

LEITNER WARYWODA, PLLC · ATTORNEYS AT LAW

The New York Nursing Home Report

Quarterly Review of Regulatory Enforcement, Liability Trends & Resident Rights

THIS QUARTER

When the Federal Floor Disappears, New York Steps Up.

The repeal of the CMS minimum staffing mandate has shifted all enforcement to state law. New York responded with its first-ever civil penalties — documenting that roughly 80% of facilities are noncompliant. Here is where New York nursing home liability now stands.

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LEAD FINDING

~80%

of New York nursing home facilities failed state staffing mandates.
NYS DOH, February 2026

\$45M
CENTERS
FOR CARE

\$12M
VAN
DUYN

\$5M
SERRAPICA
VERDICT

\$4.26M

NYS DOH first-ever staffing penalties — Feb. 2026

\$12M

AG James / Van Duyn — record operator settlement

\$45M

AG James / Centers for Care — Nov. 2024

\$5M

Serrapica verdict upheld with punitive damages — Jan. 2026

~80%

NY facilities noncompliant with the state staffing mandate

4th

Grieving Families Act veto — Gov. Hochul, Dec. 2025

EXECUTIVE SUMMARY

The Quarter in Brief

The second quarter of 2026 marks a pivotal inflection point in New York nursing home liability. At the federal level, the enforcement architecture has weakened significantly: CMS repealed the 2024 minimum staffing mandate in December 2025, a Texas federal court vacated the rule, and Congress codified a decade-long moratorium on implementation. Regional HHS Office of General Counsel branches — including New York — have closed, and the Special Focus Facility program has been de-emphasized.

New York has responded by assuming the enforcement mantle. The NYS Department of Health issued its first-ever civil staffing penalties in February 2026 — **\$4.26 million across 20 facilities** — and publicly acknowledged that approximately 80% of facilities statewide failed one or more staffing components during the initial enforcement period. Attorney General James has now recovered more than **\$70 million** from nursing home operators in the last 18 months, with the Van Duyn and Centers for Care settlements setting successive records.

In the courts, the litigation environment remains plaintiff-favorable on liability. A Nassau County court upheld a **\$5 million verdict** including punitive damages under PHL § 2801-d in *Serrapica v. South Shore*. The Second Department kept the COVID/EDTPA docket alive in the *Sapphire* cluster. But Governor Hochul's fourth veto of the Grieving Families Act continues to constrain wrongful death damages — a gap that shapes settlement strategy and trial calculus in every resident-death case.

SECTION I — FEDERAL ENFORCEMENT

The Federal Staffing Mandate: Repealed, Vacated, and Frozen

The single most consequential development this quarter is the effective elimination of the 2024 CMS minimum staffing rule. The sequence was rapid and thorough.

The Regulatory Timeline

- **April 7, 2025.** The U.S. District Court for the Northern District of Texas vacated the rule in *American Health Care Ass'n v. Kennedy* (Nos. 2:24-CV-114-Z-BR and 2:24-CV-171-Z, Kacsmaryk, J.). A parallel Northern District of Iowa ruling followed.
- **July 4, 2025.** Section 71111 of P.L. 119-21 imposed a statutory moratorium on implementation, administration, or enforcement of any CMS minimum staffing rule through September 30, 2034.
- **December 2–3, 2025.** CMS formally repealed the rule, reinstating the pre-2024 OBRA-87 federal floor: RN coverage 8 consecutive hours per day, 7 days per week, plus a full-time Director of Nursing.

The facility-assessment requirements from the 2024 rule remain in place. The Trump administration voluntarily dismissed its Eighth Circuit appeal in October 2025. For plaintiff practitioners, the enforceable numeric staffing floor is now entirely a matter of state law. In New York, that law — PHL § 2895-b / 10 NYCRR 415.13 — sets a 3.5 HPRD total requirement (2.2 CNA; 1.1 licensed nurse), and is now being actively enforced.

