

## OIG Outlines Compliance Priorities for Nursing Homes

**Nursing facilities can significantly reduce the risk of an adverse enforcement action by regularly reviewing and revising their compliance program to reflect OIG priorities.**

The United States Department of Health and Human Services Office of Inspector General (“OIG”) recently issued two pieces of guidance of interest to nursing facilities. The first, Supplemental Compliance Program Guidance for Nursing Facilities, updates the OIG’s compliance program guidance and provides “voluntary guidelines to assist nursing facilities in identifying significant risk areas and in evaluating and, as necessary, refining ongoing compliance efforts. The second, the OIG’s 2009 Work Plan, describes the compliance activities the OIG plans to focus on in the coming fiscal year.

According to the 2009 Work Plan and the Supplemental Guidance, the activities that present the most risk for nursing facilities include:

- 1. Quality of Care Issues:** The OIG now regularly uses criminal, civil, and administrative sanctions under the False Claims Act and the Civil Monetary Penalties law to police poor quality of care in nursing facilities. In the Supplemental Guidance, the OIG identifies staffing, comprehensive resident care plans, medication management, use of psychotropic medications and resident safety as the areas in which quality of care compliance activities should focus.
- 2. Billing/Claims Submission:** The OIG has identified billing and claims submission as an area of interest. Specifically, the OIG noted that SNF consolidated billing, assessment, reporting, and evaluation of resident case-mix data, Medicare SNF Resource Utilization Group (“RUG”) claims, and billing for physical, occupational, and speech therapy services present risk and should be carefully evaluated to ensure compliance.
- 3. Violations of Anti-Kickback Statute:** According to the OIG, compliance with the federal Anti-Kickback statute should be a significant focus for nursing facilities. The OIG noted that nursing facilities frequently violate this statute and can incur both civil and criminal liability as a result. Some common violations of the statute include: (1) the provision of free goods and services to residents; (2) inappropriate services contracts; (3) inappropriate discounts; (4) swapping arrangements with clinical laboratories, DME suppliers, and ambulance providers; (5) requesting or accepting benefits from a hospice; and (6) accepting payments from a hospital to reserve beds. All arrangements that fit into one of these categories must be evaluated to ensure lawfulness.
- 4. Violations of the Stark Law:** While nursing facility services are not designated health services (“DHS”) for purposes of the Stark law, which prohibits physician self-referrals, nursing facilities frequently use laboratory, physical therapy and occupational therapy services, and those services are DHS. According to the OIG, financial relationships with physicians who refer or order DHS present a great deal of risk to nursing facilities and require compliance attention.
- 5. Supplemental Payments From Medicare Beneficiaries:** Obtaining supplemental payments from residents (or their families) presents significant risks for nursing facilities

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when the supplemental payment is a prohibited charge imposed for services already covered by Medicare or Medicaid. Such payments should be closely monitored to ensure they are not “supplementing” the payment received from a federal health care program.

**6. Limitations on Medicare Part D Choice:** Any action by facilities that could be viewed as frustrating a beneficiary’s freedom of choice when choosing a Part D plan

(relationships with particular plans, for instance) should be evaluated to ensure compliance with applicable law.

As the recent guidance makes clear, nursing facilities can significantly reduce the risk of an adverse enforcement action by regularly reviewing and revising their compliance program to reflect OIG priorities.

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