

SHORTS

ON LONG TERM CARE

Poyner Spruill LLP's International Award-winning Newsletter for the North Carolina LTC Community

Thursdays with Mama

By Ken Burgess

Life has a rhythm, a symmetry, a meter, a metric. It's rarely smooth or perfect. It's knots and knuckles, bumps and bruises. It's rough and tumble. It sings its own song in its own time.

As a kid growing up in a small southern town in North Carolina, I lived for Saturdays. Saturdays, after we kids helped clean the house, and the grass was cut, and whatever other chore our over-worked Mama and Daddy could think up was done, it was play time. No homework, no obligations. Just play.

But as much as I lived for Saturdays, my favorite day was Thursday. On Thursdays, I'd get home from school and do my homework right away. On any given Monday, Tuesday or Wednesday, I'd find any excuse to do homework later. I was a straight "A" student but, like with any kid, homework was an interruption in my after-school, weekday joys. But on Thursday, I raced home, did my homework, and waited.

About 5:30, Mama would come in from her long day's work in Rocky Mount, eight miles away, as a bookkeeper for an office supply company. She'd drive that long eight miles, bone tired, quickly change clothes, and then just she and me would drive back to town to buy our family's groceries for the week. Just me, Mama and the Big Star grocery store. I pushed the buggy and Mama shopped. It took me years to question why Mama drove eight miles home, to fetch me, just to drive back to town, a half-mile from where she worked all day, to get groceries. That must have added another two hours to her already long day.

Back then, that never crossed my mind. All I remember is waiting for Mama to get home on Thursday to pick me up and heading straight to the Big Star. We'd search for whatever was on sale. One day, we saw an old man wearing a tan raincoat – it wasn't raining. Then, we heard a commotion. Turns out that old fella tried to steal a batch of collards, hiding them under his raincoat. He got caught. Even at nine, I realized those collards couldn't have cost more than a buck, less than I made cutting the neighbor's grass.

But we had shopping to do. Our family of five depended on me and Mama to come home with food for a whole week. Every shopping day, there were certain things we had to have, unless the prices got too high. Chicken, a pot roast, carrots, potatoes, green beans, and Campbell's Chicken Noodle Soup.

When I turned 16, I got a work permit which allowed me to leave my job at the fast-food restaurant and get a job where they sold beer and wine. I got a job at the Big Star. On Thursdays I'd look up from the end of the



long silver sloping checkout counter where I bagged groceries from 5 until 10 p.m. and I'd see Mama coming in. She looked awful lonely without me there to help her shop. I used to wonder if she'd forget the Campbell's Chicken Noodle Soup without me there to remind her. When she'd check out, she'd always get in my line. I could check her haul and make sure everything was there for Sunday lunch.

On Sundays for as long as I can remember, Mama got up early, really early, even before breakfast and started Sunday lunch before church. I'd see all the things we bought at the Big Star spread out on the kitchen counter, all waiting to become something else. Our Sunday meal was just plain scrumptious. Usually we'd have two meats – fried chicken, pork roast with potatoes and carrots, hamburger with onions, beef stew and vegetables – mashed potatoes, butter beans, field peas or, on bad Sundays, stewed tomatoes or collards. I hated those and still do. We always had Mama's biscuits and there'd be gravy to go on something.

And then dessert. If we only had two desserts, it was a slow Sunday. Chocolate pie, butterscotch pie, coconut cake, or pineapple upside down cake. At Sunday lunch, the table was quiet. The only sound you'd ever hear was the smacking of hungry mouths and our Daddy, pointing at a plate of fried chicken or mashed potatoes, saying "hmpf" which we all knew meant, "pass me some more of that."

After lunch, we kids did the dishes. Daddy turned on the TV and Mama disappeared somewhere to iron or fold clothes. She was never a fan of TV.

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THE OIG 2017 WORK PLAN INCLUDES FOCUS ON NURSING FACILITIES

By Iain Stauffer

The U.S. Department of Health and Human Services (DHHS) Office of Inspector General (OIG) recently issued its Work Plan for Fiscal Year 2017. The annual Work Plan provides a summary of new, revised, and continuing reviews for DHHS programs and operations, including Medicare and Medicaid. It describes ongoing audits, evaluations and specific legal and investigative matters. The release of the Work Plan provides an opportunity for nursing facilities to review their own operations and practices while comparing them to the objectives in the Work Plan in order to identify areas for compliance improvement.

The OIG conducts investigative activities that involve allegations of fraud, waste and abuse in all of DHHS's programs. Medicare and Medicaid constitute a significant amount of its work. Areas the OIG can investigate include billing for services not rendered, provision of medically unnecessary services and misrepresented services, patient harm, and the solicitation and receipt of kickbacks. In addition to performing investigations, the OIG is involved in legal matters including: the exclusion of individuals and entities from participation in Medicare, Medicaid, and other federal health care programs; false claims act cases; civil monetary penalties related to false claims; and corporate integrity agreements. The OIG will also issue advisory opinions and guidance to providers.