CMS Survey & Penalty Overhaul

Despite the staffing reversal, CMS revised State Operations Manual Chapters 5 and 7 in April 2026 to strengthen Civil Money Penalty authority (permitting per-instance or per-day fines), refine Immediate Jeopardy definitions, and standardize survey timelines and revisit protocols. CMP data will appear on Nursing Home Care Compare beginning June 24, 2026. A March 2026 Rockefeller Institute policy brief found that for more than half of penalized facilities, total annual penalties amounted to less than 0.25% of net patient revenue — a finding that directly supports the case for private civil enforcement under PHL § 2801-d.

Special Focus Facility Program Revised

Effective January 28, 2026 (QSO-23-01-NH REVISED), CMS replaced staffing with “prevalence of falls” as an SFF-selection factor, citing a September 2025 HHS OIG finding that 43% of falls with major injury went unreported (OEI-05-24-00180). A separate OIG report (OEI-01-23-00050) concluded the SFF program “has not yielded lasting improvements.” The program remains capped at 88 facilities nationally. The Center for Medicare Advocacy criticized the shift away from staffing as removing the most reliable quality predictor.

PRACTICE NOTE — THE DETERRENCE GAP

A March 2026 Rockefeller Institute brief found that for over 50% of penalized facilities, total annual CMS penalties were less than 0.25% of net patient revenue. This data point supports the argument that regulatory fines alone cannot adequately protect residents — reinforcing the indispensability of private civil enforcement under PHL § 2801-d.

SECTION II — NEW YORK STATE ENFORCEMENT

New York DOH: First-Ever Staffing Penalties

In February 2026, NYS DOH issued civil penalty notices to 20 nursing homes for noncompliance with the state minimum staffing mandate — the first enforcement action of its kind since the mandate took effect in 2022.

Penalty Structure

- **Total assessed:** \$4,259,596 across 20 facilities (covering Q2 2022 through Q4 2023, after statutory mitigating factors applied).
- **Maximum potential:** Had all noncompliant facilities been penalized at the statutory maximum from Q2 2022 through Q3 2025, total exposure could have reached approximately \$114 million.
- **~80% noncompliant:** DOH publicly acknowledged that approximately 80% of facilities statewide failed one or more of the three staffing components (3.5 total HPRD; 2.2 CNA; 1.1 licensed nurse) during the enforcement period.
- **Penalty range:** Up to \$2,000/day per quarter of noncompliance; reducible to no less than \$300/day for extraordinary circumstances.
- **Escalating structure:** DOH adopted a three-part evaluation (one component per staffing metric) with escalation for repeated annual noncompliance; unpaid penalties referred to OATH for administrative hearing.

PRACTICE NOTE — LITIGATION SIGNIFICANCE

DOH's own findings are a ready-made liability predicate. Plaintiff counsel should obtain the facility's penalty notice (or absence thereof) early in discovery and use DOH's methodology to calculate the specific HPRD shortfall on the day of the resident's injury.

Certificate of Need Reform

In June 2025, the Public Health and Health Planning Council launched an ad hoc committee to tighten CON review, adding character/competence standards for new applicants, more rigorous financial review, and enhanced scrutiny of consulting agreements and related-party transactions — the same self-dealing structures the AG has successfully targeted in *Van Duyn* and *Centers for Care*.

Legislative Developments

- **Grieving Families Act — vetoed for the 4th time** (December 5, 2025; A6063). New York’s 1847 pecuniary-loss-only wrongful death standard remains in place. Hochul cited insurance and healthcare cost concerns. New York and Alabama remain the only states without non-economic wrongful death damages.
- **PHL § 2801-d survivorship codified.** Prior amendment confirms § 2801-d claims survive the resident’s death and may be brought by the estate/legal representative, consistent with *Hauser v. Fort Hudson Nursing Ctr.*, 202 AD3d 45 (3d Dept 2021).
- **Nursing Home Closure Bill** (Sen. Kavanagh, S4275). Passed Senate 2025; requires 90-day pre-closure notice and a DOH-approved closure plan. A prior version was vetoed in 2024.
- **Justice for Nursing Home Victims Act** (A896). COVID-19 compensation program — remains pending in committee.

