

Client Alert

May 28, 2026

Acting Attorney General Blanche Announces the Creation of National Fraud Enforcement Division

On April 7, 2026, Acting Attorney General Todd Blanche (Blanche) published a memorandum announcing the Department of Justice's National Fraud Enforcement Division (NFED). According to the memorandum, the NFED's core mission is to vigorously investigate and prosecute theft and fraudulent misuse of taxpayer funds, targeting both large and small scale fraud schemes. Blanche directed the Assistant Attorney General overseeing the NFED to take immediate operational control of the Criminal Division's Tax Section, the Health Care Fraud Unit, and the Market, Government, and Consumer Fraud Unit, with authority to set priorities and direct resource allocation within each. The NFED's direct oversight of the Health Care Fraud Unit signals a likely increase in scrutiny of health care providers, particularly those with substantial Medicare, Medicaid or other federal healthcare program operations.

Our firm will continue to monitor these developments and provide updates as warranted.

Reminders About Safe AI Use

A recent decision from the Southern District of New York, *United States v. Heppner*, highlights important limitations on the use of generative artificial intelligence (AI) tools in legal matters. There, the court held that the defendant's written exchanges with the AI platform Claude were not protected by either the work product doctrine or attorney-client privilege. The court found that the exchanges did not qualify for work product protection because they were not prepared by, or at the direction of counsel and did not reflect counsel's legal strategy. Attorney-client privilege did not apply because Claude is not an attorney, the defendant's use of Claude was not undertaken at the direction of counsel, and the communications were neither intended to be, nor in fact kept confidential.

Specifically, the court noted that Anthropic's privacy policy permits the collection of user inputs and AI generated outputs for purposes of training its models and allows for disclosure to third parties, negating any reasonable expectation of confidentiality.

This case serves as an important reminder that AI tools should not be used in connection with sensitive legal or business matters without appropriate safeguards. A well-crafted AI use policy should provide a clear framework governing which AI tools are permissible and what categories of information may be entered into them.

Please contact our office for assistance in drafting AI policies and procedures tailored to your usage. A one-size fits all approach is not appropriate when it comes to AI.

Risks Associated with Smart Glasses in Health Care Settings

As smart glasses and other wearable recording technologies become increasingly common, healthcare providers should proactively address the compliance and legal risks that may arise when employees wear such devices in the workplace.

Smart glasses are capable of continuously recording audio and video. Often, they can record discreetly, such that the subjects of the recording may not be aware that they are being recorded. This raises privacy concerns, particularly in a healthcare setting, where employees interact with patients and Protected Health Information (PHI). Unauthorized recording or improper storage of PHI implicates HIPAA and may result in civil monetary penalties ranging from \$145 to \$2,190,294, depending on the tier category.

Providers should consider implementing policies that specify when employees may wear smart glasses and how such devices may be used in the workplace. At the same time, any such policy must be carefully tailored. Under the National Labor Relations Board guidance, employers must narrowly tailor any such policy restricting recording devices to address a legitimate and substantial business interest and may not interfere with an employees' rights under Section 7 of the National Labor Relations Act, including organizing activity and whistleblowing. Additionally, employers must ensure that any restriction on smart glasses use does not conflict with obligations under the Americans with Disabilities Act where an employee requires the device as a reasonable accommodation.

Please contact our office with any questions regarding the development of policies governing the use of smart glasses and other recording technologies.

New York City Bill Proposes to Prohibit 24 Hour Shifts for Home Care Employees

The New York City Council has introduced a bill that would restrict the hours that home care employers may assign to home care employees. If enacted, the bill would prohibit employers from scheduling any shift longer than 12 hours, consecutive 12-hour shifts, shifts totaling more than 12 hours in any 24-hour period, or shifts totaling more than 56 hours per week (Maximum Hours Requirement).

Until October 1, 2027, an employer may assign a shift exceeding 12 hours, if the employee knowingly consents in writing. An employee may be assigned shifts in excess of 56 hours per week if the employee knowingly agrees in writing with an indefinite time period designated. An employee may also work in excess of the Maximum Hours Requirements without a written agreement if there is an unforeseeable emergent circumstance requiring additional hours. The employee may work up to 2 extra hours per day or 10 hours per week unless additional hours are necessary to protect the life or safety of the home care recipient or the employee. The Maximum Hours Requirement would not apply to employees covered by a collective bargaining agreement entered into on or before February 18, 2026, until that arrangement terminates.

Penalties for licensed home care service agencies would be \$2,500 for each violation. If enacted, the bill will take effect April 1, 2027.

CMS Announces Moratorium on New Medicare Enrollment for Home Health Agencies and Hospices

On May 13, 2026, the Centers for Medicare and Medicaid Services (CMS) announced an immediate six (6) month nationwide moratorium on new Medicare enrollment for hospices and home health agencies (HHAs) in an effort to combat fraud, waste, and abuse. CMS plans for the moratorium to curb improper billing and prevent bad actors from entering the system. The moratorium may be extended in 6-month increments, if CMS deems it necessary.

The moratorium will apply to all hospice and HHA applications for initial Medicare enrollment and change in majority ownership (CIMO) occurring within 36 months of its initial enrollment or its most recent CIMO that are not subject to an exception. Initial enrollment applications submitted during the moratorium will be denied and the application will need to be resubmitted once the moratorium is lifted. The moratorium will not impact current enrollments or applications received by CMS before the effective date. Existing providers can continue to deliver services to Medicare beneficiaries.

During the moratorium period, CMS plans to intensify targeted investigations, deploy advanced data analytics, and accelerate the removal of hospice and HHA providers from the Medicare program that are suspected of committing fraud. Vice President JD Vance's Anti-Fraud Task Force's has already suspended payments to 773 hospices and 23 HHAs suspected of fraud in the Los Angeles area alone.

Based on the above and the February 27, 2026, moratorium placed on durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) providers, there is currently a large focus on providers in high-risk categories. As a precaution, providers should review their compliance programs, billing practices and records, policies and procedures and quality assurance programs to ensure conformity with applicable federal and state laws.

Please contact our office if you require assistance reviewing your programs, policies or procedures.

2025 Home Care Cost Report

On June 1, 2026, the 2025 Home Care Cost Report (Cost Report) will become available. Cost Report submissions will be due by August 31, 2026. Providers will receive an email from us-advrisknyshc@kpmg.com when the Cost Report is available on the Home Care Tool Dashboard (Dashboard). The New York State Department of Health (DOH) and KPMG will conduct a webinar on changes and new information for the Cost Report and will announce the date in the upcoming weeks. In the meantime, the general instructions for the Cost Report can be found on the DOH website linked [here](#) and prerecorded webinars discussing background, key information, and web-based tool functionality will be available through the Dashboard. Providers are encouraged to begin gathering the necessary information now to ensure a timely submission.

If you have any questions please contact our office.

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