In the 2017 Work Plan, the OIG has added several risk areas and revised one for Skilled Nursing Facilities (SNF) and Nursing Facilities (NF) in the Medicare and Medicaid programs. The additional areas include unreported incidents of potential abuse and neglect and facility reimbursement.

Specifically, the OIG noted ongoing reviews in other settings indicated the potential existed for unreported instances of abuse and neglect. The focus will be to assess the occurrence of abuse and neglect of beneficiaries in skilled nursing facilities and determine whether the instances were reported properly and investigated according to federal and state requirements.

Also, there are some SNF patients that have complex nursing and therapy needs. Patients are classified into resource utilization groups for payment and generally, the more complex the needs, the higher the Medicare rate for the patient. The OIG noted earlier investigations found SNFs were billing for higher levels of therapy than were medically necessary or provided. The OIG's focus will be to determine whether documentation exists demonstrating requirements were met for the level of therapy provided.



While the OIG added topics to its Work Plan, there are other areas that will continue to be a focus, including prospective payment system requirements and potentially avoidable hospitalizations of nursing facility residents. With respect to prospective payment systems, the OIG is continuing its focus on the requirement for a three-day qualifying inpatient hospital stay within 30 days of an SNF admission. Another focus area that will continue into 2017 involves potentially avoidable hospitalizations of Medicare and Medicaid nursing facility residents. The OIG is concerned with the high occurrence of patient transfers from nursing facilities to hospitals for potentially preventable conditions. It believes this could be an indication of poor quality of care. Nursing facilities with high rates of these types of patient transfers could be subject to OIG review.

In addition to ongoing work, the OIG included future planning efforts in its 2017 Work Plan. Specifically for SNFs, the OIG indicated planning efforts in the future will address oversight of compliance with patient admission requirements. The OIG did not provide any additional explanation regarding this future effort or clarify which admission requirements would be subject to examination.

WHAT DOES THIS MEAN FOR YOU?

The OIG focuses its Medicare and Medicaid oversight on reducing improper payments, and preventing and deterring fraud, waste and abuse. The Work Plan provides insight into the areas that could come under scrutiny and ultimately can help guide internal compliance activities for your facility.

These audits and the increased focus serve as an important reminder that facilities must remain vigilant with their documentation. Also, it is essential that facilities are familiar with applicable requirements for the provision of services and remain current with policies, rules, and regulations. It is also a good time for SNFs and NFs to review their compliance plan and internal policies to verify they address all necessary requirements for the provision of services.

Facilities need to take steps now and review their operations to be better prepared for the current regulatory and audit environment, to minimize their chances for negative audit findings and importantly, to provide proper and quality care.

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Don't Bite!

By William Shenton

In early February, the IRS issued “an urgent alert” concerning the latest version of the phishing scam that targets W-2 payroll information. In a scenario that has played out countless times, hackers generate a fraudulent email that looks like it came from an organization executive, asking HR personnel to send back employee W-2 forms in a return message. When the forms are sent, they are used to file fraudulent tax returns and for other malicious purposes. This particular scam generally works as follows:

- ❑ An employee in the targeted organization’s HR department receives a “spoofed” email, which superficially appears to come from a high-ranking member of management;
- ❑ The spoofed email asks the employee to respond with electronic copies of the previous year’s W-2 earnings statements (which will include employees’ social security numbers, compensation information and home addresses) for all of the organization’s employees; and
- ❑ The employee, believing that he or she is being responsive to a request from senior management, replies to the spoofed email with the requested tax information.

While all “social engineering” scams seek to find and exploit human weaknesses in order to gain access to sensitive information, this scam is brilliantly cynical: it exploits the imbalance of power between senior management and subordinate personnel by inducing a sense of urgency and desire-to-please with the goal of overwhelming the subordinate’s ability to think critically about the information request. Like any good card trick, the spoofed email creates a psychological distraction that blinds the recipient to the sleight of hand taking place right before his or her eyes.

The consequences of a successful W-2 phishing scam can be extremely serious for the target. Data breach notification laws may require delivery of notices to affected employees, government agencies, credit reporting agencies and/or the media. The organization will also need to

report the incident to local and federal law enforcement agencies, as well as the IRS. In short, it will be a costly, time-consuming, distracting and morale-draining experience to deal with the aftermath of a W-2 phishing scam.

In its February alert, the IRS emphasized this scam has begun circulating even earlier this year and is targeting a broader group of organizations including school districts, chain restaurants, and health care organizations. IRS Commissioner John Koskinen called it “one of the most dangerous email phishing scams we’ve seen in a long time.” He stressed the need for vigilance and prompt reporting of incidents to the IRS, by forwarding these messages to phishing@irs.gov, under the subject line “W2 scam.”