SECTION III — ATTORNEY GENERAL ENFORCEMENT

AG James: \$70M+ in Operator Recoveries

New York Attorney General Letitia James has maintained an aggressive enforcement posture against nursing home operators, securing more than \$70 million in recoveries since 2023. Three significant actions defined the past 18 months.

MATTER	RECOVERY	KEY FINDINGS
Centers for Care, LLC 4 NY facilities	\$45M Nov. 2024	Fund diversion via inflated rent; \$8.75M Medicaid restitution; \$35M Resident Care Fund; IHM/IFM oversight through July 2026.
Van Duyn Center Syracuse	\$12M Aug. 2025	Self-dealing mortgage & phantom salaries; contributed to 2 deaths; \$2M Medicaid restitution; \$10M Resident Care Fund.
St. Margaret’s Center Albany	\$1.3M 2026	Years of neglect, 2018–2023; Immediate Jeopardy finding; failure to administer anti-seizure medication.

COMMON PATTERN

All three actions involved diversion of funds through self-dealing related-party transactions — inflated rents, management fees, and salaries for work not performed. This is the same financial architecture that the new CMS-855A ownership-transparency disclosures are designed to expose.

Criminal Prosecutions (MFCU)

- **People v. Phillip Harris** (Glen Cove / Glengariff). Convicted of two felony counts of Endangering the Welfare of a Vulnerable Elderly Person for sexually assaulting two disabled residents; sentencing set December 2025.
- **People v. Rachel Paillet** (Rochester / Pearl Nursing Center). Pleaded guilty to Grand Larceny 3d for stealing a resident's debit card and making 220 withdrawals totaling more than \$60,000 over seven months.

New York's MFCU recovered \$627.8 million for the Medicaid program from FY2019–2025 and is one of four states accounting for half of total national civil recoveries in FY2025. FY2026 MFCU funding is \$70.8 million (75% federal). AG James has publicly warned that Trump-administration cuts to MFCU resources may constrain future enforcement capacity.

SECTION IV — VERDICTS & APPELLATE DECISIONS

Significant Court Developments (2025–2026)

Serrapica v. South Shore — \$5M Verdict Upheld

Serrapica v. South Shore Rehabilitation & Nursing Center LLC, 2026 NY Slip Op 50065(U) (Nassau Co. Sup. Ct., McGrath, J., Jan. 19, 2026). Plaintiff's estate proved pressure-ulcer neglect constituting violations of PHL § 2801-d. The jury awarded \$1 million for conscious pain and suffering and imposed punitive damages, for a total verdict of \$5 million. The court denied all CPLR 4404(a) post-trial motions, rejecting challenges to the verdict as excessive, duplicative, or unsupported by the evidence. Notably, the jury did not find the neglect a substantial factor in death — meaning the \$5M was recovered entirely on liability and conscious pain, not wrongful death.

KEY TAKEAWAY

Punitive damages under PHL § 2801-d are achievable and sustainable post-trial where the record supports willful or reckless disregard of resident rights. Expert proof on both liability (medical) and nursing practice (wounds, call-bell protocols, staff training) was essential.

“In 2022 and 2023, this facility's CNA staffing fell below the unsafe threshold every single day of the year.”

NYS DOH PENALTY DATA / CMS PAYROLL-BASED JOURNAL

Nugent v. Highland Rehabilitation (2d Dept. 2025)

Nugent v. Highland Rehabilitation & Nursing Ctr., 2025 NY Slip Op 04098 (2d Dept, July 9, 2025). The Second Department affirmed denial of the facility's CPLR 4404(a) motion, holding that a valid line of reasoning supported the jury's finding that failure to place a bed alarm departed from accepted

practice and proximately caused the resident's fall and hip fracture. The strong jury-deference standard was reaffirmed for fall cases.

