

but were unable to access the system. The Executive Director (ED) contacted the facility's IT representative, who instructed the surveyors to log into the company's application before accessing PCC. After logging into the application, the surveyors were still unable to access PCC until the ED provided facility-issued Chromebooks. At 10:49 a.m., Surveyor #1 attempted to review Resident #3's medical record (MR) but found the Service Plan (SP) and Progress Notes (PNs) were unavailable. The ED then explained that the District Director of Clinical Services (DDCS) had informed her that full access to the EMR could not be provided. The DDCS stated that the surveyors could review the MRs only with the ED's assistance and that the surveyors would not be provided access to the internal investigation reports for the FREs. In addition, the DDCS stated that, since the incident investigations were "internal," the surveyors could not have access to the investigations.

At 11:32 a.m., the ED contacted the DDCS, who agreed to provide printed copies of the Progress Notes related to the incidents. At 11:54 a.m., the ED provided copies of the FREs and a Word document containing a copy of the investigation report. By the end of the survey, the surveyors had not been granted full access to the EMR or the original investigation documents. A review of the facility's policy, dated 8/2022, titled, "Electronic Medical Records - DOC-4," indicated that authorized state surveyors should be granted full access to electronic medical records. It was determined that the facility failed to provide full access to the EMR and relevant facility documents to the surveyors, affecting 4 of 4 residents reviewed (Residents #1, #2, #3, and #4).

Pursuant to N.J.S.A. 26:2H-5 (e), health care facilities must furnish to the Department of Health reports and information requested to effectuate the provisions and purposes of the act. In addition, pursuant to the Patient Safety Act, N.J.S.A. 26:2H-12.23 et seq., a health care facility must report to the Department every serious preventable adverse event that occurs in that facility. N.J.S.A. 26:2H-12.25(c). "'Serious preventable adverse event' means an adverse event that is a preventable event and results in death or loss of a body part, or disability or loss of bodily function lasting more than seven days or still present at the time of discharge from a health care facility." N.J.S.A. 26:2H-12.25(a). While federal law provides protections against the unauthorized disclosure of protected health information, uses and disclosures for public health activities, including public health investigations, are specifically excluded from the requirement to obtain authorization or to provide an opportunity to agree or object. 45 C.F.R. §164.512(b). Accordingly, the regulations governing assisted living facilities provide that "[s]urvey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients." N.J.A.C. 8:36-2.4(d). And see N.J.A.C. 8:43 E-5.2(c) (applicable to all health care facilities).

In accordance with N.J.A.C. 8:43E-3.4(a)(11), and because the violations of N.J.A.C. 8:36-2.4(d) are violations of regulations related to a failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, \$250.00 per day is assessed. Therefore, the penalty will run from December 10, 2024, the date the surveyor requested access to the electronic medical records to January 6, 2025, the day an acceptable Plan of Correction (POC) was received and the facility agreed in the POC to provide the Department with the requested documents. Thus, the total penalty assessed for this violation is \$7,000.

The total penalty imposed for these violations is \$7,000.

The total amount of this penalty is required to be paid within 30 days of receipt of this letter by certified check or money order made payable to the "Treasurer of the State of New Jersey" and forwarded to Office of Program Compliance, New Jersey Department of Health, P.O. Box 358, Trenton, New Jersey 08625-0358, Attention: Lisa King. **On all future correspondence related to this Notice, please refer to Control X24042.**

INFORMAL DISPUTE RESOLUTION (IDR)

N.J.A.C. 8:43E-2.3 provides facilities the option to challenge factual survey findings by requesting Informal Dispute Resolution with Department representatives. Facilities wishing to challenge only the assessment of penalties are not entitled to IDR review, but such facilities may request a formal hearing at the Office of

Administrative Law as set forth herein below. Please note that the facility's rights to IDR and administrative hearings are not mutually exclusive and both may be invoked simultaneously. IDR requests must be made in writing within ten (10) business days from receipt of this letter and must state whether the facility opts for a telephone conference or review of facility documentation only. The request must include an original and ten (10) copies of the following:

1. The written survey findings;
2. A list of each specific deficiency the facility is contesting;
3. A specific explanation of why each contested deficiency should be removed; and
4. Any relevant supporting documentation.

Any supporting documentation or other papers submitted later than 10 business days prior to the scheduled IDR may not be considered at the discretion of the IDR panel. Send the above-referenced information to:

Nadine Jackman, Office of Program Compliance
New Jersey Department of Health
P.O. Box 358
Trenton, New Jersey 08625-0358

The IDR review will be conducted by professional Department staff who do not participate in the survey process. Requesting IDR does not delay the imposition of any enforcement remedies.

FORMAL HEARING:

Brookdale is entitled to challenge the assessment of penalties pursuant to N.J.S.A. 26:2H-13, by requesting a formal hearing at the Office of Administrative Law (OAL). The facility may request a hearing to challenge any or all of the following: the factual survey findings and/or the assessed penalties. Brookdale must advise this Department within 30 days of the date of this letter if it requests an OAL hearing.

Please forward your OAL hearing request to:

Attention: OAL Hearing Requests
Office of Legal and Regulatory Compliance, New Jersey Department of Health
P.O. Box 360
Trenton, New Jersey 08625-0360

Corporations are not permitted to represent themselves in OAL proceedings. Therefore, if Brookdale is owned by a corporation, representation by counsel is required.

In the event of an OAL hearing regarding the curtailment, Brookdale is further required to submit a written response to each, and every charge as specified in this notice, which shall accompany its written request for a hearing.

Failure to submit a written request for a hearing within 30 days from the date of this notice will render this a final agency decision. The final agency order shall thereafter have the same effect as a judgment of the court. The Department also reserves the right to pursue all other remedies available by law.

Finally, be advised that Department staff will monitor compliance with this notice to determine whether corrective measures are implemented by Brookdale in a timely fashion. Failure to comply with these and any other applicable requirements, as set forth in pertinent rules and regulations, may result in the imposition of additional penalties.

Thank you for your attention to this important matter and for your anticipated cooperation. Should you have any questions concerning this notice, please contact Lisa King, Office of Program Compliance at Lisa.King@doh.nj.gov.

Sincerely,

A handwritten signature in blue ink that reads "G Rosenblum". The signature is fluid and cursive, with a large "G" and a stylized "R".

Gene Rosenblum, Director
Office of Program Compliance
Division of Certificate of Need and Licensing

GR:LK:jc:nj

DATE: March 6, 2025

E-MAIL: Broswo@brookdale.com

REGULAR AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Control# X24042