

HEALTH CARE ALERT

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Home Healthcare Worker Violates HIPAA and Steals Protected Health Information: Due Diligence of Employees and Mandated Criminal Background Checks

In Lee County Florida, a home healthcare nurse stands accused of stealing from her elderly patients. Police investigators say that the nurse opened fraudulent credit card accounts under the names of at least eight of her patients. Computer and transaction records indicate that she used stolen or fraudulently obtained credit cards to purchase electronics and gift cards, and undertook expensive car repairs to her personal vehicle. The nurse has been charged with criminal use of personal information and exploiting the elderly.

With in-home care of the elderly and other vulnerable persons a burgeoning part of the healthcare sector, state and federal regulators are increasingly concerned about the potential for the financial or physical exploitation of patients. For this reason, criminal background checks and drug testing of employees, while in many cases still a voluntary measure for home-healthcare service providers, may become a mandatory part of the pre-employment screening process for many home healthcare workers.

At the federal level, many people who deliver home healthcare will fall under a new program in the Patient Protection and Affordable Care Act (ACA) that will pay for background checks for any nurse, therapist or aide who provides care for a long-term-care patient. While the program is voluntary at this time, Centers for Medicare and Medicaid Services (CMS) officials indicate that states should consider planning for a potential mandate, noting that CMS recently made background checks mandatory for hospice workers. Another section of the ACA currently offers states up to \$3 million in matching grants to carry out screening programs.

Many states already require mandatory background checks for home health workers, though the types of workers subject to the checks vary widely from state to state. In some jurisdictions, the checks apply only to home health aides, while others apply them to RNs and LPNs as well. The legal trend, however, is toward inclusion of all persons who come into contact with a patient. This, and the potential for mandatory federal checks under CMS, should give all home healthcare providers cause to assess their use of pre- and post-employment criminal background checks and drug screenings and see that they are in compliance with all applicable state and federal laws.

For further information on this topic, please do not hesitate to contact any of Roetzel's Corporate Compliance and Health Care attorneys.

Brian E. Dickerson
Practice Group Manager
White Collar Litigation & Corporate Compliance
202.570.0248 | bdickerson@ralaw.com

Anthony J. Calamunci
419.254.5247 | acalamunci@ralaw.com

James L. Ervin, Jr.
614.723.2081 | jervin@ralaw.com

Amanda M. Knapp
216.615.7416 | aknapp@ralaw.com

Thomas M. Larned
202.697.4892 | tlarned@ralaw.com

Nicole Hughes Waid
202.906.9572 | nwaid@ralaw.com