

# MANDATORY CORPORATE COMPLIANCE PROGRAMS & MEDICARE AUDITS

*Session T-26*

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Aric D. Martin



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ROLF • GOFFMAN • MARTIN • LANG Co., LPA





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## The Long-Term Care Law Firm

*ROLF* is the law firm of long-term care providers, and of the Ohio Health Care Association (OHCA). Our focused practice is dedicated to partnering with our clients to assist them with strategizing for the future, and in responding to all of their current needs. Over the years we have established ourselves as true advocates of not only our clients, but of the LTC profession as well. We serve as legal counsel to OHCA, and to providers across the Midwest in a wide range of matters, including, but not limited to:

Employment counsel & defense

Labor negotiation

Strategic planning

Buying, selling & leasing beds  
and facilities

Licensure & Certification

Survey & Enforcement

Certificate of need

Corporate formation /  
restructuring

Mergers & acquisitions

Real estate issues

Corporate compliance

Risk management

Collections & accounts  
receivable

Contracting with ancillary  
providers & suppliers

Development of operational  
policies & procedures

Medical claim defense

General civil litigation

Staff training

Tax exemption

*A Long-Term Commitment  
to Long-Term Care <sup>SM</sup>*



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## Aric D. Martin



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- Managing Partner
- 15+ years experience
- Ohio Superlawyer

Aric Martin is the Managing Partner of the law firm of Rolf Goffman Martin Lang Co., LPA.

The firm has an extensive health care practice, which represents long-term care providers, hospitals, physicians, pharmacies and numerous other providers in many states.

Mr. Martin has been selected as one of Ohio's best health care attorneys by his peers in the "Super Lawyers" publication since 2005. He has also been included in Marquis *Who's Who in American Law* and named as one of the nations Top Attorneys by The Legal News.

Mr. Martin is a nationally recognized speaker and author on topics related to health care. He co-produced the video "A Time of Transition: Moving Your Loved One Into a Nursing Home", which is currently marketed by AHCA and OHCA. He is a co-author of the "The HIPAA Security Rule: A Long Term Care Manual", "The HIPAA Privacy Rule: A Nursing Facility Manual", "The HIPAA Privacy Rule: An Assisted Living Manual", and "The HIPAA Privacy Rule: An ICF/MR Manual", which are all marketed by the American Health Care Association. He is also a co-author of "The Nursing Home Risk Management Checklist" and "The Survey Book for Nursing Facilities", which are marketed by the Ohio Health Care Association.

Mr. Martin has taught the legal portion of the Core of Knowledge at the Ohio State University's Fisher School of Business – the course necessary for licensure as a nursing facility administrator in Ohio for 15 years. He is the Associate Legal Counsel for the Ohio Assisted Living Association. He recently served on the Health Policy Institute of Ohio's Legal Workgroup for the Health Information Security and Privacy Collaboration.

He received his Juris Doctorate from the Ohio State University College of Law, where he was an editor and published author on the Law Review. He earned a Bachelor of Arts in Economics from Miami University. He also studied law at St. Anne's College in Oxford, England, and international economics at the John E. Dolibois European Center in Luxembourg.

Mr. Martin is admitted to practice in any state court in Ohio, the U.S. District Court for the Northern District of Ohio, and the U.S. Sixth Circuit Court of Appeals. He is a member of the Cleveland and Ohio State Bar Associations, American Health Lawyers Association, Leading Age, Health Care Compliance Association.





