

BEFORE THE  
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION  
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:

**ARBOR REHABILITATION AND  
NURSING CENTER, BUENA VISTA  
CARE CENTER, CATERED  
MANOR NURSING CENTER,  
COURTYARD HEALTHCARE  
CENTER, ET AL.**

Appellant.

HCAI No. 24-025C-LTC

**PROPOSED DECISION**

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, beginning on Thursday, November 21, 2024, at 1:33 PM PST.

HCAI was represented by Ty Christensen, Manager, Accounting and Reporting Systems Section. Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section and Camille Dixon, Attorney, were also present on behalf of HCAI.

Covenant Care California, LLC, owner and operator of Arbor Rehabilitation and Nursing Center,<sup>1</sup> Buena Vista Care Center,<sup>2</sup> Catered Manor Nursing Center, Courtyard Healthcare Center, Encinitas Nursing and Rehabilitation Center, Gilroy Healthcare and Rehabilitation Center, Grant Cuesta Sub-acute and Rehabilitation Center, Huntington Park Nursing Center, La Jolla Nursing and Rehab Center, Los Altos Subacute and Rehabilitation Center, Mission

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<sup>1</sup> Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=10000022> [as of November 20, 2024].

<sup>2</sup> All additional facilities’ license and ownership information is located in the Cal Health Find Database. *See* Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/> [as of November 20, 2024].

Skilled Nursing and Subacute Center, Pacific Coast Manor, Pacific Gardens Nursing and Rehab Center, Pacific Hills Manor, Palo Alto Sub Acute and Rehab Center, Royal Care Skilled Nursing Center, Shoreline Care Center, St. Edna Subacute and Rehabilitation Center, Turlock Nursing and Rehabilitation Center, Valle Vista Convalescent Hospital, Vintage Faire Nursing and Rehabilitation Center, Wagner Heights Nursing and Rehabilitation Center, collectively, “Appellant,” was represented by James Kimball, Chief Financial Officer. Toni Gutierrez, Director of IT, Carol Sparks, Director of Reimbursement, were also present on behalf of Appellant. In addition, Kevin Lawrence from Axiom Healthcare, a representative of the cost reports consulting company, was also present on behalf of Appellant.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on November 21, 2024, at 2:11 PM PST.

#### PROCEDURAL FINDINGS

1. On September 27, 2024, HCAI assessed a penalty against Appellant in the amount of \$5,600 for each of its twenty-two delinquent Long Term Care Annual Disclosure Reports for a total of \$123,200.<sup>3</sup>
2. Appellant appealed the penalty by submitting Request for Administrative Hearing forms dated October 2, 2024, and received by the HCAI Hearing Office on October 14, 2024.
3. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.<sup>4</sup>
4. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 14 were found to be authentic and relevant and admitted to the record.
5. Appellant submitted a letter of explanation to the Hearing Office and HCAI at the time of appeal. This letter was found to be authentic and relevant and admitted to the record as exhibit A.

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<sup>3</sup> Health & Saf. Code, § 128770. *See also* exhibit 12.

<sup>4</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. Tit. 22, § 97052.

In addition, Appellant submitted a report from Mullen Coughlin detailing the digital forensics and incident response to a November 14, 2023 ransomware attack, admitted to the record as exhibit B.

## FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file or request an extension for its Long-Term Care Annual Disclosure Reports for the Report Period Ending (“RPE”) date December 31, 2023 by Tuesday, April 30, 2024.<sup>5</sup>
2. Prior to the deadline, Appellant requested and received both available extensions, for a total of 90 days, for all twenty-two facilities. Following the extensions, the reports were due by Monday, July 29, 2024.<sup>6</sup>
3. On May 21, 2024, Appellant received a 60-day filing extension on its Medicare cost reports and a “zero percent payment suspension rate” through July 30, 2024.<sup>7</sup>
4. On Wednesday, June 19, 2024, prior to the extended due date, Mr. Lawrence emailed HCAI staff to ask for an additional extension due to the destruction of the data and corruption of the backup data needed to prepare the reports at issue that occurred in a ransomware attack on November 14, 2023.<sup>8</sup> As no additional extensions were available by statute and regulation, Mr. Christensen explained that the facilities would need to file an appeal after the penalties had been assessed.<sup>9</sup>
5. HCAI sent automated reminders to Appellant via email on Thursday, July 4, 2024,<sup>10</sup> Friday, July 19, 2024,<sup>11</sup> and Sunday, July 28, 2024.<sup>12</sup> A delinquent report reminder was automatically emailed to Appellant on Thursday, August 1, 2024.<sup>13</sup>

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<sup>5</sup> Health & Saf. Code, § 128770. *See also* Cal. Code Regs. Tit. 22, § 97051.

