or videos of births, FaceTime while patient is awake)
  - Determine what's prohibited practice (e.g., recording of procedures, photographing other patients)
    - Are there exceptions?
- Post signs
- Determine enforcement strategy

Employees as Visitors

- You have trained your workforce on the importance of protecting PHI at work
- But, what if they're not at work?
  - Employees may visit friends and families who are being treated (or reside at) at the facility
  - It's not abnormal to take pictures of and with friends and family
  - But, what if another employee sees a Facebook post and doesn't understand the personal connection?

Patient/Visitor Recording Takeaways

- Establish a video/photography policy...and be ready to enforce it!
- Determine how your facility will train on/address employees who are recording while they are visitors

What Else is Being Recorded?

The Guardian

Apple contractors 'regularly hear confidential details' on Siri recordings

Workers hear drug deals, medical details and people having sex, says whistleblower

Alex Hern

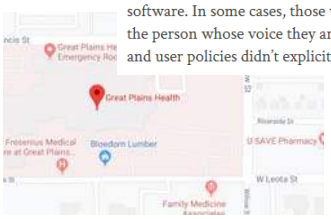
"Sometimes you can definitely hear a doctor and a patient, talking about the medical history of the patient."

https://www.theguardian.com/technology/2019/jul/26/apple-contractors-regularly-hear-confidential-details-on-siri-recordings

Amazon to let Alexa users delete voice commands in privacy push

Bloomberg May 30, 2019 0

Bloomberg reported last month that some Amazon employees listen to users' voice recordings as part of an effort to improve the software. In some cases, those workers can access the location of the person whose voice they are transcribing. Amazon's privacy and user policies didn't explicitly disclose either practice.



Alexa, etc.

- Hospital-owned? Patient-owned? Workforce-owned? All need to be addressed
- Security Risk Analysis
- Bring Your Own Device (BYOD) policies
- In-room policies for most likely patient group(s)

Key Takeaways

- Remember, all of the usual HIPAA protections apply to photographs and audio/video recordings
- Carefully evaluate use of photography and video
  - By the organization
  - By visitors/patients/law enforcement
- Don't forget about the HIPAA Security Rule
- How to respond for requests for recordings
- Train staff accordingly

Questions?

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Accommodations in Health Care Delivery: Auxiliary Aids, Interpreters, Translators, and Service Animals

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Accommodations in Health Care Delivery: Auxiliary Aids, Interpreters, Translators, and Service Animals

Zachary J. Buxton

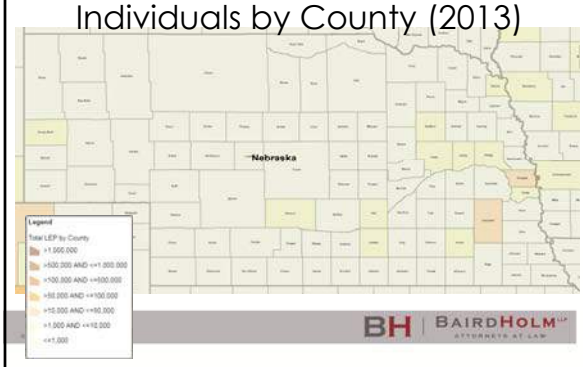
Goals

- Respond to requests for interpreters, translators, and auxiliary aids in a compliant manner
- Familiarity with federal laws governing accommodations in health care
- Identify gaps in accessibility in facility, exam rooms, and medical equipment
- Generally familiar with service animals and your facility's obligations

Providing services to limited English proficient (LEP) individuals

INTERPRETERS & TRANSLATORS

Nebraska: Total # of LEP Individuals by County (2013)



Legal Framework

- Title VI of the Civil Rights Act of 1964
  - Race, color, and national origin
- Section 1557 of the ACA
  - Nondiscrimination in health care
- "Federal financial assistance" = Medicare Part A or Medicaid

