



State of New Jersey

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

OFFICE OF THE STATE COMPTROLLER
MEDICAID FRAUD DIVISION
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KEVIN D. WALSH
Acting State Comptroller

JOSH LICHTBLAU
Director

March 25, 2025

BY ELECTRONIC, OVERNIGHT AND REGULAR MAIL

Mr. Donny Schwartz, Administrator
Belle Care Nursing and Rehabilitation Center
439 Bellevue Ave
Trenton, NJ 08618
[REDACTED]

Re: Review Findings – Belle Care Nursing and Rehabilitation Center - National Provider Identification – [REDACTED]

Dear Provider:

This letter serves to inform you that the New Jersey Office of the State Comptroller, Medicaid Fraud Division (OSC) completed its review of the staff-to-resident ratio of Belle Care Nursing and Rehabilitation Center (Belle Care) for the period from July 1, 2023 through July 31, 2023. The purpose of this review was to determine whether Belle Care satisfied state requirements pertaining to the required minimum staffing requirements (i.e., staff-to-resident ratio). As explained more fully below, OSC found that Belle Care routinely failed to satisfy the direct care staff-to-resident ratio requirements. Accordingly, OSC is seeking to recover the Medicaid funds paid for the dates for which Belle Care failed to meet these requirements and a civil monetary penalty based on the pervasive and serious deficiencies OSC identified.

OSC conducted its review based on documentation OSC obtained from Belle Care. Specifically, OSC reviewed copies of professional licenses, timesheets, and payroll records of Belle Care's staff, including Certified Nursing Assistants, who provided direct care assistance. Based on its review, OSC found that Belle Care violated N.J.S.A. 30:13-18 and N.J.A.C. 10:49-9.8 by consistently providing staffing levels that were significantly below the minimum legal requirements. OSC's finding that Belle Care routinely failed to meet minimum staffing levels raises serious concerns because there is considerable evidence showing that staffing levels

correlate to quality of care, with higher staffing ratios corresponding to higher quality and lower levels to lower quality.¹

Pursuant to N.J.S.A. § 30:13-18a, nursing homes shall maintain the following minimum direct care staff-to-resident ratios:

- 1) One certified nurse aide to every eight residents for the day shift;
- 2) One direct care staff member to every 10 residents for the evening shift, provided that no fewer than half of all staff members shall be certified nurse aides, and each staff member shall be signed in to work as a certified nurse aide and shall perform certified nurse aide duties; and
- 3) One direct care staff member to every 14 residents for the night shift, provided that each direct care staff member shall sign in to work as a certified nurse aide and perform certified nurse aid duties.

Moreover, pursuant to N.J.A.C. 10:49-9.8(a), “providers shall certify that the information furnished on the claim is true, accurate, and complete.”

Based on its review, OSC determined that for each of the 31 days in July 2023, for at least two shifts every day, Belle Care failed to provide the minimum number of direct care staff to appropriately render services to its residents. Out of the 93 shifts that constituted the three shifts (day, evening, and night) for the 31 days in July 2023, Belle Care did not adequately staff 83 of the 93 shifts (89 percent). On average, Belle Care provided 4 fewer direct care staff members per shift than required, a shortage of 48 percent. When broken down by shift, the results are as follows: during the day shift, on average, Belle Care staffed its facility 57 percent below the minimum legal requirement; during the evening shift, on average, Belle Care staffed its facility 36 percent below the minimum legal requirement; and, during the night shift, on average, Belle Care staffed its facility 51 percent below the minimum legal requirement.

When viewed from a patient care perspective, OSC’s findings raise serious concerns. Belle Care’s failure to adequately staff its facility meant that each direct care staff member, on average, provided services to approximately 30 beneficiaries during the day shift, which was 275 percent more than permitted by law. During the evening shift, each direct care staff member, on average, provided services to approximately 22 beneficiaries, which was 116 percent more than permitted by law. Finally, during the night shift, each direct care staff member, on average, provided services to approximately 35 beneficiaries, which was 147 percent more than permitted by law. Furthermore, OSC also found that for 3 of the 93 shifts tested, Belle Care **did not have any direct care staff members present to care for 82 residents present** at that time. These findings, taken as a whole, demonstrate that Belle Care’s failure to provide adequate staffing undoubtedly

¹ Design for Care Compare Nursing Home Five-Star Quality Rating System: Technical Users’ Guide January 2025, p. 6: <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcompliance/downloads/usersguide.pdf>; see also, Abt Associates, Nursing Home Compare Five-Star Quality Rating System: Year Five Report, p. 17: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/NHC-Year-Five-Report.pdf>.

adversely affected its residents and caused staff that were present to face workloads that were, at times, far in excess of the limits established by state law. *See* Appendices I and II for details.