As always, the first line of defense against every scam is workforce training and vigilance. In addition to sensitizing personnel to this and other phishing dangers, the IRS recommends organizations adopt a formal written policy about the distribution of W-2 information and other sensitive data. We recommend adopting a general policy triggered whenever an employee gets a request for any sensitive data from a colleague, requiring the employee to start a new email to the purported originator of the message, and never reply directly to the email. Here’s the link to the IRS alert on this subject: <https://www.irs.gov/uac/dangerous-w-2-phishing-scam-evolving-targeting-schools-restaurants-hospitals-tribal-groups-and-others>.

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Advance Health Planning Clinics Statewide in April 2017

By Todd Hemphill & Ken Burgess

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For the fourth year in a row, the NC Bar Association and numerous health care systems, hospice providers and senior advocates will be hosting free advance health care planning clinics in counties throughout North Carolina. Most of the clinics will be held on Saturday, April 8, 2017 between 9 a.m. and 2 p.m. Here's some information you may want to know:

WHAT ARE THE CLINICS? An opportunity for North Carolinians to learn about their right to execute advance directives – specifically living wills and health care powers of attorney – under N.C. law and to receive assistance in executing them if they so desire. You can get a more in-depth overview of how the clinics operate at www.gotplans123.org.

WHERE WILL THE CLINICS BE HELD? The clinics will be hosted by community providers in multiple NC counties. These community hosts are typically hospitals, senior centers, hospice organizations and similar entities. Each community host has identified a site accessible to the public.

WHO IS INVOLVED? Each clinic will be staffed by experienced volunteers, usually some combination of attorneys, community educators, social workers and clinical experts. These volunteers help the community hosts answer questions about the need for advanced directives. The attorney volunteers also provide one-on-one legal assistance to visitors who elect to execute those documents.

HOW MANY PEOPLE ATTEND THE CLINICS? In 2016, we served over 500 NC families in 20 counties. Some sites had as few as 20 attendees and some had over 100. In 2017, given our advance planning, we expect more sites and larger crowds at each event.

HOW CAN I GET INVOLVED? Ken Burgess and I are part of the steering committee organizing these clinics. If you would like to help host or participate in a clinic in your community, please feel free to contact either of us.

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Thursdays with Mama's

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About four o'clock on Sundays, Mama would finally join us in the big living room. She'd say, "I'm feeling hungry." That was our cue to start hitting the Sunday lunch leftovers, all neatly arranged and covered on the kitchen counter.

We'd eat and eat, snack and nibble until there was that one chicken leg or piece of roast and potato left. 'Round about 9 p.m., the snacking was over, it was getting time for bed and Monday morning school and work for Mama and Daddy. The final round of dish-washing was done and Sunday was over. I'd start thinking on Sunday nights about next Thursday when me and Mama would go to the Big Star.

To this day, as a 59-year old man, I hate Sundays after 9 p.m. I want it to be 4:00, when Mama comes into the living room and says, "I'm feelin' hungry" and we line up for seconds of chocolate pie, or coconut cake, or cold fried chicken, and watch reruns of Gunsmoke or Amos and Andy on our old black-and-white TV.

I left the old home place in 1975, headed to college, law school, then on to my career in Raleigh, Washington, D.C., San Francisco, and then back to Raleigh. Over the years, I've traveled all over the world, met all kinds of people and done all kinds of things I dreamed I'd do. I reckon I did what most kids do – ran as far from home as I could get, thinking it must be better somewhere out there.

Then, I came home. Daddy's gone now. He passed in 2002. The old house has long since been sold. The old Big Star grocery store is also long gone, replaced by something else. Three years ago, I moved back to Rocky Mount and built a new house out in the county. In it lives me, two dogs, a cat, an uncle and guess who – my Mama. She has just turned 80, is going strong and still cooks the best fried chicken and gravy on earth.

I wrote this story five years ago, stuck it in a folder and forgot about it. I recently found it, dusted it off, read it and shed a few nostalgic tears. Then, I laughed. Somehow, after all my years and jobs and travels, that little kid who waited for Mama every Thursday at 5:30 to head to the Big Star, that kid who ran as far away as he could, has ended up less than 10 miles from where he started and living with Mama.

Life has a rhythm, a symmetry, a meter, a metric. It's rarely smooth or perfect. It's knots and knuckles, bumps and bruises. It's rough and tumble. It sings its own song in its own time.

KEN BURGESS, Editor of *Shorts*, has over 30 years of experience advising health care clients on a wide range of regulatory, litigation, compliance and operations issues. He may be reached at kburgess@poynerspruill.com or 919.783.2917.