Current Section 1557 Regulations

- Current obligations for "meaningful access" for individuals with LEP (45 CFR § 92.201)
  - Free of charge
  - Use of qualified interpreters and translators
  - Restrictions on certain individuals as interpreters/translators
  - Permitted to use video remote interpreting (VRI)

Proposed Section 1557 Regulations

- Proposed obligations for "meaningful access" for individuals with LEP (45 CFR § 92.101)
  - OCR will balance four factors to evaluate compliance
  - Same requirements as existing regulations (free, qualified, and limits on certain individuals)
  - Removes VRI option
  - Four factors biggest change

Pro Tips for Contracting

- Difference between interpreters and translators
  - Pricing structure
- Appropriate certifications
  - The National Board of Certification for Medical Interpreters
  - Certification Commission for Healthcare Interpreters
- Areas of expertise
- Qualifications
  - Master, novice, or some other indication of proficiency
  - English → Spanish and Spanish → English
- Continuing education
- Requirement for hours of interpretation/translation

Evaluating Vendors

- What baseline qualifications do you require your linguists to have?
- How often do you assess your linguists or vet their work?
- How do you determine whether a linguist is qualified for a job?
- Do you keep records of client complaints?
- How do you address client complaints?

Source: https://www.lep.gov/resources/TRUST%20ME%20I'M%20CERTIFIED%20_%203-19-14%20_%20508.pdf (last visited August 3, 2019)

Evaluating Vendors (cont.)

- What is your insurance coverage?
- How do you verify your linguists have and maintain certification?
- What remedy do you offer clients if a linguist makes an error?
- What happens to a linguist if he/she has made substantial errors?

Source: https://www.lep.gov/resources/TRUST%20ME%20I'M%20CERTIFIED%20_%203-19-14%20_%20508.pdf (last visited August 3, 2019)

Evaluating Vendors (cont.)

- How do you identify languages?
- Can you commit to specific connection times and on-demand services?
- How do you maintain the quality of your services?
- If necessary, are you willing to be subject to intermittent testing throughout the term of the contract?

Source: https://www.lep.gov/resources/TRUST%20ME%20I'M%20CERTIFIED%20_%203-19-14%20_%20508.pdf (last visited August 3, 2019)

Pro Tips for Practitioners

- Maintain eye contact with patient; not interpreter
- Record interpreters name and any identifying information in m/r
- Be aware of indicators of low quality
  - Patient appears to be confused
  - Frequent use of English words by interpreter
  - Your explanation is long; interpretation is short
- Pause after 1-2 sentences for interpretation
- If necessary, end the session and request another interpreter (if over the phone)
  - Request administration follow-up with service and communicate concerns

Takeaways

- If language services are offered, must be free of charge
- Costs for compliance
  - Translation is expensive; interpreters $45-$150 per hour, with hourly minimums
- Consider training for staff and practitioners
  - Language cards, how to access interpreter line
- Language access plan is optional
- Evaluate vendor capabilities prior to contracting
- New Section 1557 regulations, if adopted, will lower risks of noncompliance

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Providing services to individuals with disabilities

AUXILIARY AIDS

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Legal Framework

- Section 504 of the Rehabilitation Act of 1973
- Title II of the ADA
  - State and local governments (county hospitals)
- Title III of the ADA
  - Public accommodations (all hospitals, including county hospitals)
- Section 1557 of the ACA
- "Federal financial assistance" = Medicare Part A or Medicaid

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Current & Proposed Section 1557 Regulations

- No significant changes between current and proposed Section 1557 regulations
  - Current: 45 CFR § 92.202
  - Proposed: 45 CFR § 92.102
  - Both apply Title II regulations for use of auxiliary aids (28 CFR §§ 35.160-35.164)
  - Restrictions on who can serve as interpreter (Overlake Medical Center)

Auxiliary Aids: Deaf or Hard of Hearing

- Interpreters
  - Sign language (ASL v. signed English/signed exact English)
  - Cued speech transliteration
  - Oral translation
- Permits VRI
- Notetakers
- Assistive listening devices/systems
- Videotext displays

