

PUBLICATION

OIG Publishes Draft Supplemental Nursing Facility Compliance Guidance

April 25, 2008

On April 15, 2008, at the Health Care Compliance Association conference in New Orleans, OIG Inspector General Daniel Levinson announced publication of additional draft compliance program guidance (CPG) for nursing facilities. The draft is published in the April 16, 2008 Federal Register and comments are due no later than June 2, 2008. The original nursing facility CPG was published on March 16, 2000. Since that time and with the advent of PPS reimbursement, the consolidated billing rules for skilled nursing facilities, and the most recent OIG Work Plan, the OIG has focused increased scrutiny on quality care and staffing in the nursing facility.

The OIG recognizes that the aging population - mostly baby boomers - is estimated to rise to 71 million by 2030. The draft CPG outlines five quality of care, four accurate claims and billing, and five kickback areas of focus. In addition, it identifies three other risk areas: physician self referral; anti-supplementation of Medicare and Medicaid payment rates either through actions or practices with referral sources and beneficiaries; and Medicare Part D; and it provides additional guidance regarding HIPAA privacy and security. It further outlines guidance for implementation of measures to foster an ethical corporate culture, and for regular review of compliance plan effectiveness. It outlines communications tools to include decision makers in the compliance process, including the development of a measure such as the "dashboard" to relay appropriate compliance, performance-related and quality of care information to a nursing facility's board of directors and senior officers. A "dashboard" is essentially an instrument providing a user-friendly snapshot of key information necessary for the management and oversight of an organization or, in this case, the organization's compliance program. Lastly, in keeping with the OIG's April 15, 2008 Open Letter regarding the Provider Self Disclosure Protocol, the draft CPG encourages voluntary self reporting of fraud.

With respect to the quality of care focus, the OIG notes that providers who fail to deliver quality of care risk becoming the target of government investigations. The industry has already seen the inception of failure of care investigations, especially with wound care and staffing, and the imposition of quality of care corporate integrity agreements (CIAs). The OIG identifies additional areas for compliance focus including: sufficient staffing; the development of comprehensive care plans; appropriate use of psychotropic medications; medication management; and resident safety as common quality of care risk areas. The OIG encourages key employees to refocus on the conditions of participation and implement targeted training for key personnel.

For accurate claims submission, the OIG asserts it has uncovered a number of fraudulent transactions, in addition to the common risks of duplicate billing, lack of sufficient documentation and false cost reporting. It proposes additional compliance scrutiny for proper reporting of resident case mix; appropriate utilization of therapy services; screening for excluded individuals; and ensuring that residents receive appropriate restorative and personal care services.

The OIG identifies additional fraud and abuse risk areas and encourages scrutiny of arrangements under the kickback statute, including free goods and services arrangements to avoid inappropriate inducements with potential referral sources; physician and non-physician service contracts to avoid disguised kickbacks; discount arrangements to ensure that price reductions meet the anti-kickback discounts exception and that there is no "swapping" of discounts for referrals; hospice services arrangements to be free of remuneration inducements for referral; and reserved bed arrangements with hospitals to avoid disguised payments for referrals.