<sup>6</sup> Exhibits 4, 5, and 6.

<sup>7</sup> Exhibit 3.

<sup>8</sup> Exhibit 2.

<sup>9</sup> *Id.* *See also* Health & Saf. Code, § 128770 and Cal. Code Regs. Tit. 22, § 97051.

<sup>10</sup> Exhibit 4.

<sup>11</sup> Exhibit 5.

<sup>12</sup> Exhibit 6.

<sup>13</sup> Exhibit 7.

6. Penalties accrued from Monday, July 29, 2024 until Monday, September 23, 2024 when the reports were filed.<sup>14</sup>

7. In accordance with Health and Safety Code section 128770, subsection (a), HCAI assessed penalties in the amount of \$100 per day for fifty-six days for each of the twenty-two reports, resulting in a penalty amount of \$5,600 per report.<sup>15</sup> These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

8. Appellant submitted exhibits with its appeal and made oral statements of facts it believes show good cause why the report at issue was not submitted in a timely manner.

9. In its written statement Appellant stated that it was affected by a ransomware attack and lost the data necessary to file the reports at issue.<sup>16</sup> Exhibit B provided additional detail from the forensic investigation into the attack. “The investigation determined that following initial access, the threat actor used compromised user account credentials with administrative access to browse different devices within the environment to perform additional reconnaissance and lateral movement. Following network reconnaissance and data staging, the investigation determined that the threat actor commenced a file encryption attack, deploying a ransomware encryption payload file. CRA’s [Charles River Associates] investigation was unable to definitively determine the initial point of compromise based on available forensic artifacts.”<sup>17</sup>

10. Mr. Kimball testified that following the ransomware attack on or about November 14, 2023, Appellant engaged the company, Mullen Coughlin, to help investigate the breach with the assistance of Charles River Associates. The investigation determined that the earliest malicious connection to Appellant’s network occurred on or about November 12, 2023 and that after approximately two days of network reconnaissance, the criminals deployed the ransomware software, beginning on or about November 14, 2023 at approximately 3:45 am. The attack prevented Appellant from accessing its accounting software and network drives. In addition, the off-site backups were corrupted. As Appellant did not pay the ransom, the data had to be rebuilt

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<sup>14</sup> Exhibits 11 and 12.

<sup>15</sup> Health & Saf. Code, § 128770.

<sup>16</sup> Exhibit A.

<sup>17</sup> Exhibit B.

“from scratch.” Appellant utilized notes from its staff accountants, PDFs of data, quarterly reports, and such to recreate the data from 2023 necessary to file its Medicare and HCAI reports.

11. Mr. Kimball further testified that prior to the ransomware attack, Appellant already utilized a managed services provider for network security and monitoring. The impacted servers were able to be taken offline quickly once the malicious software was deployed and detected, but large amounts of current and historical data was still affected, including backups.<sup>18</sup>

12. Ms. Sparks additionally testified that the data recompilation or re-creation took until on or about Thursday, July 18, 2024. She then was able to perform her review and analysis of the data prior to turning it over to the cost report preparer at Axiom Healthcare. Ms. Sparks further testified that despite the extension granted for the Medicare cost reports, Medicare was withholding claims reimbursements which was affecting Appellant’s ability to continue normal operations.

13. In addition, Mr. Lawrence testified that the priority from Ms. Sparks was the Medicare cost report for financial reasons and because it is a less complicated report to prepare. The reports at issue are more detailed and rely on information that must be calculated for the Medicare reports, so it made sense to the report preparer to complete the Medicare reports first.

14. These facts were substantiated by oral statements made under oath by Mr. Kimball, Ms. Sparks, and Mr. Lawrence at the hearing as well as written exhibits.<sup>19</sup> Exhibit A was provided to the Hearing Officer and HCAI in a timely manner prior to the hearing and exhibit B was admitted at the hearing with no objection from HCAI.

15. Exhibit 14 showed that Appellant has a history of filing required reports in a timely manner, typically on the due date with available extensions.

## DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety

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<sup>18</sup> See also exhibit B.

<sup>19</sup> Exhibits A and B.

Code section 128770, for failing to file its reports by Monday, July 29, 2024, and whether the penalty should be waived in whole or in part.

2. Under Health and Safety Code section 128770, subsection (c), a penalty may “be reviewed on appeal, and the penalty may be reduced or waived for good cause.” In *Waters v. Superior Court*, the California Supreme Court stated that, “good cause may be equated to a good reason for a party’s failure to perform that specific requirement from which he seeks to be excused.”<sup>20</sup> Good cause must be directly related to the specific legal requirement which the party failed to perform and should be outside the reasonable control of the party.<sup>21</sup> Good cause is sometimes defined as circumstances beyond the party’s control, and not related to the party’s own negligent act or failure to act. On an individual basis, courts and administrative bodies have often found that hospitalization, incapacitation, accident involvement, or loss or unavailability of records may constitute good cause.<sup>22</sup> The determination of good cause in a particular context should utilize common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.<sup>23</sup>

3. A party’s diligence is a factor in determining good cause for an extension or a delay.<sup>24</sup> Appellant has shown a history of submitting its reports timely and requesting extensions in a timely manner.<sup>25</sup> Here, the substantiated facts show that Appellant was impacted by criminal activity which was outside of its control. The substantiated facts show that Appellant took reasonable security precautions prior to the attack. In addition, the facts demonstrated that Appellant reacted to the ransomware attack in a matter of hours and properly notified HCAI

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<sup>20</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

<sup>21</sup> *Waters, supra*, 58 Cal.2d 885,893 and Secretary of State, “Good Cause” Reasons for Waiving Late Campaign & Lobbying Filing Fees <https://www.sos.ca.gov/campaign-lobbying/good-cause-reasons-waiving-late-campaign-lobbying-filing-fees/> [as of December 4, 2019].

<sup>22</sup> Fair Political Practices Commission, Guidelines for Waiving Late Fines (Nov. 2017) <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/FilingOfficer/700FO-Folder/Late%20Fine%20Guidelines.pdf> [as of November 15, 2022]. See also *Waters, supra*, 58 Cal.2d 885, 893.

<sup>23</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>24</sup> *People v. Financial & Surety, Inc.* (2016) 2 Cal.5th 35, 47. See also *Wang v. Unemployment Ins. Appeals Bd.* (1990) 225 Cal.App.3d 412, 420.

<sup>25</sup> Exhibit 14.

staff.

4. Appellant demonstrated criminal circumstances outside its control. This is further substantiated by the fact that Appellant contacted HCAI prior to the deadline to ensure program representatives were aware of the ransomware attack. This demonstrates due diligence on the part of Appellant under the circumstances. However, Appellant chose to prioritize the Medicare reporting for both financial and reporting reasons. The financial decision, while logical as a business decision, does not constitute good cause for a reduction or waiver of the penalty assessed. Appellant also testified that the reports at issue are more complex than the Medicare reports but provided no specifics which would form the basis of a further reduction. The facts reasonably demonstrate that Appellant would have been unable to complete the reports at issue prior to the filing of the Medicare reports on Wednesday, August 28, 2024 and twenty-six days elapsed following the filing of the Medicare reports before the reports at issue were filed. However, by statute, Appellant would have four months to prepare the reports at issue following the close of its fiscal year.<sup>26</sup> Therefore, the reports were prepared with reasonable haste following the data recompilation following the ransomware attack.

5. The substantiated facts demonstrate that Appellant was impacted by unique circumstances outside its control and acted with due diligence under the circumstances and with reasonable haste. Therefore, the substantiated facts show good cause for waiver of the penalty assessed.

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<sup>26</sup> Health & Saf. Code, § 128775(b). *See also* Cal. Code Regs. Tit. 22, §§ 97040 and 97051.

PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: December 24, 2024

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MICHELLE CHURCH-REEVES  
Hearing Officer  
Department of Health Care Access and Information

DECISION

Pursuant to Health and Safety Code section 128775, after due consideration of the record,  
the Proposed Decision is:

Accepted

Rejected

Dated: January 13, 2025

//original signed//

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JAMES YI, Attorney IV  
FOR ELIZABETH A. LANDSBERG, Director  
Department of Health Care Access and Information