Auxiliary Aids: Blind or Low Vision

- Qualified readers
- Audio recordings
- Taped texts
- Large print materials

Situational Examples from DOJ Settlement

- Discussing a Patient's symptoms and medical condition, medications, and medical history, including medical, psychiatric, psychosocial, nutritional, and labor and delivery
- Explaining a Patient's diagnosis or prognosis and recommendation for treatment
- Explaining medical procedures to be selected by the Patient or used, including tests, treatment, treatment options or surgery
- During labor and delivery, in both the labor room and the delivery room

Failure to Provide Interpreter

- Highline Medical Center
  - Deaf patient requested ASL interpreter pre- and post-surgery, in addition to certain times throughout 3-day hospital stay
  - Interpreter present prior to surgery but only intermittently afterwards
  - $45,000 total settlement

Reliance on Family Members

- Overlake Medical Center
  - Deaf patient requested sign language interpreter and OMC did not honor request
  - Mother interpreted for patient, hospital stopped attempts to locate interpreter
  - OMC policy only allowed one family member in delivery room; patient's SO not allowed in delivery room
  - $200,000 in total penalties

Improved Staff Training

- Seminole Neurology Associates, P.A.
  - Patient contacted physician's office through a relay interpreter
    - Receptionist: "Will you need an interpreter?"
    - Patient: "Yes."
    - Receptionist: "You will need to provide your own interpreter."
    - Patient: "No, that's your office's responsibility."
    - Receptionist: "No." *click*

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Takeaways

- What's your preference? Just ask!!!
- Requests for auxiliary aids applies to patient's companions as well (e.g., deaf husband of pregnant patient)
- Document in patient's medical record
- Staff and provider training
- "Primary consideration" to the patient's request for auxiliary aids

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Providing services to individuals with disabilities

ACCESSIBLE EXAM ROOMS & MEDICAL EQUIPMENT

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Legal Framework

- Section 504 of the Rehabilitation Act of 1973
- Title II of the ADA
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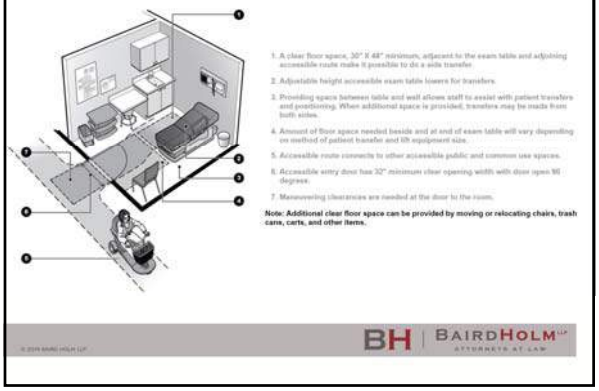
Accessible Exam Rooms

- "Access to Medical Care for Individuals with Mobility Disabilities"
  - Joint publication between the US DOJ and US DHHS
- Width of doors
- Adequate space in room for 360° turns in wheelchair
- Adequate space to transfer to exam table

Accessible Medical Equipment

- Adjustable height exam tables
- Transferring patient to exam table
- Radiologic equipment
- Mammography equipment
- Scales



1. A clear floor space, 30" X 48" minimum, adjacent to the exam table and adjoining accessible route make it possible to do a side transfer.
2. Adjustable height accessible exam table lowers for transfers.
3. Providing space between table and wall allows staff to assist with patient transfers and positioning. When additional space is provided, transfers may be made from both sides.
4. Amount of floor space needed beside and at end of exam table will vary depending on method of patient transfer and lift equipment size.
5. Accessible route connects to other accessible public and common use spaces.
6. Accessible entry door has 32" minimum clear opening width with door open 90 degrees.
7. Maneuvering clearances are needed at the door to the room.

Note: Additional clear floor space can be provided by moving or relocating chairs, trash cans, carts, and other items.

