

MDS Alert

Compliance: Beware: The OIG Work Plan Is Chock-Full of Compliance Hot Spots

The list includes MDS accuracy, hospitalizations, potential False Claims Act actions, and more.

If your compliance team hasn't yet taken a hard look at the 2011 OIG work plan, now's the time to find out what the agency has up its sleeve.

"The work plan is a good roadmap for facility compliance committees to better focus on OIG issues that may not readily receive sufficient attention from the facility," says attorney **Neville Bilimoria**, with Duane Morris LLP in Chicago.

For one, says Bilimoria, the OIG is going to focus on Part A SNF payments. The OIG document says it plans to do a medical review for claims from calendar year 2009 to see if they were "medically necessary, sufficiently documented, and coded correctly."

In addition, the OIG plans to look at CMS processes for ensuring facilities are submitting complete and accurate MDSs, says attorney **Paula Sanders** with Post & Schell in Harrisburg, Pa. Sanders predicts this OIG focus will "trickle down to surveys, possibly where surveyors and UMR teams will be reviewing MDS accuracy."

Also: In its work plan, the OIG states that as part of its ongoing focus on atypical antipsychotic use in nursing homes, it plans to take a look at "the extent to which nursing homes used CMS's Resident Assessment Protocol for Psychotropic Drugs to develop residents' care plans."

The OIG plans to target hospitalizations of nursing homes residents, Bilimoria says. The OIG says it "will review the extent of hospitalizations of Medicare beneficiaries residing in nursing homes," noting that hospitalizations are costly to Medicare and may be indicative of quality of care issues.

Troubling stats: The work plan specifically notes that a 2007 OIG study discovered "that 35 percent of hospitalizations during a SNF stay were caused by poor quality of care or unnecessary fragmentation of services." The OIG also plans to take a look at CMS oversight of facilities whose residents show high hospitalization rates. Sanders notes that the 2011 OIG work plan also includes two hospital reviews that are continuations from last year's work plan: "hospital admissions with conditions coded as being present on admission (POA), and the early implementation of the Medicare policy for hospitalacquired conditions (never events)." She predicts the OIG's focus on these areas will have an effect on nursing facilities. For instance, "under hospital admissions, the OIG says it will determine whether specific providers transferred a higher number of patients with POA diagnoses to hospitals," Sanders says.

Potential scenario: If a nursing home transfers a high number of residents to the hospital who remain in "observation status" for a few days and develop pressure ulcers before being admitted as hospital inpatients, the nursing home may appear to be transferring a large number of residents with a POA condition, Sanders says.

Bottom line: With the government's increased focus on payment and quality, nursing homes shouldn't overlook hospitalization as an area of concern, Sanders stresses.

Watch Out for Quality of Care-Related False Claims Act Cases

"On the healthcare fraud front, the OIG plans to continue to investigate False Claims Act cases predicated on the provision of 'worthless services' tied to quality of care," says Bilimoria. He notes that False Claims Act cases related to quality of care in nursing homes are on the rise and can be expensive for facilities to defend against.

"Significantly," Bilimoria says, the 2011 work plan states that "OIG examines quality-of-care issues such as in nursing facilities, institutions, community-based settings, and other care settings and instances in which the programs may have been billed for medically unnecessary services, for services either not rendered or not rendered as prescribed, or for substandard care that is so deficient that it constitutes 'worthless services.'"

The theory the government has used in bringing FCA cases against nursing homes is that "the services you provided are so bad you should not have been paid," says attorney **Robert Markette Jr.**, with Gilliland & Markette LLP in Indianapolis, Ind. While the Department of Justice started with the "egregious cases," that threshold for bringing cases against nursing homes continues to move, he observes.

Don't miss: Hospice in nursing homes is also on the OIG's radar screen, according to the work plan. For a closer look at what this means for nursing facilities, see the next MDS Alert.

Resource: Download the 2011 OIG work plan at http://oig.hhs.gov/publications/workplan/2011/FY11_WorkPlan-All.pdf.