Long-Term Care Survey Alert

Survey & Clinical News To Use

-**Hold the RAI manual training** ... **CMS plans to post revisions to the revisions on May 23 with a June 15 implementation date.** Facilities trying to stay ahead of the survey game with RAI manual changes recently got a curve ball. Just days from the May 1 implementation date, the **Centers for Medicare & Medicaid Services** pulled the RAI manual revisions posted on its Web site on March 28.

Why the backtracking? "CMS discovered some technical problems with the revisions," explains CMS spokesperson **Mary Kahn**.

The agency is now revising the original update and plans to post the replacement on its Web site at www.cms.hhs.gov/quality/mds20 by May 23, with a new implementation date of June 15.

The good news: "For those who had begun training [on the changes] that would have been effective on May 1, the majority of content for the June 15 effective date will not be significantly changed," said a CMS' representative during the April 27 SNF Open Door Forum.

The revisions to the revisions will focus on Sections AA9, G1A, G4A, M and R2b, according to CMS.

Tip: If you buy an RAI manual from a vendor, make sure it doesn't include the May 1 changes, advises **Nathan Lake, RN**, an MDS expert and software developer in Seattle.

-**If you think informal dispute resolution doesn't do much to resolve survey disputes, you're about half right**. IDR resulted in citation changes for 45 percent of disputed deficiencies in 14 states reviewed by the **HHS Office of Inspector General.** Other findings of the OIG report (OEI-06-02-00750):

1. Nursing homes are doing a good job in meeting requirements for submitting IDR requests: 99 percent of requests for IDR were in writing, as required; 86 percent included an explanation of the specific deficiency being disputed; and 91 percent provided appropriate reasons for the IDR requests.

2. States completed 80 percent of IDR cases within 60 days. The federal requirements for IDR don't force states to complete IDR within that timeframe, but doing so is beneficial as nursing homes have 60 days from receipt of the formal notice of imposition of enforcement remedies to file a formal appeal request.

   Tip: CMS is not supposed to post deficiencies on the publicly available Nursing Home Compare Web site until the state completes IDR, the OIG reiterates in its report.

   Editor's Note: See the chart outlining State Operation Manual's requirements for IDR, later in this issue.

-**Using IDR to challenge unfair survey citations may become more important than ever, given a new federal report suggesting nursing facilities may soon be paying bigger, and more frequent, civil monetary penalties.**

In a recent report, the **HHS Office of Inspector General** tells CMS that it should step up pressure on nursing homes to perform by using less restraint when levying CMPs. The OIG report also calls on CMS to work with states to improve the collection of fines imposed.

Until now, CMS has used restraint when doling out fines, reports the OIG. Typically, fines imposed have been on the

lower end of the allowable ranges. For example, the median per day imposition amount for an immediate jeopardy violation was about $4,000, far short of the maximum per day amount allowable of $10,000.

In addition, CMS may step up efforts to collect fines more promptly than it has in the past. Of the cases considered in the OIG report, CMS had failed to collect 14 percent of the fines by the end of the OIG's tracking period, December 2002.

Although the auditors attributed some uncollected fines to bankruptcy, they found in some cases no evidence that CMS had even tried to collect the money.

If CMS does increase fines and collection efforts, poor performers could find themselves paying millions. The government imposed $81.7 million in CMPs during the study period, from 2000 through 2001, but collected only $34.6 million.

Federal regulations call on CMS to reduce fines by certain increments, which account for much of the uncollected money, the OIG explains in the report. Such obligatory reductions won't go away, but if the government levies larger fines at the start, nursing could find themselves paying substantially more for noncompliance.

-**With the new MDS Section W coming on line in October to capture flu vaccination rates, make sure you don't get caught without enough vaccine this flu season.**

Because uncertainty lingers over the availability of inactivated flu vaccine for the 2005-2006 flu season, the **Centers for Disease Control & Prevention** is encouraging a two-tiered pre-booking strategy. The agency is asking customers of the inactivated vaccine to provide two requests for supplies, one using the number of doses needed for persons in the priority group in the event vaccine supplies are limited, and another based on priority group use plus other groups if there is no vaccine shortage.

Facilities should notify their pharmacist or other pharmaceutical distributor now that they would like to pre-book and that their order falls under the priority categories.

-**Ready for more RUGs?** CMS has included RUG refinements in a proposed rule scheduled to go into effect January 2006 in order to give providers and fiscal intermediaries time to upgrade billing software. The additional RUG categories account for the costs of certain medically complex patients who require rehabilitation services as well as multiple treatments for comorbidities. CMS is also proposing increases in the case- mix index for all of the RUGs. The increase in the index is equal to half of the value of the temporary "add-on" payments that end with the refinement of the current system.

The proposed rule retains the 128 percent adjustment for SNF residents with AIDS. The increase in payments associated with the RUG refinements, together with an annual inflation increase of three percent, will result in virtually no change in overall SNF Medicare payments in FY 2006, according to CMS.

A full copy of the SNF PPS proposed rule for FY 2006 is available on the CMS Web site at www.cms.hhs.gov/providers/snfpps.