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5. Exam surface may articulate to provide support during patient transfers and positioning
6. Rails/armrests can be moved for transfers
7. Rails can be added beside the table surface to assist transfers, provide support, or prevent falls
8. Space to position a wheelchair alongside table is critical for transfer

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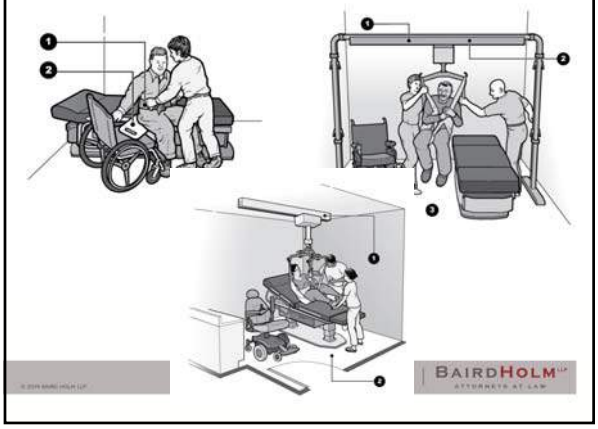

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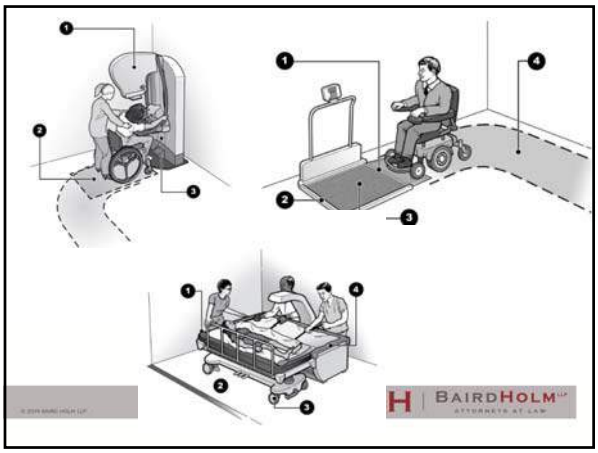

Takeaways

- Do you require any assistance? What's your preference? Just ask!!!
- Every exam room does not need to be accessible; consider reverse furniture layout in one room
- Staff training
- Where is adaptable medical equipment?

"Ma'am, you can't bring that goat in here."

SERVICE ANIMALS: THE GAMESHOW

Open your smartphone browser and go to
live.voxvote.com
and enter the following code
PIN: 64954
Alternative: Scan this QR-code and you are immediatly logged in

Alternative: Download the VoxVote app from

Service Animals: The Gameshow

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Questions, comments, or recommendations?

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The Last Word

Sean T. Nakamoto
(Moderator)

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The Last Word

Panel of Baird Holm Attorneys

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The Travel Act

Zach Buxton

Travel Act: What's Old is New Again

- Forest Park Medical Center in Dallas, Texas
  - Physician-owned hospital
- Government alleged *quid pro quo* payments between FPMC and physician-owned entities disguised as "marketing services agreements"
  - Also paid chiropractors, lawyers, and workers comp specialists to refer patients to FPMC
  - Over $40 million in payments in exchange for referrals

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Travel Act: What's Old is New Again

- Majority of patients referred had commercial health insurance (United, Cigna, Aetna)
- Travel Act violations predicated on violation of state law; In Nebraska, likely commercial bribery law (NRS § 28-613(c) or (d))

Takeaways

- Although novel, DOJ using theory in other cases
- Update fraud and abuse training to include Travel Act
- FPMC had bad actors; risk is low if you're not blatantly paying for referrals

New CMS Co-Location Rules

Sean Nakamoto

Why Now?
New Guidance from CMS

- **May 3, 2019:** CMS issued national draft guidance regarding shared space arrangements after several years of uncertainty
- Guidance is available at: https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO-19-13-Hospital.pdf

Distinct Spaces

- **Requirement:** Hospital must have defined and distinct spaces of operation for which it maintains control at all times
  - Including clinical spaces designated for patient care
- Why are distinct spaces necessary for the protection of patients?
  - Right to personal privacy
  - Right to receive care in safe environment
  - Right to confidentiality of patient records