As outlined above, Belle Care failed to meet its statutorily required staffing levels for each day in July 2023. Despite that, when Belle Care submitted claims to the Medicaid program for payments for these dates in July 2023, it asserted that it had complied with all laws and requirements. Those representations were not “true, accurate and complete” and, thus, Belle Care violated N.J.A.C. 10:49-9.8(a). In fact, given how pervasive its staffing deficiencies were, Belle Care knew or should have known that its Medicaid claims were not true, accurate and complete.

Based on the findings above, OSC is seeking to recover from Belle Care the payments that the Medicaid program paid to Belle Care for each day in July 2023, which is \$215,768. In addition, given Belle Care’s knowledge of its deficiencies, as well as the pervasiveness and seriousness of the findings outlined above, OSC is imposing a civil monetary penalty of \$431,536 against Belle Care. In total, Belle Care must repay the Medicaid program \$647,304. Finally, to address the staffing deficiencies identified above, within 30 days from the date of this letter, Belle Care must provide OSC with a Corrective Action Plan (CAP) outlining the steps it will take to correct these deficiencies.

Enclosed please find password protected files containing a detailed analysis and calculations of the direct care staff-to-resident ratios, along with each shift’s staffing requirements and a presentation highlighting staffing shortages. To obtain the password, please contact [REDACTED] Supervising Senior Auditor by electronic mail at [REDACTED] or by calling [REDACTED]

PLEASE TAKE NOTICE: If, after reviewing OSC’s analysis, you believe that Belle Care provided patient care in accordance with the relevant state requirements, you may submit to OSC a written explanation with relevant supporting documentation within 30 days of the date of this letter. Should you submit such a written explanation within this 30-day time period, OSC reserves the right to obtain additional records, conduct on-site visits, and perform any additional analysis necessary to conclude this review. Should you fail to respond in writing to OSC within this 30-day period, OSC may take further appropriate action, including but not limited to: issuing a Notice of Claim, Certificate of Debt, and Notice of Withholding, which would withhold a portion of your future claim’s payments, and any other remedy available to OSC by law.

If you agree with OSC’s conclusion, please mail a Certified Check, Bank Check, or Attorney Trust Account Check for the above stated amount made payable to “Treasurer, State of New Jersey” to the address below. Please insert on the “memo line” of the check [REDACTED]

Treasurer, State of New Jersey
Division of Revenue
200 Woolverton Street, Building 20
Lockbox 656
Trenton, New Jersey 08646
Attn: Processing Bureau

In addition, please forward a copy of your certified payment by email to [REDACTED] or by US Mail to the Office of the State Comptroller, Medicaid Fraud Division, P.O. Box 025, Trenton, New Jersey, 08625-0025, attention [REDACTED]. Should you have any questions regarding this letter please contact [REDACTED] or by email at [REDACTED] or you may contact [REDACTED] at [REDACTED] or by email at [REDACTED]

This letter documents and seeks a recovery relating to Belle Care's failure to meet state minimum staffing levels and its improper billing of claims to the Medicaid program. Given this finding, Belle Care immediately must cease inadequately staffing its facility and submit to OSC a CAP, as outlined above. If Belle Care fails to take these actions, it may be subject to additional penalties and/or administrative sanctions for such failure.

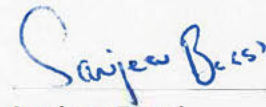
Please be advised that this letter is a public document and, as such, may be placed on the OSC/MFD website.

Sincerely,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

DATE: 3/25/2025

By:



Sanjeev Bassi
Assistant Division Director (Audit)
Office of the State Comptroller
Medicaid Fraud Division

Attachments:

- Appendix I- Findings Summary (password protected)
- Appendix II- Detail Findings Report (password protected)

cc: Joel Leifer – Owner of Belle Care Nursing and Rehabilitation Center
Joel Zupnick – Owner of Belle Care Nursing and Rehabilitation Center
Cheskel Berkowitz - Owner of Belle Care Nursing and Rehabilitation Center
David Rubinstein - Owner of Belle Care Nursing and Rehabilitation Center
Martin Ornstein - Owner of Belle Care Nursing and Rehabilitation Center
Joseph Orgel - Owner of Belle Care Nursing and Rehabilitation Center
Justin Berardo, Assistant Division Director, Regulatory and Exclusion Unit, OSC
Glenn Geib, Recovery Supervisor, OSC

Response to the Review Findings Letter

Following the issuance of the OSC Review Findings letter dated March 25, 2025, Belle Care Nursing and Rehabilitation Center (Belle Care), through its legal representative Peter Slocum, Esq. of Lowenstein Sandler, LLP, submitted a written response dated April 28, 2025. In its response, Belle Care disagreed with all of the findings; however, it did not provide any additional information or documentation to refute the findings. Additionally, Belle Care was required to submit a Corrective Action Plan to OSC but failed to do so. As a result, the findings outlined in the Review Findings letter remain unchanged.

A copy of Belle Care's response to the OSC's Review Findings letter is attached as Exhibit A.