1           ~~(2) *EFFECTIVE DATE.* *The amendments made*~~  
 2           ~~*by paragraph (1) shall take effect on the date on*~~  
 3           ~~*which the Secretary makes the information described*~~  
 4           ~~*in subsection (b)(1) available to the public under such*~~  
 5           ~~*subsection.*~~

6   **SEC. 6102. ACCOUNTABILITY REQUIREMENTS FOR SKILLED**  
 7                           **NURSING FACILITIES AND NURSING FACILI-**  
 8                           **TIES.**

9           *Part A of title XI of the Social Security Act (42 U.S.C.*  
 10   *1301 et seq.), as amended by sections 6002 and 6004, is*  
 11   *amended by inserting after section 1128H the following new*  
 12   *section:*

13   **“SEC. 1128I. ACCOUNTABILITY REQUIREMENTS FOR FACILI-**  
 14                           **TIES.**

15           “(a) *DEFINITION OF FACILITY.*—*In this section, the*  
 16   *term ‘facility’ means—*

17                   “(1) *a skilled nursing facility (as defined in sec-*  
 18                   *tion 1819(a)); or*

19                   “(2) *a nursing facility (as defined in section*  
 20                   *1919(a)).*

21           “(b) *EFFECTIVE COMPLIANCE AND ETHICS PRO-*  
 22   *GRAMS.*—

23                   “(1) *REQUIREMENT.*—*On or after the date that*  
 24                   *is 36 months after the date of the enactment of this*  
 25                   *section, a facility shall, with respect to the entity that*

March 23, 2013

1 *operates the facility (in this subparagraph referred to*  
2 *as the ‘operating organization’ or ‘organization’),*  
3 *have in operation a compliance and ethics program*  
4 *that is effective in preventing and detecting criminal,*  
5 *civil, and administrative violations under this Act*  
6 *and in promoting quality of care consistent with reg-*  
7 *ulations developed under paragraph (2).*

8 “(2) *DEVELOPMENT OF REGULATIONS.*—

9 “(A) *IN GENERAL.*—Not later than the date  
10 *that is 2 years after such date of the enactment,*  
11 *the Secretary, working jointly with the Inspector*  
12 *General of the Department of Health and*  
13 *Human Services, shall promulgate regulations*  
14 *for an effective compliance and ethics program*  
15 *for operating organizations, which may include*  
16 *a model compliance program.*

March 23, 2012

17 “(B) *DESIGN OF REGULATIONS.*—Such reg-  
18 *ulations with respect to specific elements or for-*  
19 *mality of a program shall, in the case of an or-*  
20 *ganization that operates 5 or more facilities,*  
21 *vary with the size of the organization, such that*  
22 *larger organizations should have a more formal*  
23 *program and include established written policies*  
24 *defining the standards and procedures to be fol-*  
25 *lowed by its employees. Such requirements may*

Large vs small  
organizations

1           *specifically apply to the corporate level manage-*  
2           *ment of multi unit nursing home chains.*

3           “(C) *EVALUATION.*—*Not later than 3 years*  
4           *after the date of the promulgation of regulations*  
5           *under this paragraph, the Secretary shall com-*  
6           *plete an evaluation of the compliance and ethics*  
7           *programs required to be established under this*  
8           *subsection. Such evaluation shall determine if*  
9           *such programs led to changes in deficiency cita-*  
10           *tions, changes in quality performance, or*  
11           *changes in other metrics of patient quality of*  
12           *care. The Secretary shall submit to Congress a*  
13           *report on such evaluation and shall include in*  
14           *such report such recommendations regarding*  
15           *changes in the requirements for such programs*  
16           *as the Secretary determines appropriate.*

17           “(3) REQUIREMENTS FOR COMPLIANCE AND ETH-  
18           ICS PROGRAMS.—*In this subsection, the term ‘compli-*  
19           *ance and ethics program’ means, with respect to a fa-*  
20           *cility, a program of the operating organization*  
21           *that—*

22           “(A) *has been reasonably designed, imple-*  
23           *mented, and enforced so that it generally will be*  
24           *effective in preventing and detecting criminal,*

Compliance Program  
Requirements

1           *civil, and administrative violations under this*  
2           *Act and in promoting quality of care; and*

3                     *“(B) includes at least the required compo-*  
4                     *nents specified in paragraph (4).*

5                     *“(4) REQUIRED COMPONENTS OF PROGRAM.—*

6           *The required components of a compliance and ethics*  
7           *program of an operating organization are the fol-*  
8           *lowing:*