Shared Spaces

- **Shared Spaces:** Public spaces and public paths of travel utilized by both the hospital and the co-located healthcare entity are permitted
- Sharing or travel through a clinical space of a hospital by another co-located entity is **not acceptable**
  - Clinical Space: Any non-public space in which patient care occurs

Public Space

- Lobby
- Reception areas (but registration areas must be separate)
- Waiting rooms
- Hallways through separated clinical areas
- Public restrooms
- Cafeterias
- Gift shops
- Elevators
- Main corridors
- Main entrances
- Staff breakrooms and lounge areas

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Clinical Space

- Inpatient units
- Observation units
- Hallways through inpatient/observation units
- Exam rooms
- Nurses stations
- Operating rooms
- PACU
- Emergency Department
- Therapy departments
- Imaging department
- Outpatient clinics
- "Check-in Area" (registration)

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Emergency Services

- **Requirement:** Hospitals without emergency departments must have appropriate policies and procedures to address individual emergency needs at all times
- Policies and procedure should include:
  - Identifying when a patient is in distress
  - How to initiate an emergency response
  - How to initiate treatment
  - Recognizing when patient must be transferred to another facility to receive appropriate treatment

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Emergency Services

- **Requirement:** Emergency policy and procedures must reflect potential emergency scenarios typical of the patient population a hospital routinely cares for

Emergency Services

- Contracting with a co-located hospital for code teams or rapid response teams to appraise and initiate treatment of patients in an emergency is permitted
  - **BUT ONLY** when the contracted staff are not working or on duty simultaneously at that other hospital
- If a hospital "contracts for emergency services" with another hospital's emergency department, hospital considered to provide emergency services and must meet requirements of EMTALA

Emergency Services

- Appropriate Transfer in an Emergency
  - It is acceptable for a hospital to refer or transfer patients with emergency conditions to co-located hospitals if transferring hospital cannot provide care beyond initial emergency treatment

Survey Procedures: Emergency Services

- Surveyors consider the following:
  - Does hospital respond to its own in-hospital emergencies, with its own trained staff?
  - Does hospital have emergency equipment in the event that patient requires resuscitation?
  - Is hospital staff properly trained in use of emergency equipment?
  - Is emergency equipment properly maintained?
  - Is hospital staff properly trained for appraisal of emergencies, initial treatment, and referral when appropriate?

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Survey Procedures: What if a Deficiency is Found?

- If deficiencies are identified, deficiencies will be assessed under particular CoP and the governing body CoP
  - Why? Governing body is responsible for oversight of all contracted services provided in the hospital
- Could also result in deficiency under QAPI CoP

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Labor and Employment Policy Considerations

Scott S. Moore

Things to Consider

- Video and Audio Recordings
- Access to Public Areas
- Unauthorized Use of Your Logos

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OPPS
Proposed Requirement to Publish Negotiated Rates

Abby Mohs

OPPS and Negotiated Rates

- Proposed Rule
  - Publication date August 14, 2019
  - Comments due September 27, 2019
- Price Transparency
  - Executive Orders
- Affordable Care Act as Authority
- Anticipated Legal Challenges

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Denials Alert: Address Claim Denials for Off-Campus Locations

Kimberly A. Lammers

Claim Edits Update

- CMS will "go live" with claim edits based on provider locations in October
- Will reject and return claims with addresses that are not exact matches
- In prior pilot testing, CMS turned on edit for one billing cycle, but then turned off edit so claims processed

Denial Reason Codes

- 34977 – Claim service facility address does not match provider practice file address
- 34978 – Off-campus provider claim line that must have a PN or PO (*Not applicable to CAHs)
  - Modifier PN = Non-excepted off-campus provider-based departments
  - Modifier PO = Excepted off-campus provider-based departments

Common Denial Examples

- Enrollment information and claims information must be exact match
- "Road" in enrollment information but "Rd" or "Rd." on claim form
- "Suite" in enrollment information but "STE" on claim form

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