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OIG Issues Nursing Facility Industry Segment-Specific Compliance Program Guidance; First in a Series in Furtherance of its Modernization Initiative

Client Alert

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On November 20, 2024, the U.S. Department of Health & Human Services, Office of Inspector General (“OIG”) issued the first Industry Segment-Specific Compliance Program Guidance (“ICPG”), which applies to the Nursing Facility Industry. This follows from the OIG’s Modernization Initiative to update publicly available resources for the healthcare industry first announced in September 2021¹ and finalized in April 2023². This ICPG comes just over a year after the OIG issued the General Compliance Program Guidance (“GCPG”) that kicked off the OIG’s efforts to modernize and consolidate numerous Compliance Program Guidance documents issued between 1998 and 2008.

The Nursing Facility ICPG serves as a centralized source of OIG **voluntary** compliance program guidance for nursing facilities that includes risk areas that are specific to nursing facilities. The ICPG is designed as a companion to the GCPG, which together set forth guidelines and risk areas that healthcare providers should consider when developing, implementing and evaluating their compliance program.

Background of the OIG Compliance Program Guidance and the OIG’s Modernization Initiative

Beginning with the issuance of the Compliance Program Guidance (“CPG”) for Hospitals in February 1998, the OIG published separate guidance for various healthcare providers and agencies, including the following: Home Health Agencies (“HHA”), Clinical Laboratories, Third-Party Billing companies, Durable Medical Equipment, Prosthetics, Orthotics and Supply (“DMEPOS”) entities, Hospice, Medicare+ Choice Organizations (“MCO”), Nursing Facilities, Individual and Small Group Physician Practices, Ambulance Suppliers, Pharmaceutical Manufacturers

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and Recipients of PHS Research Awards. While these CPG's offered invaluable insight to the healthcare industry on compliance requirements, after years of supplementation and updates, the OIG sought to improve the CPGs and other OIG resources by:

... producing useful and timely resources, (ii) deliver[ing] data and information to the public using modern technology, and (iii) spur[ing] improved compliance and innovative approaches that adapt to changes in healthcare systems and keep pace with technological changes. 86 FR 53073.

To that end, the OIG requested public and industry comments regarding how the CPGs were used to understand compliance practices and risk areas, what additional resources or information would be beneficial to stakeholders, and any other aspects that stakeholders wanted to see, including the format of updated CPGs. Based upon the feedback received, the OIG announced that it would no longer issue updates to the existing CPGs, but rather would be issuing a new compliance program guidance of general application in late 2023 followed by various industry-specific compliance program guidance beginning in late 2024.

Following its stated timeline, in November 2023, the OIG published the GCPG to apply across all healthcare segments that addresses fraud and abuse laws, compliance program basics, operational aspects of effective compliance programs and additional OIG resources available to assist healthcare entities with their compliance efforts. As its name suggests, the GCPG provides relevant general information about healthcare compliance with applicable federal laws, as well as risk areas that are applicable to any healthcare segment. The OIG then stayed true to form and issued the first ICPG according to its stated timeline that addresses specific risk areas applicable to nursing facilities.

Using the Nursing Facility ICPG

The 59-page Nursing Facility ICPG is a user-friendly tool that is divided into the following six Sections:

1. User's Guide;
2. Introduction;
3. Compliance Risk Areas and Recommendations for Mitigation;
4. Other Compliance, Quality, and Resident Safety Considerations;
5. Conclusion; and
6. Supplement: Reimbursement Overview.

While the GCPG and ICPG are voluntary, the OIG acknowledged that Nursing Facilities participating in Medicare and Medicaid have statutory and regulatory obligations to have a compliance and ethics program and has drafted the ICPG and GCPG to complement and expand upon these mandates.³

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Turning to the substantive sections of the ICPG, the OIG identifies notable Risk Areas, along with examples and mitigation recommendations. These Risk Areas include Quality of Care and Quality of Life, Medicare and Medicaid Billing requirements, Federal Anti-Kickback Statute and “Other” risk areas, such as Health Insurance Portability and Accountability Act (HIPAA) compliance, related-party transactions and Stark law (physician self-referral). The OIG also provides numerous resources to assist Nursing Facilities in their compliance efforts.

With the GCPG and ICPG, Nursing Facilities now have centralized resources to advance their voluntary and mandatory (for Medicare and Medicaid facilities) quality and compliance efforts and ensure the residents they serve receive high-quality, dignified care in accordance with all applicable legal requirements and industry standards.

If you would like additional information on the Nursing Facility ICPG or the complementary GCPG, please contact the authors of this Client Alert or your Butzel attorney.

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[1] See, OIG Modernization Initiative to Improve Its Publicly Available Resources–Request for Information, 86 FR 53072, (9/24/21)

[2] See Modernization of Compliance Program Guidance Documents, 88 FR 25000, (4/25/23)

[3] See, Section 1128I(b) of the Social Security Act (42 USC 132a-7(b); CMS Requirements of Participation (“ROP”), 42 CFR §§ 483.85 and 483.95(f); and State Operations Manual, Appendix PP (F895 and F946)