9                     *“(A) The organization must have estab-*  
10                    *lished compliance standards and procedures to be*  
11                    *followed by its employees and other agents that*  
12                    *are reasonably capable of reducing the prospect*  
13                    *of criminal, civil, and administrative violations*  
14                    *under this Act.*

15                    *“(B) Specific individuals within high-level*  
16                    *personnel of the organization must have been as-*  
17                    *signed overall responsibility to oversee compli-*  
18                    *ance with such standards and procedures and*  
19                    *have sufficient resources and authority to assure*  
20                    *such compliance.*

21                    *“(C) The organization must have used due*  
22                    *care not to delegate substantial discretionary au-*  
23                    *thority to individuals whom the organization*  
24                    *knew, or should have known through the exercise*  
25                    *of due diligence, had a propensity to engage in*

1           *criminal, civil, and administrative violations*  
2           *under this Act.*

3           “(D) *The organization must have taken*  
4           *steps to communicate effectively its standards*  
5           *and procedures to all employees and other*  
6           *agents, such as by requiring participation in*  
7           *training programs or by disseminating publica-*  
8           *tions that explain in a practical manner what*  
9           *is required.*

10           “(E) *The organization must have taken rea-*  
11           *sonable steps to achieve compliance with its*  
12           *standards, such as by utilizing monitoring and*  
13           *auditing systems reasonably designed to detect*  
14           *criminal, civil, and administrative violations*  
15           *under this Act by its employees and other agents*  
16           *and by having in place and publicizing a report-*  
17           *ing system whereby employees and other agents*  
18           *could report violations by others within the orga-*  
19           *nization without fear of retribution.*

20           “(F) *The standards must have been consist-*  
21           *ently enforced through appropriate disciplinary*  
22           *mechanisms, including, as appropriate, dis-*  
23           *cipline of individuals responsible for the failure*  
24           *to detect an offense.*

1           “(G) After an offense has been detected, the  
2           organization must have taken all reasonable  
3           steps to respond appropriately to the offense and  
4           to prevent further similar offenses, including any  
5           necessary modification to its program to prevent  
6           and detect criminal, civil, and administrative  
7           violations under this Act.

8           “(H) The organization must periodically  
9           undertake reassessment of its compliance pro-  
10          gram to identify changes necessary to reflect  
11          changes within the organization and its facili-  
12          ties.

13          ~~“(e) QUALITY ASSURANCE AND PERFORMANCE IM-~~  
14 ~~PROVEMENT PROGRAM.~~

15          ~~“(1) IN GENERAL. Not later than December 31,~~  
16 ~~2011, the Secretary shall establish and implement a~~  
17 ~~quality assurance and performance improvement pro-~~  
18 ~~gram (in this subparagraph referred to as the ‘QAPI~~  
19 ~~program’) for facilities, including multi unit chains~~  
20 ~~of facilities. Under the QAPI program, the Secretary~~  
21 ~~shall establish standards relating to quality assurance~~  
22 ~~and performance improvement with respect to facili-~~  
23 ~~ties and provide technical assistance to facilities on~~  
24 ~~the development of best practices in order to meet such~~  
25 ~~standards. Not later than 1 year after the date on~~



## **AUDITS / CONTRACTORS / PAYERS**

|             |   |
|-------------|---|
| <b>FI</b>   | Fiscal Intermediary   |
| <b>MAC</b>  | Medicare Administrative Contractor ( <i>formerly intermediary and carrier</i> ) |
| <b>MIC</b>  | Medicaid Integrity Contractor   |
| <b>MRA</b>  | Medicare Recovery Auditor ( <i>fka RAC</i> )                                    |
| <b>PSC</b>  | Program Safety Contractor.  |
| <b>QIC</b>  | Qualified Independent Contractor  |
| <b>QIO</b>  | Quality Improvement Organization  |
| <b>RAC</b>  | Recovery Audit Contractor. ( <i>New term is RA – recovery auditor</i> )         |
| <b>ZPIC</b> | Zone Program Integrity Contractor   |



**Mandatory Corporate Compliance  
Programs & Medicare Audits**

*OHCA / May 2012*

**Aric D. Martin**  
*Rolf Goffman Martin Lang Co., LPA*

**Rolf**

# Golf





Why Are You  
Here Today?