The Sapphire Cluster: COVID/EDTPA Cases Survive

On November 26, 2025, the Second Department decided four companion cases: *Lee v. Sapphire Ctr. for Rehabilitation & Nursing of Cent. Queens, LLC*, 2025 NY Slip Op 06610; *Burke* (06596); *Ho* (06636); and *Gaviria* (06603). The court held: (1) repeal of the Emergency or Disaster Treatment Protection Act (EDTPA) is not retroactive — EDTPA immunity defenses survive as to COVID-era conduct; but (2) defendants failed to conclusively establish immunity on their CPLR 3211(a)(7) motions where plaintiffs adequately alleged gross negligence. Dismissals reversed.

KEY TAKEAWAY

COVID nursing home death cases with strong gross-negligence allegations (systemic staffing failures, infection-control breakdowns, cohorting decisions) survive EDTPA immunity at the pleading stage. Conclusory gross-negligence allegations will not. Plead specific institutional failures with dates and operational detail.

Van DeVeerdonk: Spoliation Warning

Van DeVeerdonk v. North Westchester Restorative Therapy & Nursing Ctr. (2d Dept. 2024): absent pending litigation or specific-claim notice, a facility is not sanctioned for destroying fall video under a normal retention schedule. However, ordinary negligence can support a spoliation sanction where a duty to preserve exists. **Implication:** send a litigation-hold/preservation demand immediately upon retaining the case — before filing, before CPLR 3101 demands, before anything else.

— SECTION V — STAFFING & QUALITY DATA

New York Staffing: Bottom Ten Nationally

Per LTCCC analysis of CMS Q2 2024 Payroll-Based Journal data, New York averaged 3.59 total nurse-staffing HPRD — placing it in the bottom ten states. Approximately 80% of New York facilities provided less than the 4.1 HPRD identified as necessary for safe care in the landmark 2001 federal study. New York ranked worst nationally for administrator time per resident; 42.7% (255 facilities) reported zero medical-director hours in Q2 2024.

CNA STAFFING BELOW THE 2.0 HPRD UNSAFE THRESHOLD

YEAR	% DAYS BELOW 2.0 CNA HPRD	RISK LEVEL
2019	96.4%	UNSAFE
2020 †	97.8%	UNSAFE
2021	94.0%	UNSAFE
2022	100%	UNSAFE — EVERY DAY
2023	100%	UNSAFE — EVERY DAY
2024	100%	UNSAFE — EVERY DAY

† 2020 is the year most directly relevant to pending litigation. Source: CMS Payroll-Based Journal / Institute of Medicine (2.0 HPRD threshold).

Staffing Benchmarks

- **New York mandate:** 3.5 HPRD total (2.2 CNA; 1.1 licensed nurse) under PHL § 2895-b / 10 NYCRR 415.13.
- **Federal OBRA-87 floor (now operative):** RN 8 hrs/day; 24-hr licensed coverage. No numeric HPRD minimum federally.
- **National average (AARP Q1/Q2 2025):** 3.9 total nursing HPRD (0.7 RN; 0.9 LPN; 2.3 nurse-aide).
- **NY CNA average:** approximately 1.60 hours per resident per day at noncompliant facilities — 30% below state mandate; well below the Institute of Medicine’s 2.0 unsafe-threshold floor.
- **Turnover (2025):** CNA turnover 42.34% (down from 44.16%); RN turnover 36.53% nationally. AARP flags NY among the least competitive states for direct-care-worker wages.

Facility Closures

Since 2019, New York has lost more than 5,600 nursing home beds to closures and decertifications, against approximately 599 facilities statewide. Cold Spring Hills Center for Nursing and Rehabilitation (Long Island, ~600 beds) closed approximately May 15, 2025 following a failed sale and bankruptcy, after losing more than \$600,000 weekly and facing an AG lawsuit with a court-appointed health monitor.

SECTION VI — REGULATORY SPOTLIGHT

Ownership Transparency & Reimbursement

CMS Ownership Disclosure (Effective Jan. 1, 2026)

All SNFs must now submit ownership disclosures to CMS via a revised CMS-855A, identifying: (1) governing-body members; (2) officers, directors, partners, trustees, and managing employees; (3)

“additional disclosable parties” (entities exercising operational/financial/managerial control, landlords with $\geq 5\%$ interest, and management/consulting/financial service providers under 42 C.F.R. § 424.502); and (4) full organizational structure (42 C.F.R. § 424.516(g)). Failure to report risks denial, deactivation, or revocation of Medicare billing privileges.

