

OIG Unveils 2011 Work Plan, Sets Stage for Greater Scrutiny of Nursing Homes

Recently the U.S. Department of Health and Human Services Office of the Inspector General (OIG) unveiled its Work Plan for fiscal year 2011 (Work Plan). The OIG's mission is to defend the integrity of the programs enacted by the Department of Health and Human Services and protect the health and welfare of the beneficiaries of such programs. The Work Plan is a public summary of how the OIG will utilize its funding and how it will focus its audit and enforcement efforts. It is a helpful resource for regulated entities seeking to understand the "hot-button" issues for the year to come. As for information specifically applicable to Nursing Homes, the Work Plan lays out several areas in which the OIG will focus its efforts:

Medicare Part A Payments to Skilled Nursing Facilities

According to a report issued by the OIG, 26 percent of Medicare claims originating at Skilled Nursing Facilities (SNFs) had Resource Utilization Groups (RUGs) that were not supported by the residents' medical records, resulting in \$542 million in potential overpayments in 2002 alone. As such, the OIG intends on conducting a close review of the medical necessity of claims, focusing on calendar year 2009.

Medicare Requirements for Quality of Care in Skilled Nursing Facilities

The OIG will focus on three major quality-related issues regarding the extent to which: (1) SNFs have developed plans of care based on a thorough analysis of their residents' needs; (2) SNFs followed the plans of care; and (3) SNFs planned for the discharge of their residents. The OIG plans to pay close attention to how SNFs utilize the Resident Assessment Instrument (RAI).

Assessment and Monitoring of Nursing Home Residents Receiving Atypical Antipsychotic Drugs

The OIG seeks to complete a thorough review of nursing facilities' compliance with assessment and care-planning requirements for their residents who have been prescribed atypical antipsychotic medication. This inquiry will also include a look at facilities' use of CMS's Resident Assessment Protocol for Psychotropic Drugs to develop resident care plans.

Oversight of Poorly Performing Nursing Homes

POSTED:

Jan 3, 2011

RELATED PRACTICES:

[Health Care](#)

<https://www.reinhartlaw.com/practices/health-care>



This portion of the Work Plan is targeted at gaining greater understanding of how enforcement measures taken by CMS and the states impact the quality of care provided in nursing homes. Importantly, the OIG will look at how state and federal regulators attempt to ensure nursing homes are putting their plans of correction into effect.

Hospitalization of Nursing Home Residents

After noting the high cost of hospitalizations of nursing home residents, and the correlation between hospitalizations and care-quality issues, the Work Plan indicates that the OIG intends to review the extent of hospitalizations of Medicare beneficiaries in nursing homes. The OIG also will review CMS's oversight of nursing homes experiencing high rates of hospitalization for their residents.

Nursing Home Emergency Preparedness and Evacuations During Selected Natural Disasters

In 2006, the OIG found that many nursing homes in Gulf states lacked sound emergency plans or failed to follow their plans when emergencies arose. The OIG will review the deficiencies cited by the states as they pertain to emergency plans and preparedness, and report on the experiences of certain homes as they implemented their emergency plans during recent natural disasters.

Criminal Background Checks for Nursing Facility Employees

The OIG will examine the prevalence of nursing homes employing individuals with criminal convictions. The OIG will also review which states require criminal background checks for nursing home employees.

Program for National and State Background Checks for Long-Term Care Employees

The OIG will review the program of national and state background checks for prospective long-term care employees, called for by the Patient Protection and Affordable Care Act of 2010 (PPACA). The OIG will focus on the procedures that various states have used to conduct background checks and will also assess the costs of conducting background checks.

Medicare Part B Services During Non-Part A Nursing Homes Stay: 2008 Overview

In addition to examining nursing homes' billing patterns for Part B services, the



OIG will assess the level of Part B services provided to nursing home residents whose stays are not covered under Medicare's Part A benefit for SNFs. Fraud and abuse will be a primary area of concern for the OIG in this inquiry.

Hospice Utilization in Nursing Facilities

The OIG recently found that 82% of hospice claims for beneficiaries in nursing facilities failed to meet the applicable Medicare requirements for coverage. As part of the Work Plan, the OIG will study Minimum Data Set (MDS) data and Medicare Part A hospice claims to better understand hospice utilization in nursing facilities. The OIG also will review the business relationships between hospices and nursing facilities, with a close look at the marketing practices of hospice operators experiencing high utilization.

Next Steps

After our review of the Work Plan, Reinhart attorneys have identified several areas in which we may be able to assist your facility to prepare itself to best withstand this volatile regulatory environment. We briefly discuss a few of these areas below.

Quality of Care Issues

The OIG plans to audit how SNFs have implemented various federal and state requirements governing quality of care. This inquiry will focus, in part, on how effectively SNFs respond to plans of correction. Our depth in the survey and certification process proves invaluable for helping facilities navigate these troubled waters.

Natural Disaster Preparedness

Noting deficiencies in many facilities' disaster preparedness and evacuation protocols, the OIG intends on intensifying its review of these areas. Our attorneys have great depth of experience in this area, and can help you develop protocols that are compliant with law and regulation, and offer greater protection for your staff and residents in the event of fires, floods, or other natural disaster.

Final Thoughts

Given the current state of the federal and most, if not all, state budgets, we believe that the OIG intends to significantly ratchet up its enforcement activity in the areas discussed above. If you have questions about the [2011 Work Plan](#) or



other regulatory issues affecting nursing homes, please contact your Reinhart Health Care attorney.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.