

DMFEA Launches Operation SAFE to Investigate SNFs During COVID-19

Insights

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On January 27, 2021, the California Attorney General [announced Operation SAFE](#) (Stop Abuse and Fraud of Elders), which focuses on increasing investigations and enforcement of claims of fraud and abuse by skilled nursing facilities. Members of Operation SAFE will conduct unannounced visits to skilled nursing facilities to investigate fraud and abuse complaints, with what appears to be a focus on the COVID-19 pandemic. The initiative also includes the expansion and elevation of the California Department of Justice's Bureau of Medi-Cal Fraud and Enforcement (now called the Division of Medi-Cal Fraud and Elder Abuse (DMFEA)). With those expanded resources, the DMFEA will increase prosecutions of Medi-Cal fraud as well as crimes against elders and dependent adults committed by employees of skilled nursing facilities.

The goal of patient protection is certainly laudable. However, the expansion of DMFEA and Operation SAFE, in the midst of the ongoing pandemic, raises questions about whether another layer of government oversight is the solution. Preliminary research has shown that the spread of COVID-19 in skilled nursing facilities was predominately associated with the lack of available personal protective equipment, lack of available testing, facility size, community spread and asymptomatic and pre-symptomatic cases—not lack of enforcement or oversight by the DMFEA. Moreover, at least four governmental agencies already have primary jurisdiction over the specific and highly regulated area of skilled nursing care. Skilled nursing facilities are already subject to oversight from the Center for Disease Control (“CDC”), Centers for Medicare & Medicaid Services (“CMS”), the California Department of Public Health (“CDPH”), and various County Public Health Departments. Through the pandemic, guidance and mandates from these agencies have been constantly changing as the world learns more about the novel coronavirus and variants.

While the value of this additional DMFEA oversight is subject to debate, SNFs must nonetheless be prepared to respond to such investigations. The DMFEA often pursues civil and criminal actions based on allegations of elder abuse and fraud under the California False Claims Act. The consequences of liability under such statutes can be severe, including but not limited to felony and misdemeanor charges, civil money penalties, and exclusion from the Medi-Cal program. If your facility is subject to a DMFEA investigation, it is best to immediately seek guidance from experienced counsel.

For further information, please contact [Mark Johnson](#), [Stan Stock](#), or [Matt Lahana](#) in San Diego, [Mark Reagan](#) or [Scott Kiepen](#) in San Francisco, or your regular Hooper,

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