Peter Slocum
Partner

One Lowenstein Drive
Roseland, New Jersey 07068



April 28, 2025

VIA CERTIFIED MAIL

Sanjeev Bassi
Assistant Division Director (Audit)
Office of the State Comptroller
Medicaid Fraud Division
P.O. Box 024
Trenton, NJ 08625

VIA ELECTRONIC MAIL

[REDACTED]
Supervising Senior Auditor
Office of the State Comptroller
Medicaid Fraud Division
PO Box 024
Trenton, NJ 08625
[REDACTED]

Re: In re Review Findings - Belle Care Nursing and Rehabilitation Center ([REDACTED])

Dear Mr. Bassi:

This firm is counsel to Belle Care Nursing and Rehabilitation Center (the “Facility,” NPI ID # [REDACTED]). We are in receipt of the March 25, 2025 Review Findings (“Findings”) issued by the New Jersey Office of the State Comptroller Medicaid Fraud Division (the “Division”). We write in response to the Findings, which the Facility disputes on numerous grounds.

First, the underlying basis for the Findings is the purported failure to comply with N.J.S.A. 30:13-18; L. 2020, c. 112 (the “Staffing Law”), which establishes direct care staff-to-resident ratios in excess of those set by N.J.A.C. 8:39-25.2. The Staffing Law mandates that, notwithstanding any other staffing requirements elsewhere established by law, nursing homes must maintain one certified nurse aide (“CNA”) to every eight residents for the day shift, one direct care staff member to every ten residents for the evening shift, and one direct care staff member to every fourteen residents for the night shift. As we believe the Division is aware, and as we are prepared to demonstrate through both expert and lay testimony, there are insufficient CNAs and direct care staff in New Jersey to fulfill the Staffing Law’s mandates. The nursing home industry as a whole—of which the Facility is a member—is thus not able to comply with the impossible Staffing Law despite good faith efforts. If compliance with a law is factually or legally impossible, then the law

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is unconstitutional. See Brunetti v. Borough of New Milford, 68 N.J. 576, 599 (1975) (“Statutory provisions which are unworkable and impossible to comply with may be invalidated on the ground that they constitute a denial of substantive due process.”); Grp. Health Ins. of N.J. v. Howell, 43 N.J. 104, 112 (1964) (“A regulation which in practice is illusory or impossible to comply with is arbitrary and oppressive and would violate due process.”). Indeed, the Staffing Law is the subject of an ongoing legal challenge for that very reason, in which the Court has already rejected the Defendants’ efforts to dismiss the complaint. See Health Care Association of N.J. v. New Jersey Department of Health, MER-L-1712-24. The Findings cannot stand.

Second, even assuming that the Staffing Law were constitutional (it is not), the Findings do not demonstrate how any of the Facility’s claims forms filed in July 2023 contain materially false, misleading, or inaccurate information such that the Facility’s claims are not “true, accurate, and complete” in violation of N.J.A.C. 10:49-9.8(a). The Division does not identify any specific misrepresentation in any of the Facility’s claim forms during the relevant time period. Nor has the Division identified any legal requirement that the Facility certify its compliance with the Staffing Law as a condition to payment of its Medicaid claims. In any event, any penalty or recovery based on the Staffing Law is inappropriate given its unconstitutionality. Therefore, the Division has no legal basis to recover the \$367,590 in payments made to the Facility or to impose the civil monetary penalty of the same amount.

Third, the Division has not identified a legal basis for the additional civil monetary penalty of \$367,590. N.J.A.C. 8:43E-3.4(a) states that the New Jersey Department of Health “may” assess certain penalties in its discretion for certain violations. The Division has not identified any provision authorizing the Division to impose civil penalties for alleged violations of the Staffing Law. The Division’s authority to impose civil monetary penalties generally is codified in N.J.A.C. 19:70-4.4(a) and N.J.S.A. 30:4D-17. Neither provides a basis for the Division to seek civil penalties in the absence of a material misrepresentation knowingly made. As explained above, the Division has failed to identify any material misrepresentation on the Facility’s part in the Facility’s claims forms. Accordingly, the Division has no basis for a civil monetary penalty of \$367,590.

Fourth, even assuming that the Staffing Law were constitutional (it is not) or that the Division otherwise had valid factual or legal bases to impose the above civil monetary penalties (it does not), the penalty is arbitrary, capricious, and otherwise excessive. Indeed, the Superior Court of New Jersey has already accepted that fining health care facilities for failing to comply with the impossible mandates of the Staffing Law would violate constitutional guarantees against excessive fines and penalties. See Health Care Association of N.J. v. New Jersey Department of Health, MER-L-1712-24.

The Facility therefore objects to the Findings and formally requests review in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 *et seq.*, and 52:14F-1 *et seq.* At any future administrative or judicial proceeding, the Facility reserves the right to supplement the above arguments, as well as to provide testimony and other documentary evidence in its defense.

Thank you for your attention to this matter.

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Medicaid Fraud Division
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Respectfully submitted,

/s/ Peter Slocum

Peter Slocum

cc: Anish Patel, Esq.
Julie A. Minicozzi, Esq.