**2000**

OIG NF Compliance Guidance

**2008**

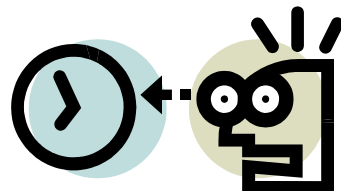
OIG NF Compliance Guidance Updated

**Voluntary**

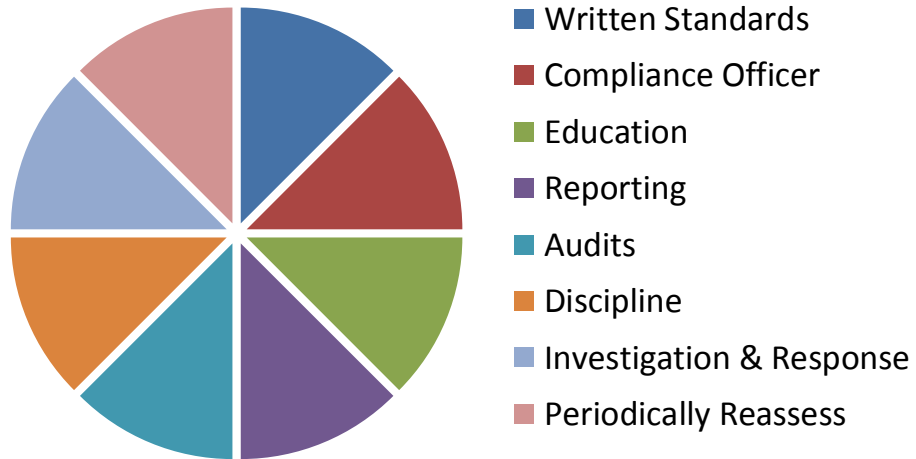


*Deadline* →

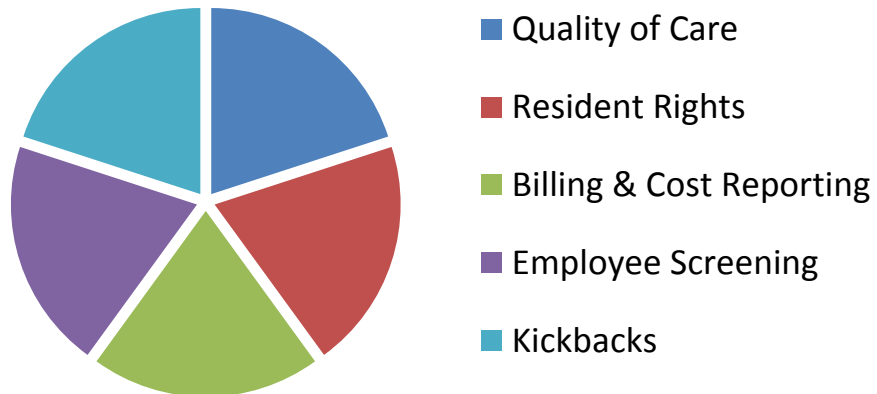
**March 23,  
2013**

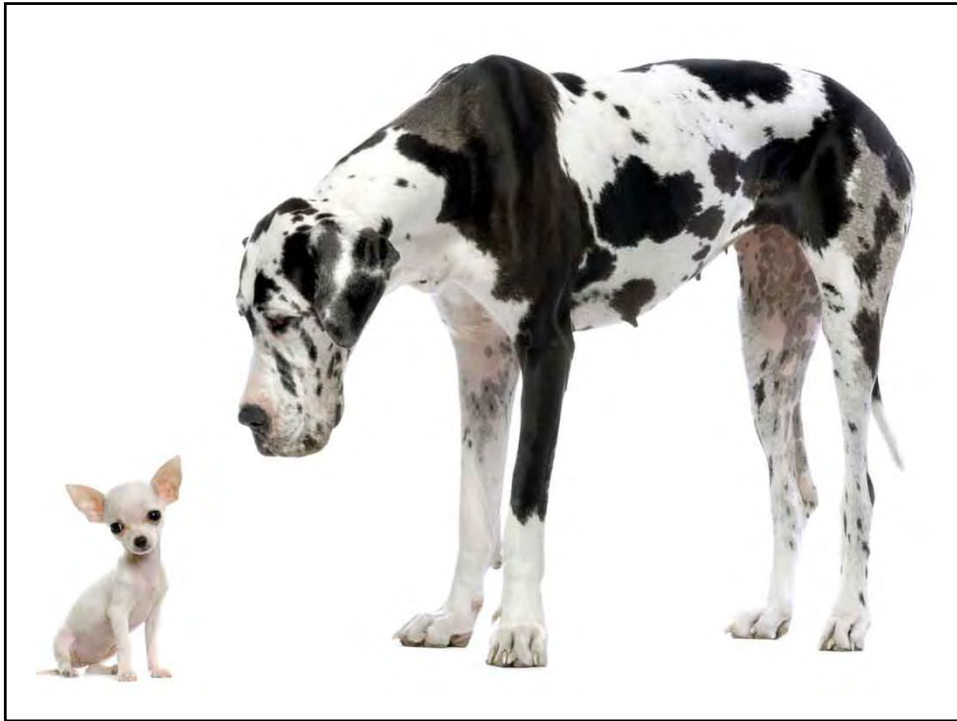


## Statutory Components



## Areas of Focus





**The Regulations Were Not Published.**



**Should You Wait?**

**The requirement is  
in Statute.**

**It is a good idea.**

**EXCLUSION**

## False and Fraudulent Claims

Jump to: 2011, 2010, 2009

False and Fraudulent Claims Archive 

[Top](#)

In each CMP case resolved through a settlement agreement, the settling party has contested the OIG's allegations and denied any liability. No CMP judgment or finding of liability has been made against the settling party.

### 2012

#### 04-16-2012

- > Baypointe Nursing Home, Inc. d/b/a Baypointe Rehabilitation & Skilled Care Center (Baypointe), Massachusetts, agreed to pay \$351,255.44 for allegedly violating the Civil Monetary Penalties Law. The OIG alleged that Baypointe employed an individual that it knew or should have known was excluded from participation in Federal health care programs.

- > Confidentiality of Data Bank Information
- > Drug Price Reporting
- > **False and Fraudulent Claims**
- > Kickback and Physician Self-Referral