LITIGATION USE

CMS-855A disclosures are a roadmap to the related-party landlords, management companies, and consulting arrangements proven in the AG’s operator actions. Request them early via FOIA or subpoena; cross-reference against CON filings and PHHPC records.

Reimbursement: \$480M in New Medicaid Rate Funding

The FY2026–27 New York State budget (enacted late May 2026) includes \$480 million in new Medicaid rate funding for nursing homes beginning April 1, 2026, plus approximately \$385 million in MCO-tax-related funding and ~\$57 million in capital reimbursement restoration — more than \$920 million tied to FY26–27. Facility-level distribution depends on methodology and timing. Nursing home groups argue even a 5% rate increase falls well short of the ~20% needed to meet staffing requirements.

SECTION VII — PRACTICE RECOMMENDATIONS

Six Recommendations for Plaintiff Counsel

The following recommendations are directed to plaintiff-side practitioners litigating nursing home negligence, wrongful death, and PHL § 2801-d claims in New York. Each is grounded in the developments covered in this report.

#	RECOMMENDATION	ANALYSIS
1	Anchor liability in New York’s state staffing mandate	With the federal rule dead, plead PHL § 2895-b and 10 NYCRR 415.13 violations as regulatory predicates for § 2801-d claims. DOH’s conclusion that ~80% of facilities were noncompliant, combined with New York’s bottom-ten 3.59 HPRD ranking, anchors a systemic-understaffing narrative.
2	Lead with § 2801-d and build the record for punitive damages	<i>Serrapica</i> confirms punitive damages survive post-trial motions where conduct exceeds ordinary negligence. Plead specific 42 C.F.R. §§ 483.10/.24/.25/.35 violations alongside PBJ staffing data and DOH penalty findings to establish “willful or reckless disregard.”
3	Send preservation demands on day one	Given <i>Van DeVeerdonk</i> , immediate litigation-hold letters are essential to trigger the duty to preserve fall video, PBJ records, and MDS/care-plan documentation before “normal business practice” destruction forecloses a CPLR 3126 spoliation remedy.
4	Mine ownership-transparency filings and CON records	The January 1, 2026 CMS-855A disclosures and PHHPC’s tightened CON scrutiny map related-party landlords, management companies,

#	RECOMMENDATION	ANALYSIS
		and consulting arrangements — the self-dealing fact pattern proven in <i>Van Duyn</i> and <i>Centers for Care</i> . Use them to pierce operating-company shells.
5	Calibrate damages expectations to the GFA veto	Until the Grieving Families Act passes, wrongful death recovery remains limited to pecuniary loss. Maximize value through the § 2801-d statutory cause of action and conscious-pain-and-suffering claims rather than betting on wrongful-death expansion.
6	Work the COVID/EDTPA docket aggressively — but plead gross negligence with specificity	The <i>Sapphire</i> cluster keeps 2020-era death cases viable where immunity is not conclusively established and gross negligence is adequately pleaded. Draft complaints with concrete, non-conclusory allegations of systemic failures to survive CPLR 3211(a) motions.

Has Your Loved One Been Harmed in a New York Nursing Home?

Leitner Warywoda, PLLC has recovered more than \$250 million for injured New Yorkers and their families, including landmark results in nursing home negligence and wrongful death cases. Our attorneys know how to read regulatory records, obtain and analyze EMR audit trails, retain the right experts, and take cases to trial when justice requires it. If your family has been affected by nursing home neglect or abuse — in Westchester County, New York City, Long Island, or anywhere in New York State — contact us for a free, confidential consultation. No fee unless we recover for you.

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The New York Nursing Home Report is published quarterly by Leitner Warywoda, PLLC, a leading New York plaintiff-side personal injury firm concentrating in nursing home abuse and neglect, medical malpractice, construction accidents, catastrophic injury, and wrongful death. The firm has recovered more than \$250 million for injured New Yorkers and their families.

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