- > Managed Care
- > Patient Dumping
- > Overcharging Beneficiaries
- > Select Agents and Toxins

## The Supreme Court Factor



## Prognostication



*Reality Check...*

**What will put you  
on the enforcer's  
radar?**

# **Medicare Audit Contractors**

# **RAC**

- ❖ Purpose = identify overpayments
- ❖ Paid on a contingency basis
- ❖ Look-back period = 3 years
- ❖ Limited to post-payment review
- ❖ Documents request limited
- ❖ Extrapolation very rare
- ❖ Ohio in Region B (of 4 regions)
- ❖ RAC = CGI
- ❖ Approved issues are posted on website
  - <http://racb.cgi.com>

# ZPIC

# Purpose = Identify Fraud

- ❖ Not paid on a contingency basis
- ❖ Look-back period not specified
- ❖ Review of claims can be pre or post pay
- ❖ Unlimited document requests
- ❖ Extrapolation common
- ❖ Not required to notify providers before beginning a review
- ❖ May suspend payment (i.e., 100% prepayment review) in addition to recoupment

## 5 Stages of Audit Appeal

Redetermination

Reconsideration

Administrative Law Judge

Medicare Appeals Council

Federal District Court

## Overpayments

## Key Take-Aways



- ❖ You MUST have a corporate compliance program
- ❖ Traditional ways of conducting internal audits & responding to external audits no longer work



## Contact Info

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